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Effects of the new Mexican immigration policy on the human rights of migrants in transit

A Thesis submitted in partial satisfaction of the requirements for the degree Master of

Arts

in

Latin American Studies (International Migration)

by

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ABSTRACT OF THE THESIS

Effects of the new Mexican immigration policy on the human rights of migrants in transit

by

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Master of Arts in Latin American Studies (International Migration)

University of California, San Diego, 2018

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The migration policy in Mexico has been a chain of “emergency responses” to the historical and critical situations that instead of looking for a structural solution, the creation of laws, initiatives, and programs have been part of a restrictive system where control and lack of attention to the protection of human rights are the rule, not the exception.

This thesis analyzes the effects of the migration policy in Mexico implemented since 2008 with the decriminalization of undocumented migration in the country, and whether the creation of the Migration Law –as the core of the new political stance on migration has worsened, enhanced, or exacerbated the abuses and violations of human rights of migrants. The investigation is a quantitative study based on reports of human rights of migrants’ violations that I collected from the National Commission on Human Rights database, and the Migrant Advocacy Organizations’ Documentation Network.

I argue that the conditions in which migrants’ travel through Mexico, have not changed after the implementation of the new migration policy, but they have not improved either. Moreover, I claim that this control policy came in part from the United States externalization of borders and that the southern border program was an example of an emergency response to the unaccompanied minors “crisis”, which has now fostered a new era where migrants and indigenous Mexicans are being hunted due to racial profiling.

INTRODUCTION

Mexico used to be considered a country of origin for immigrants, even though it also received large flows of refugees from Spain in the early 1940 and Central Americans because of civil wars in the decade of 1980, but since early 2000 it has become a country of origin, destination, transit and return. It is also now recognized on an international level as an advocate of the human rights of Mexican migrants in the United States (US), but, on the other hand, it has one of the most restrictive migration policies in the world (Carrasco, 2013).

Nowadays, thousands of undocumented migrants –most of them coming from Central America, cross the southern border of Mexico trying to either stay in the county or reach their destination known as the United States. Guatemala, El Salvador, and Honduras have been the main countries of origin from the Northern Triangle of Central America (NTCA) since the last decades of the 20th century. Most of the migration from Guatemala after the civil wars chose southern Mexico as a destiny, which –at the same time, has also been a temporary working place for them.

When the migration phenomenon started to become important –under the Salinas’ administration, Mexico forged a new objective: control the migration flows, coming from South to North. In early 1990, the National Institute of Migration (INM) was created and turned into a symbol of a new era of migration control (Casillas, 2008).

Estimates say that approximately 400,000 irregular migrants cross the southern border each year (Amnesty International, 2017). Although there is no official data about the number of migrants crossing through Mexican territory, non-government organizations and advocates of human rights have made great efforts to record it. Moreover, keeping a record of the violations of

human rights is an equal and far more difficult and complex task. However, it is possible to make estimates with the data from the INM and from institutions like the National Commission of Human Rights (CNDH) and the Migrant Advocacy Organizations' Documentation Network (REDODEM). Lack of confidence in the Mexican judicial system, fear to be detained and deported, ignorance of their basic rights (Pardinas, 2008), are some of the reasons why people in conditions of human mobility in Mexico do not report any kind of abuses or violations.

International organizations such as Doctors Without Borders (MSF, 2017) through violence assessment surveys and medical and psychosocial consultations [thanks to the medical labor they do with migrants and refugees in Mexico fleeing from Central America], have witnessed and documented a pattern of violent displacement, persecution, sexual violence, and forced repatriation akin to the conditions found in the deadliest armed conflicts in the world today (p.4). The clandestine condition in which they must travel made them targets of abuses and violations of human rights. Drug traffickers, the organized crime, and some authorities took advantage of their vulnerability, and the increment of violence due to the war on drugs and organized crime worsened the situation.

The main objective of this effort [war against organized crime] has been to guarantee the Law Empire in all national territory; [...] some criminal organizations had taken territorial control in different regions of the country... if there is no other law than the one that the Congress approves the organized crime seeks to impose its own law. If the State has the monopoly of the use of force, these groups seek to impose their own strength, to dominate the citizens, and paralyze the government. In fewer words, they had defied the state and pretended to supplant the authority, [...] that is why we decided to act with all the strength of the state to reestablish the order and authority. [...] this will be a long and difficult battle that will take a long time, it will require huge economic resources, and unfortunately, it will also cost human lives (President Calderón's discourse, First governmental report, 2007, in Quiroz: 41)

The massacre in northern Mexico of 72 migrants coming from Honduras, El Salvador, Guatemala, and South America by the *Zetas* on August 24th, 2010 is one of the best-known examples of this increasing violence. Along with this example it would be easy to find so many more, which is the case of the report that MSF released in 2017 in which they stated that one-fourth of MSF medical consultations in the migrants/refugee program were related to physical injuries and intentional trauma that occurred en route to the United States (5).

In both cases there is little or no doubt that criminal groups and the authorities colluded, but it is not only the fact that 72 persons were killed in Mexican territory and the government did not do anything about it, or that of the 1,817 refugees and migrants treated by MSF for mental health issues in 2015 and 2016, close to half (47.3 percent) were victims of direct physical violence en route (MSF, 2017: 5) and 44 percent [of them] had been hit, 40 percent had been pushed, grabbed or asphyxiated, and 7 percent had been shot, it is the fact that, seven years after the massacre in San Fernando, Tamaulipas there has been no justice and the people who perpetrated the crimes are not under investigation, and those who flee from their countries are not able to get access to medical care or seek protection from either government (Mexican or American).

These events, along with many other cases of torture and homicide of migrants, revealed the vacuum that the government left in terms of transit migration through Mexico, since they did not only demonstrate the ineffectiveness of the restrictive migration policies; but also made it obvious that indifference and state complicity with the organized crime towards migrant population in an irregular situation was a widespread practice (REDODEM, 2014). It is a challenge for the Mexican State to deal with this phenomenon that involves undocumented migration and violence across the country, where apart from the cases of torture, kidnapping, or

homicide, sexual violence is part of the daily life of undocumented migrants in Mexico, especially women.

The migration policies or steps that the government took to improve the situation in the country are recent. Although Mexico has a long history advocating for the human rights of the Mexican community residing in the United States, the response to –especially its Southern neighbors has shown the opposite from what they demand for their nationals. Less than ten years ago the legislators decriminalized undocumented migration, and 6 years ago they created the first migration law.

Help from different civil and international organizations played an important role in the surge of these changes in the Mexican policy toward the migration phenomenon¹. Institutions and human rights advocates such as the Organization of American States, the High Commissioner for Human Rights, and the Ministry of Foreign Affairs in El Salvador demanded the Mexican government to take responsibility and to give an explanation on the massacre in San Fernando Tamaulipas² a month after the incident.

The relevance of the migration phenomenon in today's context is greater than ever. The number of people fleeing from the NTCA, Venezuela, Haiti, and some African countries has changed the scenario in Mexico; they are either trying to reach the US or aiming to get asylum in its southern neighbor country, but in both cases, they face the reality of the Mexican migration policies and practices. “In only five years –from 2011 to 2016, the number of asylum seekers in

¹ In November 2010, the BBVA Bancomer Foundation coordinated the fourth meeting of the Global Forum on Migration and Development in Puerto Vallarta, Mexico, along with the forum on migration for civil organizations. They had the opportunity to exchange views in what was called *Espacio común* (common space) and allowed government representatives, international bodies, and non-governmental organizations to dialogue about the challenges that international migration posed.

² The incident of San Fernando was a massacre of 72 migrants in the state of Tamaulipas. For more information see <http://www.masde72.periodistasdeapie.org.mx/>

Mexico grew more than a 1000%” (Proceso, 2017). National and international civil organizations and institutions argued that Mexico is not ready to receive that amount of asylum seekers.

The Mexican policy has demonstrated to be based on the detention and deportation of migrants to all costs, and less of being consistent with what they demand from the United States for their fellow nationals. Even though there is an existing Mexican Commission for Refugee Aid (COMAR) and a dozen of treaties signed by the government, the number of refugee status granted has lowered. In the first semester of 2017 COMAR only granted refugee status to the 11% (Sin Fronteras, 2017).

The migration policy in Mexico, starting with the creation of a complete legal framework that did not exist before like the Migration Law in 2011, has been a chain of “emergency responses” to the historical and critical situations such as the Law itself or the implementation of the Southern Border Program in 2014. Instead of looking for a structural solution, the creation of laws, initiatives, and programs have been part of a restrictive system where control and lack of attention to the protection of human rights seem to be the rule, not the exception.

This thesis, therefore, will analyze the effects of the migration policy in Mexico implemented since 2008 with the decriminalization of undocumented migration in the country. And whether after the creation of the Migration Law -as the core of the new political stance on this matter has worsened, enhanced, affected, or otherwise exacerbated the abuses and violations of human rights of migrants.

The next section will outline the relation between the US and Mexico in terms of securitization of the Mexican borders, fight against the organized crime in the Mexican side, and the positive response of the Mexican government to these policies of control and their

implementation. The second section will present the methodology used for this research, the complexities of it, and the challenges that emerged. The third will develop the theoretical framework to better understand the human rights in an international context, the recognition of migrants in the United Nations (UN), and the securitizations of borders in a globalized world.

What has gone wrong?

Although progress has been reached in the discourse and the Mexican State now has a model of a migration legal framework, it is still far from what reality looks like in the country. It has been 10 years since the war on drugs and organized crime started, the levels of violence have kept increasing, and the constant presence of the United States in the decision-making of Mexico's issues have brought the country to a human rights' crisis.

1. The United States externalization of borders

[...] while we do not seek to dictate to other states the choices they make, we do seek to influence the calculations on which these choices were based. We also must hedge appropriately in case [of] states choose unwisely. [...] [These principles guide] our relations within our own Hemisphere, the frontline of defense of American national security. Our goal remains a hemisphere fully democratic, bound together by good will, security cooperation, and the opportunity for all our citizens to prosper. [...] If America's nearest neighbors are not secure and stable, then Americans will be less secure. Our strategy for the Hemisphere begins with deepening key relationships with Canada and Mexico, a foundation of shared values and cooperative policies that can be extended throughout the region. We must continue to work with our neighbors in the Hemisphere to reduce illegal immigration and promote expanded economic opportunity for marginalized populations (Bush, 2006).

According to Yolanda Silva (2014), there are some activities that countries of destination put in motion to prevent the immigrants' arrival, such as joint operations between states to monitor and intercept immigrants before their arrival to the country of destination; request support from transit countries or countries of origin to avoid immigrants' entry from third countries; establish certain rules for the visa expedition in countries of origin; initial inspections by the countries of destination in places such as airports in countries of origin or transit

countries; [...] and deterrent campaigns to show immigrants the dangers of crossing undocumented (29).

In the case of the United States - Mexico, the latter works as a natural geographical border for immigrants trying to reach the United States coming from the south, especially from Central America. Due to its location, it has become some sort of police that acts in favor of the United States to prevent immigrants to go further (Baggio, *et. al.* in Quiroz, 2014: 16).

Although both countries worked together in the past, the terrorist attacks on September 11, 2001, in the United States led to a more restrictive migration policy in Mexico. Its northern border security systems were reinforced by the United States and this compelled Mexico to adopt more severe control mechanisms in the southern border, which included major deportations and less access to opportunities of seeking asylum (Pardinas, 2008). The consecutive years were marked with a sustained effort to keep the border safe, agreements and actions were taken, and even large sums of money were distributed among Mexican initiatives.

A few months later -in early 2002, both countries signed the Smart Border Agreements, which included the secure flow of people, infrastructure, and flow of goods. In relation to the flow of people, Mexico made a commitment to collaborate with the development of systems for exchanging information and sharing intelligence, enhance cooperative efforts to detect, screen, and take appropriate measures to deal with potentially dangerous third-country nationals, taking into consideration the threats they may represent toward security, and establish a joint advance passenger information exchange mechanism for flights between Mexico and the U.S. and other relevant flights. (The White House in Quiroz, 2014: 48). It was the beginning of a relationship between states based on the concept of National Security.

Controlling undocumented migration became a priority in 2005 with the Security and Prosperity Partnership of North America (ASpan), and the Secure Border Initiative (SBI) -a multiyear, multibillion-dollar program aimed at securing U.S. borders and reducing illegal immigration (GAO, 2010). According to a White House Press Release in March 2005 (U.S. Department of State), the first meeting of the Partnership was held, and the agenda included three main points: secure North America from external threats, prevent and respond to threats within North America, and further streamline the secure movement of low-risk traffic across [...] shared borders.

As of late 2005 DHS [Department of Homeland Security] -as part of the SBI, had more than 11,000 Border Patrol agents along nearly 7,000 miles of the northern and southern border, an increase of 15 percent over 9/11 levels (Global Security, 2011). The Mexican government, interested in keeping good relations with its northern neighbor, accepted without any complaints the United States' National Security discourse and war against terrorism (Yolanda Silva, 2014: 59). An example of this is the affiliation to the Security and Prosperity Partnership of North America mentioned earlier. While both the SBI and the Partnership were put in motion, the Mexican National Institute of Migration became part of the National Security System, which meant that in Mexico the migratory topics became a National Security issue.

Within this new notion of National Security that Mexico adopted, immigrants, terrorists, drug dealers, and human traffickers were put in the same group of criminals (Yolanda Silva, 2014: 53). Since the decade of 1970 with the creation of the General Population Act, immigrants were considered criminals and we find in the Mexican discourse (as well as the American discourse) the term "illegal" to refer to the undocumented immigrants. But it was with these changes in the migratory policies that the idea of an undocumented immigrant as a criminal was

reinforced. There are some discrepancies between this discourse and the practice that I will further address.

Along with the projects promoted by the Bush administration, in 2008 the Merida Initiative (also called *Merida Plan*) -a partnership between the United States and Mexico created to fight organized crime, came into operation. Its main goal is to enhance citizen security by disrupting organized criminal groups, institutionalizing reforms to sustain the rule of law and support for human rights, creating a 21st-century border, and building strong and resilient communities (U.S. Department of State, 2017).

Even though the Initiative is structured around the fight against organized crime, it also focuses on border control. One of the Mexican institutions involved in this international security project is the Mexican Center for Research and National Security which, at the same time, the INM is part of. The Merida Plan poses an example of how the discourse makes a connection point between an immigrant and a criminal. In other words, immigrants are criminals and potential terrorists, so they must be detained and deported before they keep going forward and reach the United States.

Up to this day, the U.S. Congress has appropriated 2.5 billion dollars that include aircraft, telecommunication systems, vehicles with x-rays, Blackhawk helicopters, different types of equipment, etc. Nowadays this Initiative is on the verge of disappearing. According to Mexico's Interior Secretary, Miguel Ángel Osorio Chong, there have been 2 years since Washington has threatened with the withdrawal of the funds given for the project. They [the people in Washington] argue that this decision is based on the fact that there have been human right violations (Martínez, 2017).

Data from the U.S. Customs and Border Protection (CBP) shows the difference between periods, 2005 and 2015. In the former, CBP apprehended 1,189,075 persons; ten years later -in 2015, it apprehended 337,117, a 72% less. According to Doctors Without Borders (2017), the decrease over the years reflected on the number of detentions could be explained by the externalization of the border control that the U.S. has deployed towards Mexico, especially in the last few years since the implementation of the Southern Border Plan [in 2014]. In fact, detentions of people coming from the Northern Triangle have been dropping in the United States while in Mexico they are increasing at the same pace (23).

2. Meanwhile, what was happening in Mexico?

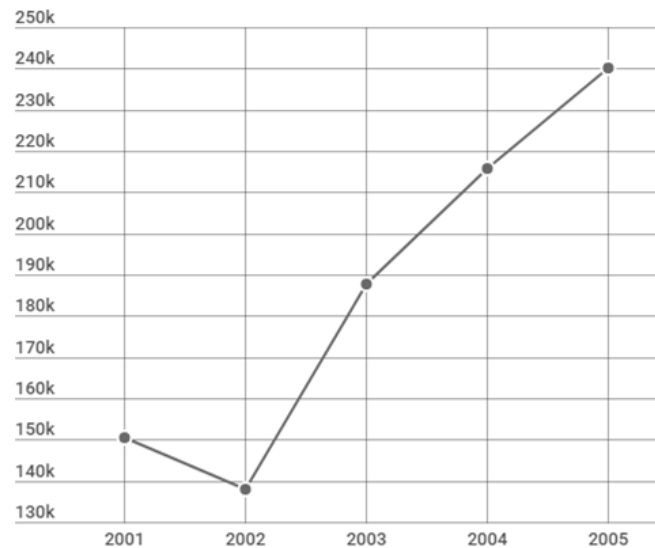
The way the Mexican government started to approach the migratory issue was to create the National Institute of Migration in early 1990. It only took a couple of years to build 25 migration detention centers along the country by the beginning of the 21st century, with which Mexico started to become a strong “wall” between the immigrants coming from the South and the so-called American dream.

Along with the construction of the detention centers, the *Southern Plan* was launched in June 2001 to enhance control of migratory flows that went from the Isthmus of Tehuantepec to the southern border. According to Yolanda Silva (2014), the strategy of ‘protection’ of migrants was focused on the entrance restriction to Mexican territory, military and police elite groups were underpinned in critical points (p. 59).

By 2005 the number of detention centers grew. 52 facilities mostly located in southern Mexico showed the strict control and migration verification policy that the *INM* established

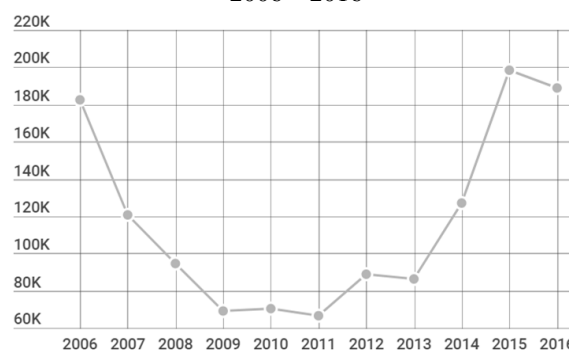
between 2000 and 2005 that reached 247 thousand detentions at the end of that period (Kuhner, 2011).

Graph 1: number of undocumented migrants' apprehensions in Mexico, 2001 – 2005



After the peak in 2005, the detentions started to decrease significantly being 66 thousand 583 detentions the lowest number in 2011. This decline was partly due a couple of hurricanes and several natural disasters that hit southern Mexico (the roads were closed, and migrants had to search for new alternative and more dangerous routes), the American economic meltdown in 2008, and the increasing violence in Mexico as part of the war against drug trafficking and organized crime.

Graph 2: number of undocumented migrants' apprehensions in Mexico, 2006 – 2016



After 2011, migration flows started increasing again and so the deportations. The highest peak reached in 2015 can be explained by the implementation of the Southern Border Program (*Programa Frontera Sur*) in 2014 after the “crisis of migrant children,” which again led to a surge in security operations on the Mexican border with Guatemala and Belize, with frequent reports of extortions, mass deportations, kidnappings and other human rights abuses against migrants (Amnesty International, 2017).

“In July 2014, at the United States’ urging, Mexico instituted a “Southern Border Program” [...] that purports to: regulate migration from Central America; improve border infrastructure as a way to increase development and security; increase coordination within Mexican agencies and with Central American governments; and protect migrants and guarantee respect for their human rights.” (WOLA, 2017: 7) The creation of this Program was a renewed version of the Southern Plan from 2001, and in this case, instead of protecting the human rights of migrants, it became a hunt. A Nicaraguan migrant in the Chahuities’ shelter, located in Oaxaca explained this way: Imagine that they [the migration agents] start running behind you and when they grab you pum! Pum! Pum! They hit you. You have to throw yourself to the floor like an animal. Like a wild animal with the hunter behind. (Animal Político, 2015)

The Washington Office on Latin America (2017) argued that in the Tenosique-Palenque corridor, Mexico’s INM agents, with the support of state and local police, were often involved in operations to hunt down migrants (7). Civil organizations, the media, and scholars strongly criticized the Program that in practice was meant to get rid of as many migrants as possible and in the shortest possible time. A way to exemplify this is the increasing number of road checkpoints and police presence in the south of Mexico.

Along with the checkpoints and the numerous police forces appointed to control the border, the Program also meant a concerted effort to keep migrants from traveling in vehicles and boarding *La Bestia* (WOLA, 2017: 7) –the cargo trains used by migrants as transportation where they have often been victims of crime. As part of these efforts, the government decided to increase the train speed and to put some kind of wire mesh on the side of the railroad to prevent migrants from jumping into the train. According to several civil society organizations the discourse based on the protection of human rights was all talk and in practice, dozens of migrants were facing, even more, dangers than before, death included.

Two years later –in 2016, after the implementation of the Program, and according to the latest report of Amnesty International (2017), there is still an ongoing initiative regarding the externalization of borders; it claims that “data from the US Congress in February showed that the United States government plans to allocate US\$75 million to “security and migration enforcement” on Mexico’s southern border, through the Mérida Initiative”, which contradicts what Osorio Chong said about Washington’s threat regarding the withdrawal of funds from the Initiative.

Overall, the Southern Border Program triggered a sharp increase in total migrant apprehensions. During the Program’s first full year in operation (July 2014-June 2015) apprehensions grew by 79 percent compared to the same period in the previous year. Apprehensions increased by three percent during the Southern Border Program’s second year, which represents a rate 85 percent higher than pre-Program apprehensions. The intensity of enforcement operations appeared to level off in 2016, primarily due to limited resources. In August 2016 the Mexican government took away the operating permit from the Chiapas-Mayab train company and assumed control over the train route. Shelter personnel [from *La 72*] say that the train now maintains a more irregular schedule: sometimes two trains will come in a day, at other times several days will pass between them. Now, operations to remove migrants from the trains have become less frequent (WOLA, 2017:7, 8).

As I mentioned earlier, the high peak in the second graph showed that the sharp increase from 2014 to 2015 was due to the implementation of the Southern Border Program and then in

2016 the number of apprehensions lowered partly due to lack of resources. But there is another crucial factor to understand the change. Since jumping into the train became harder migrants have been forced to search for new —more dangerous, clandestine routes. Additionally, “corruption—which is not uniform, but rarely gets investigated or punished—may have also been a factor in the leveling of the numbers. Migrants and smugglers also adjusted to new security patterns, either by changing routes or by bribing police and migration officials to look the other way” (WOLA, 2017: 8).

But, what about the money spent in Mexico regarding all these Initiatives, plans, and programs? The Washington Office on Latin America (WOLA) argued that the “U.S. support for Mexico’s southern border security has been slower to arrive than expected. In 2014 and 2015, U.S. officials announced US\$90 million to help Mexico strengthen its security along its southern border. As of January 18, 2017, Congressional Research Service reported that about US\$24 million had been delivered from State Department accounts, with a smaller but additional amount coming from the Defense Department” (2017: 8).

On the other hand, biometric and communications programs continue apace. The U.S. State and Defense Departments are currently implementing a US\$88 million-dollar program to increase Mexican immigration authorities’ capacity to collect biometric data and share information about who is crossing through Mexico with the U.S. Department of Homeland Security. The U.S. State and Defense Departments are also funding a US\$75 million project to improve secure communications between Mexican agencies in the country’s southern border zone. This program has erected 12 communications towers so far, all of them on Mexican naval posts (WOLA, 2017: 4)

Although there are some discrepancies between what the Secretary of the Interior, Osorio Chong, says and what some organizations such as Amnesty International say, it is clear that the United States has allocated funds to enhance control of the southern border.

Methods

The investigation is a quantitative study based on reports of human rights of migrants' violations collected from the CNDH database that gathers information from 1994 to the present. For this research, I created a 10-year database that goes from 2006 to 2016³. The information I gathered from the recommendations was the date of the file, the number of the file, date of the aggression, place of the aggression, perpetrators, sex, age, place of origin, and type of human rights violation. I decided to only look at reports from 2006 onwards since it was on that year that President Felipe Calderón declared war against drug trafficking which had an impact in the migrant's routes, increasing violence, and collusion of the State agents with the organized crime.

From the 10-year data collection period, 40 cases ended in reports and recommendations for different governmental institutions to make amends, and those 40 cases encompass 11 896 people aggrieved⁴. Given the fact that not in every report the CNDH gives complete information about the victims, I worked only with the number of what the investigations comprised, comparing them to the number of complaints filed, and the number of migrants interviewed in detention centers and migrant homes. I obtained all the information from the CNDH website which I will further explain in detail.

I also collected information from reports written and published online by different national and international organizations and institutions such as Sin Fronteras, IAP; Amnesty

³ Data from the first semester of 2017 is also shown to better illustrate the current situation in some cases.

⁴ In most cases more than one type of violation was committed.

International, Mexico; WOLA; IMUMI; REDODEM; INSYDE; PRAMI; IACHR; UNHCR; HRW; COLEF; ITAM; and the Wilson Center, Mexico Institute. Furthermore, since there are not many recent academic investigations on the subject due to the difficulty that the data collection presents, I used the thesis from Yolanda Silva Quiroz (2014) as guidance, and a way of continuing her research with a slightly different focus due to the changing migration scenario, taking advantage of the time distance –six years after the implementation of the Law and two and a half years since the Southern Border Program, that allowed me to observe the consequences (either positive or negative) from this “new” migration policy in Mexico.

Data from COMAR regarding the number of asylum seekers per year since 2007 against the number of asylum status granted in those years helped me analyze the Mexican government’s response to the situation, the importance the governmental authorities have given to the matter, and moreover to the current humanitarian crisis on the region. The limitation I found with this data is that when there is a change of administration their reports missed data from a couple of months, but the data is not greatly affected.

The Migration Law and its regulation booklet became my new best friends throughout this journey along with the reports and papers “Dignity without exception: Alternatives to immigration detention in Mexico” from the International Detention Coalition, and “Understanding Mexico’s Changing Immigration Laws” from the Wilson Center, that helped me better understand the strengths and flaws of the Law.

Finally, I used several articles from digital newspapers. Animal Político played a key role to gather information about the Southern Border Program, and to get insights of some REDODEM’s reports. Sin Embargo was one of the richest press sources where I found

numerous articles that exemplified the control that migration agents and other authorities exercise on the ground. La Jornada published an article from Sanjuana Martínez in 2015 that was one of the main reasons that I decided to start researching this topic.

The article was called *Denuncian narcomenudeo, tortura y trata de personas en estación migratoria Las Agujas* (“Drug dealing, torture, and human trafficking were reported in *Las Agujas*, a migration detention center”), and by telling the story of Elvis Ariel Garay –a Nicaraguan man detained in *Las Agujas* for over a month, the journalist depicted how life was in the detention center in Iztapalapa, Mexico City. In 2017, Sin Embargo published an investigation of Elvis’ case.

It is important to mention the relevance of the case of *Las Agujas* for this investigation. In 2014 –before I started working on this research or even thought about it, I was able to enter for a six months period to the detention center through a civil organization called *The Well of Life*. My job as a volunteer was to attend on a weekly basis for two hours and talk with the women that “lived” there. The main goal was to detect victims of trafficking, but also (in the best-case scenario) to make them forget for a short period of time their reality. What was that reality? *Las Agujas*, far from being a safe place for migrants, it looks and feels more like a jail. A year after that experience I found the case presented in both La Jornada and Sin Embargo that helped me shape one section of the chapter in which I presented the results of my investigation.

CNDH

The CNDH is an autonomous agency of the Mexican state, i.e. not dependent on any other authority. Its mission is the defense, promotion, study and dissemination of human rights under the Mexican Constitution, international treaties and laws [...], and also carries out other

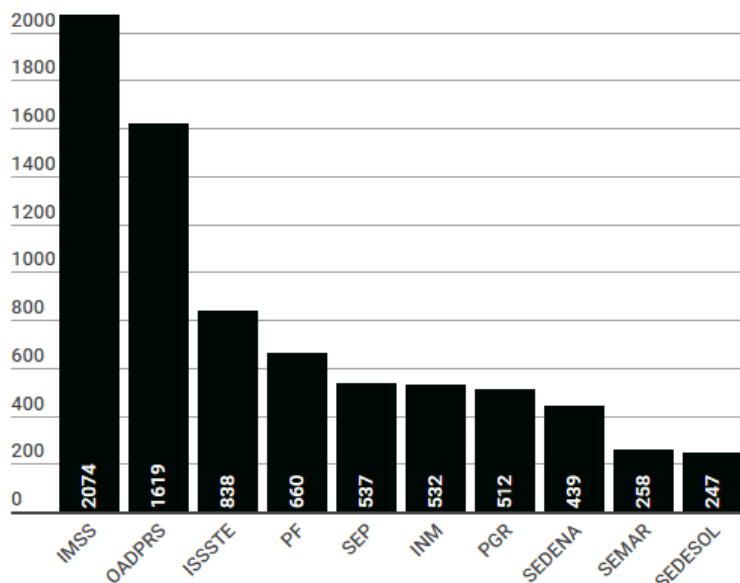
activities such as enforcement, promotion, study and dissemination of human rights (CNDH, 2017). For this investigation, as I mentioned earlier in this section, I gathered data from three different functions that the CNDH carries out.

Receive complaints of alleged human rights violations; hear and investigate alleged human rights violations, for acts or omissions of administrative authorities federal, or tolerance or consent of the authority of unlawful conduct engaged individuals or social partners; and make public recommendations, complaints and complaints to the respective authorities, when deciding ultimately disagreements that arise on the recommendations and agreements of the human rights bodies of the States; as well as the insufficient fulfillment of their recommendations by local authorities (CNDH, 2017) are some of the functions that the CNDH performs, and that I used in order to compare the number of investigations, complaints, and interviews carried out each year.

1. Complaints

According to the CNDH (2017), it is the application that a person does, whether in written, verbal or sign language, or even system Braille writing, that the National Commission on Human Rights to investigate the alleged violation of human rights by acts or omissions from administrative authorities or federal public servants. Anyone within the country, Mexican or foreign, [can file a complaint] who believes that their human rights have been violated or who has knowledge of the effects on human rights of another.

Graph 3: example of the most mentioned authorities in the general complaints' file, 2016.



The CNDH (2017) is competent to file a complaint anywhere in the country in the following cases: When the administrative authorities of federal character, with the exception of the Judicial Power of the Federation, commit acts or omissions that violate human rights; when a person commits an unlawful with tolerance or acquiescence of a public servant or federal authority, or when the latter refuse, without foundation, to exercise the powers legally allocated to them in relation to such offenses; particularly in the case of behaviors that affect the physical integrity of persons; when disagreements arise for omissions or inactivity incurred by the State Human Rights Commissions, as well as the failure in compliance with its recommendations by local authorities.

The complaint files may be concluded for the following reasons:

- Due to lack of competence of the National Commission to hear the complaint filed;
- Not it involves violations of human rights, in which case give legal advice to the complainant;
- For having sent to the authority or public servant designated as responsible document no responsibility;

- For withdrawal of the complainant;
- Due to lack of interest of the complainant in the continuation of the procedure;
- By agreement backlogs;
- Not to be subject to continue hearing the complaint file, and
- By the complaint file have been resolved through conciliation or during the respective process. (CNDH, 2017)

To collect the data of a number of complaints per year it was necessary to go over the yearly activity reports, which are divided under different categories, being one of them the priority care groups- migrant people. Within the section there is a fragment where it mentioned the number of complaint files, number of visits to the detention centers, number of people served, and number of visits to the migrant houses and/or shelters. I also used the data gathered from the last three fragments to analyze CNDH's work throughout time.

2. Recommendations

[Are] The resolution emitted by human rights watchdogs that determines the violation of human rights. With this resolution to the authority it indicated its responsibility in the violation of human rights; it is instructed to authority how shall reimburse or repair damage to the affected and may request the relevant authorities, initiation of procedures, where appropriate, punish those servants who are guilty of the offending conduct rights human, or, ask those authorities expediting procedures and concluded that the date of issuance of the recommendation is pending. (CNDH, 2017)

Recommendations are published after an investigation on the alleged violation of human rights. The core of my research is based on these reports since it is the only institution that consistently presents almost every detail of each case that covers the 11-year period of time that I chose to investigate about. On the other hand, I compared this data with the one collected from the complaints because the CNDH has other ways of solving a case aside from the issuance of a recommendation.

CNDH stated in its annual report in 2013 that protection and defense of human rights were not only reachable through the issuance of recommendations, but when restitution of the

violated rights was achieved quickly. That is the case of the conciliations, and of the solution of the problem along the process. (6)

For this investigation, I focused only on the recommendations that denounced human rights violations of migrants in Mexico, and cases of discrimination in which a Mexican citizen was forced to stay in a detention center due to their appearance or their basic knowledge of the Spanish language. There also are some investigations in the recommendations section about human rights violations to Mexicans in a foreign country, but I did not make those cases part of my database since I focused only in the Mexican territory, its laws, and authorities.

Recommendations are divided into two parts: the first one is the synopsis, where all the most important information is presented, and the second part is the whole investigation itself. All the reports are written in Spanish, and a very few of them have their synopsis in English. The length of the recommendations may vary, but the average is 20 pages.



Comisión Nacional de los Derechos Humanos
México

Recommendation 23/2011

The following is a synopsis of the recommendation emitted by the CNDH . The complete version may be consulted on this institution's web page.

Underage children of V1, of Honduran nationality and V2, director of hostel A

AUTHORITIES RESPONSIBLE: Attorney General National, Migratory Institution Commissioner

April 29th, 2011

The CNDH informs that from the collection of evidence that compile complaint file CNDH/5/2010/3091/Q, in agreement with the information set out in article 41 of the Mexican Human Rights Commission Law, it can be concluded that violation of the human rights to legality, legal security, procurement of justice, due process and as a result the children's right to protection of their integrity, occurred to the detriment of V1, V3, V4, V5, V6, V7 and V8, due to repeated acts of improper exercise of civil service. Additionally, the rights to legality and legal security of V2 were violated, which led to Recommendation 23/2011.

Figure 1: recommendation 23/2011 by CNDH, 2011.

Civil organizations

I attempted to gather data from civil society organizations such as Sin Fronteras, Amnesty International Mexico, and REDODEM. I contacted Sin Fronteras in two different moments; the first one was in February of 2017, asking via email for their reports from 2000 to the present which was not reachable in their website at the moment. I received a reply a month later saying that the website was undergoing repairs and the information was not available, but in the same email a report was attached, and they urged me to also look for their latest publication about their research in detention centers from the past 15 years which I also used for this investigation. The second time I tried to reach them was by the end of March 2017 when I went to their office located in Mexico City to ask for their database. This time I was asked to send an email to the sub-coordinator of the Psychosocial Support area and never received a reply.

Sin Fronteras is well known for their work in the migration detention centers, especially *Las Agujas* located in Mexico City. They are advocates of human rights of migrants and refugees, provide legal representation, and have dedicated most of their work to the documentation of their situation in the detention centers.

In the case of Amnesty International they referred me to their reports related to the migration phenomenon when I asked for information via email, and after going to their offices a couple of days after trying to gather more information (when I was denied the entrance after telling the guard on the door that I did not have an appointment), they told me to send an email to the Education in Human Rights Coordination and Complaints area. I was looking for any kind of database that they could have but faced a response that I did not expect. They did not have at that time documented cases of migrants but suggested me look for their report from October 2016 *Hogar dulce hogar (Home sweet home)*, which I also used for this investigation along with other

data gathered from different publications from the organization. The Coordinator recommended me to contact organizations such as Asylum Access and Sin Fronteras arguing that it was probable that they had more specialized information that could help me.

Lastly, I tried by different means to get a hold from the REDODEM database which encompasses more than 30 000 people registered and more than 40 000 cases. As the REDODEM is comprised of different institutions, civil society organizations, and migrant homes, I contacted two of them. The first one was the Jesuit Migrant Service, Mexico (JSM) and the second one was FM4 Paso Libre (Dignidad y Justicia en el Camino A.C.), located in Guadalajara, Jalisco. I asked both organizations for the same information that I did with Sin Fronteras and Amnesty International, and received the same response in both cases: there was no public access to the database, but I could read their reports based on the data gathered from the different houses, organizations, and shelters.

SJM explained that only the Network had access to the database due to security measures. After talking with them I contacted the Coordinator of the REDODEM –who is also FM4’s Coordinator and found the same answer. For this investigation, I used the organization’s reports which are –without a doubt, the biggest extra official record of undocumented migrants in the country (REDODEM, 2014, p. 6). When I talked to them they only had published two reports, one in 2014 and another one in 2015, but in early 2017 they published their latest report about the situation in 2016 called *Migrantes en México: Recorriendo un camino de violencia* (Migrants in Mexico: Walking through a path of violence).

Limitations

Although some civil organizations and institutions have tried to collect data from migrants and refugees in Mexico, the difficulty that it poses to create a National database is a limitation of this investigation. A general problem that anyone trying to approach this topic will face is the lack of access to the information. As I mentioned in the beginning, keeping record [that is, statistical data] of these violations in the migration context is a difficult task itself. The migration topic was (and still is) not an important enough problem to be approached as a serious study phenomenon in the government sphere. The only attempts to work with the migrant population and keep record of it, was boosted by institutions like CNDH or civil society organizations.

CNDH and Sin Fronteras (a civil society organization) were the only two that started working with migrants since the 1990 decade, and collecting reports from the migrants surveyed (mostly) in detention centers. Although CNDH also tried to collect data from surveys gathered in migrant's houses and shelters, the bulk of the population came from detention centers. As I will further explain, other limitations that this investigation faced besides the poor attention this topic has drawn historically, is the fact that the few institutions that tackled the human rights' violations of the migrant population also faced internal changes that prevented them to maintain a uniform methodology.

In the CNDH's case, one possible element that could hinder the data collection is the number of staff available each year to complete the task, or if they decided to take a smaller sample. This could be a consequence of various factors such as economic problems within the institution, or other external ones like the political climate, etc. The last element is important to address since the Mexican president in turn is the one who appoints the CNDH's president and there could be a possible conflict of interests when it comes to collect or report human rights violations. Also,

there could be a change on the methods used to collect it every six years when the administration changes and so the CNDH's president.

There was also a need to collect more information of migrants located along the country, but the problem is that there was not even a single institution dedicated to gather all the information. REDODEM made efforts to collect data from migrants in houses and shelters, but it is a very recent initiative.

Theoretical framework

Migration as a field of study –and the complexities within is new in the global agenda. Though part of the academia was dedicated to the study of the migration flows, the shift that this issue had in recent years draw much more attention, and it became part of one of the main issues in the Western society. The debate nowadays bounces between the limits of immigration control (as a branch of national security) and human rights (in this specific case of the undocumented migrants). In other words, where does the national sovereignty ends and where human rights start? As Tom K. Wong (2015) stated, “our current age of migration is simultaneously an age of immigration control, wherein it is unclear where the impulse, desire, and necessity of controlling immigration ends and where the rights of all migratory persons, irrespective of their migration status, begins.” (8)

Although there are some views that argue that when it comes to the matter of immigration control need not always mean or even imply closure and restrictiveness, as the various mechanisms used by states to control immigration are policy outputs that emerge from the broader political and institutional context in which the contentious politics of immigration unfolds and takes place, (Wong, 2015: 6) it does not invalidate the right to have basic human

rights despite the migration status. According to the case of *M.S.S. v. Belgium and Greece*, the ECtHR concluded that states' legitimate concerns about deterring unwanted immigration "cannot absolve" them of their human rights obligations, [...] and, as the Special Rapporteur urges, "at the core of immigration policies should be the protection of migrants, regardless of their status or mode of entry" [UNHCR, 2011:6]. (Wong, 2015:48)

The Mexican case is special. While it has not had any problem ratifying international treaties regarding protection of human rights and human rights of migrants, its immigration focus is based on a national security agenda that leads to immigration control. This can be seen in the reification of identity through biometric passports, visas, and other "papers". Though not entirely new (Torpey, 2000), has further entrenched the notion of "illegality"⁵ as one the foremost categories of the undesirable "other." (Wong, 2015: 2)

By exploring the concept of national security in Mexico, it will be possible to understand the complexity of the matter, and the influence that the US has had on the migration agenda in the 21st century. Regarding the immigration control, even though politicians and legislators have tried to detach the term from a negative connotation, it is still a strategy to stop threats, real or potential, that goes from mere discourse to the creation of laws and regulations that make detention and deportation the rule and not the exception.

⁵ The term "illegal" constantly pops-up in academic works, and in some countries, the pejorative terminology is still used. Mexico has apparently made progress regarding discourse, but recent policies and the reality show a different picture. The concept of illegality is still deeply rooted (especially in practical terms) although the discourse has tried to change the idea to the concept *irregular*. This has kept the tension between illegality and immigration control latent.

1. National security

According to the pioneer of the national security concept in Mexico, it is a situation in which the majority of sectors and social classes have guaranteed their cultural necessities and vital materials through the decisions of the national government in power, and of the actions of the set of State institutions, that is, where there is a relative security against threats or challenges internal or external, real or potential, that violates the reproduction of the nation and of the State. (Piñeyro, José Luis 2006:220-21)

In other words, it is the essential condition for the integral development of the country based on the preservation of national sovereignty and independence, maintaining the constitutional order, the protection of the rights of its inhabitants and the defense of its territory [Leonardo Curzio 1998:13], by identifying pressures, risks and threats to political unity and social harmony in an orderly manner. (Salazar, Ana María, 2008:72)

But having a situation become a national security matter is not a good sign.

When it becomes part of a country's national security agenda, it means that the State failed and previous attempts to solve those problems in other areas did not work. In fact, the more problems a country has in this regard, the number of indicators showing that normal mechanisms for conflict resolution that do not work will be greater. The problem solution in the national security field should be understood as an exceptional situation and not as a form of intervention. Including a problem in a country's national security strategy generates costs for society, because it implies that the state will have extraordinary resources and efforts that could be available in other important areas of the country. When a problem is addressed as part of national security strategies, the State is willing to use exceptional mechanisms to achieve an effective solution: [...] to control the free passage of people within the country, to expel foreigners without due process legal [among others]. (Salazar, Ana María, 2008:73-75)

Additionally, the concept highlights at least three basic limitations or deficiencies. The first is that some conceptualizations only include threats of an external or internal nature, and when they incorporate both they do not make a difference between the potentials and the real,

that is, between a challenge and a threat. The second limitation is that it does not indicate whether the definition is due to a socio-economic and political situation to maintain and defend, or is a project to be carried out by the respective nation and state. The last restriction of these definitions is that there is confusion between the security of the nation, security of the State institutions and security of the national government in power, which can coincide or not, over time or in a critical economic or military situation. (Piñeyro, José Luis, 2006:20)

In the Mexican case, as in most countries of the continent, the term national security is confusing, controversial and political. It clearly expresses the frustration that exists because the concept of national security is indefinite, and by the indiscriminate use that the Mexican government, the politicians, Legislators, and media do about it. (Salazar, Ana María, 2008:63-64) This can be explained theoretically and practically, and these explanations are not mutually exclusive, but the latter can illustrate and deepen the theoretical analysis.

The first explanation is based on the premise that conflict spaces are modifiable. The duality that the concept poses comprises 1) security and 2) risk, which means that it is framed by the definition of the enemy and the probable risks to which a confrontation is conducted, that is, that national security is not a concept established over time, but it is subject to change. It entails a cultural framework and the defense of its values, which are not unique and uniform, but derive from a historical tradition and have multiple meanings capable of crossing the differences and keep together a social whole. (Garduño Valero, Guillermo, 2004:79)

The practical explanation encompasses the political sphere and the relation with the United States. José Luis Piñeyro (2006) argues that the lack of political and conceptual agreement about social situations that may or may not be risks or threats to Mexican national

security is a historical constant that is largely due to two structural situations. The first one responds to the presidential and authoritarian character of the political regime where historically the one who has defined what is understood by national security is the president in turn and where the State secretaries only repeat the presidential discourse or raise generalities about it during their public statements. The second issue responds to the multiple pressures of the United States to involve more our country in its national security scheme according to the interests, objectives, challenges, and dangers of such scheme and reluctance of the various PRI governments to maintain a variable distance from the northern colossus. (18)

The second case conceptualizes the idea of hemispheric security, which represents the defense of a system of collective interests, linked by certain common values, which nonetheless surpass the idea of cultural identities and operate as complex systems of interrelation, presided over by a hegemonic sphere of world interests, represented by the United States for the case of Latin America. (Garduño Valero, Guillermo, 2004:79)

The question that stands out here then is: who defines the concept of national interest? Is it space where the social framework describes it from its values and its perspective of defense or, on the contrary, the external hegemonies characterize and shape the nature and scope of national security in relation to the confrontation spaces?

In the Mexican case, the hemispheric security led by the United States has shaped the concept national security in the 21st century since the terrorist attacks in 9/11. Issues such as poverty, ethnic and religious conflicts and migration, are increasingly mentioned as agents that jeopardize Mexico's security. [...] However, it cannot be assured that, by itself, any of these factors can endanger the country's security, but the consequences of American control measures

have reached the Mexican southern region. In practice, it has become the first line of containment of migrants in transit to North America. By legal obligation and, above all, by pressures from the US government, Mexico has made the detention and deportation of undocumented migrants the priority of internal migration policy [CCED, 2001:185]. (Salazar, Ana María, 2008:265,77)

Piñeyro (2006) argues that if the current national security scheme persists, based on growing subordination and dependence on the United States as business and geopolitical partners, the only thing that is guaranteed is a greater systemic weakness in the security of the Mexican nation and an upward vulnerability of the State and government, both internal, referred to a lower legitimacy and governability, as external, understood as much fewer spaces of national independence. (31-32)

In the case of immigration as part of the long list of national security issues, scholars have tended to take the stated restrictive goals of migration control policy at face value, claiming in a second step that governments do not live up to these goals. For instance, the standard volume in the field argues “that the gap between the goals of national immigration policy (laws, regulations, executive actions, etc.) and the actual results of policies in this area (policy *outcomes*) is wide and growing” (Cornelius, Martin, and Hollifield 1994:3). They further claim that the “gap” between policy goals and outcomes creates “greater hostility toward immigrants” and puts “intense pressure on political parties and government officials to adopt more restrictive policies.” (Guiraudon and Joppke, 2001: 11) Immigration control as a form of national security enforcement and the US externalization of borders is outlined below.

Immigration control

Immigration policy transmuted into “immigration control,” in which immigration became depicted as a societal threat and challenge to national identity. Although previous historical periods of socioeconomic uncertainty also led to political scapegoating (Noiriel, 1996), putting migration on the agenda is even more tempting today as other issues [...].

The concept *immigration control* refers broadly to the policies and practices used to deter unwanted immigration, meaning immigration that is occurring despite and against the intentions of states [Guiraudon and Joppke, 2001]. (Wong, 2015: 9) There are some scholars and organizations that have argued that whenever there is stated the need for “control”, there is the unstated admission that current policies have failed to prevent migration from happening. Furthermore, globally, migration has been increasing regardless of governmental policies on detention, and pragmatically, there is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum. In fact, as the detention of migrants and asylum-seekers has increased in a number of countries, the number of individuals seeking to enter such territories has also risen or has remained constant. (Guiraudon and Joppke, 2001; UNHCR, 2011).

As Guiraudon and Joppke (2001) argued migration is increasingly linked to issues of domestic and international security. [...] There is a simple reason for linking migration and security: to the degree that immigration is unwanted, and immigration policy becomes “control” policy (in which states seek to stem, rather than solicit, international migration), immigration is likely to be addressed in negative terms, as a “threat” to the receiving society. (15) An example of the last point are some views that support the national sovereignty political stance, saying that “a safe and prosperous country that declares its border open risks being over-whelmed by a

massive influx of immigrants from poor and/or violent countries.” (Weiner, 1996:172-73 in Wong, 2015)

There have been different attempts to control this unwanted migration flows, from deterrence at the border in the form of higher fences (as in some parts of the US southern border) and beefed-up guards, but in both cases, these attempts only turn circular into one-directional migration (that is, “immigration”), at least it makes the once-caught migrant smarter not to get caught the second time. (Guiraudon and Joppke, 2001:3)

Moreover, Guiraudon and Joppke (2001) argue that preventing migration at source has been the preferred state strategy in the 1980s and 1990s, but I also claim that it is still part of the US strategy regarding Mexico. In practice, this means “externalizing” controls beyond national borders so that aspiring migrants or asylum-seekers do not reach the territory of the receiving countries. The pioneer of this strategy has been the United States, which already in the 1920s shifted the processing of visitors and immigrants to its consular posts abroad [Zolberg 1997].

By externalizing borders and cooperating with the countries of origin and transit, the receiving country (in this case the US) ensure that the former establishes effective institutions that in the first place, develop control mechanisms, and in the second place put into motion discourage immigration strategies. When migration has already occurred, a second remote control strategy seeks to uncover illegal entrants by internally delegating control to local actors such as municipalities, regional authorities or private employers. (Guiraudon and Joppke, 2001:13)

CHAPTER 1: MIGRATION POLICY AND MIGRATORY CONTROLS

For a very long time, Mexico paid little attention to the human rights of migrants crossing through the country on their way to the United States. This was portrayed in the lack of a migration legal framework aside from Constitutional articles 11 and 33, and articles 119 to 123 in the General Population Act. The year 2011 marked an important moment for the Mexican law, especially in the migration and human rights fields. Along with the creation of the Migration Law on June 11th of the same year, the Mexican Constitution established in its first article that “individuals are entitled to enjoy human rights recognized in this Constitution, and in the international treaties of which the Mexican State is part of...”.

According to Castilla Juárez (2013), this meant that when it comes to human rights in the Constitution, it is comprised by dispersed norms in various regulations (or treaties). In that sense, when the CPM talks about human rights, it is referring to its own norms, and the ones located in the treaties that Mexico signed. Up to this day, Mexico signed and ratified more than two hundred of those international treaties (SCJN, 2017), and took part of two big human rights protection systems: the UN Human Rights System, and the Inter-American Human Rights System.

Furthermore, the LM proposed that the “Mexican State will ensure the exercise of rights and liberties to foreigners recognized in the Constitution, treaties, and international conventions to which Mexico is a party. According to the applicable legal provisions, and independently from the migration situation.” Morales Vega argues that this erases the migration status as a requirement to be the subject of rights, and should result in the cessation of 1) arbitrary

detentions from police or any other authorities that are not trained to work with migrant population rather than the INM, and 2) discrimination by racial profiling (2012).

But it seems that none of those efforts to protect human rights of migrants in Mexico prospered in the way that the international treaties and the Mexican Law portrayed. In the Americas region, Mexico is one of few countries that has established detention as part of their migration policy and practice; therefore, the State is still violating their human rights according to the same treaties that Mexico compromised to respect and follow.

Table 1: number of detentions and deportations,
2006 – 2016

	Number of detentions	Number of deportations
2006	182 705	179 345
2007	51 700	44 679
2008	94 723	87 386
2009	69 003	64 447
2010	70 102	65 802
2011	66 583	61 202
2012	88 506	79 643
2013	86 298	80 902
2014	127 149	107 814
2015	190 366	155 418
2016	188 595	159 872

The State sovereignty speech allows the State to implement in its territory increasingly more restrictive migration policies that are based on the orderly control of migration flows, and the migrants' irregular situation. By setting these two elements as the core to indefinitely detain foreign people, expel them from the territory, and even establish restriction periods to reenter, the Mexican State seek the participation of its North American and Central American neighbors (Sin Fronteras, 2015: 50, 51).

In this chapter, I explored the contrast between the treaties that have been signed, the Mexican legal action with the creation of the migration law, and what happens on the ground when the migration controls are enforced. It comprises two big parts divided into three sections

overall. The first part covers the international treaties and the national discourse depicted in the law, and the second part encompasses the migration controls, its consequences and the contrast between control and discourse.

In the first section I presented the international scenario in which the Mexican legal framework is inserted, and what that meant to the state as to the responsibility it has towards migrants in refugees in Mexican territory and with the international community. In the second section I analyzed the migration policy in Mexico, starting with the decriminalization of migration in 2008, then the 2011 Migration law in depth⁶.

In the third section, I presented the migration controls enforced on the ground as a way of showing the growth of power execution from the Mexican state. Finally, in the fourth section, I explored the tension between discourse and the control enforced in practice, and the consequences of putting securitization over human rights.

1.1 Discourse

1.1.1 International treaties

In a globalized world, being part of the international community and establish agreements and treaties between countries based on a certain topic has become necessary. While it is not mandatory for the states to follow these statements, Mexico has not been the exception and has complied with some standards when it comes to human rights, which is why it has signed and ratified the 10 international treaties on that subject, as well as the Universal Declaration of Human Rights (REDODEM, 2017: 92).

⁶ The core of the law is divided into two: national security and the protection of human rights of migrants.

Treaties and conventions' signature and ratifications have become important in the global community as a way of accepting, promoting, and protecting human rights with no restrictions regarding nationality, ethnicity, religious beliefs, gender, age, etcetera. In other words, the state makes a compromise to establish conditions of equality between immigrants and citizens (Yolanda Silva, 2014: 25).

Although these treaties have no direct regulatory function in the Mexican law, there is a principle of accountability inherent to the agreements; therefore, the state is responsible for fulfilling the protection standards of human rights in its territory. This principle is key to fighting impunity and corruption since it can work as a way of auto-limitation. According to the UN (2013), "the dispositions of the Declaration are considered customary international law for their widespread acceptance, and for serving as a model to measure the states' conduct."

There are some minimal international standards that Mexico must meet in relation to the migrants' detention, asylum seekers and refugees, such as:

- a) Respect for the principle of presumption of freedom, or presumption against detention in recognition of it as inherently undesirable, and of an exceptional nature (Inter-American Commission on Human Rights [IACHR], 2010, para. 41, 416; *Peirano Basso v Uruguay*, 2009, para. 93-94).
- b) The obligation to not detain vulnerable people such as pregnant women, nursing mothers, victims of trafficking, refugees, torture and other cruel, inhuman, or degrading treatment survivors, stateless people, elderly people, disabled people, or with physical or psychological needs (UN, 2002, para. 41, 42, 50; UN, 2011a, para. 19; UN, 2010b, para. 6).
- c) The no-detention of children for migration reasons, and protection consistent with the Convention on the Rights of the Child (UN, 2009c, para. 3-4, 2011c, para. 56; IACHR, 2008, principle 3; UN, 2010, para. 53-55).
- d) The no-detention or punishment to asylum seekers because of their irregular status (UNHCR, 2012, para. 12-14).
- e) Use detention as a last resource preventive measure, by evaluating the specific circumstances in each case, and the principles of necessity, proportionality, and reasonableness, consistent with a goal pursued by the State. (IACHR, 2009, para. 95; *López Álvarez v Honduras*, 2006, para. 67; *García Asto and Ramírez Rojas v Peru*, 2005 para. 105; *Ricardo Canese v Paraguay*, 2004 para. 129; *Vélez Loor v Panama*, 2010, para. 170-171; UN, 2011^a, para 19).

- f) Assess and implement alternatives to immigration detention before determining a custodial measure of personal freedom. Such assessment and implementation must also satisfy the criteria of need, reasonableness and proportionality in each case (UN, 1999b, para. 14 and 16; IACHR, 2010, para. 41 and 243; UN, 2010A, para. 55; UN, 2009A, para. 113).
- g) The decision to detain must be based on fair policies and procedures, subject to periodic and independent judicial review and detainees must have the right to challenge the lawfulness of the detention, including the right to legal aid and to challenge the Act before authority with sufficient powers to order the release (UN, 2003b, para. 62; UN, 2005a, para. 85; UN, 1998B, para. 69).
- h) The indefinite detention prohibition. In all cases where the detention is necessary, this should be for the shortest possible time and shall never exceed urgent deadlines set by the laws (UN, 2009b, para. 67; IACHR, 2010, para. 42; UN, 2011B, para. 50; UN, 1999a, principle 7). (IDC, 2013: 106, 107).

1.1.2 Mexican legal framework

While the possibility of detaining individuals for immigration purposes has legally existed since the end of the '40s, it was not until the past decade, under the General Population Law (*Ley General de Población*) and its Regulations, that enforcing detention was strengthened, turning it into the most commonly applied action facing irregular immigration (International Detention Coalition, 2013: 52). The LGP established that entering the country without the necessary legal documentation was a crime. The punishments went from six months to five years in prison. But in June 2008 the law went through a reformation, and the penalty for entering in an irregular condition was banished.

Since then changes in the migration legal framework started to become important and more visible. In 2011 the biggest change in the migration field happened with the above mentioned: the creation of the LM. Politically and legally there are two key moments that marked a turning point as to how migration is approached.

President Calderon's Administration took a much bolder step in the fall of 2010, by proposing a comprehensive migration law. On January 9, 2011, the Senate followed up with draft legislation for a new migration law plus amendments to the General Law of Population and other related laws and codes. The proposed migration law, an amended General Law of Population and a new Refugees and Complementary Protection Law

(approved in January 2011) would constitute México's Migration policy for the 21st century. (González-Murphy & Koslowski, 2011)

Although scholars and non-governmental organizations argued for years that a migration law was needed, a series of events had to occur for this to happen. The first step toward this goal was the decriminalization of undocumented migration in 2008, but after the increasing violence and the massacre of the 72 migrants in northern Mexico reached the ears of international media and migrants' advocates, the pressure speeded up the process. It was time for Mexico to face the migration phenomenon that had been happening for over a decade, and being a country of origin, destination, transit, and the return of migrants, the creation of the law also forced the State to join the international treaties.

Like a snowball, after its release, other regulations were emitted, like the Norms applicable to the detention centers and provisional quarters in 2012. The Constitutional framework in the migration subject can be currently found in articles 1, 11, 14, 16, 17, 30, and 33.

1.1.3 Decriminalization of migration

On July 22, 2008, a decree took effect that decriminalized undocumented persons' unlawful or unauthorized entry into Mexican territory. It also repealed other provisions of the General Population Act that had ordered sentences ranging from 18 months to 10 years for migrants in an irregular situation convicted of crimes such as illegal entry or presence in the country, falsification of documents, claiming an immigration status other than one's actual status, violation of the legal time period that one is authorized to stay in the country, engaging in activities that are not authorized on one's legal entry permit, marriage with a Mexican citizen for the sole purpose of establishing one's residence in the country, and other crimes. By this decree, the penalty of imprisonment was eliminated for the above actions and fines were established in lieu of imprisonment. (CIDH, 2013)

Until 2008 article 123 imposed a prison sentence and a fine (from 300 to 5,000 Mexican pesos) to the foreigner who entered the country illegally (CEPAL, 2008). According to Juan E. Pardinás (2008), this article was one the biggest aberrations of the migration legislation in

Mexico. Although rarely enforced, the sole fact that it was written down led the Attorney General's Office to make a subjective decision between taking a criminal proceeding or not against an illegal migrant in the country. This meant that there was room for discretion that opened the opportunity to acts of extortion of migrants detained by Mexican authorities.

In essence, the General Law of Population promotes an immigrant population that demonstrates good mental and physical health, economic solvency, poses no threat to Mexican labor, and shows a desire to assimilate. Given this objective, the General Law of Population is categorized as an instrument of vigilance and control, focused on regulating the entry, stay, voluntary exit, and forced expulsion of foreigners from Mexico (González-Murphy & Koslowski, 2011).

According to the General Population Act (1974), both the INM and the Preventive Federal Police were the only ones authorized to detain the migrants who violated the law. But in the field, the game was played differently. Since boundaries were not clear as to how to approach the migration phenomenon, and being undocumented also was an administrative fault, local officers –from municipal to federal ones, used that argument to justify their intervention in the process of detention of migrants. It was the perfect scenario to broaden the possibilities of corruption: Migrants could not identify which of the 300 police forces abused their human rights, and they were willing to pay to continue their journey instead of reporting extortions or violent acts (Díaz & Kuhner, 2007).

1.1.4 Migration Law

It took some important steps and effort to create a migration law that was thought as a mean to “regulate the entrance and exit of Mexicans and foreigners from national territory, as

well as transit and stay of foreigners in a context of respect, protection, and safeguarding of the human rights; that contributes to national development, and preservation of the sovereignty and national security” (INM, 2012).

The LM and RLM legal framework does make headway towards respecting international migrants’ rights, and sets forth the following as guiding principles for migration policies, with no distinction of national origin or immigration status: i) respect and safeguard of migrants’ human rights; ii) compulsory protection of children; and iii) decisions based on the best interests of the child (IDC, 2013: 54). A highlight of the LM is precisely the focus given to the vulnerable groups. Women, disabled people, and children are an example of these groups that the LM seek to bring protection.

Some concepts tried to change the way migration was approached. Since the decriminalization of the migration status, it was no longer politically correct to refer to it as a crime or imply that migrants are criminals. They became migrants with an irregular status. In 2014, the term “rescue operations” increased, and acted as a cover for detention and migratory verification arguing that they were fighting against the organized crime (Sin Fronteras, 2015: 50, 51).

After the law came out, there were several debates about it. One of them addressed the new term that could be literally translated as “lodging” (*alojamiento*), instead of “securing” (*aseguramiento*), or as it was used before, “detention”. The change in the discourse gave the idea of a welcoming stay in the migration stations (*estaciones migratorias*) –globally known as detention centers, while you were waiting to be deported to your home country. Sin Fronteras

(2015) argued that this was based only on a word game to cover a punitive system and of exclusion, particularly when it comes to detention and expulsion of foreigners (50).

The PRAMI, Institute on Human Rights Ignacio Ellacuría carried out a media monitoring initiative from August to December 2014 that clearly showed how the discourse changed. It stated that the first articles published in August talked about control operations to stop migrants from jumping in *La Bestia*. Then, there was a radical shift in the discourse starting in September. In a four-month period, 23 articles were published in which the central argument was based on rescue operations. They talked about how the operations served as a way of liberating migrants from the privation of liberty by human traffickers. As part of this liberation process, the articles described that to offer them “security”, they [migrants] had to be transferred to the INM, and start the paperwork for their repatriation.

The criteria to detain according to the LM was based on your migration status. This meant that if you did not fulfill the requirements asked by the INM, and you fell into the category of “irregular”, then you were subject to be lodged in a migration station. The process works as it follows: any individual with irregular status detected in an immigration review or inspection must be ‘presented’ to authorities and remain ‘lodged’ in detention centers (estaciones migratorias) or provisional quarters (estancias provisionales). Presentación is the act of ‘presenting’ an individual to immigration authorities that determines his/her detention. This scenario of mandatory detention as a result of an irregular immigration status is applicable to the vast majority of migrants and asylum-seekers in the country (IDC, 2013: 56).

Furthermore, the LM stated that they cannot be detained longer than 15 business days after their “presentation”⁷, only if they are subject to fractions I to V from article 111. In case of failure of compliance with the necessary requirements or further investigation is needed, the LM stated that accommodation can last up to 60 days. However, the Mexican Constitution stipulated in article 21 that for administrative faults the detention cannot exceed 36 hours. Even in the enforcement of the term set forth by this constitutional provision, detention must comply with guarantees of due process and judicial protection (IDC, 2013: 55). But mandatory detention based on irregular immigration status has the effect of penalizing and sanctioning migrants and asylum-seekers without having followed a criminal process and without guarantees of due process or judicial supervision in an administrative setting (IDC, 2013: 56).

The LM also made a distinction between people who voluntarily went to the INM to legalize their migration status, against those who were “discovered and captured”. In the first case, they could continue with their paperwork outside the detention centers, which means that they are rewarded for their willingness to cooperate. Whereas in another instance, they had to stay in the detention center until they got expelled from the country.

With asylum seekers worked in a similar way. Those who requested asylum before being detained by the INM could stay in a migrant’s house, while in the opposite case, they are forced to stay in the detention centers for months, against their will and depriving them of their liberty.

⁷ Detention begins with the resolution for the act of being “presented” (*acuerdo de presentación*) that immigration authorities must issue within a term no more than 36 hours from the moment in which individuals with irregular status are in their custody. Once this resolution has been issued, the maximum term for detention is 15 working days, which exceeds the limit permitted by Article 21 of the CP for deprivation of personal liberty in acts of administrative authorities. In addition, by being regulated in working days, this measure sidesteps the fact that personal freedom is a right important enough for its loss to be computed in calendar hours and days: one hour imprisoned without any reason other than the fact that it is not a working day makes the measure illegal and arbitrary under the CP and international conventions (IDC, 2013: 57).

In both cases, there is a pattern in which turning yourself is rewarded and being caught by the INM is punished. For asylum seekers, this aggravates: INM agents use discouragement tactics to prevent them to apply by telling them that they are going to spend months, and that, in most cases, they are not going to be granted the refugee status⁸.

According to Castilla Juárez (2013), many of the problems, and inconsistencies that we find today in the LM did not arise with it, but were mostly present since the LGP, so that the violation of the rights of migrants and thus the unconstitutionality was not overcome by the new law, but rather were replicated from its legal antecedent. And while this is not exclusive in Mexico of the LM, but a problem of the Mexican legal system, in this case, is aggravated by the low visibility given from the right to migrate as a human right.

1.2 Migratory controls

In Mexico, the authorities' unwillingness to accept criticism was so severe that it retreated into a state of denial about the country's human rights crisis. Despite the fact that almost 30,000 people were reported missing, that thousands had lost their lives due to security operations to combat drug trafficking and organized crime, and that thousands were forcibly displaced from their homes as a result of widespread violence, the authorities ignored criticism from Mexican civil society and international organizations, including the UN (Amnesty International, 2017).

With the declaration of war to the organized crime and drug trafficking, an era of violence began. The human rights crisis that Amnesty International mentioned in its last report shows not only the Mexican government's unwillingness to face the facts, but also that it is actively involved in these crimes, either by omission or collusion.

While organizations like Amnesty International did not give the Mexican government the benefit of the doubt, and strongly argued that the authorities have everything to do with the

⁸ If detention seeks an illegitimate purpose – such as discouraging or punishing irregular entry or the exercise of rights – it will be arbitrary in itself, according to international law (IDC, 2013: 58).

human rights crisis in the country, the Ministry of Interior (SEGOB) argued that the responsible for migrants' aggressions and violations of human rights are the criminal organizations. [...] In 2008 and 2009 it [the Mexican government] assured that the main risk for Honduran people in Mexico was extortion whereas the Guatemalan people did not face any kind of risk. (SEGOB, 2010 in Silva Quiroz: 26 and 46) Testimonies and data gathered from institutions and organizations have shown that although a large part of the abuses is committed by criminal organizations, there is also an increasing participation from the authorities, either local or federal ones.

Once in Mexico, migrants and refugees are victims of the organized crime that act sometimes with the approval or complicity of national authorities, and are left as victims of violence and all kinds of abuses, kidnappings, robberies, extortion, torture, rape –that aside from the physical injuries and immediate trauma they may face, those violations and abuses can have grave consequences (Doctors Without Borders, 2017: 4).

The Washington Office on Latin America (2017) recently stated in its report *Mexico's Southern Border* that “crimes and abuses against migrants traveling through Mexico continue to occur at alarming rates, and shelters have noted a more intense degree of violence in the cases they document. [...] Migrant rights organizations in southern Mexico documented an increase in cases of migration and police authorities' abuse of migrants as a result of the Southern Border Program, including recent accounts of migration agents, who are supposed to be unarmed, using pellet guns and electrical shock devices” (4)

With more patrols of different police bodies, the phenomenon of immigration was securitized. This made the line between internal, external and national security more blurred, to

the extent that under this pretext human rights have been violated, and placed foreigners and Mexicans under conditions of vulnerability (Silva Quiroz, Yolanda, 2014: 88).

This wave of violence and abuses toward migrants began when most criminal groups started charging a fee to human traffickers for the use of specific routes⁹, and to have the right to ride on the train in Chiapas, Veracruz, and Tabasco. Besides, kidnapping and murder of migrants have become part of the business. One of those criminal organizations known as the *Zetas* has made the violent control of migration flows one of their main businesses (SEGOB, 2010; CNDH, 2011 in Quiroz Silva: 43 and 45). Authorities located at different points throughout the country where migrants travel discovered a goldmine in this “new business”.

Gretchen Kuhner, director of the Institute for Women in Migration, or IMUMI, has been talking about the subject for more than a decade now. In *La violencia contra las mujeres migrantes en tránsito por México* (2011) she mentioned that violations of human rights of migrants were perpetrated by the different police forces –sometimes colluded with armed groups, and shared that since 2002, the UN Special Rapporteur mentioned her conversations with migrant women about violations from security agents on the trains: extortion and sexual violence in exchange for letting them go and not deporting them, forced labor, unwanted pregnancies, and discrimination. Sexual violence was particularly used by state officials and civilians against migrant women in transit (Kuhner, 2011).”

⁹ According to Rodolfo Casillas (2006), the use of routes is selective and obeys to current obstacles, such as migratory controls, criminal networks, discovery of new routes, support or human traffickers’ networks, etcetera (p. 29). In the case of this present research, after the implementation of the Southern Border Program in 2014 migrants have faced the necessity of creating new routes that meant even greater risks for them due to their clandestine situation.

The government kept denying its responsibility on the matter when in 2010 the President Felipe Calderón forcefully stated that kidnapping was a recent fact and the ones who victimized migrants were the criminal structures (SEGOB, 2010, p. 93 in Quiroz: 46). But testimonies from years earlier (Díaz & Kuhner, 2007) of migrant women detained in Mexico show the already existing violence against them from both criminal organizations and state authorities:

We were sitting outside Agua Prieta when the authorities stole from us. All men had to take their clothes off but when they got close to where I was, they touched my whole body before taking my money (Peruvian, 22 years old).

We were on the train near Apizaco, Tlaxcala –there was a toll booth next to it when a security agent got on the train and raped me. He told me that if I reported anything to the police, they would take me back to Guatemala. After that, he stole 40 dollars from me. (Guatemalan, 21 years old.)

We were in Tapachula and got stopped by a migration agent. He told us that if we had intercourse with him, he will not detain us. (Salvadorian, 27 years old).

The problem back then is the same persisting problem: there is no real interest from the government to protect migrants' rights. This statement becomes visible in terms of regulation of the authorities' activities. Although it is a challenge to keep a record of each agent's activities throughout the entire Mexican territory, it is a key factor to assure that migrants' rights are respected. According to the Institute for Security and Democracy (INSYDE) (2013) even if the scenario changes it will not look promising:

Even if the *INM* would –partially offer a legal-administrative framework with behavioral patterns [for their migration agents], these guides would leave the agents with nothing more than their experience and common sense. In other words, it would leave them with a wide margin of discretion. The potential for abuse, ineffectiveness or corruption, usually lies in this wide margin with which the agents interact, as well as the lack of oversight in their day-to-day decision-making. These factors increase when a State agent has the power to detain and subject, putting in risk the physical, mental, and emotional health of people.

The Inter-American Commission on Human Rights (2013) has received information that exemplifies INSUDE's statement. Cases of abuses, kidnappings, murders, etc, and in the case of the women, most of them were sexually exploited or victims of violence in the hands of criminal organizations. Furthermore, a significant number of cases reported that federal agents, either from the police forces or agents from the INM have been directly involved in the perpetration of these crimes and violations of human rights.

A couple of years after the creation of the Mexican Migration Law in 2011 a group of migrant centers and civil society organizations that work throughout the country attending migrants' needs, from the basics to legal representation, got together to form the Migrants Advocate's Organization Documentation Network (REDODEM) in 2013. Since 2015 REDODEM has published a yearly report about the migrants' situation in Mexican territory. It has been the first and only attempt so far to create a complete database regarding demographics and violations of human rights from Northern to Southern, and Eastern and Western Mexico.

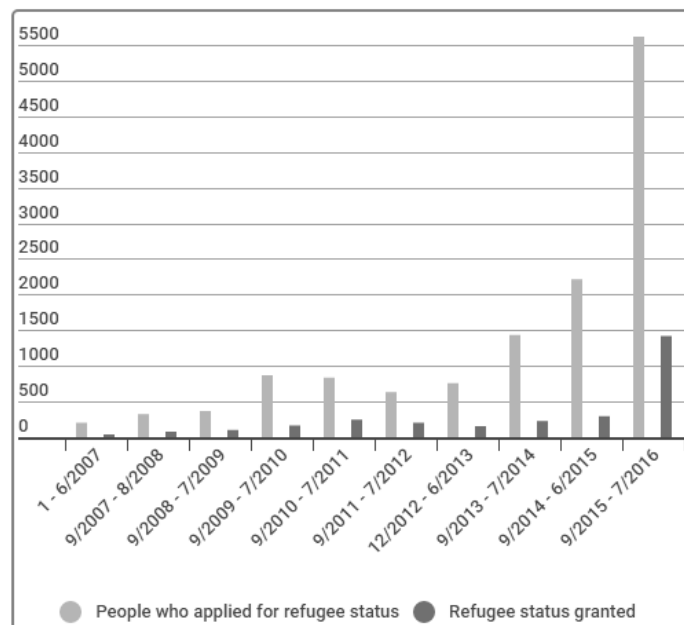
In their most recent report they argued that the victims and witnesses of crimes said that from the 5,298 criminal elements, 921 were committed by a state agent, being the Federal Police the main aggressor with 201 records; followed by the municipal police with 196 cases, the undetermined police group in third place with 176 cases, and in the fourth place the INM with 112 cases. The data showed that in 103 cases the state aggressor was marked as "other". However, the state police were identified in 94 cases, followed by the Attorney General's Office (PGR) with 20 cases, the army with 12, and the Marine with 7 (REDODEM, 2017: 103).

Data from this report showed that almost 20% of the people interviewed by different centers and organizations were victims of human rights violations. The most common violations

that REDODEM (2017) identified were a violation to treatment with due dignity, legal security and due process, right to no discrimination, right to protection to family unity, right to not be criminalized, illegal deprivation of liberty, as well as a violation to superior interests of the child of the migrants that transit through the country. (108)

Another way to approach this problem is the government's response to the ongoing humanitarian crisis in the Northern Triangle of Central America (NTCA). Due to several factors such as violence in the NTCA and Trump's arrival to the presidential stage, Mexico has experienced many asylum applications since 2016 and the Mexican government was not prepared for it. Data from the Mexican Commission for Refugee Aid (COMAR) showed the little importance that the government has given to refugees throughout the years. For example, from September 2007 to August 2008, COMAR received 325 asylum applications and only granted 24% of them. It dropped from September 2014 to June 2015 when COMAR only granted refugee status to only 13%.

Graph 4: asylum seekers in Mexico, 2007 – 2016



According to the United Nations High Commissioner for Refugees (UNHCR), 8,781 people applied for asylum in Mexico in 2016 (91.6% from the NTCA), and Mexico only granted asylum status to less than 4,000 people fleeing El Salvador, Honduras, and Guatemala (2017).

Doctors Without Borders (MSF) is another organization that since 2013 has been treating migrants and refugees along the Mexican territory, and since 2015 decided to start interviewing some of the 33,593 consultations done throughout the years. In 2017 they argued in their last report on migration in Mexico (*Forced to Flee Central America's Northern Triangle*) that 68.3% of the 467 surveys carried out in 2015 with migrants and refugees have been victims of violence on the route towards the United States, and that “of the 1,817 refugees and migrants treated by MSF for mental health issues in 2015 and 2016, close to half (47.3 percent) were victims of direct physical violence en route, while 47.2 percent of this group reported being forced to flee their homes.” (5)

In the case of crimes against migrants some patients claimed that they were kidnapped, beaten repeatedly for days or even weeks to extortion them or get a ransom; sometimes they did it to scare other migrants and refugees, or to serve as an example. Physic violence often included sexual aggressions and rapes. [...] Other [migrants] tell of being tortured and abused in order to force migrants and refugees to reveal contact information for family members in order to demand a ransom payment, or as punishment for the delay in ransom payment. Others report that violence is used to psychologically terrorize other migrants and refugees to ensure that they not report crimes to authorities or try to escape. (MSF, 2017: 8 and 14)

According to the data from civil organizations, national and international institutions shown before, violence has been increasing overall which impacts directly on migrants' lives that

cross Mexico. “Despite existing legal protections under Mexican law, they are systematically detained and deported-- with devastating consequences on their physical and mental health. In 2016, 152,231 people from the NTCA were detained/presented to migration authorities in Mexico, and 141,990 were deported. (MSF, 2017: 5)” The government’s response to this matter does not seem to understand the phenomena and the role that Mexico plays in it. Even when dozens of treaties have been signed and there is now a legal framework that supposedly protects human rights, the reality is far from the discourse.

CHAPTER 2: WHO ARE THEY?

This chapter presents the demographic data collected from the two organisms with the complete information that exists so far in Mexico: the CNDH and the REDODEM. The information presented here complements itself with other reports written by different organizations and that sum up to this investigation.¹⁰ CNDH's data, while also recounted its visits to migrant shelters, is focused on recommendations collected at road checkpoints and detention centers. On the other hand, REDODEM helps to enhance this information with the data of migrants surveyed in shelters.

In the first instance, I presented the universe of both organizations. To unify the data, I used age, gender, and nationality as the elements to be analyzed with the intention of understanding in a general way the type of populations that are exposed –both in transit and detention to aggressions and violations of their rights. In the presentation of the universe and the various elements, I first showed the population surveyed in general and then a specific breakdown of migrants whose human rights were violated. This, with the purpose of using the universe as a frame of comparison of each element.

With this information, I analyzed whether allegations of human rights violations have increased or not in the last 10 years following the implementation of the new immigration framework in Mexico and its policies and whether it has equally impacted vulnerable groups

¹⁰ Whilst this section gathers information from various sources to have a clearer picture of the undocumented population in Mexico, the most common places where their rights were violated, and the authorities that committed those violations, it is only a representation of the migratory scenario in the country, but does not comprise the totality of the migrant community. I used my database from the CNDH recommendations and complaints as the core of this investigation, and the Doctors Without Borders report “Forced to Flee Central America’s Northern Triangle: A Neglected Humanitarian Crisis” and the REDODEM annual reports as supplementary data.

such as minors and women. Finally, I observed from which countries migrants coming or crossing through Mexico come from, and if there was any change in the last years of the countries mainly affected.

2.1 Sociodemographic data

2.1.1 General specifications

Each year, the CNDH carries a record of the complaints it receives, and which subsequently result in conciliation, management or recommendations. Those shown in the following table cover only the number of people attended and/or interviewed by the CNDH derived from visits to detention centers, and houses or shelters for migrants over a 10-year period, from 2006 to 2016. The data collected from the reports of the REDODEM cover only from the year 2014 onwards.¹¹

Table 2: people interviewed by the CNDH, 2006 – 2016

	Number of people reached	Number of complaints	Percentage
2006*		3,522	
2007*		2,843	
2008	39,493	3,476	8.8%
2009	43,424	3,480	8%
2010	49,962	4,265	8.5%
2011	47,977	7,344	15.3%
2012	61,660	8,109	13.1%
2013	64,420	6,488	10%
2014	74,023	6,550	8.8%
2015	80,464	7,881	9.8%
2016	92,771	7,658	8.2%

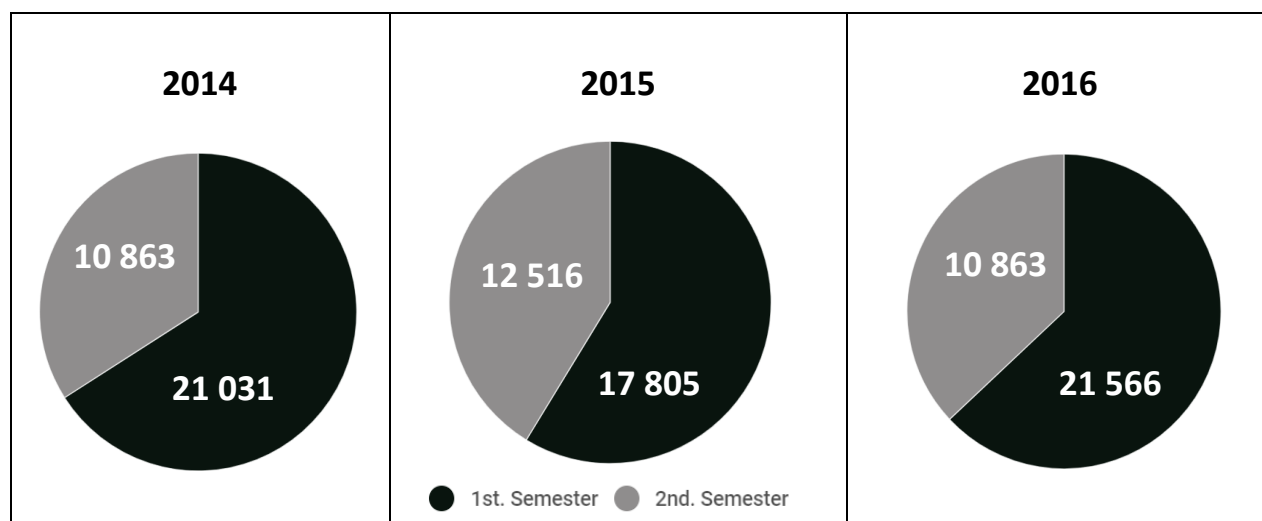
¹¹ Although the network was formed in 2013, from 2014 it is possible to observe a methodological consensus among the different migrant houses and shelters.

* The CNDH does not mention the figures of the people surveyed in both years

According to the data shown in the previous table, the number of people of concern surveyed by the CNDH has been constant in the past 10 years. Although there is a small variation in 2011, it may be due to the violent climate in the country thanks to the drug war, which is closely related to the dozens of clandestine graves found in Tamaulipas following the massacre of the 72 migrants in the same state in 2010.

As a complement to the number of people surveyed¹² REDODEM data can shed information that helps to understand in greater detail the population who stayed in migrant houses and shelters. For a further understanding of the numbers presented below, the network divided the figures into two semesters.

Graph 5: total number of migrants registered by the REDODEM,
2014 – 2016



The REDODEM data presented a similar result as the CNDH, that is, a constant trend in the three years surveyed. In terms of this investigation, this sets the course for the analysis. As the data from both organization showed, the number of migrants surveyed has not changed significantly throughout time, which can be because of the different changes in the institutions

¹² The number of people surveyed by the CNDH mostly covers people in detention centers, rather than houses or shelters for migrants.

and their methodology as I mentioned in the *limitations* section. On that basis, I will analyze whether the new Mexican policy played a role in the human rights violations' events growth or decline from 2006 to 2016.

2.1.2 General data on human rights violations

For this investigation, I collected all the data of the recommendations issued by the CNDH concerning human rights violations of undocumented migrants in transit through Mexico. I also chose the cases of Mexicans as a sign of widespread discrimination towards the same nationals accused of being Central American and sent to detention centers. The following table shows the general and migratory recommendations that the CNDH issued in the last decade.

Table 3: CNDH's general and migration recommendations, 2006 – 2016

	General recommendations	Migration recommendations	Percentage
2006	46	8	17%
2007	70	9	13%
2008	67	7	10%
2009	78	4	5%
2010	86	13	15%
2011	95	7	7%
2012	93	10	11%
2013	86	13	15%
2014	55	10	18%
2015	60	12	20%
2016	72	16	22%

I compared this chart with the REDODEM data, and then analyzed the human rights violations' trend after the implementation of the migration law in 2011. The purpose was to see if there was a clear change between the before and after, or if there was a discrepancy between both databases.

Table 4: victims and witnesses of human rights violations of migrants from the REDODEM database, 2014 – 2016

	2014	2015	2016	Percentage (2014)	Percentage (2015)	Percentage (2016)
Witnesses	430	323	1,357	18.57%	15.45%	25.61%
Victims	1,886	1,768	3,941	81.43%	84.55%	74.39%
Total	2,316	2,091	5,298	100%	100%	100%

As noted in table 3, the number of general recommendations did not show a clear trend. However, there was a modest increase of recommendations on migratory issues. Even though the figures fall in 2011, the 15% reached in 2010 can be explained by the climate of violence in the country¹³.

In comparison to table 4, there are some slight differences. In the REDODEM chart the percentage of victims increased in 2015 against 2014, but then in 2016 it decreased again, whereas the CNDH data showed a modest constant increase in its percentage since 2012. This modest increase trend in the migration recommendations can be explained by three main but not exclusive factors.

The first one, as I mentioned earlier, was the violence provoked by the drug war that reached its peak in 2010, but kept going strong after at least for two more years. In the late 2012 when Enrique Peña Nieto became president, a different strategy came in and although there was peace in the beginning, then a wave of violence hit the country and stayed since his administration did not know how to control it, and which has been one of the “highlights” of his mandate.

¹³ It should also be emphasized that each recommendation may include more than one aggrieved person, as is the case of one of the recommendations in 2016 involving 11 thousand 160 people detained at the detention center *Las Agujas* in the accumulated of several months of that year.

In the second place, non-existent change in the practices of State agents. The federal police remained the main government unit that extorts migrants. Neither the [at that time] new location of the federal police in the public administration nor its new holder diminished the profile of an essentially corrupt police (REDODEM, 2013:23). There has not been a clear action from the government to regulate the police's intervention in migration operations, nor did the migration law established specific orders about their participation besides the fact that they cannot act on their own. The third cause may be due to the implementation of the southern border program in 2014, which kept the number of recommendations increasing moderately until 2016.

2.1.3 Age

The CNDH data for this section did not represent the reality of the people aggrieved in the period analyzed in this investigation. There are some cases such as 2009 and 2014 that showed only adults and zero presence of minors. If I compare it to the REDODEM data, there was a clear presence of minors (although it was a small percentage) in 2014.

Graph 6: percentage of minors and adults from the CNDH recommendations, 2006 – 2016

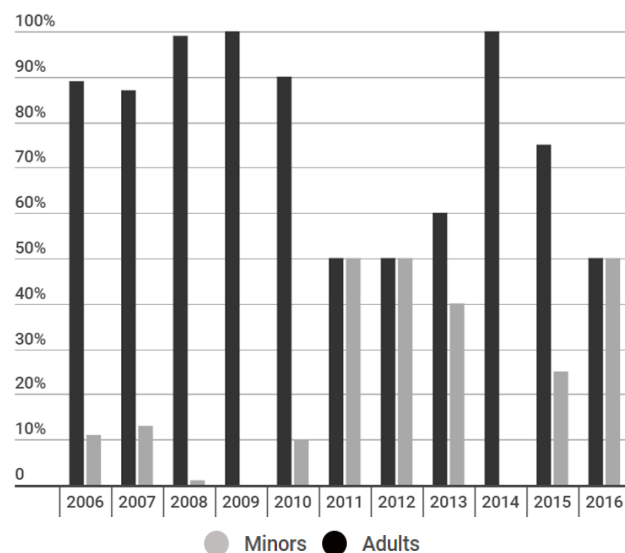


Table 5: number of minors and adults from the REDODEM database,

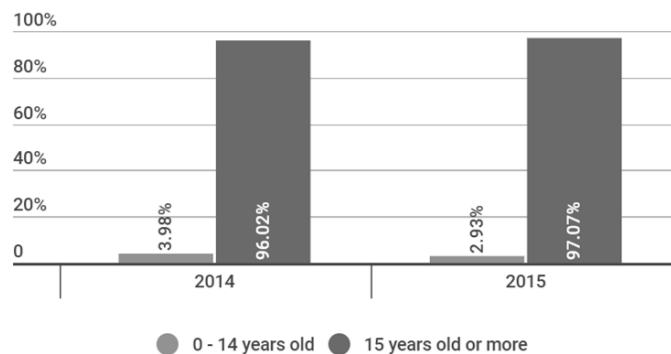
2014 – 2016

	Minors	Adults	Percentage (minors)	Percentage (adults)
2014	2,622	29,272	8.2%	91.77%
2015	3,008	27,343	9.9%	90.08%
2016	3,382	30,852	9.8%	90.12%

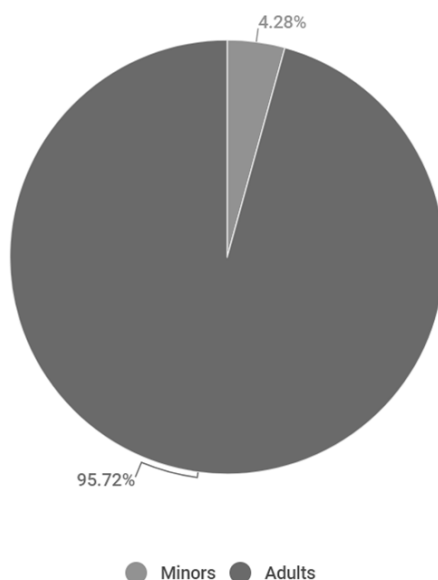
Besides the cases from 2009 and 2014, the increase in the percentage of migrant children in Mexico may be due to various factors, such as family reunification (mainly with family in the United States), personal and family economic growth, given that some despite being considered children have already started a family in their home countries, and the increase in violence in the NTCA that pushed them to seek refugee status in the neighboring country of the north.

This data does not necessarily mean that there were more minors victims and witnesses of offenses and violations of their rights, it could be only a natural modest upward trend due to the greater presence of minors in transit. An example of this large flows of migrants (who were possible targets of violations and abuses) was the 2014 “humanitarian crisis” of undocumented migrant children.

Graph 7: minors, victims of human rights violations surveyed by REDODEM, 2014 – 2015



Graph 8: victims of human rights violations by age, REDODEM 2016

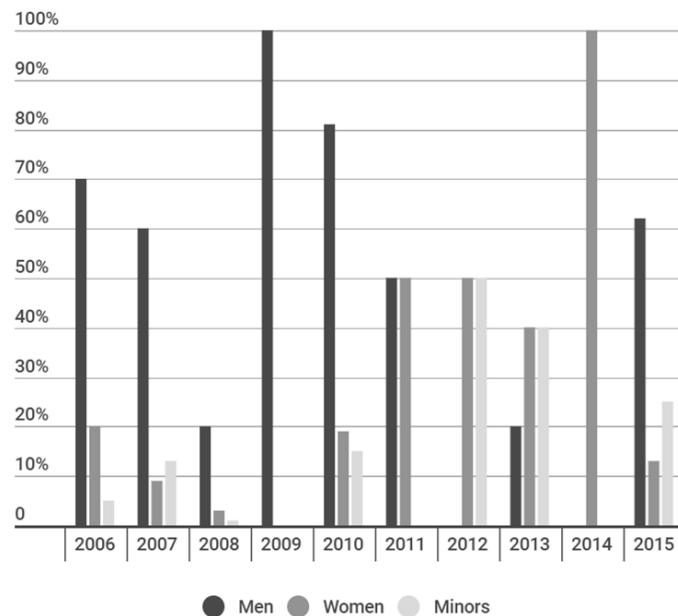


As for aggrieved adults, there was an upward trend on average, except for some cases such as the period from 2011 to 2013 where the percentage decreased considerably in accordance with the recommendations issued by the CNHD. In the same way as minors, this group was also severely affected by the high rates of violence in the NTCA that have also been reflected in the increase of refugee applications in Mexico in 2016.

2.1.4 Gender

In this section, as in the one before, it seemed that the CNDH is missing information from the 2009 and 2014 data. In these cases, either only adult women or adult men were there registered population. According to the recommendations collected, the number of boys and girls was almost the same, with boys being a little bit above 50 percent.

Graph 9: men, women, and minor percentages from the CNDH data, 2006 – 2016



Similarly, the REDODEM showed in the previous graph that although men maintained the highest percentage, it decreased a little each year while the presence of women continued to increase. The reasons for leaving their countries of origin may be closely linked to the reasons presented on the largest number of minors traveling through Mexican territory, regarding violence, economic growth, etc.

Graph 10: men and women percentages from the REDODEM database, 2014 – 2016

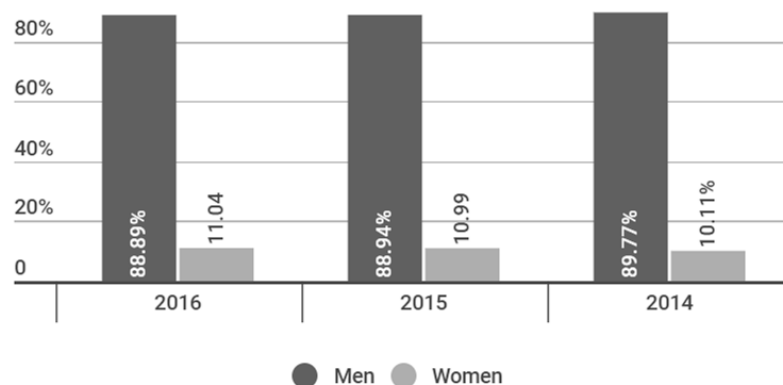


Table 6: victims of human rights violations (per criminal event),
REDODEM 2016¹⁴

Gender	Number of events	Percentage
Masculine	4,990	94.48%
Feminine	291	5.51%
Total	5,281	

In accordance with the previous graph, the percentage of men who suffered and/or witnessed violations of their rights in 2016 was exponentially greater than women. Although the number of women who migrate began to rise in recent years and men to descend at a minimum scale, men remain the biggest affected. In this area, the REDODEM did not make a difference between the men and women adults from the boys and girls. On the other hand, in 2015 of the people who reported being victims of a crime 1 thousand 609 were men and 159 were women (REDODEM, 2016:55), which represented a 91 percent and nine percent respectively.

The charts and tables presented showed that men maintained an average high trend and, as they continued to be part of the majority group, the number of events of human rights violations was higher. Women –as part of a vulnerable group along with minors, grew in recent years, therefore, the number of women victims of human rights violations increased as well.

2.1.5 Nationality

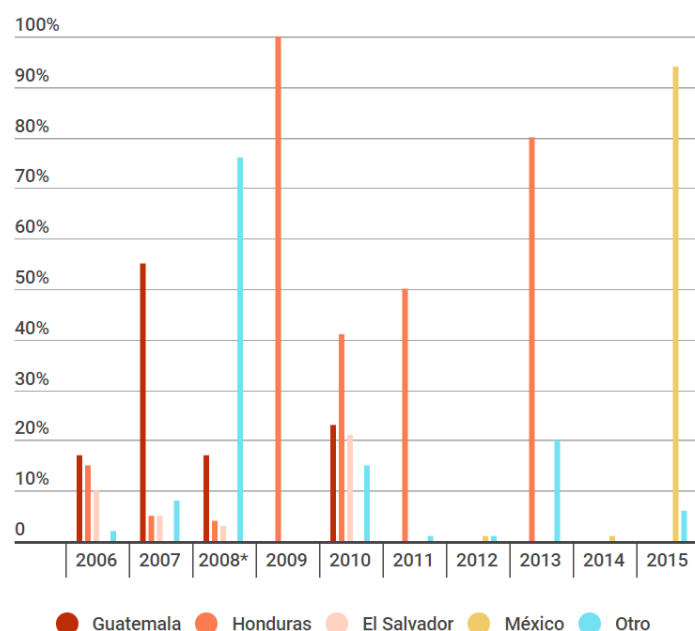
In some cases, the recommendations talked about more than one person aggrieved, but did not give enough information of each of them. As the graph 11 showed, there was very little

Given that the figure of the first (people in detention centers) rises more than 50 percent, the REDODEM information was used as a complement to the population surveyed in migrant houses and shelters.

¹⁴ The REDODEM does not specify the gender of the victims in the year 2014. Likewise, for the 2016 it also considered the transgender population. However, in the CNDH's data there is no mention of this population so, to homologate the methodology, I only used the male and female gender. For more information on the transgender population, see the latest REDODEM's report: <https://drive.google.com/file/d/0B2qOr5xTBM2TZDZhcWdrVjZKeVk/view>

information in 2012 and 2014, and in the case of the *otro* (other) category, it was most likely to be people coming from the NTCA but the CNDH did not give detailed information about it.

Graph 11: most mentioned nationalities in CNDH’s recommendations, 2006 – 2016¹⁵



Honduras is the country with the largest number of people aggrieved over the last 10 years. One of the reasons why the Honduran population had the highest and most consistent rates may be that –after Guatemala– it was the country with the largest number of migrants in transit through Mexico in the last decade. Guatemala (the most important NTCA migrant-sending country) followed Honduras in the second place.

Guatemala has a long migration tradition to Mexico. Labor migration in the Soconusco region continued to be of great importance thanks to the possibility of acquiring a temporary

¹⁵ The CNDH did not mention any specification about the nationalities of the people aggrieved in 2016. In this case, the REDODEM data was used to cover this gap. Also, in 2008 all the aggrieved population was Central American, however, countries are not specified

work visa. However, the Guatemalan people also suffered high rates of violence –especially indigenous groups, and on numerous occasions had been forced to leave their country ¹⁶.

In recent years, the Mexican population was also the victim of human rights violations, previously not recorded by the CNDH. In the cases of 2014 and 2015 is mainly due to the veiled policy of discrimination with which the agents act in Mexico, and that was accentuated by the implementation of the southern border program.

Table 7: migrant's nationalities from the REDODEM database, 2014 – 2016

Country of origin	2016		2015		2014	
	Total	Percentage	Total	Percentage	Total	Percentage
Belice	17	0.05	15	0.05	15	0.05
Colombia	9	0.03	8	0.03	8	0.03
Costa Rica	9	0.03	8	0.03	6	0.02
Cuba	116	0.34	74	0.24	152	0.48
Ecuador	6	0.02	5	0.02	16	0.05
United States	20	0.06	18	0.06	22	0.07
Guatemala	4 397	12.84	3 817	12.59	3 938	12.35
Haiti	6	0.02	5	0.02	3	0.01
Honduras	20 050	58.57	17 882	58.98	18 550	58.16
Mexico	2 875	8.4	2 542	8.38	3 380	10.6
Nicaragua	657	1.92	581	1.92	584	1.83
Africa	3	0.01	3	0.01	3	0.01
Asia	8	0.02	7	0.02	5	0.02
South America	23	0.07	20	0.07	18	0.06
Panama	14	0.04	12	0.04	9	0.03
Peru	2	0.01	2	0.01	3	0.01
El Salvador	6 024	17.6	5 322	17.55	5 182	16.25
Total	34 234	100	30 321	100	31 894	100

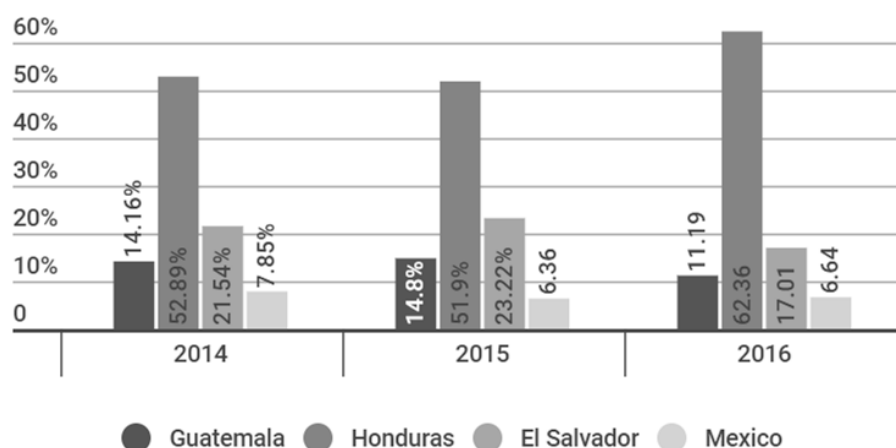
Similar to the CNDH, the population surveyed by REDODEM showed that Hondurans were most affected the last three years in a row. As the previous table shows, this may be due to the high number of Hondurans that the network attended during that period, as well as the high

¹⁶ An example of the situation in Guatemala is the forced displacement of 700 Guatemalans from Petén by the Guatemalan army in June 2017. The population saw the need to cross the border with Mexico in Campeche. For more information you can consult the communiqué of various civil organizations on the displacement, the conditions in which this community was, and the response of the Mexican state up to that time: <http://www.la72.org/wp-content/uploads/2017/06/Desplazamiento-Comunidad-Laguna-Larga.pdf>

general number of Hondurans transiting through Mexico according to official figures. Followed by Honduras was positioned El Salvador which presented a variable trend that for the last year marked its lowest percentage in the three years with 17%.

A lesser percentage of the Guatemalan population suffered violations of their rights in 2016. Unlike people from Guatemala and El Salvador, a greater percentage of Mexicans suffered human rights violations in 2016 with respect to 2015.

Graph 12: victims of human rights violations from the REDODEM database, 2014 – 2016



According to the data presented in both charts, the most affected populations came from the NTCA countries and Mexico. In both the information that the REDODEM and the CNDH showed, Mexicans were an important part of the population affected from 2014 to 2016. On the other hand, according to the sources, Hondurans are the group with the greatest exposure to violence in transit. In the case of the REDODEM data can be explained by being the largest number of people surveyed, however, historically is not the population with the greatest presence in the country¹⁷.

¹⁷ Even though Hondurans are not the main population in transit through Mexico that the official data showed, it is the second country with major presence in the country.

This chapter showed that the percentage of migrants who suffered or witnessed human rights violations increased modestly in recent years, mainly from 2011 to 2016 but it cannot be necessarily linked to the implementation of the new migration policy in Mexico. The increasing violence in the NTCA played a major role in the greater number of migrants coming, and the drug war worsened their journey.

Vulnerable groups such as women and minors had a greater presence in this period compared with previous years. Although the number of women in transit continued to rise, men remained the main targets of human rights violations. On the other hand, the figures are narrowed when dealing with minors, who regardless of whether they are boys or girls, the data showed that both are equally aggrieved.

However, minors were a vulnerable group that, although it has always been present, it started rising since 2010 and became known thanks to the media in 2014. This exposure to violence in Mexico put them as targets of human rights violations that have increased in the last six years, except for 2015 that –according to the data of both organizations, the percentage of human rights violations declined.

The NTCA countries continue to be the main migrant sending-countries who travel through Mexico or decide to reside in the country. Honduras led this section, with the largest number of Honduran migrants aggrieved in the last 10 years; from 2010 to 2016 it remained upwards (with very few variations: in 2012 and 2014). However, a considerable percentage of Mexicans who have been detained based on racial profiling and targeted as Central American also formed part of this investigation as the most important turning point in recent migratory issues in Mexico.

CHAPTER 3: HUMAN RIGHTS VIOLATIONS

I am from San Pedro Sula, I had a mechanical workshop there. Gangs wanted me to pay them for “protection”, but I refused, and then they wanted to kill me. First, they threatened me; they told me that if I stayed without paying, they would take my blood and one of my children. In my country, killing is ordinary; it is as easy as to kill an animal with your shoe. Do you think they would have pitied me? They warn you, and then they do it, they don’t play, and so they came for me. Last year in September, they shot me three times in the head, you can see the scars. Since then my face is paralyzed, I cannot speak well, I cannot eat. I was in a coma for 2 months. Now I cannot move fingers on this hand. But what hurts most is that I cannot live in my own country, is to be afraid every day that they would kill me or do something to my wife or my children. It hurts to have to live like a criminal, fleeing all the time.

Honduran—Male—30 years old— (MSF, 2017: 12)

To start talking about how the migration law interacts in practice with the undocumented migrant's everyday lives it is imperative to highlight the rising levels of violence in Central America and in Mexico itself. Although Mexico experiences the arrival of Haitians, South Americans, and people from other continents, the biggest population in the country comes from the NTCA. As a geographical region (Mexico – NTCA), it is necessary to address briefly the situation to better understand the Mexican government’s response to the ongoing crisis in its southern neighbors’ territory. Therefore, most of the people interviewed and attended by experts from diverse civil society organizations, and of the population from the CNDH data that I will mention in this investigation, come from the countries located in the NTCA.

What stands out from the current humanitarian crisis¹⁸ is that the NTCA population is no longer fleeing from dictatorial regimes or civil wars, now people are thrown out of their countries by everyday violence. According to MSF and Sin Fronteras, Central American people have a previous encounter with violence –in their home countries before they decided to leave in which murders, disappearances, kidnappings, threats, forced recruitment by non-governmental

¹⁸ For more information see <http://www.un.org/spanish/News/story.asp?NewsID=35200#.Wdl8JGjWw2w>

armed groups, extortion, and sexual violence are part of the daily life (MSF, 2017: 6). Moreover, instead of getting away from a violent cycle by fleeing seeking for survival, they face other challenges in their migration journey through Mexico that involve more violence in various forms, either physical, psychological, social, political, or economical (Sin Fronteras, 2017: 8).

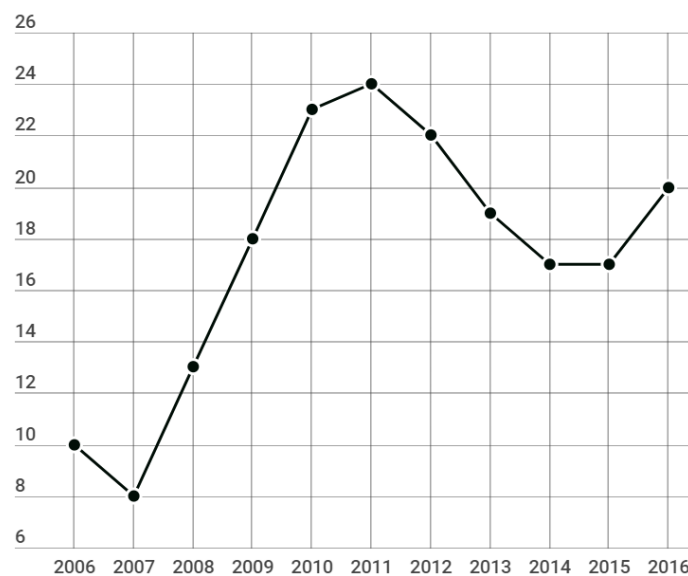
Of the migrants and refugees surveyed [by MSF] in Mexico, 68.3 percent of people from the NTCA reported that they were victims of violence during their transit. Repeated exposure to violence is another reality for the population from NTCA crossing Mexico. Of the total surveyed population, 38.7 percent reported more than one violent incident, and 11.3 percent reported more than three incidents (11). There is a different scenario in which it is conceivable to avoid as much contact with violence as possible, but that comes with a price. In the journey through Mexico, only those who have enough economic resources can pay for protection.

There is a few percentage of people that have the necessary means to “escape” from the violent path that the organized crime and the authorities set. Most of them that are fleeing from their home countries are not prepared to face the reality in which they are thrown into. That is the case of a 36 years old Salvadoran woman who had to leave her country after she exhausted all the possibilities:

I requested asylum through the US embassy in San Salvador in 2011. My husband was a police officer, and [also] worked with the Mara [criminal gang]. I was threatened several times by the other gangs because they wanted to retaliate against my husband for being a spy. I survived this, but then they started to threaten my children. I thought I should leave. My sister lives in the USA. I thought I could go there and join her. But I never received an answer to my request. I had no other choice but to stay and try to survive. My husband was killed in 2015. Then they came, they raped my kid and chased me from my house. They said I should leave, or they would take my kids. I had no other choice. The little money I had, I gave to the pollero [smuggler] to help us. I heard there were stories of rape and kidnapping along the road, but I thought: God will help me through it (MSF, 2017: 24).

When the circumstances in the country of origin force you to flee to a country of which you know nothing more than what you have heard, sometimes the only way out is to survive on the road. However, violence is latent since migrants take the first step in Mexican territory and the fight for survival becomes increasingly complicated due to the clandestine conditions in which they must travel. The yearly statistics published by the INEGI on the homicide rate showed a clear picture of the violence that exists in Mexico and that, consequently, migrants are affected by both organized crime, drug trafficking, and the authorities who have found in illicit business a source of wealth.

Graph 13: homicide rate in Mexico per 100 thousand inhabitants, 2006 – 2016



The homicide rate from 2007 to 2011 maintained an upward trend that went from 8 homicides per 100 thousand inhabitants in 2007 to 24 in 2011. This increase of 200% was mainly due to the openly declared war against organized crime and drug trafficking by the administration of President Felipe Calderón who took office in December 2006. The next three years (2012 – 2014) present a downward trend, passing from 24 to 17 for every 100 thousand

inhabitants. Despite the downward trend, the figures remained within a high range compared to the data prior to 2009. In the last two years, the number of homicides escalated from 17 to 20.¹⁹

Homicides and violence in addition to having increased [at the highest peak of 2011] have also expanded (Yolanda Silva, 2014:43) by the dissolution and creation of different cartels in the country. This internal struggle between the various drug trafficking organizations, coupled with the government-declared war, dragged many people along with it. In the 11 years of the war against drug trafficking, more than 188 thousand people died, according to official data (BBC, 2017), which is only a small percentage and does not contemplate the unofficial data –a category in which the migrant population falls due to the clandestine conditions in which they must travel.

Violence along with the poor implementation of the Mexican immigration legal framework provoked a series of abuses and human rights violations that extended in a range of deprivation of freedom, lack of access to information, extortion, robbery, sexual assault, physical and verbal aggression, and death. According to WOLA (2017), between 2014 and 2016 the number of migrants who have been victims or witnesses of serious crimes in the country regularized their immigration status in Mexico increased by 575 percent; this confirmed the increase in crimes against them (4).

In Mexico, regardless of the crisis that the NTCA countries are going through, and despite the palpable violence that migrants are exposed to in their home countries and in Mexican territory, what dictates the rules in migration are detentions. According to the INM's official data, 1 million 292 thousand 290 migrants have been detained in the past 10 years (2006–2016), and detentions increased a 283% in 2016 compared to 2011. There are different

¹⁹ INEGI's data from 2016 are preliminary to July 18, 2017.

factors that can explain the rise in the percentage, such as the humanitarian crisis mentioned above, but also the migration policy implementation that has added to the statistics' escalation as detentions and deportations became the rule and not the exception.

Despite progress made in discourse, until now detention and confinement of irregular migrants in detention centers called *estaciones migratorias* or *estancias provisionales* in Mexico is an act of deprivation of liberty that maintains its criminal nature that was apparently abolished since 2008 (Sin Fronteras, 2016:14). In addition to the deprivation of freedom, in the detention process and within the detention centers the migrants' rights are violated. According to the Sin Fronteras (2016) report, *Detención sin excepción* is throughout these processes in which these violations range from the lack of information regarding the process to affectations to their physical and mental health and to the lack of access to resources for a proper defense (15).

In this chapter, I analyzed the human rights violations of migrants over time, and how they are intertwined with the tightening of control policies in the country. I divided it into three different sections with a study case to exemplify each one: in the first one I presented a brief story of how the authorities began to collude with the organized crime, then I talked about the most frequently mentioned authorities by migrants aggrieved, and some testimonies gathered from the CNDH recommendations. In the second section, I showed the types of human rights violations since 2006 and analyzed if there has been any change in recent years since the implementation of the new migration framework in the country. I presented a case study taken from the CNDH recommendations at the end of the section to exemplify what the data showed. Finally, in the third section, I laid out the most dangerous Mexican states for migrants, where the majority of human rights violations have been perpetrated.

3.1 Authorities

No policeman stopped someone for being a coyote [in the decade of 1980], much less judged, [...] Crossing Mexico, recalls Mr. Coyote, could be even a pleasant journey. 'People did not get off the bus more than to urinate,' he recalls. In the migratory checkpoints of the road, everything was already arranged, and you hardly had to leave a few dollars to the agents of each booth." In early 2000, "Things became more difficult and even worse." "Things had changed. In Mexico there was more security, here it was already a crime to be a coyote. The coyote fee was 6 thousand per person then, wherever your destiny was in the United States. Few things were like before.

In 2005 we began to work with *Los Zetas*, but it was minimal, it was not mandatory. Having a contact with someone from that group was a guarantee, one reached out to them. Through the Mexican coyote, we planned out everything, just as we worked along with the police. Then, around 2007 they [*Los Zetas*] began to charge the undocumented directly. They didn't care who the people were. They started charging 100 dollars per person, you had to pay that amount. Now it's been two years since these fuckers toughened it. [...] If you are constant and pay 200 per person, they don't bother you, but if I go on my own... then... well. Then *Los Zetas* get angry: "This [dude] will cross and won't leave a dime", it is then when they get tough and charge up to 5 thousand dollars per head. If you work with contacts that know *Los Zetas*, you have guaranteed the crossing through Mexico, you no longer have a problem.

[...] They are a group [*Los Zetas*] with very good coordination with the military and the police. Even if you're stopped by a patrol and [the police] inquire if you already paid *Los Zetas*, and you've paid indeed, then you'll be released immediately. If they find out that you have no contact with *Los Zetas*, then it's tight, you're not going to go to jail, they'll take you directly to them, they're going to turn you in. That's why people disappear. Mexico is no problem if you have contact with *Los Zetas*. If not...

(Interview with Mr. Coyote²⁰ by Óscar Martínez, 2014)

The narrative of the first coyote in Chalate, El Salvador is just a small approach to the migratory scenario in Mexico in the last decade. "Until recently the irregular migrant was a ghost that did not exist to the authorities, therefore, it did not represent a potential complaint against the abuses or violence that they are usually subject to" (Mazzitelli, Antonio, 2015). Following the hardening of the control systems in the country in early 2000, a series of changes in the migratory experience of the undocumented population was provoked.

²⁰ Mr. or *señor* in Spanish, is a term used to call men that after a long time making trips taking people (through Mexico and into the US), they have created a *line*, that is a chain of contacts with migration agents, police, and mafia. Thanks to this now they can *coyotear* from home, and only dedicate themselves to coordinate the operation. (Martínez, Óscar, 2017)

In the first place, the creation of the "law to prevent and punish human trafficking" in 2007 that the coyote mentioned between the lines on the new sanctions of the practice of *coyotaje*, is a sign of good faith from the central government to deal with the problems that afflict to the country. However, the law received critics from some civil society organizations in which they argue that "the progress made in preventing the problem, as well as the understanding of the mechanisms that the criminal networks act is limited, in part due to the lack of investigation with a uniform methodology and measurable indicators" (IMUMI, 2013).

On the other hand, given that "nearly the 50 percent of Mexican and Central American migrants that cross the border use the services of a *pollero*" (De La Torre, Felipe, 2015), the collections for the routes –previously used by criminal groups, turned into a much more profitable business and less risky [for the smugglers] than drug trafficking (Mazzitelli, Antonio, 2015). However, this meant a double-edged sword in the hands of migrants: if you were not willing to pay the increase of almost 70 percent²¹ in quotas to buy your clandestine condition, and [above all] protection throughout the journey, then the consequences were a lot worse.

According to a *coyote* from western El Salvador interviewed by the journalist Óscar Martínez (2017), the basis of this business consists of three elements:

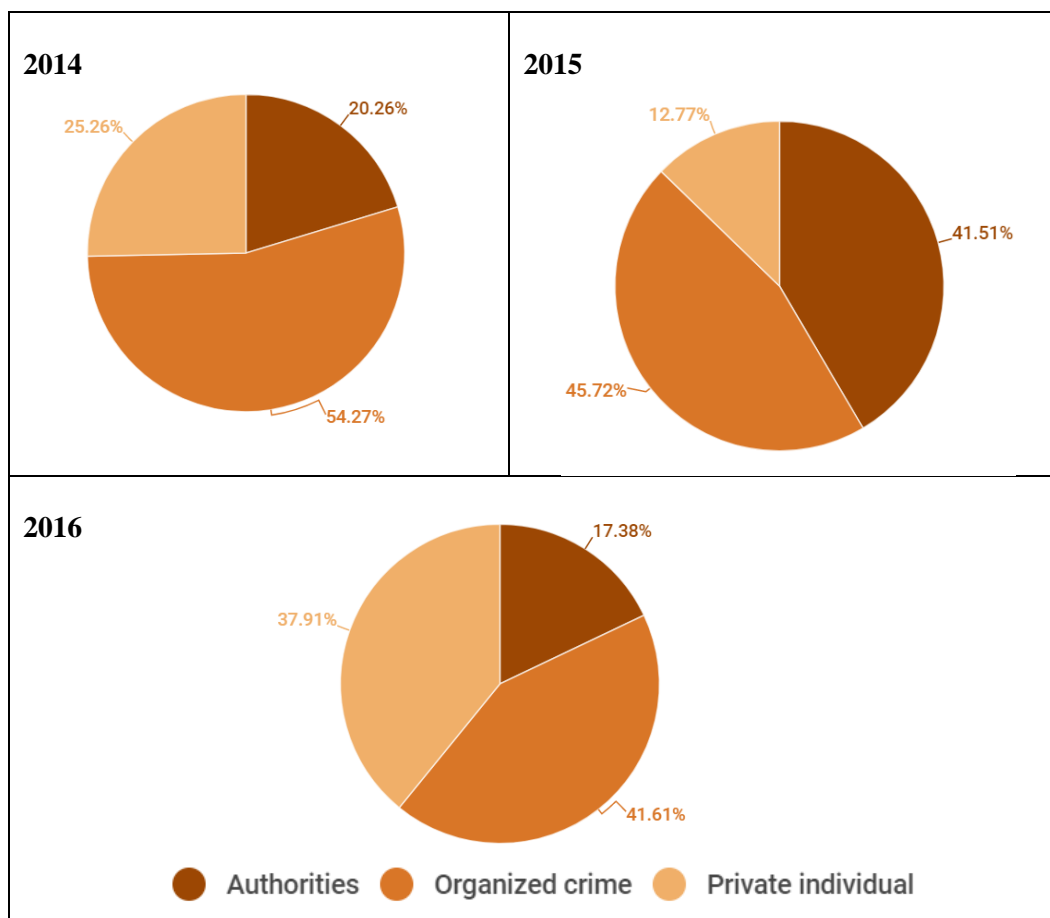
1. A corrupt police or agent from the INM. Normally, that agent lets us know when he/she is at a migration checkpoint on the route. The *coyote* sets a price for it migrants and the agent let them cross without a problem. "You can buy Mexico with a few pesos," he said.
2. Then the difficult part comes: "you have to get a code with the cartel." You usually get it with a Mexican *señor coyote* who works in the northern border, has relations with *Los Zetas* or the Gulf Cartel, and that is willing to receive the clients from the Salvadorian *coyote*.
3. That Mexican *coyote* will get the code and at the same time will provide the third element necessary for the Salvadorian *coyote*: cross his migrants to the US and take

²¹ According to the *señor coyote* this increase started in 2010, and the minimum fee in 2014 was 7 thousand dollars per person to get to the US. (Martínez, Óscar, 2014)

them, only if they paid, to the city of destination. The Mexican *coyote* charges entirely for these last services. The Salvadorian charges for the trip to the US and, of course, for the contact with the northern *coyote* and the corrupt Mexican official. (Martínez, Óscar, 2017)

From these elements what stood out is the importance that the Mexican authorities have in the scene. Of the three necessary elements to achieve a “successful” trip from Central America to the US, in two are involved different agents or policemen who, through corrupt businesses, make extra money. The *señor coyote*’s expression “you can buy Mexico with a few pesos” reflects the wage conditions in which migration agents work, besides the ease with which you can “buy” an agent, possibly as a result of the need to get an extra salary.

Graph 14: human rights violations’ perpetrators in Mexico, 2014 - 2016



The previous graph showed the participation of the organized crime, private individuals, and authorities involved in the human rights violations of migrants and crimes. The organized crime perpetrated most of the crimes in the last three years. On the other hand, the human rights violations [perpetrated by the authorities] increased more than double from 2014 to 2015. This was mainly due to the tougher migratory control after the implementation of the southern border program that reached its highest peak in 2015. Subsequently, in 2016 it presented a decline that followed the decrease in the number of detained migrants in that year due to lack of resources. (WOLA, 2017: 7)

One of the complexities of the collection of complaints concerning human rights violations is the reluctance of the migrants themselves to put a formal complaint or even talk about it. Fear of retaliation or lack of trust in the authorities is some of the most common causes not to talk about it. However, the UN Rapporteur claimed that with the southern border program the number of complaints increased regarding authority abuse against undocumented migrants, as a result of the coordinated operations between different authorities “in order to prevent the border crossing”. (El Universal, 2017)

Even though the graph does not show the authorities involved as clear as the *señor coyote* mentioned it, there is empiric data such as testimonies of migrants who suffered violations of their rights and were victims of several crimes. The testimony of a 35-year-old Honduran woman served as an example for the 2015 – 2016 period:

I'm from Honduras. This is the fourth time that I try to cross Mexico, but this hasn't happened to me before. This time I came with my female neighbor and we were kidnapped by a group of criminals. The worst part was that they were also Hondurans.

The Federal Police²² was its accomplice. We were handed over to the gang members. The raped me; they put a knife on my neck and didn't resist. I'm ashamed of even saying this, but I think it'd have been better if they had killed me. (MSF, 2017: 15)

The story of these women presented an example of the bond that the authorities and the organized crime formed throughout time. It can also imply that they also colluded with minor criminal groups in the migration route besides big criminal organizations such as the *Zetas*. However, there is still necessary the statistical data to support the testimonies' information.

According to the CNDH, from 2006 to 2016 the authorities that received recommendations regarding human rights violations of migrants were: in the first place, the INM with a 38.62 percent, followed by the Secretary of the Navy (SEMAR) with 16.04 percent, the state governments with 15.42, and the Attorney General's Office (PGR) with 11.83 percent.

Table 8: authorities involved in human rights violations, 2006 – 2016

	Authorities involved	Percentage
2006	National Institute of Migration	63.00%
	Ministry of Health	15.00%
	Private Police	8.00%
	Public Security	7.00%
	Others	7.00%
2007	National Institute of Migration	57.00%
	Municipal Police	38.00%
	Federal Police	3.00%
	Secretary of the Navy	1.00%
	Private Police	1.00%
2008	Secretary of the Navy	70.00%
	National Institute of Migration	15.00%
	Municipal Police	15.00%
2009	National Institute of Migration	50%
	Ministry of Health	50%
2010	Attorney General's Office	43.35%
	State Government	42.19%

²² The federal police, besides working in the highways as part of their mission on prevention and combat of crime, it can also work as the INM's support in certain operations if necessary. (Migration law, 2016: 26).

Table 8: authorities involved in human rights violations, continued

	Authorities involved	Percentage
	National Institute of Migration	8.67%
	Federal Police	5.78%
2011	National Institute of Migration	67.00%
	Ministry of Health	33.00%
2012	National Institute of Migration	100%
2013	National Institute of Migration	60%
	State Government	40.00%
2014	National Institute of Migration	100%
2015	National Institute of Migration	88.00%
	National System for Family Development	5.80%
	State Government	5.80%
2016	National Institute of Migration	100%

In 10 out of the 11 years that this investigation covered, the INM occupied either the first or the second place. In the recommendations, it played an important role, in most cases, it was the principal perpetrator of the human rights violations by omitting the situation or, violating directly the migrants' rights. Most of these violations took place during the detention process and in the detention centers.²³

Study case: A 12-year-old Honduran boy was detained in the State of Mexico's detention center. His case displayed examples of both INM's omission and direct aggression. According to the recommendation 27/2015, the boy fell from the train on his way to the US and he was taken care by the *Beta* groups. The boy decided to take the splint off to continue with his journey, but after being detained in the State of Mexico and transferred to the detention center, he said that his wrist hurt.

He was given a medical assessment at the Red Cross in Toluca, State of México. This institution indicated that he needed to be urgently treated because "if the surgical repair of the

²³ On the detention centers I'll delve further forward.

physis was left more time, that is the growth disk of the left radius, the growth of the radius was directly compromised, which brought as a sequel a shortening of the bone... " (CNDH, 2015:7).

The next day he was transferred to the detention center in Mexico City while the INM solved his migration situation. The procedure that should have taken place according to the “Norms for the detention centers and provisional quarters’ operation of the National Institute of Migration” (Norms from now on), was to open a file that included a medical certificate issued when he first was admitted. This file should include his name, nationality, the physical state of the minor, and express if there is any kind of condition that required special treatment (chapter III, article 14: IV), as well as the right to receive health (chapter IV, article 24: III).

The detention center staff ignored every norm and performed the medical evaluation 19 days later.²⁴ This led to the formation of "a bridge and bone callus at the level of the fracture of the left radius, resulting in poor bone consolidation" (CNDH, 2015:6). In other words, the fracture was never correctly treated, a callus was formed, and the growth of the lower left arm was not given in a normal way, which resulted in a shorter arm than the right.

On the other hand, during his stay at the detention center in Mexico City, they put the minor apart from the rest of the population and locked him up in a "cell" in the adult area for five days for having a "difficult" behavior (CNHD, 2015:9). In accordance with the rules, in the case of non-compliance, minors must receive a verbal reprimand in private, with a witness, or in public in case of recidivism (chapter VII, article 44: I).

²⁴ It should be emphasized that the medical assessment was made one day after the CNDH requested that it be sent to a hospital in an urgent manner.

The CNDH's recommendation argued that the rights to protection of health and legal certainty were violated by the events previously mentioned. But beyond making a list of the rights violated, the most important thing is to understand the severity of this case that represents the situation faced by migrants in Mexico. An unaccompanied minor transiting as an undocumented migrant is the equivalent of being part of a minority group that is in a multiple-vulnerability situation. That is, that he is in a position where he is fully exposed to any kind of violation of his human rights.

According to the INM, its mission is to "strengthen the protection of the rights and security of national and foreign migrants, recognizing as subjects of law, through efficient migration management, based on the legal framework and with full respect for the dignity Human" (2017). Despite this, the case of the minor showed the opposite in each one of the points that the INM mentioned.

The institution failed to protect his rights by being the one who ignored the necessary medical care, in addition to locking him up even though he was a minor, and which is contrary to the same Norms. Second, it failed to protect the child's safety by placing him in the adult area, and by truncating the growth of his left arm due to lack of necessary treatment in time. Moreover, it can be concluded that he was not treated as a subject of law, nor was his human dignity respected.

3.2 Types of human rights violations

As I mentioned earlier, human rights violations of migrants go well beyond a list of mere numbers. The figures are important to show the seriousness of the matter, but the center of this investigation goes further: to put on the table the situation of extreme vulnerability in which this

population is in Mexican territory provoked –up to a certain point by the actions of the Mexican authorities, and by the deficient immigration system.

Table 9: human rights violations (per event), 2006 – 2016

	Human rights violations (per event)	Percentage
2006	Legal certainty and due process	32.58%
	Legality	27.31%
	Humane treatment	19.79%
	Personal security and integrity	16.54%
	Health	1.50%
	Identity and freedom of personality	1.25%
	Free movement	0.50%
	Access to justice	0.25%
	Equality	0.25%
2007	Legal certainty and due process	41.66%
	Legality	28.40%
	Access to justice	11.36%
	Humane treatment	9.09%
	Personal security and integrity	9.09%
	Health	0.37%
2008	Legal certainty and due process	23.21%
	Legality	22.32%
	Personal security and integrity	22.32%
	Humane treatment	21.42%
	Personal freedom	10.70%
2009	Health	50%
	Life	50%
2010	Life	57.60%
	Legal certainty and due process	14.40%
	Legality	14.40%
	Personal security and integrity	9.60%
	Property	2.40%
	Humane treatment	0.80%
	Personal freedom	0.80%
2011	Health	14.28%
	Physical and mental integrity	14.28%
	Life	14.28%
	Humane treatment	14.28%
	Personal freedom	14.28%
	Legal certainty and due process	14.28%
2012	Legality	14.28%
	Humane treatment	20%
	Legal certainty and due process	20%

Table 9: human rights violations (per event), continued

	Human rights violations (per event)	Percentage
	Legality	20%
	Education	20%
	Equality	20%
2013	Access to justice	25%
	Life	12.50%
	Personal security and integrity	12.50%
	Legal certainty and due process	12.50%
	Humane treatment	12.50%
	Legality	12.50%
	Physical and mental integrity	6.25%
	Personal freedom	6.25%
2014	Free movement	25%
	Personal freedom	25%
	Not to be discriminated against	25%
	Legal certainty and due process	25%
2015	Free movement	23.33%
	Not to be discriminated against	23.33%
	Legal certainty and due process	21.66%
	Personal freedom	18.33%
	Personal security and integrity	6.66%
	Access to justice	5%
	Health	1.66%
2016	Humane treatment	100%

For the 2006 – 2016 period, the violation of legal certainty and due process of migrants topped the list with nearly 30 percent. In other words, there was a failure to ensure that, regardless of ethnic or national origin and migratory status, in any administrative or judicial process the essential formalities are fulfilled and are attached to law, based on the constitutional and International guidelines (CNDH, 2017). In nine out of the 11 years studied in this investigation, at least 12 percent of the population suffered violations of this right (as it was the case in 2013) and reached the highest percentage in 2007 with almost 42 percent of the aggrieved population.

Secondly, the principle of legality reached 22.95 percent. That is, that the authority can only carry out the attributions and functions that are determined in the Constitution, international treaties or the law, prohibiting that the exercise of its functions is arbitrary or abusive against the person. Persons cannot be disturbed in their property, possessions, family, integrity or rights, without a written commandment issued by a competent authority and duly founded and motivated by the authority (CNDH, 2017). In the previous table, this principle presented high percentages in the first years, especially from 2006 to 2008. However, it declined in 2010. From that year until 2013 it maintained a constant average. On the other hand, in the last three years, it was not mentioned in any of the recommendations issued.

15.17 percent of the population mentioned in the recommendations suffered violations of their right to humane treatment or right to human dignity. That is, that the migrant status does not detract from any human being, therefore, no one (authorities and civilians) has the right to give a differentiated and exclusive treatment to these people (CNDH, 2017). The most representative cases of violations of this right took place in the detention centers or during the security operatives.

Finally, the right to personal security and integrity almost reached 13 percent during this period. According to the CNDH, every person has the right to have the State respect its physical, moral and psychic integrity [...] and there is the special protection of this right in the prohibition of infringing torture or ill-treatment, cruel, inhuman or degrading treatment. All the cases collected in the recommendations that violate this right happened in the detention centers and were perpetrated either by INM personnel or the auxiliary police services contracted by the same institution.

Study case: One of the cases that encompassed the violations of these four rights –besides the violation of the right to personal freedom is the one of a 16-year-old Honduran minor by INM agents in a detention center. According to the recommendation 17/2014, after the presentation of the minor at the San Luis Potosí detention center on September 27, 2013, six days passed until the delegate Alberto Rojo Zavaleta resolved her legal status, and after other four days, they notified her about it. Regarding this, the Norms stipulate that girls, boys, and adolescents who for some reason are “lodged” in a detention center or provisional quarters, have the right to be transferred as soon as possible to appropriate institutions for their healthy physical and emotional development (art. 25).

However, 21 days after the initial date, the facilities’ assistant director decided to expand the date of her deportation on the grounds that the corresponding itinerary had not been established, therefore she could not be transferred. In total, the child was detained for almost 40 days. This fact alone was against the Constitution and hence the law. Article 11 of the Constitution clearly states that "everyone has the right to enter the Republic, to leave it, to travel through its territory and to change from residence, without the need for a security letter, passport, safe-conduct or other similar requirements.”²⁵

On the other hand, in article 111 of the law, it was established that foreigners staying in the detention centers should not surpass a period of 15 working days from the date of their presentation. Even though the law has some clauses that can extend this period of 15 days, there was no sufficient reason to deprive a minor of his freedom²⁶.

²⁵ I will not delve into detail about the unconstitutionality of the law at this point. See Chapter 2.

²⁶ To learn more about the case of the minor, see the recommendation issued by the CNDH: http://cndh.org.mx/sites/all/doc/Recomendaciones/2014/Rec_2014_017.pdf.

In most cases, deprivation of freedom derives from other violations. In this case, the decision of the migratory agent to postpone the departure of the minor resulted in sexual assault by the delegate of said detention center, as the recommendation stated: [...] Being approximately 21:45 hours on November 1, 2013, AR1 [Delegate of the INM San Luis Potosí] went to the detention center with an alcoholic breath and entered the women and minors' dormitory. He then took V1 [minor aggrieved] and T1 [witness], a foreign minor who had requested to speak with him, to his office. After talking about the migratory situation of the girls, he sexually assaulted the first, trying to hug and touch her breast. (CNDH, 2014:1)

The severity of the aggression towards the minor has a couple of edges that involved more than one agent working for the INM. First, the non-existent protection of an unaccompanied teenager. According to the Law, the Ministry [of the Interior] must implement actions to provide adequate care to migrants who, by different factors or their combination, face vulnerable situations such as girls, boys and unaccompanied migrant adolescents, women, crime victims, persons with disabilities and older adults (2016:25). As a minor, and according to the rules, she must have been given special protection for being part of a vulnerable group.

Secondly –contrary to what the law and the Norms dictate, the ones in charge of providing a safe environment for the child were accomplices or direct actors of the sexual aggression. According to at least three witnesses, plus the declaration of the minor, the delegate continually went to the detention center under the influence of alcohol, and it was not the first time he tried to sexually assault the minor. This series of events plus the aggression itself showed the lack of vigilance and care mainly by the Deputy Director of the detention center, who was also the responsible for postponing the minor's departure.

Besides, when the CNDH analyzed the entries' record of the day of the facts to the facilities, they found out that despite being inside the detention center at the moment the delegate entered to commit the conducts already indicated, the assistant director omitted to prevent the access of the former, who was under the influence of alcohol; this contravened his obligation to protect migrants, as provided in articles 49, second subparagraph, and 50, of the standards (CNDH, 2014:2).

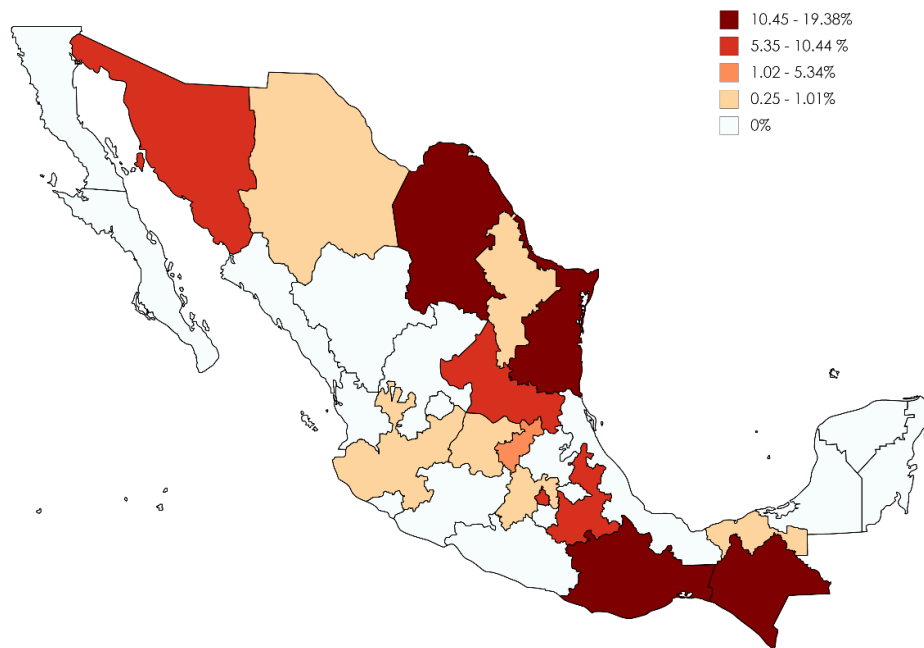
In addition, a third migration agent –who was in charge of taking care of the minor, was working in the detention center on the same day, and she told him what happened right after the aggression. However, all he did was recommend that she file a lawsuit before "human rights", without taking into account the severity of the situation and the immediate needs of the child.

A couple of days after the girl filed a complaint about the aggression, she was transferred to a shelter along with a minor who witnessed the incident. After spending several months with the legal process, in January 2014 they were sent back to their country, where they were placed at the disposal of the Honduran Institute of Children and the family. As for the delegate, an investigation was initiated for the crimes against sexual freedom and the normal psychosexual development, sexual harassment, sexual abuse, rape, and abuse of authority, (CNDH, 2015:8).

In March 2014, Rojo Zavaleta resigned his position as a delegate, and in May of the same year, the INM filed a complaint against him after the minors filed their statements. However, the following year he was appointed the legal coordinator of the Congress of the state of San Luis Potosí. The President of the Political Coordination Board of Congress defended his appointment and said that the former delegate presented an acquittal for the crime he was charged (Pacheco, Leopoldo, 2015).

3.3 Federal entities

Figure 2: states affected by human rights violations of migrants,
2006 – 2016



For the 2006–2016 period, the states that presented a higher percentage of human rights violations of migrants were the border states. For the south, Chiapas, and Oaxaca, and in the North Coahuila and Tamaulipas. According to REDODEM, much of the country's southern border, in particular, Chiapas, remained a high-risk area for migrants, as well as a place where violence continued to increase (2017:99). These were followed by Sonora, San Luis Potosí, Puebla and Mexico City. In this second group, there was much more presence of entities located in the center of the country; the only border city the migrants mentioned was Sonora with 8.41 percent.

Querétaro was the only one in the following percentage range with 1.02%. The federal entity has been almost a compulsory stop for most of the migrants who are looking to reach the US, however, in recent years the number of those seeking to settle increased. On the other hand, according to data from the recommendations issued by the CNDH, in the percentage range from

0.25 to 1.01, Nuevo León, Chihuahua, Jalisco, Guanajuato, Mexico, and Tabasco were part of this group. The following table shows the perpetrations of violations of migrants' rights in the different entities per year.

Table 10: breakdown of states affected by human rights violations, 2006 – 2016

	Federal entities	Percentage
2006	Coahuila	50%
	Sonora	22.05%
	San Luis Potosí	13.97%
	Chiapas	11.02%
	Ciudad de México	2.20%
	Tamaulipas	0.73%
2007	Chiapas	54.43%
	Oaxaca	37.97%
	Sonora	3.79%
	Ciudad de México	2.53%
	Tabasco	1.29%
2008	Sonora	84%
	Oaxaca	12%
	Tabasco	4%
2009	San Luis Potosí	100%
2010	Tamaulipas	79.12%
	Oaxaca	10.98%
	Puebla	7.69%
	Chiapas	2.19%
2011	Ciudad de México	50%
	Tabasco	50%
2012	Chiapas	100%
2013	Ciudad de México	42.85%
	Chiapas	28.57%
	Estado de México	14.28%
	San Luis Potosí	14.28%
2014	Ciudad de México	50%
	Jalisco	50%
2015	Chiapas	52.63%
	Querétaro	21.05%
	Ciudad de México	15.78%
	Chihuahua	5.26%
	Oaxaca	5.26%
2016	Ciudad de México	100%

This chapter showed an important element that neither the CNDH nor the media reached to encompass or deepen. That is impunity. Given the vulnerability of migrants, threats became an effective way to prevent them from reporting. According to official figures for the 2014–2016 period, of a total of 5 thousand 824 offenses against migrants in Chiapas, Oaxaca, Tabasco, Sonora, Coahuila and at the federal level, there is evidence of only 49 sentences, equivalent to an impunity of 99% (WOLA, 2017: 4). That without taking into account the number of officials who continued to act on the opacity and did not even reach the official statistics.

Furthermore, while the violation to the right to legal certainty and due process remained constant since 2006, the right to not be discriminated started to appear in 2014 which can be closely linked to the implementation of the southern border program and affected not only the Central American population but also the Mexican.

It is also striking that even though Tabasco is one of the obligatory steps for migrants coming from the south, and that several civil organizations have denounced on numerous occasions the aggression towards the migrants and towards them [the human rights advocates], in the CNDH's records the allegations that reached recommendations were minimal²⁷, this could be another flaw that the CNDH had at recording data. On the contrary, Mexico City has become an important spot in the last six years.

²⁷ The migration route into Mexico through Tenosique, Tabasco has seen a sharp increase in children and families fleeing violence in the Northern Triangle region. Between 2014 and 2016, the number of children (both accompanied and unaccompanied) apprehended in the state of Tabasco increased by 60 percent. The majority of migrants traveling through this area of the border are from Honduras (WOLA, 2017: 4)

CHAPTER 4: CRIMINALIZATION AND DISCRIMINATION

Detention must be the exception and not the rule, that is the central point. When you have a detention policy instead of a policy that really has human dignity and human rights of migrants as its central axis you have this type of cases and they will continue to reproduce. (Quiroz Rendón, Perseo in *Sin Embargo*, 2014).

The detention policy constitutes the guiding principle for the treatment given to undocumented migrants in Mexico. The now Senior Advocate for the Amnesty International region of the Americas spoke out against this policy that uses the detention centers and provisional quarters as the main means to carry it out. No wonder this statement and others have been made over the years by organizations like *Sin Fronteras*. The conditions in which undocumented migrants are "lodged" on many occasions, both in detention centers and in provisional quarters "are degrading and alien to international standards on detention" (Quiroz Rendón, 2014).

However, to understand the conditions in which the migrant population is at the detention centers, it is necessary to take a step back and analyze two crucial aspects that emerged from this detention policy: criminalization and discrimination.

This chapter exposes the problem of the criminalization of migration in the country, and the dilemma between deprivation of liberty and "securing". Here, the detention centers serve as a central actor, and the case of *Las Agujas* located in Iztapalapa, Mexico City, is used as a representation of one of the largest migratory stations in the country and, therefore, one of the most conflictive. In addition to this, the development of a policy of discrimination in recent years that extended to Central Americans and Mexicans, mainly of indigenous origin, is exposed.

4.1 Criminalization

"Get up and do 20 squats," shouted the agent of the National Institute of Migration (INM) [...]. Then he said: you have a good ass. Then two policemen held him down, and the penetration happened. [...] When it was over, they put me in a room that measured four by four meters, dark; a punishment cell where they would throw cold water at me every day, they insulted me, and they continued to attack me" (Sanjuana Martínez, 2015).

As I mentioned in chapter 1, in 2008 undocumented migration was decriminalized. So, why are we talking about criminalization almost 10 years away? As Rendón indicated, detention continues to be part of the migration policy in Mexico. It is, in fact, the strong arm of national security within the migratory field in the country. This results in the treatment of undocumented migrants as if they were criminals, from the way in which many are persecuted, to the time and manner in which they spend their "lodging" in the detention centers. Elvis Garay, Nicaraguan cited at the beginning of this section, spent 45 days²⁸ in *Las Agujas*. His story is a very recent example of the dehumanization that can happen in a detention center²⁹.

According to the *Derechos Cautivos* report (2015), the architecture of the detention centers itself reproduces "the design of spaces for control and surveillance, such as psychiatric hospitals or jails." In my experience within the women's section of *Las Agujas* in 2014, the atmosphere that exists there is depressing. I am not referring only to the emotional regret and tension of facing the return to their countries of origin, or knowing that they have a long wait

²⁸ [...] Migrants remain, in total, 21 days only in provisional quarters before being held at the detention center, which contravenes the Migration law with respect to the maximum detention time of 15 working days (except when a migrant interposes a judicial or administrative appeal, in which case the detention can be prolonged indefinitely). (Sin Embargo, 2014)

²⁹ Elvis suffered inhuman and degrading treatment in 2014 by agents of the INM. To learn more about his story and what is lived in *Las Agujas*, you can review the two reports released up to this day: "Denuncian *narcomenudeo*, tortura y trata de personas en estación migratoria Las Agujas" (La Jornada, 2015), y "Violencia, maltrato, extorsión: Elvis Garay cuenta el horror que significa México para migrantes" (Sin Embargo, 2017).

ahead in the case of requesting asylum, but to the physical space itself. They are confined in a small courtyard with a strip of garden where they have clotheslines, and on the right a basketball basket; in the background, there are a couple of laundry rooms and to the side is the dining room.

Although the beds they have do not seem to be in such bad conditions, the common problem is overcrowding. It does not matter that the mattresses are of the best quality if there are not enough, and women and children have to sleep on the floor, getting cold at night. There are also a considerable number of women traveling with their babies. The entrance and the windows have bars, and on the roof, you can see immigration agents walking all the time, watching. There are cameras in every corridor, it is difficult to avoid them. It is not very clear if migrants are being protected from possible external threats –or internal threats? or if the high security tries to contain and (in a certain way) intimidate the population in confinement.

Mónica Oehler, a lawyer in charge of the *Sin Fronteras*' report *La ruta del encierro*, said that over the years their diagnoses have changed because initially the complaints of the migrants detained in the detention centers were related to material issues. When infrastructure improvements began in 2010, migrants' complaints become more about the treatment they received in detention centers (Sin Embargo, 2014).

During the six months that I was attending weekly, the constant complaints were about the poor quality of the food (which was sometimes already spoiled, or the personnel did not take into consideration if someone needed a special diet for health reasons), the lack of information about their status, little medical attention, and that they were not allowed to use the telephone. Very few knew when they were going to leave. They told me: "I heard that a truck is going to

leave tomorrow afternoon, but they have not told us who is leaving. A truck left yesterday with all the Hondurans (or another Central American nationality) who had just arrived a day earlier."

In at least 50 percent of the cases, I saw the same young men or ladies more than once, which meant that they spent at least 15 days detained. Not to mention a family that requested refuge and spent four months without being able to leave, awaiting the verdict. Finally, the mother together with her children, two daughters, one of 22 years old and one of 14 years old, and a boy around eight years old at the time, obtained a positive response to their request.

The most severe case I witnessed was that of a Salvadoran girl around the age of 24 who presented her application for refuge and spent more than six months in *Las Agujas*. When I met her, she was a happy girl despite the situation and full of life. Months later, her physical and mental health began to diminish due to spending so much time in confinement. She began to experience very strong anxiety crises and her friends, who had time to meet her, said that they were having a very difficult time seeing her like that.

The last time I had the opportunity to be with her, she was only in bed, unable to get up except at times. Her skin was pale, and her lips chapped. She did not have much strength to speak, but when she saw us a smile appeared on her face. The medications that she received to control the anxiety attacks were apparently very strong and she was as if stunned. I never knew with certainty what they were giving her. Later I learned that her request was denied, and they sent her back to El Salvador, where she began to recover little by little.

María's story [fictitious name to protect her privacy] is just one among many that reflect the consequences of the detention policy that was implemented in the country, where national security became the central axis of immigration policy and put aside human rights. The INM

expressed its position with respect to this, and the director of social communication of the Institute said: "We, as of 2013, have a policy of unrestricted application of human rights in the migratory stations. Of course, there are things we have to improve, all work can be improved, and we are heading towards that" (Sin Embargo, 2014).

But, recommendation 68/2016 proved the opposite. According to the CNDH, in 2016 the detention center *Las Agujas* presented overcrowding problems repeatedly, and the INM showed no interest. After the insistence of the CNDH to fix it, the number of detained people was reduced, but after a short time, it was overcrowded once again. This example was a reflection of the increase in the number of detentions, and of the little importance given to the conditions in which the migrant population is held. Although human rights violations arose almost since the creation of detention centers, the increase in detentions aggravate the situation that, in this case, can be seen more clearly since 2014.

Now, it would be a mistake to think that only in the detention center of Mexico City occur human rights violations. The detention center located in Saltillo, Coahuila, had two cases that reached the media. In the first, a worker hired by a security company for the detention center said that the migrants had suffered violations of their right to humane treatment, not giving them the opportunity to bathe and restricting personal cleaning utensils on more than one occasion. At the time of the interview in February 2016, they said that the last time it had happened was for a period of more than 15 days (Vanguardia, 2016).

The second case (in 2015) was a Guatemalan family victim of extortion for 1 thousand 050 dollars from inside the detention center. In addition, two minors and a newborn baby were threatened with death (Vanguardia, 2015). The newspaper that narrated the story of the family

said that the victim, who was working in the US, deposited the money they asked for. However, two days later she received another call. This second time they asked for 10 thousand dollars in exchange for the safety of their relatives.

According to this newspaper, an investigation was carried out as of this incident since it was not the first case of which there was registration. It was striking, on the one hand, the lack of importance that was given to the first registered incident, and on the other that there was no more information about the follow-up of the investigation, or if any member of the INM staff was fired for the crimes committed. In addition, in August 2015, Father Alejandro Solalinde publicly denounced that extortion of relatives of detained migrants had been documented in the detention centers located in Chiapas, Veracruz and Mexico City (Vanguardia, 2015).

Although it has been almost 10 years trying to walk a path that leads to the recognition of the human rights of migrants by the State, it is undeniable that it has failed again and again, especially in recent years which have represented a setback with the implementation of the Southern Border Program. The expansion of the detention centers and their remodeling marked a decrease in the number of complaints in material terms but prompted complaints about the treatment received by the migrants. This gave rise to a new problem, and that is that, according to what has been analyzed in this chapter and to civil society organizations, in these centers, the "mass" treatment (of migrants) is "inhumane" (Proceso, 2015).

4.2 Racial profiling: the "new" Central American case

According to the CNDH and REDODEM, the Mexican population began to be part of the most affected group of people in the last three years. As I mentioned in the sociodemographic information chapter, according to the CNDH's recommendations in 2015 almost 100% of the

registered population were Mexicans. Of these, 25 percent are of indigenous origin from Chiapas. The reason for Mexicans to be part of this investigation is to demonstrate the risk of having a control policy over human rights, even for the Mexican population itself.

In all cases, people were registered as Central Americans before the INM and transferred to some detention center. Of these, 64.70 percent got their documentation that accredited them as Mexicans as invalidated. Three Tzeltal indigenous people from Chiapas who were going to Sonora for work reasons were arrested in Queretaro and, despite filing documents, the immigration agents accused them of being false. Two of them did not know how to speak Spanish, one of legal age and the other was a minor. According to the recommendation 22/2016, the first of them learned three days later that he was in a detention center. Part of his statement is shown below:

[...] the immigration staff insisted that he declare that he was originally from Guatemala, denying that accusation made against him. Because of that, a Federal Immigration agent kicked him in the right leg, in addition to threatening him that he would leave him locked in that "prison" for 3 months (...) likewise, he showed him an object with which he indicated he would inflict electric shocks, asking him "Is this what you want?", to which he told the public servant that he was originally from Chiapas before the Federal Immigration agent gave him an "electric shock" on his right hand, so he decided to accept what the public servants wanted him to say: that he was from Guatemala (...) After that, they signed several documents and stamped their fingerprints on them ... (2016: 5).

His right to free transit was truncated, as well as his rights to personal integrity and security, access to justice, and non-discrimination. This is not the only case in which an indigenous person is detained based on a racial profile, which in itself constitutes a serious violation of the rights of these young people. What stands out, in this case, is the use of physical and psychological torture to accept being Guatemalan.

In recent years the cases of detention by racial profiling took a turn that was not seen before: Mexicans began to be arrested for their physical appearance and (as the previous case showed) even forced to declare being of Central American origin. Either it is a recent phenomenon that began to be noticed as a result of the detentions' increase, or it was not a topic of interest for the CNDH before. Either way, in the recommendations I found no record of human rights violations of Mexicans for this reason until 2012.

81.25 percent have no doubt of having been detained because of their physical appearance. Most of the time they were people from Chiapas traveling by bus. They were accused of being –in their majority Guatemalans, even in those cases where they did carry some type of official document that identified them as Mexicans. In almost 100 percent of the cases, the people affected were low income.

According to Yolanda Silva, there is a strategy to detect Central Americans on buses based on racial profiling. According to the query made to officials of the Specialized Prosecutor's Office on Crimes Committed against Immigrants (FEDCCI):

[...] this strategy was based on the generalized idea of how agents and police officers have *colmillo*³⁰ to identify Central Americans on buses. The so-called *colmillo* is nothing more than the set of the following considerations:

a) Undocumented people who travel by road use the cheapest means of transport (fast southern buses or *combis*).

b) Due to their condition of irregularity, they seek to get away from the rest of the passengers and they usually prefer the last seats, unequivocally next to the windows.

c) To avoid attracting attention, they pretend to sleep; "A Mexican or a local does not fall asleep on such a short trip," said a border policeman. Also, they usually read the newspaper or magazines.

d) Those who travel alone, not being from here, usually are looking through the windows; It is believed that the local people do not do it because he already knows the area.

e) Some police officers of the prosecution mentioned that, if they travel in groups, the Hondurans are easily identifiable because when they speak they raise their voices a lot

³⁰ Mexican expression similar to "to be an old fox".

and dress badly. The Guatemalans are short, brown and quiet (they even sit in the last seats). Salvadorans like the others are also identified by their accent (when they speak) (Silva Quiroz, 2014: 158).

These characteristics are not necessarily exclusive for Central American migrants traveling through Mexican territory. As exemplified by the recommendations of the CNDH, at least three of the five points mentioned by the FEDCCI apply to the people from Chiapas who are primarily discriminated against for their physical appearance. They also use buses to go to other parts of the country, their physical appearance is similar to Guatemalan people (short and brown), and most likely, being young people the ones who were mostly registered by the CNDH, they were looking through the windows for being their first trip (or their first trips) in search of work to another state.

Silva mentioned in her investigation that she was the only one to whom on two occasions military and immigration agents asked her for official identification, in addition to listening to her speak in order to know her accent, and the institutional affiliation of origin. Even on one of the trips, the closest female passenger was white-skinned and with two small ones equally colored with light skin. However, only Silva was required to prove his nationality. Why? She argues that the likely response is that she looked like a migrant. [...] If "they look like migrants" they are asked for their official photo identification; their residence is verified and if they are not from the city –and even more if they have been deported they are taken to the local jail. The frequent charges are to alter the public order and suspicious activity. (2014: 159).

One of the recent cases that came to the PGR due to forced disappearance was a young native of Chiapas who was traveling to Quintana Roo for work reasons in May 2016. He, like all cases of people from Chiapas mentioned in this investigation, was targeted as Guatemalan

despite showing his birth certificate and his CURP³¹. After 52 days, the young man appeared alive in Chiapas³². To this end, Vidal Olascoaga from Mesoamerican Voices, explained that his organization has a registry of 150 disappeared migrant people from Chiapas who were travelling to the US, while the migrant's shelter *La 72* in Tenosique, Tabasco has a recent record of at least four mass kidnappings³³ of migrants, without serious investigations in this regard (Proceso, 2016).

In recent years, the Chiapas population, especially indigenous people, have been threatened by the Mexican government's containment measures that seek to detain and deport them. Based on racial profiling, Central Americans are now more affected and, consequently, Mexicans who, according to the agents' "strategies", fit in with the Central American migrant profile.

³¹ Mexican ID.

³²For more information on the young Maximiliano Gordillo Martínez, see: <http://www.proceso.com.mx/453477/tras-52-dias-desaparecido-joven-indigena-aparece-vida-en-chiapas>

³³ In 2010, the CNDH documented 214 mass kidnappings that involved 11 thousand 333 migrants. For more information see: http://www.fundacionjusticia.org/cms/wp-content/uploads/2015/08/2011_secmmigrantes.pdf

CONCLUDING REMARKS

While this is only a representation of what the human rights reality looks like in the country, it is important to have always in mind that the numbers and the situations that migrants are living on a daily basis in Mexico are worse than this investigation shows. It is still a very new area of study that has been explored minimally; there were only two institutions/organizations that started collecting data since the late 1990s: CNDH and *Sin Fronteras*.

In general, there is a lack of information that civil organizations and a small part of academia have tried to cover, and that has grown in the last couple of years. I believe there is still a long way to go in the path of access to information in Mexico, especially in the human rights area and much more in every topic related to migration.

Both the CNDH and the civil society organizations still face the external complexities of working with the migrant population such as their reluctance to report abuses and/or violations to their human rights, the lack of economic solvency (especially in the case of the civil society organizations), and other internal factors, for instance the possible conflict of interest in the CNDH due to the appointment of its president made by the President of the Mexican Republic, and the changes in the organizations' methodology as part of the learning process of collecting data.

The investigation showed that Mexico has experienced regulatory progress in terms of migration, especially since the creation of the Migration Law and its regulation in May 2011. However, this has not improved their condition during the journey: they are still vulnerable due to the clandestine paths that they have to take and the increasing violence, and protecting their human rights is still missing on practice.

Although there was no major change after the implementation of the new migration policy, I found that there were three important factors that could explain the constant human rights violations: the increment of violence in Mexico in the last years as consequence of the drug war –which raised more complex challenges for the Mexican State (CIDH, 2013), the externalization of borders, and the lack of oversight inside the *INM* and the broad margin of discretion that the migration agents have when they are on duty despite the existing legal and administrative framework (INSYDE, 2013).

War against drug trafficking and the militarization of specific areas in the country affected the migrants' routes towards the United States; they had to search for more clandestine paths and isolated areas to go through, where the criminal gangs and the drug cartels are located. Migrant smugglers expanded their network in the drug-trafficking region, which now represents one of the main sources of income for the organized crime in Mexico. The high economic profits gained by the abduction of migrants, human trafficking, and smuggling have been a very attractive for the different state authorities and led them to collude with the organized crime. The Inter-American Commission on Human Rights (2013) stated that “institutional fragility, corruption from state agents and impunity that identifies crimes committed against irregular migrants, have encouraged criminal operations and violations of human rights.”

As Piñeyro (2006) stated, these are reflections of a structural problem in which the national security strategy in Mexico is based on the US migration agenda, and the lack of interest of the Mexican government to act on the ongoing human rights crisis on the country. There is a lack of an efficient regulatory system that forces migration agents to be accountable for their actions that fall in a vicious circle of impunity that fuels up with the difficulties that migrants face when they want to denounce.

Even though it is not possible to assure that torture and inhumane and degrading treatment are a common practice in the detention centers, the data showed that they are not isolated cases, neither they are exclusive to a single facility. On the other hand, it is possible to assure that migrants are still being detained in inhumane conditions in some of them like the detention center located in Mexico City, where overcrowded facilities are the rule and not the exception. With the implementation of programs such as *Programa Frontera Sur* in 2014, not only the overcrowding became more noticeable, but also a new problem arose: the detention of Mexican people, especially indigenous from the southern region.

Several challenges were presented during this investigation, from data collection to the continuous human rights violations, however, I believe there are four actions that different Institutions could take. About data collection: First, the National Institute of Statistics and Geography (INEGI) should be the institution in charge of collecting migrant data with a uniform methodology that involves sociodemographic data and a specific section regarding violence. Second, the Survey of Migration at Mexico's Northern and Southern Border (EMIF), CNDH, *Sin Fronteras*, and *REDODEM*'s databases should be integrated into a single database with a uniform methodology.

Finally, regarding the Institutions itself: The CNDH's president should be elected by the Senate instead of the President of the Mexican Republic to avoid conflict of interests with the INM and the PGR. On the other hand, the INM's *Consejo Ciudadano* should be the regulatory body of the migration agents and other police forces that support its operations, and not be solely a taken as the "civil society organizations perspective and opinion on the human rights of migrants' matter".

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