

MEXICO AND THE ICRMW: PROTECTING WOMEN MIGRANT WORKERS

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1 Introduction

Mexico was the first country to sign the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in 1991 and has been one of its foremost promoters since it was conceived in the late 1970s. While during the drafting of the ICRMW, Mexico's intention was to have an instrument to protect Mexican migrants in the US, today Mexico must also guarantee the rights of migrants who live and work in Mexico, as well as those who are in transit.¹ Part of this population is comprised of women who are impacted at each part of the migration process in different ways than men.

This chapter analyses the changes in legislation and policies that Mexico has undertaken to comply with the ICRMW, especially to address the specific situation of women migrant workers. While Mexico has made legislative and policy advances, it still falls short of compliance with ICRMW standards in practice. The corruption and impunity endemic in Mexico as a result of the weak rule of law mean that the country lacks an effective infrastructure for implementing policy and legislation. This, coupled with Mexico's geographical position as a route between Central America and the US, limits the robust application of the legislative framework. While the dearth of publicly available information prevents an accurate, detailed assessment of migrants' access to their rights and services in Mexico, the humanitarian crisis represented by the transit of Central American irregular migrants and asylum seekers through the country, and the dangerous and exploitative conditions that migrant workers, especially women, face on a daily basis, are evidence of the lack of compliance with the ICRMW. While fulfilment of recommendations

1 G Díaz Prieto & G Kuhner 'Mexico's role in promoting and implementing the ICRMW' in P de Guchteneire et al (eds) *Migration and human rights: The United Nations Convention on Migrant Workers Rights* (2009) 219.

made by the Committee on Migrant Workers (CMW) would help strengthen the protection of women migrant workers' rights in Mexico,² the CMW should make a greater number of recommendations concerning women migrant workers, the implementation of which would help to eliminate the rights violations that they face.

This chapter first describes the migration context and the particular problems that migrant women face in Mexico. Second, it analyses Mexico's compliance with the ICRMW in three areas: legislation, policy and practice. Third, it addresses the activity of the state and civil society in relation to the ICRMW and their interaction with the CMW. Finally, it concludes by identifying three conditions that the Committee could address to improve implementation of the ICRMW in Mexico with a view to strengthening protection for women migrant workers.

2 Background

Although Mexico was the first country to sign the ICRMW, eight years went by before it was ratified. The reason for this delay largely relates to a shift in government priorities due to the negotiations of the North American Free Trade Agreement (NAFTA) with the US and Canada. At the time, there was a concern that signing the Convention could potentially jeopardise the success of these negotiations.³

In order to encourage ratification of the ICRMW, Mexican civil society organisations carried out a national campaign that portrayed migrants as dignified workers. In addition, they developed a favourable relationship with the Mexican Senate, which proved important in ensuring that the ICRMW was ratified in 1999 with fewer reservations than proposed by the executive branch.⁴ As a result, the Convention was ratified with only one reservation which concerned article 22(4) of the ICRMW. Article 22(4) provides for the right of migrants to submit the reason they should not be expelled and to have their case reviewed, as well as the right to request suspension of the expulsion decision until such review is undertaken. This right was in conflict with article 33 of the

2 Mexico presented periodic reports to the CMW in 2005, 2010 and 2016, and has received recommendations in 2006 and 2011. Those specifically concerning barriers or rights violations faced by women migrant workers are: Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Mexico, CMW (20 December 2006), UN Doc CMW/C/MEX/CO/1 (2006) paras 6, 26, 30, 32, 34, 36 & 38; and Draft Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Mexico, CMW (6 April 2011), UN Doc CMW/C/MEX/CO/2 (2011) paras 24, 26, 32, 34, 38, 40, 46, 48, 50 & 53. The CMW is currently preparing its Concluding Observations in response to Mexico's 2016 report.

3 Díaz Prieto & Kuhner (n 1 above) 222.

4 F Venet 'La Convención para la protección de todos los trabajadores migrantes y sus familiares: posibilidades y límites en su aplicación' in *Primer curso de capacitación para organizaciones de la sociedad civil sobre protección de poblaciones migrantes* (1999) 270.

Mexican Constitution⁵ which at the time took legal precedence over international instruments.⁶ Indeed, in May 1999, the Supreme Court clarified that all international instruments should be considered secondary or immediately below the Constitution, but above federal law.⁷

Although the CMW requested Mexico to withdraw this reservation a number of times since 2006, it was not until 2011 that the Mexican Constitution was revised; integrating international human rights instruments into the national legal framework.⁸ This marked the beginning of a legal journey to comply with UN conventions ratified by Mexico and the recommendations made by the Committees assigned to monitor each instrument.⁹ Three years later, on 11 July 2014, Mexico finally withdrew the reservation to article 22(4), thereby allowing migrants to submit the reason they should not be expelled and to have their case reviewed by the competent authority.¹⁰ Other significant law reforms to comply with the ICRMW are analysed in section 5 of this chapter.

3 Migration context in Mexico

Mexico forms part of one of the most dynamic and complex migratory systems in the world, that of North America, which is one of the principal regions of destination for migrants.¹¹ Its proximity to the US poses a number of important challenges for Mexico.

On the one hand, 12 million Mexican-born people live in the US (equivalent to 10 per cent of the population in Mexico), and 51 per cent of them are undocumented. Both the economic crises as well as the increasingly restrictive US immigration policy have resulted in significant

5 Article 33 of the Mexican Constitution and art 125 of the General Population Act stipulated that the Executive had exclusive authority to expel from the National territory, immediately and without a judicial hearing, any foreigner whose residence in Mexico it deemed undesirable. Therefore, art 33 was contravened by the requirements of ICRMW art 22(4).

6 At that time, art 133 of the Mexican Constitution established legal precedence of the Constitution over international instruments. Díaz Prieto & Kuhner (n 1 above) 222.

7 Suprema Corte de Justicia de la Nación 'Tesis P. LXXVII/99' *Semanario Judicial de la Federación y su Gaceta* (1999) 46 http://www.equidad.scjn.gob.mx/biblioteca_virtual/jurisprudencia/nacional/jurisprudencia/27.pdf (accessed 15 March 2015)

8 Suprema Corte de Justicia de la Nación *SCJN determina que las normas sobre derechos humanos contenidas en Tratados Internacionales tienen rango constitucional. Contradicción de Tesis 293/2011* (2013) <http://www2.scjn.gob.mx/asuntosrelevantes/pagina/seguimientointoasuntosrelevantespub.aspx?id=129659&seguimientoid=556> (accessed 22 February 2015).

9 For example, art 33 of the Mexican Constitution was modified in 2011 in order to guarantee the right of migrants to explain their reasons for objecting to their expulsion and to submit their case to the competent authority, as recommended by CMW.

10 While Mexico has recognised the competence of the CMW under art 77 to receive complaints from individuals, it has not recognised the competence of the CMW under art 76 to receive inter-state complaints, although the Committee has recommended Mexico to do so.

11 R Smith 'Dilemas y perspectivas del sistema migratorio de América del Norte' (2000) 50 *Comercio internacional* 289.

return migration to Mexico, consisting of both voluntary return (1.4 million people between 2005 and 2010) and 'repatriation' (2.8 million deportations from the US to Mexico between 2008 and 2013).¹²

On the other hand, Mexican territory is one of the main migratory corridors in the world. Each year approximately 400 000 undocumented migrants transit through Mexico on their way to the US, more than 90 per cent of whom are from Central America.¹³ The principal entry point to Mexico is the southern border with Guatemala, which lacks the infrastructure to ensure that international migration takes place through regular routes. According to the Ministry of the Interior, there are eleven official entry points and 370 informal transit points along the 1 149 km border. The latter facilitates 95 per cent of the irregular migration which takes place across Mexico's southern border.¹⁴

Twenty per cent of the 400 000 persons that annually cross Mexico in an irregular fashion are women.¹⁵ Although the total flow and women's participation in it diminished between 2006 and 2011, it started to grow in 2012 and reached a peak in 2014, with the migration of thousands of Central American families fleeing violence¹⁶ and lack of opportunities.¹⁷

This transnational movement of families has increased the presence of women and girl migrants in the migration flows and detention centres both in the US and Mexico.¹⁸ While the number of apprehensions of male migrants by the Southwest Sector Border Patrol in the US increased by 15 per cent between 2013 and 2014, the number of apprehensions of female migrants increased by 74 per cent between 2013 and 2014.¹⁹ In Mexico, there was a twofold increase in the number of women in detention (from

12 Secretaría de Gobernación *Programa Especial de Migración 2014-2018* (2014) 10. Multiple deportations of the same individual in a given year are counted as separate deportation 'events' for the purposes of these figures.

13 G Díaz Prieto & G Kuhner *Un viaje sin rastros. Mujeres migrantes que transitan por México en situación irregular* (2014) 16 & 47.

14 Secretaría de Gobernación (n 12 above) 21.

15 Díaz Prieto & Kuhner (n 13 above) 16.

16 UNHCR published in 2014 and 2015 two reports that thoroughly document the escalation of violence in Central America, the devastating effect it has on children and women, and their international protection needs. UNHCR *Children on the Run* (2014) <http://www.unhcr.org/56fc266f4.html> (accessed 19 April 2016) and UNHCR *Women on the Run* (2015) http://www.unhcrwashington.org/sites/default/files/Women%20on%20the%20Run%20Report_Full%20Report%20for%20Web%20Nov%202015.pdf (accessed 19 April 2016).

17 More than 68 000 families arrived to the US during FY 2014 and 40 000 during 2015. R Dominguez Villegas & V Rietig *Migrants deported from the United States and México to the Northern Triangle: A statistical and socioeconomic profile* (2015) Migration Policy Institute <http://www.migrationpolicy.org/research/migrants-deported-united-states-and-Mexico-northern-triangle-statistical-and-socioeconomic> (accessed 22 February 2016).

18 Dominguez Villegas & Rietig (n 17 above) 6.

19 United States Border Patrol 'US Border Patrol fiscal year 2013 sector profile' (2013) <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf> (accessed 22 February 2016); United States

13 975 in 2013 to 28 639 in 2014), whereas the number of men in detention increased by 36 per cent.²⁰ The apprehension of children in Mexico and the US grew by 150 per cent in this period (from 28 934 to 72 491), and the deportation of girls from Mexico tripled (from 1 800 in 2013 to 5 500 in 2014).²¹

In 2010, the discovery of the bodies of 72 migrants in San Fernando, Tamaulipas, led the international community to denounce the humanitarian crisis experienced by migrants who transit through Mexico. While such migrants run the risk of forced disappearance, homicide, abduction, physical and sexual violence and extortion, the vulnerability of migrants in transit, especially women and children, is heightened by the wider national context of corruption and lack of accountability.²²

In addition, in the southern states that border Guatemala and Belize, high levels of intra-regional migration occur based on historical and geographical ties, especially in Chiapas, where the border was established just a century ago. This state has a large number of migrants from those countries, mainly Guatemala, who live and work on different sides of the border, either as temporary workers or permanent residents.

It is important to note that Mexico does not have a high level of immigration. The number of foreign-born people living in Mexico is less than 1 per cent of the total population²³ while in 2012 immigrants in the US and Canada constituted 13 per cent and 19,8 per cent respectively.²⁴ However, the number of people born in Guatemala, Honduras, El Salvador and Nicaragua and residing in Mexico increased by 60,77 per cent between 2000 and 2010.²⁵ In particular, the Mexican censuses of 2000 and 2010 show that the majority of Central American migrants in Mexico are women.²⁶ This figure reflects the trend of intraregional migration in Central America, where women constitute 57 per cent of migrants.²⁷

Border Patrol 'US Border Patrol fiscal year 2014 sector profile' (2014) <http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf> (accessed 22 February 2016).

20 Centro de Estudios Migratorios de la Secretaría de Gobernación 'Extranjeros presentados y devueltos' 2013; 2014 & 2015 http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos (accessed 6 July 2015).

21 Dominguez Villegas & Rietig (n 17 above) 14 & 23.

22 Díaz Prieto & Kuhner (n 13 above).

23 INEGI 'Población nacida en otro país residente en México, 2000 y 2010' *Censos de población y vivienda* http://www.inegi.gob.mx/prod_serv/contenidos/espanol/bvin/egi/productos/censos/poblacion/2010/princi_result/cpv2010_principales_resultados_IV.pdf (accessed 22 February 2016).

24 OECD *International migration outlook 2014* (2014) 362-363.

25 INEGI (n 23 above).

26 UN Women & Instituto para las Mujeres en la Migración *Las trabajadoras migrantes centroamericanas en Chiapas. Recomendaciones de política pública para garantizar el ejercicio de sus derechos* (2015) 11.

27 J Mazza & E Sohnen 'On the other side of the fence: Changing dynamics of migration in the Americas' (2010) *Migration Information Source* Migration Policy Institute <http://www.migrationinformation.org/feature/display.cfm?ID=784> (accessed 22 February 2016).

While women migrants from Central America who work in Chiapas share some of the risks women in transit experience, they also face other kinds of rights' violations. They tend to be young women, in their productive and reproductive age, with high levels of illiteracy and little formal education. The majority are employed in low-wage jobs in the informal economy, in gendered employment sectors including street sales, domestic work, sex work and the entertainment industries.²⁸ Most of them do not have a work permit, which means that abuse and lack of access to rights is constant. The conditions of exploitation endured by women migrants who work in the agricultural *fincas*, as domestic workers and in the sex industry in Chiapas have recently been documented.²⁹

While it might be complex to differentiate between Central American transit migrants and immigrants living in Chiapas, there are elements that allow a distinction. The decision of Central American women who migrate to the US, and their chances of reaching their destination, are strongly influenced by a number of factors, including their economic situation; their labour experience in their country of origin; and importantly their access to a migration network (having family in the US) which allows them to pay for a long and perilous journey and to secure employment and housing in the destination country. On the other hand, Central American women who migrate to Chiapas value the perceived proximity to their families and the regular visits home that this facilitates.³⁰

4 Implementation of the Convention in Mexico

4.1 Impact on legislation

As mentioned above in section 2, in 2011 the Mexican Constitution was revised, integrating international human rights instruments into the national legal framework.³¹ In order to comply with UN conventions and the recommendations made by the Committees assigned to monitor each instrument, Mexico has initiated important efforts to align its legal framework with international human rights instruments, producing some positive changes for migrant worker protections. First, in 2011, the Law on Migration which sought to ensure compliance with ICRMW obligations

28 CEDAW's General Recommendation 26 acknowledges there is a male-centred culture of entertainment that has created a demand for woman as entertainers (para 8). The entertainment industry is the occupational sector that relates to sex, but does not include direct sexual activity with the paying client. In Tapachula, Chiapas, many Central American women work as table dancers as well as in 'centros botaneros', where their work consists of drinking and dancing with clients.

29 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 9.

30 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 11.

31 Suprema Corte de Justicia de la Nación (n 8 above).

was passed.³² In recent years, Mexico has approved new legislation related to the protection of refugees and asylum seekers; to prevent, punish and eradicate trafficking in persons; to promote assistance for victims of crime and human rights violations; and to guarantee access for women to a life free from violence. In addition, in 2012, the Federal Labour Law (LFT) was reformed, incorporating a gender perspective and strengthening workplace inspection.

These new laws, and reforms to existing laws, provide Mexico with an important regulatory framework to promote and guarantee the rights of migrant workers as recommended by the CMW. Some examples include:

- (a) The Migration Law (articles 11 and 12) complies with the recommendation of the CMW to guarantee access to justice for migrant workers and their families, regardless of their migration situation.³³ Article 52(v) of this law stipulates that migrant victims or witnesses of felony crimes shall receive immigration status for humanitarian reasons, issued by the National Migration Institute (INM). This migration document allows victims to reside and work in Mexico while they participate in legal procedures related to the crime.
- (b) The Migration Law (articles 9 and 12) complies with the CMW recommendation to ensure that the birth of children of migrant workers may be registered, regardless of the migration status of the parents.³⁴
- (c) The reforms of 2012 to the Federal Labour Law (article 994) and of 2014 to the Workplace Inspection Regulations (articles 18, 28 and 46) increased the penalties for employers and strengthened workplace inspections, in compliance with CMW recommendations,³⁵ to improve oversight of workplace conditions.
- (d) Article 8 of the Migration Law recognises the right to emergency health care for all migrants and the Health Regulation 046SSA2-2005 (2009) includes criteria for prevention and assistance in cases of domestic and sexual violence that include migrant women, irrespective of their migration status. In an attempt to ensure access to basic health services for migrants in transit, the Federal Health Ministry announced in January 2015 that all migrants can register for a federal health programme for a period of 90 days, an initiative that would help migrants moving throughout the country receive free health services at any local clinic.

32 F Alba & MA Castillo *New approaches to migration management in Mexico and Central America* (2012) <http://www.migrationpolicy.org/pubs/RMSG-MexCentAm-Migration.pdf> (accessed 22 February 2016).

33 Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to Mexico, CMW (20 December 2006), UN Doc CMW/C/MEX/CO/1 (2006) para 6.

34 Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to Mexico, CMW (3 May 2011), UN Doc CMW/C/MEX/CO/2 (2011) para 40. Some of the state-level civil registry codes have not been reformed to comply with the federal Migration Law and still contain articles that impede the birth registration of migrant workers' children www.imumi.com (accessed 22 February 2016).

35 CMW (n 33 above) para 38; CMW (n 34 above) para 48.

- (e) In December 2014, Mexico passed a federal law on the protection of children that includes a specific chapter on migrant children. The law provides that no child should be detained in any detention centre. Children who are brought into INM custody should be transferred to a shelter run by the Department of Family Protection for a 'Best Interest Determination'.

However, Mexican legislation still has areas that need to be reformed in order to improve legal protection for migrant workers. First, the Mexican labour legislation still needs to increase its protection of women workers' rights. For example, it does not guarantee decent working conditions for domestic workers, be they Mexican or migrants. An example of this is the provision in the Federal Labour Law for a 12 hour day without overtime (article 133). In addition, the Social Security Law does not require employers of domestic workers to register them with the social security system (article 12(I) and 13). Furthermore, the Federal Labour Law and the Social Security Law do not include occupational safety and health benefits for women working in the sex industry.

Other shortcomings in the Mexican legislation reflect the historical position of Mexico vis-à-vis foreigners, characterised as simultaneously desirable and inconvenient, especially for Mexican businessmen.³⁶ For example, the Federal Labour Law (articles 354 and 357) permits foreign workers to participate in unions, but not within the leadership (article 372). Furthermore, the reality of the labour market in which the majority of immigrants in Mexico participate, particularly in the southern part of the country, is not addressed by the Migration Law³⁷ which:

- (a) Leads to indirect discrimination for migrant workers who apply for work authorisation as the requirements are linked to the formal economy (official employer offer, tax requirements, formal contracts and costs that are unrealistic for many workers from Central America).
- (b) Limits the possibility for migrant workers in an exploitative work environment to terminate an employment relationship as work authorisation is linked to an individual employer.
- (c) Limits the possibility for women in situations of domestic violence to obtain a residence permit independent of the spouse or to otherwise continue legal residence.³⁸

Finally, the US also has interests at stake. While the Migration Law allows federal migration agents to conduct migration enforcement activities throughout the country (in addition to the standard immigration controls

36 P Yankelevich *Deseables o inconvenientes? Las fronteras de la extranjería en el México posrevolucionario* (2011) 12.

37 Migration Law, arts 52-57 & 132-134; Regulations of the Migration Law, art 115; and Federal Labour Law, arts 8 & 16.

38 UN Women et al *Legislación mexicana y derechos de las trabajadoras migrantes. Un análisis del cumplimiento de la Convención sobre la Eliminación de todas las formas de Discriminación Contra la Mujer (CEDAW) y su Recomendación General no 26 en la legislación* (2014) 40.

for people entering by air, land and sea) including mobile checkpoints, the US has granted support to these activities through the Merida Initiative (2008-ongoing), an agreement between the US and Mexico with US investment.³⁹ Hence, migration agents are authorised to board buses and arbitrarily detain migrants based on discriminatory criteria such as skin colour, ethnicity, accents and smell. These practices have been denounced as unconstitutional because they violate non-discrimination clauses, the right to free transit and the right to privacy.⁴⁰

One of the objectives of the Mexican migration policy for the current federal administration (2013-2018) is to accomplish a total harmonisation with the international-legal framework, but regional economic and political interests make this more difficult. Nevertheless, in spite of the legislative gaps, Mexico has a strong legislation which, if properly implemented, could effectively guarantee the rights of migrant workers.⁴¹

4.2 Impact on policy

The Mexican government has established a number of mechanisms to protect and guarantee the rights of workers, including migrant workers. Most of the mechanisms to which migrant women have access are designed for the general population, such as the labour conciliation and arbitration courts. However, there are some initiatives that have been designed specifically for migrants, such as the Special Prosecutor's Offices for Crimes Committed against Migrants. These Offices, which have been opened in the states of Chiapas, Veracruz and Oaxaca, are in charge of preventing crime, increasing access to justice for migrants and intensifying investigations and prosecutions against perpetrators who target the migrant population.

Moreover, the government has demonstrated interest in complying with its international obligations to improve protection for migrant

39 CR Seelke & K Finklea *US Mexican security cooperation: The Mérida initiative and beyond* (2015) 7 & 16 <https://www.fas.org/sgp/crs/row/R41349.pdf> (accessed 22 February 2016).

40 CNDH *Recomendación General número 13/2006 sobre la práctica de verificaciones migratorias ilegales* (2006) http://www.cndh.org.mx/sites/all/doc/Recomendaciones/generales/RecGral_013.pdf (accessed 22 February 2016); Grupo de Trabajo sobre Política Migratoria 'Aportes al debate sobre la Ley de Migración: Posicionamiento del Grupo de Trabajo' 2011 <http://www.estudiosdemigracion.org/> (accessed 22 February 2016); CONAPRED *Proteger los derechos humanos de las personas migrantes: reto múltiple del Estado mexicano*, (2012) http://www.conapred.org.mx/documentos_cedoc/Dossier_Migr_2012_INACC.pdf (accessed 22 February 2016); i(dh)eas *Víctimas entre fronteras. La ausencia del Estado en la defensa de los derechos de las personas migrantes en México* (2013) 104; 'Detectan a migrantes por su olor a hierbita' *Reforma* 26 November 2013 3; Díaz Prieto & Kuhner (n 13 above) 24.

41 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 19.

workers through national public policies elaborated for the period 2013-2018.⁴² The *National Development Plan* recognises the important economic and social contributions that migrants make and takes into consideration the gendered differences in these contributions. It also underscores that women migrants are more vulnerable to certain types of abuses in the migration process and that programmes designed to address these abuses must include a gender perspective.⁴³

As part of the national policy planning for the period 2013-2018, the government created the *Special Programme on Migration* in 2014. It constitutes the first ever national migration policy that includes objectives and specific strategies that require inter-institutional cooperation. While the national policy programming acknowledges the responsibility of Mexico as a country of origin and transit for Central American migrants and refugees, acceptance by Mexico that it is a country of destination and return is not reflected in its policies. This position is also evident in Mexico's reports to the CMW. For example, in 2011, the Mexican government stated that the lack of policies and programmes for women migrant workers was due to the fact that 'Mexico, unlike other regions like Europe and North America, is not a relevant receptor of feminine migration'.⁴⁴

On the other hand, the objectives and strategies of the *Special Programme on Migration 2014-2018* are extremely ambitious. For example, they provide for an alliance between the US, Mexico and Central America to promote regional development, cultural exchange and enhanced legal mechanisms for migration.⁴⁵ Although this objective implies the opportunity to address transit migration from a regional perspective, including solutions to guarantee human security for migrants and access to basic rights, in practice policies have focused on detention rather than regularisation of migrant flows.

Currently, this alliance is limited to the Merida Initiative, discussed above in section 4.1. The fourth pillar of the Initiative seeks to strengthen

42 This policy framework includes a *National Development Plan*, transversal programmes (gender, migration), as well as sectoral programmes for each Ministry. In these documents, the Executive Power establishes the objectives, priorities and strategies that outline the actions the government should follow throughout the period in question. For further information on the main action lines regarding women migrant workers in Mexico, see: UN Women & Instituto para las Mujeres en la Migración (n 26 above) 22-35. Action lines for women in transit are analysed in Díaz Prieto & Kuhner (n 13 above) 98-101.

43 Secretaría de Hacienda y Crédito Público *Plan Nacional de Desarrollo 2013-2018* (2013) 96.

44 Respuestas presentadas por escrito por el gobierno de la República de México a la lista de cuestiones (CMW/C/MEX/Q/2) recibidas por el Comité para la protección de los derechos de todos los trabajadores migratorios y de sus familiares en relación con el examen del segundo informe periódico de México, Gobierno de México (15 March 2011), UN Doc CMW/C/MEX/Q/2/Add.1 (2011) para 243.

45 Action Line 2.3.7. Secretaría de Gobernación (n 12 above) 37.

Mexico's southern border.⁴⁶ Additionally, Mexico has adopted a Southern Border Programme (2014-2015) to reduce irregular migration to the US.⁴⁷ The results of this collaboration are dramatic and disquieting: while irregular migration on the US border decreased by half in 2015,⁴⁸ detention of Central Americans in Mexico during 2015 increased by 70 per cent.⁴⁹ Due to the limited capacity of the INM and the Commission for Refugee Assistance (COMAR) to screen for cases that require international protection, the policy has led to violation of protection standards for migrant families and children during detention and deportation procedures, and human rights violations against migrants have increased.⁵⁰ Civil society organisations and the media have documented the violence caused by the intensified migration enforcement practices.⁵¹ The planned national policies to improve protection of migrant workers have in fact been neglected in favour of enforcement activities.

4.3 Implementation of the migration policy

Although Mexico has a solid legal framework, the lack of implementation of national policies related to migrants' rights is exposed by the humanitarian crisis of Central American irregular migrants and refugees in transit through Mexico, as well as the dangerous and abusive conditions that migrant workers, especially women, face on a daily basis. An evaluation of migrant workers' access to basic rights and services, and of the impact of government programmes on migrants' living, work and transit conditions, is hampered by a lack of publicly available information.⁵² For example, in 2010 the CMW requested information

46 In 2015, the US Congress provided \$79 million above the Administration's request of \$115 million for the Mérida Initiative to be used for helping Mexico secure its southern border and implement justice sector reforms. Seelke & Finklea (n 39 above) 7 & 16.

47 On 7 July 2014, President Peña Nieto announced a new Southern Border Plan. The plan increased security at 12 ports of entry with Guatemala and Belize and along known migration routes. Under this plan, migration agents have worked with the military and the police to increase immigration enforcement efforts. CR Seelke *Mexico's recent immigration enforcement efforts* Report IF10215 (2015) <http://pennyhill.com/jmsfileseller/docs//IF10215.pdf> (accessed 22 February 2016).

48 The number of apprehensions of Salvadorans, Guatemalans and Hondurans by the US reduced from 239 000 in 2014 to 110 000 in 2015. Domínguez Villegas & Rietig (n 17 above) 22.

49 Domínguez Villegas & Rietig (n 17 above) 1.

50 UNHCR *Arrancados de Raíz* (2014) <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9828> (accessed 22 February 2016); Georgetown Law Human Rights Institute Fact-Finding Project *The cost of stemming the tide: How immigration enforcement practices in Southern Mexico limit migrant Children's access to international protection* (2015) http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/HRI-Fact-Finding-Report-Stemming-the-Tide-Web-PDF_English.pdf (accessed 22 February 2016).

51 Animal Político & CIDE *Programa Frontera Sur: Una cacería de migrantes* (2015) April 28 <http://www.animalpolitico.com/caceriademigrantes/index.html> (accessed 22 February 2016).

52 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 24.

regarding the number of disputes before conciliation and arbitration boards and the courts concerning unfair dismissal, employment-related complaints and compensation for injury suffered by foreign workers in an irregular situation.⁵³ The Mexican government was unable to provide this type of information because the labour court system does not record the nationality (or the migration status) of claimants.⁵⁴ Information disaggregated by sex regarding claimants in labour cases is also unavailable. As a result, in 2011, the CMW recommended that Mexico establish a national migration system that takes into account the different aspects of the Convention in order to improve the characterisation of the migration flows and stocks and the design of public policies.⁵⁵

While the national migration information system is included in the national policy for 2013-2018, the government has not complied with the recommendation in practice. Without a migration information system, the government will be unable to design and evaluate policies aimed at improving migrants' access to rights and services. Lack of information also undermines efforts to improve accountability, reduce corruption and impunity and strengthen the rule of law. As a result, the third report, presented in 2016, ten years following Mexico's first report to the CMW, showed few substantive advances in the implementation of the Convention.

The majority of the observations made by the CMW in 2006 and 2011 still remain relevant, particularly recommendations to guarantee:

- (a) Access to regular, safe and dignified migration for women migrant workers in transit,⁵⁶ as well as those who live and work in Mexico, in order to protect their rights.⁵⁷
- (b) Conditions for decent work for agricultural migrant workers and migrant domestic workers by increasing workplace inspections,⁵⁸ the right to unionise and the right to participate in union management.⁵⁹
- (c) Access to justice and reparation for women migrant workers who are victims of labour exploitation, crimes or human rights violations, as well as sanctions for those responsible,⁶⁰ including state actors.⁶¹

53 List of issues to be taken up in connection with the consideration of the second periodic report of Mexico (CMW/C/MEX/2), CMW (28 December 2010), UN Doc CMW/C/MEX/Q/2 (2010) para 22

54 Written replies by the Government of Mexico to the List of Issues (CMW/C/MEX/Q/1) raised by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in connection with the consideration of the Initial Report of Mexico (CMW/C/MEX/1), Government of Mexico (5 October 2006), UN Doc CMW/C/MEX/Q/1/Add.1 (2006) para 242.

55 CMW (n 34 above) para 18.

56 CMW (n 34 above) para 50.

57 CMW (n 33 above) para 34; CMW (n 34 above) para 53.

58 CMW (n 33 above) paras 34 & 38; CMW (n 34 above) paras 38 & 48.

59 CMW (n 33 above) para 36; CMW (n 34 above) para 46.

60 CMW (n 33 above) paras 6, 26, 30 & 34; CMW (n 34 above) paras 26, 34, 38, 48 & 50.

61 CMW (n 33 above) para 32; CMW (n 34 above) paras 30 & 32.

- (d) The right to non-discriminatory treatment, especially based on ethnic origin and gender.⁶²

In order to comply with the ICRMW, the Mexican government needs to mainstream gender policy and design evidence-based policies, programmes and actions. Policy should recognise women migrants as agents of development, instead of stigmatising, criminalising or solely identifying them as victims. Affirmative actions should also be implemented. For example, the migration documentation process currently discriminates against women agricultural migrant workers. While men are contracted by their *finca* employers and documented with a work permit, women are not recognised as equal workers by their spouses and employers. They are excluded from contract agreements by their husbands and it suits employers not to include them on the employee list they hand to the migration authorities for registration, as this allows them to contract women informally, thereby reducing expenses. The outcome is that many women are registered by migration authorities as ‘partners’ (or not registered at all), and contracted informally, without access to a work permit and its benefits. A measure designed to document agricultural migrant workers with a work permit would help to guarantee their labour rights.⁶³

There are other ways in which Mexico could improve opportunities to migrate with a work permit while complying with the ICRMW. One way would be to address contradictions between the migration legal framework and other laws. For example, the requirements contained in the Migration Law for a domestic worker to obtain migration status with work authorisation contradict the regulations of the Federal Labour Law as well as the reality on the ground.⁶⁴ As a result, even though a third of Central American women who reside in the southern state of Chiapas are domestic workers and 70 per cent of Guatemalan cross-border workers are employed in domestic work, between January 2011 and July 2014 the INM in Chiapas only issued 153 employer permits to contract foreign domestic workers.⁶⁵ The domestic work market in Tapachula, which sits on the border with Guatemala and is the largest city in the state of Chiapas, consists mainly of indigenous Guatemalan women because they are

62 CMW (n 34 above) paras 24, 40 & 53.

63 UN Women et al *Guía breve para desarrollar legislación migratoria con perspectiva de género* (2015) 26.

64 While the Federal Labour Law allows an informal contract with a domestic worker, the migration legislation requires the employer to present a work offer to the INM in order to request a work permit for a foreigner. Moreover, under the migration law the INM can pay visits to the employer’s house to verify working conditions, while the Federal Labour Law does not consider this type of inspection.

65 UN Women et al (n 63 above) 18.

stereotyped as women who are ‘good with children’ and who ‘withstand hard labour’, although they are also judged as ‘thieves’.⁶⁶ These prejudices and stereotypes exacerbate the discrimination and exploitation that they experience. At the same, they constitute barriers of access to other rights such as justice.

Efforts to reduce impunity for human rights violations against migrants are central to compliance with the ICRMW. Although many human rights violations are committed by civilians, authorities are indifferent or lack training to address the issue.⁶⁷ In addition, the lack of repercussions promotes impunity for human rights violations against migrants. In order to reduce impunity, various factors should be addressed: Mexican authorities should be held accountable, institutions strengthened, and existing laws and policies implemented.

Weak public institutions and the scarcity of resources to strengthen capacity contribute to migrants’ rights violations. A clear example of the state’s inability to guarantee workers’ rights includes the security and hygiene regulations in the agricultural camps in Chiapas, and the reduced human and financial resources allocated to labour inspection, arbitration and conciliation.⁶⁸ Chiapas, a state with more than 5 million inhabitants has only two workplace inspectors.⁶⁹ There are three offices of Workers’ Conciliation and Arbitration, and the one in Tapachula has 16 employees. In order to file an employment complaint, migrant workers from all over the state must present their complaint in this office, which is often more than 500 km from their worksite.⁷⁰

Mexico also fails to comply with its obligation to protect child migrants due to a lack of human and financial resources. Child migrants should not be detained in detention centres, yet the Office on Family Protection (DIF), charged with housing migrant children, lacks the basic infrastructure and budget needed to protect them, with the result that the majority does not have access to its services.⁷¹ With three offices and 15 officials throughout the country, the COMAR lacks capacity to screen

66 T Cruz Salazar ‘Racismo cultural y representaciones de inmigrantes centroamericanas en Chiapas’ (2011) 6 *Migraciones Internacionales* 133; Centro de Derechos Humanos Fray Matías de Córdova AC *Por el reconocimiento a la contribución significativa de las trabajadoras del hogar en la economía global. Situación de las y los trabajadores del hogar en la ciudad de Tapachula, Chiapas* (2012) 3.

67 I(dh)cas (n 40 above) 108.

68 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 34.

69 A Romero Gudiño ‘Inspección federal del trabajo en México’ (2008) 6 *Revista Latinoamericana de Derecho Social* 113.

70 Interview with a public officer of the Tapachula Labour Conciliation and Arbitration 2nd Special Court on 21 October 2014.

71 D Lorente & G Morales ‘Introducción a los capítulos sobre niños en el contexto de la migración en México – dos fronteras: una sola niñez’ in K Musalo & P Ceriani (eds) *Niñez y migración en Centro y Norteamérica: causas, políticas, práctica y desafíos* (2015); MD París y R Zenteno *Detención y devolución de niños, niñas y adolescentes (NNA) migrantes no acompañados* (2015).

child migrants for international protection needs.⁷² During 2014, it only granted refugee status to 12 of the more than 23 000 children who were detained and deported from Mexico. This is of particular concern considering that the Office of the High Commissioner for Refugees (UNHCR) presented evidence that more than 50 per cent of the children fleeing from Central America have international protection needs.⁷³

Therefore, it is important that the Mexican government takes measures to guarantee the effective implementation of the existing legal framework. There is a need to properly train government officials and to provide specific procedures so as to reduce the level of discretion which officials enjoy when making decisions relating to migrants.⁷⁴ In the case of access to justice, the Migration Law establishes that migrant victims of crime should receive migration status for humanitarian reasons in order to continue with their criminal case. However, there is no mechanism to identify victims and no information is available to concerning the criteria the INM uses to issue these documents, how many people apply and what the rate of successful and rejected applications is. In order to avoid granting humanitarian protection, the INM often issues voluntary departure letters that require migrants to leave the country within 15 days rather than granting a year to follow up with their criminal cases as victims.⁷⁵ In 2014, for example, Mexico issued just 332 documents for humanitarian reasons.⁷⁶

Other barriers to migrants' rights could be addressed by better training of government officials. For example, Central American women migrant workers' access to rights and services (particularly health, legalisation, identity, education and programmes for their children) are not explicitly excluded by the law. Rather, access is impeded through confusing interactions with civil servants, including those who are in charge of implementing government programmes.⁷⁷

5 Mexican civil society and the ICRMW

Civil society organisations in Mexico have been committed to the ICRMW since the international campaigns for its signature and

72 Even though asylum applications grew 17% in 2014, COMAR's budget increased only 4% in 2015. Seelke (n 47 above) 7; 'México recibe 67% más solicitudes de refugio, pero sólo tiene 15 oficiales para atender 2 mil casos' *Animal Político* México 19 June 2015 <http://www.animalpolitico.com/2015/06/mexico-recibe-67-mas-de-solicitudes-de-refugio-pero-solo-tiene-15-oficiales-de-comar-para-atender-2-mil-casos/> (accessed 22 February 2016).

73 UNHCR (n 50 above) 32.

74 UN Women & Instituto para las Mujeres en la Migración (n 26 above) 22-35.

75 Insyde *Diagnóstico del Instituto Nacional de Migración. Hacia un sistema de rendición de cuentas en pro de los derechos de las personas migrantes en México* (2013) 252-256.

76 Georgetown Law Human Rights Institute Fact-Finding Project (n 50 above) 51.

77 L Carte 'Everyday restriction: Central American Women and the state in the Mexico-Guatemala Border City of Tapachula' (2014) 48 *International Migration Review* 113.

ratification. It is therefore not surprising that they have elaborated and presented alternative reports in 2005 and 2011 which were drawn on by the CMW in its concluding observations to Mexico. Civil society organisations have worked for effective implementation of the Convention, not only through long-term advocacy work for migration legislation,⁷⁸ but by active participation in the design of the national policy programming exercise during 2013 that led to strategies and action lines to guarantee migrant workers' rights.⁷⁹ They have also contributed through their participation in the INM's Citizen Council and their assessments of the main institutions involved.⁸⁰ Finally, they have produced guides and protocols to inform and improve public service, especially to identify international protection needs and secure access to justice for migrants,⁸¹ and to guarantee women migrants' rights in compliance with CEDAW and the ICRMW.⁸²

6 Opportunities to enhance the protection of women migrants in Mexico through the CMW

Three conditions need to be met in order to more effectively implement the ICRMW in Mexico:

6.1 Strengthen migrant worker protection through enhancing the relationship between the ICRMW and other international instruments

The ICRMW extends human rights to migrants without distinction as to sex. However, it does not address the specific gendered needs of women in the migration process.⁸³ For example, the Convention does not adequately respond to the change in the nature of international migration whereby growing numbers of women migrate for economic reasons such as the

78 Grupo de Trabajo sobre Política Migratoria (n 40 above) '<http://www.estudiosdemigracion.org/> (accessed 22 February 2016).

79 Colectivo Plan Nacional de Desarrollo-Migración *Las propuestas del Colectivo-PND migración y su relación con el Plan Nacional de Desarrollo 2013-2018 y lineamientos de la Secretaría de Hacienda y Crédito Público* (2013) http://www.imumi.org/pnd/recursos/propuestas_colectivo_pnd_migracion.pdf (accessed 22 February 2016).

80 Insyde (n 75 above).

81 Sin Fronteras *Protocolo de actuación para quienes imparten justicia en casos que afectan a personas migrantes y sujetas de protección internacional* (2013) <http://www.amij.org.mx/protocolos/Protocolo%20Migrantes.pdf> (accessed 22 February 2016); Sin Fronteras *Guía práctica para identificar a personas con necesidades de protección especial* (2014) http://www.sinfronteras.org.mx/attachments/Cartilla_SolicitantesPI_WEB.pdf (accessed 22 February 2016).

82 The Institute for Women in Migration (Instituto para las Mujeres en la Migración) & UN Women developed a series of documents with guidelines and recommendations to promote women migrant workers' rights through legislation and policy. Most of the documents are cited throughout the chapter and are listed in the References section.

83 S Jolly & H Reeves *Gender and migration: Overview report* (2005) <http://www.bridge.ids.ac.uk/reports/cep-mig-or.pdf> (accessed 22 February 2016).

demand for caregivers in destination countries, and make an increasing contribution in their countries of origin and destination.⁸⁴ It does not suitably address the human rights violations that women migrants face during different migration processes, including the costs of undocumented migration, that are higher for women than for men, or situations of trafficking, sexual exploitation, physical violence and sexual harassment.⁸⁵ Finally, the ICRMW does not take into account access to sexual and reproductive health services. Therefore, CEDAW and its General Recommendation 26 on Women Migrant Workers (CEDAW GR 26) can usefully guide the CMW's interpretation of the ICRMW to strengthen women migrant workers' protection.⁸⁶

The approach of CEDAW GR 26 of addressing the particular human rights concerns of women migrant workers throughout the migration cycle was taken by the CMW in its General Comment 1 on Migrant Domestic Workers (2011).⁸⁷ Subsequently, this Comment and gender perspective guided the CMW's 2011 observations to Mexico to end discrimination against migrant workers and members of their families based on ethnic origin and gender (para 24), and by enforcing access to justice for women migrant workers, especially domestic workers (para 38). These observations would be enhanced by a closer adherence to the spirit and substance of CEDAW GR 26. For example, under GR 26, states should ensure that contracts for women migrant workers are legally valid, when this is not always true for agricultural women migrant workers in the *fincas* of Chiapas. In addition, states should enforce access to redress for human rights violations at all stages of the migration cycle and, for example, provide shelters for abused women migrant workers who wish to leave exploitative employers.

84 UN Women et al (n 38 above) 23.

85 Conceptual Note *Promoción y protección de los derechos de las mujeres trabajadoras migrantes en el mundo. Alianzas para la migración y el desarrollo humano: Prosperidad compartida – responsabilidad compartida* High level conference previous to GFMD IV Meeting, organised by UNIFEM (part of UN Women) and the Mexican Government, Mexico, 7 & 8 September 2010.

86 A Petrozziello *Género en marcha. Trabajando el nexo migración-desarrollo desde una perspectiva de género* (2013) 193. UN Women has systematised women migrant protections in Mexico under several instruments (ICRMW, General Comment 1 on Migrant Domestic Workers, CEDAW and its General Recommendation 26 on Migrant Workers. UN Women et al *Compromisos de México con los derechos humanos de las trabajadoras migrantes* (2016) 18.

87 The CMW included a section on gender perspective in its General Comment 1 on Migrant Domestic Workers, based on CEDAW's General Recommendation 26 on Women Migrant Workers. Both instruments, in alliance with ILO Convention No 189 on Domestic Workers, strengthen protection of women migrants' rights. General Comment 1 on migrant domestic workers, CMW (23 February 2011), UN Doc CMW/C/GC/1 (2011) http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm (accessed 9 March 2016).

6.2 Increase CMW attention to specific issues related to women migrant workers

In its Shadow Report of 2005, the Mexican Migration Forum emphasised the need to issue migration documentation independent of an employer or spouse, in order to prevent different forms of abuse and violence. However, the CMW has not made a pronouncement regarding discrimination that women migrant workers face in the labour market, gender-based violence in the workplace, the restrictions on their freedom of movement or the limitations on their access to health, education and family unity.

To address this, the CMW should request specific information regarding indicators, disaggregated by sex and nationality, to evaluate Mexico's implementation of its public policy. Finally, the Committee could include the following recommendations for Mexico:

- (a) Ratify the International Labour Organisation (ILO) Convention 189 on Domestic Workers to strengthen protection for women migrant domestic workers.
- (b) Bring labour and social security laws into compliance with international instruments, particularly in the case of domestic workers.
- (c) Implement clear procedures to provide assistance to undocumented women migrant workers in the area of sexual and reproductive health, and train healthcare providers on migration and human rights, in order to eliminate discriminatory practices.
- (d) Strengthen the INM's capacity to protect the rights of migrants by establishing evaluation mechanisms to detect migrants who have special needs such as victims of kidnapping and trafficking in persons, refugees, unaccompanied and repatriated child migrants; refer them to appropriate government offices such as COMAR, National System for Family Development (DIF), the Attorney General (PGR) and the Executive Commission for Victim Support; and facilitate their access to justice.
- (e) Increase types and number of visas for migrants from Guatemala, El Salvador and Honduras that allow documented travel through Mexico. This would be in line with Mexico's commitment in the *Special Programme on Migration 2014-2018* to create an alliance with the US and Central American countries to promote regular migration.⁸⁸

6.3 Take into account the specific needs that women migrants face upon returning to Mexico, as well as those who remain in communities of origin

Finally, it is important to point out that while the Committee has made recommendations regarding migrant workers in transit and those who live and work in Mexico, it has not taken a stance regarding migrant workers and their families who have returned to Mexico, often as a result of forced return from the US. A million and a half Mexicans were removed from the US to Mexico between 2009-2013.⁸⁹ Mexico should guarantee access to health and education services for the US-born children of Mexicans upon return. It is equally important to address the concerns around family separation when the children of returnees remain in the US. In addition, the Committee has not yet made observations regarding the issues faced by the spouses and family members left behind in the communities of origin in Mexico, and the relevance of their investment of remittances in development projects in their communities.

7 Conclusion

Mexico was a leading advocate for the elaboration of the ICRMW. Over the course of the last 15 years, the country has made significant legal changes in order to comply with the ICRMW, but implementation of this legal framework remains a challenge. The dearth of public information on migrants' access to rights and services means that there is little hard evidence of *de facto* compliance with the ICRMW. On a general level, the enforcement of laws and policies that promote women migrants' rights is limited by a weak rule of law, corruption, impunity, xenophobia and the lack of a gender perspective. Furthermore, implementation is impeded by budgetary constraints and a lack of clear guidelines for state officials concerning protection of migrants' rights. Lastly, effective compliance with the ICRMW cannot be analysed in isolation from the economic and political interests of Mexico within the region that comprises North and Central America, and its complex position as a country of origin, transit and destination. While civil society is working on tools and guidelines to promote implementation of the ICRMW, the role of the CMW and its observations are central. Specific and assertive recommendations on enforcement of ICRMW standards could give the Mexican government the necessary direction to better achieve effective implementation. Finally, international acknowledgement of the migrant and refugee crisis in the region, faced mainly by women and children, and recommendations from

89 US Department on Homeland Security *2013 Yearbook on Immigration Statistics* (2014) 107 http://www.dhs.gov/sites/default/files/publications/ois_yb_2013_0.pdf (accessed 22 February 2016).

the Committee encouraging Mexico to work towards a solution, are of the utmost importance.