

UNRIGHTEOUS TRANSIT LINES

MIGRANT VULNERABILITY, HUMAN RIGHTS AND INSTITUTIONALIZED CORRUPTION ALONG MEXICO'S SOUTHERN BORDER

It is night-time, a star-painted sky brushed from horizon to horizon across this flattened and empty, desert landscape. Huddled like bruised mangoes in the fruit markets they left behind, together they sit atop this cold, clunky train that rattles through the eternal sea of cactus that surrounds them. A girl clutches the leg of her father who strokes her black hair, his eyes wide and weary. A woman is crouched around two young boys, travelling in search of her husband. There are hundreds of them on this train, 'La Bestia (The Beast)' it is called, leading them to a destination they have dreamt of, on a journey that could only be described as nightmarish. This path of uncertainty, treacherously travelled by tens of thousands each year, takes them from the wilds of Central America, where gangs, poverty and corruption are fled, in hopes of arriving in the United States, where jobs, security and prosperity are sought. First, they must pass through Mexico, contending with cartels, corrupt authorities and criminals that threaten their survival. Their future is unknown, the journey the most treacherous part.

Migration and human relocation is perhaps one of the greatest social and political phenomena of our time, encapsulating globalisation in its most profound human manifestation. The movement and flow of peoples around the world is driven by countless motivations – whether chosen or forced – and is redefining concepts of nation-state, citizenship, identity and culture. Further, the transnational nature of migration has meant laws between states vary in their approach to accepting, rejecting or ‘processing’ of foreigners, whether they seek asylum, work or residency. The system becomes complicated when compliance with international accords and treaties fails to be met and states choose not to apply laws from conventions that they have ratified. Whilst Australia is currently dealing with its highly politicized and controversial refugee and asylum seeker policy, Mexico – a nation geographically primed for dealing with large scale movements of migrants – is negotiating its own attempts to recognize, process and legally accommodate for human transition between its borders.

In response to harsh criticisms internationally and domestically towards the treatment of Central American migrants crossing the southern border, Mexico’s then-President Felipe Calderón passed a progressive law recognizing refugee ‘good practices’¹ that would allow access to services such as health, education and employment whilst in Mexican territories. Although initially endorsed and supported by human rights organizations and the international community, more than 12 months after the law came into force, and with a new government recently elected, its implementation in practice must be examined and the notion of ‘good practice’ re-evaluated as migrants and refugees remain vulnerable.

Amidst the increasingly tumultuous political environment that is Mexico in 2012, Central Americans continue flooding north, although the assurance of their rights seems to have taken a back seat to electoral corruption, drug cartels and the unrestrained violence that currently engulfs the country. The passage of Central Americans to Mexico is not a new

trend. Its roots are traditionally agrarian, when Guatemalans and Hondurans would migrate seasonally to work the highly productive crops in the southern part of the country, often travelling all the way to cross the American border in search of employment. The workers would create communities during the harvest months, integrating with locals and contributing to the economy, before returning back across the border with their profits.

Throughout the 20th century, this practice continued, slowing only with the deterioration of agricultural production in Mexico due to the signing of the NAFTA (*North American Free Trade Agreement*) in 1994, after which a large proportion of staple products were consumed by the United States. This changed the migratory patterns of Central Americans and Mexicans, as they could no longer afford seasonal migration, instead relocating permanently; the United States of America their destination.

Due to catastrophic political climates in Central America, migration has become a commonly practiced phenomenon, on which the economy and society now depends for survival. The civil war in Guatemala (1944-1996) created over one-million displaced peoples, the majority seeking refuge in Mexico during this time. Honduras’ banana-based economy has been volatile for decades due to unstable presidents and natural disasters destroying heavily dependent crops. In Nicaragua, the divisive social and political impacts of the Sandinista-Somoza decades still flagrantly taint the population, now led by the socialist-populist President Ortega.

Today, the lack of law and order, low investment, corrupt governments and the ever-increasing strength of gangs are encouraging the northern migration of hundreds of thousands of Central Americans each year. On average, 1.5 million people cross the southern border annually.² More than 500,000 deported migrants were registered in 2005.³ The combination of these political and human factors makes the southern border a highly complex area for maintaining law and rights.

Tracking Human Rights Violations

Central Americans, marginalised by their Mexican neighbours, face many dangers and vulnerabilities in the 1000 km journey attempting to reach and cross the United States border. Human rights violations occur blatantly and frequently, often perpetrated by Mexican authorities themselves. Migrants, the majority undocumented, face a wide range of abuses including rape, robbery, violence, extortion, homicides and denial to services, including health and legal access.⁴

Further, thousands of women travel alone or with children, marginalised amongst mostly males and easily taken advantage of by authorities. These women face not only gendered isolation, but rape, human trafficking and involuntary prostitution.⁵ They are incredibly vulnerable in their undocumented status and are often kidnapped to work in the sex industry along border towns. On average, 18 000 migrants are abducted annually, the majority with the intent to extort family members in the United States.⁶ Factors that contribute to the vulnerability of these Central Americans include their poverty, which forces them to migrate in the first place; their lack of documentation, their inability to solicit a legal visa caused by limited funds; a limited knowledge of the journey and travel route; corruption by the authorities; and an increase of border security and surveillance by the Mexican authorities.⁷

The Tabasco Commission for Human Rights has recognized that migrants are entitled to the right to migrate with free transit; to find work where they can; the right to life, freedom, alimentation and rest; to be treated with dignity; and have access to health, security and ownership of their possessions.⁸ These migrants become even more susceptible in the current Mexican environment that creates challenges unlikely to disappear anytime soon – the weakness of the rule of law, pervasive corruption, a lack of political will and the inadequacy of federal, state and local resources, all deeply embedded in a system that normalizes violence and corrodes human rights.

Ratified, but not Rectified in Practice

Although there is no comprehensive legal instrument at the international level that establishes a framework for the governance of migration, international and regional frameworks for cooperative migration governance exist. These reflect primarily the interests of states, their national and interstate relations, but also give strong recognition to the human rights of migrants and the need for the promotion and protection of these rights in the exercise of state sovereignty.⁹ Mexico adheres to several important international regimes, although has only recently complied with ‘best practices’ through domestic legislative reform.

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The United Nations (UN), under international law, has created two key legal instruments for mandating the rights of migrants and refugees. The *UN Convention and Protocol Relating to the Rights of Refugees* was created in 1951 and became a protocol in 1967. This document outlines that in regards to individual rights, education, health and employment, refugees should encounter ‘the same treatment as is accorded to nationals’.¹⁰ Important to note also in this context is Article 31 in relation to ‘unlawful’ refugees. It writes that states ‘shall not impose penalties on refugees on account of their illegal entrance or presence.’ In 2000, Mexico became a signatory to this convention, but failed to create adequate domestic



nosotros
los migrantes
solo queremos
pasar no
queremos nada mas

<http://www.flickr.com/photos/shareproductions/5718721211/>

legislation to ensure its obligations until January 2011 when it passed the Law on Refugees and Complementary Protection. The legislation incorporates Mexico's good practices on refugees, such as permission to work, access to health services and health insurance, access to education and recognition of educational qualifications.

In 1999, Mexico ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, its terms coming into force in 2003. By signing and ratifying, Mexico 'affirms its political will to ensure international protection of the rights of all migrant workers, in accordance with this international instrument, (to which) all the provisions of this Convention will be applied in conformity with its national legislation.'¹¹ However, it is almost 10 years later that laws are finally being implemented.

Regarding regional law and treaties, in 1996 Mexico ratified the *Protocol to the American Convention on Human Rights* in the area of Economic, Social and Cultural Rights, which upholds international obligations recognized in the *UN Declaration of Human Rights*. By acknowledging the existence of these instruments, and signing legal terms to ensure their adherence in domestic policy and practices, Mexico recognizes the importance of human rights. However, until recently federal legislation has lacked sufficient terms to enforce human rights for migrants and refugees. In the past two years, Calderón has pushed through several important laws to guarantee the rights and treatment of transitory migrants, particularly those from Central America, in attempts to improve the tainted and negative international perception of Mexican human rights.

Displaced, Politically and Legally

Two principal laws govern the treatment of

migrants and their rights whilst they are in Mexican territory: the *General Population Law* (1974) and the *Migration Law*. These laws empower authorities to take all 'necessary actions' to respond to migration flows, including the responsibility of deporting undocumented travellers. The recognition of the complex and controversial nature of current migration processes has been recognized through a series of incremental reforms to immigration policies. Since elected in 2006, President Calderón has made the contentious issue of migration in Mexico one of his main focuses, in a move to strengthen relations with the United States, to improve its international image and to recognize its responsibility to provide positive laws and processes for migrants transiting through the country. The laws governing migration have been labelled as 'outdated' and do not reflect the current socio-economic and demographic, according to the Comisión Nacional de Derechos Humanos (National Commission of Human Rights).¹² Officials from the National Institute of Migration (INM) themselves have said that the General Law of Population is 'obsolete' and needs to be reformed.¹³ In addition, Mexico has an international obligation to ensure the protection of human rights under the agreements it has ratified, namely the United Nations 1951 *Refugee Convention* and its 1967 Protocol.¹⁴ In late 2010, the Mexican Senate introduced an initiative to assess, review and improve the laws that govern the migration process.

In response to pressure from the INM, the public and the government, the Senate bill has constructed the legal framework of Mexico's immigration policy as follows:

- a The Migration Act is to regulate the mobility of people in its broadest sense, including the entry and residence of foreigners, the transit and return of migrants,
- b General Population Law, after repealing more than 70 articles, regulates the field of population, internal migration and some issues on migration, and
- c The law of Complementary Protection Shelter standardizes international obligations by Mexico in terms of refugee issues and humanitarian protection.¹⁵

These changes proposed by the Senate would mean that the Migration Act would legally recognize the multiple dimensions of the migration process and correspond with the new provisions of international agreements that Mexico has ratified. Some of the most important aspects relate to the rights of migrants. For example, in exercising their rights, the new law guarantees equal treatment of undocumented migrants, the same as ordinary Mexican citizens. Under this principle, all immigrants, regardless of their migration status, are entitled to health and education services.¹⁶ The changes represent a strong government initiative to change and improve the laws, promoting the importance of protecting human rights. Further, firm migration policies are highly polemic in the current geopolitics of North and Central America and, as a state of transit, Mexico has to ensure it adheres to best practices.

Following these initiatives, on May 25, 2011, the federal government approved several legislative changes to the Migration Act, which were able to improve the legal status of immigrants and the legal obligations held by Mexican authorities. Confirmed by the Interior Ministry, the new law completely decriminalizes illegal migration and 'provides a framework of guarantees to protect the rights of migrants and seeks to inhibit and punish abuses of authority.'¹⁷ Rights of access to health, education and justice will also be ensured, regardless of immigration status. The most significant change is that this legislation repeals Article 156 of the federal Criminal Code, allowing the decriminalization of undocumented passage through Mexico.¹⁸ The significance of the changes and the rights that are guaranteed:

- Assume that migrants are not criminals;
- Do not prescribe penalties for those who enter undocumented;
- Only give power to competent authorities to arrest illegal migrants. Specific rights are to be guaranteed in this regard;
- Emphasize that a person's immigration status does not prevent the exercise of their rights and freedoms, particularly that they are to be treated without discrimination;
- Allow any person who voluntarily goes to the immigration authorities and the relevant



The USA/Mexico Border (Nogales, AZ)

requirements attesting to register their immigration status;

- State that the immigration authorities must resolve the immigration status of an undocumented migrant within 24 hours, during which the individual must be notified of the framework regulating their immigration status or they will be punished by expulsion, allowing for potential claimants to receive effective remedies; and
- Establish special provisions to ensure special attention to vulnerable migrants such as children, youth, women, the elderly or those with disabilities and victims of crime.¹⁹

This law is a proposal to protect migrants and should be used to ensure a safe, transitory passage, without rights violations. Its aim is to promote legal equality between documented and undocumented migrants. President Calderón has said the law 'eliminates the

dispositions that favour arbitrariness and ambiguity and that promote opportunities for corruption by public servants over migrants.²⁰ However, Calderón fails to address the issue that the abuse of power occurs within the authorities, and that these laws give more responsibility to them, demonstrating an unfettered confidence in the fact they will not violate their power, as has occurred in the past.

The law requires immigration agents to undergo special training and vetting, and it establishes criminal penalties for agents who abuse migrants or violate their rights. It also seeks to streamline paperwork for migrants. Although an undocumented foreigner is not to be considered a criminal, they are required to obtain papers that might include a so-called humanitarian visa. Section 5, article 57 of the constitution of the National Institute of Migration lists the objectives and obligations of the institute in

regards to its responsibilities and actions towards migratory processes. Article 151 of the Population Law establishes the powers of the migratory authorities to effect revisions of the foreigners that transit through the country.

However, Mexico does not provide a competent regulatory environment to ensure these obligations are upheld, nor to guarantee a minimum standard of 'best practice' in regards to treatment of migrants. Needless to say, they are making attempts. 'Nearly 200 agents have been fired in the last year for a number of infractions, and 40 are facing jail time,' said Salvador Beltran del Rio, head of the governmental National Institute of Migration. Seven regional directors were recently fired amid allegations that agents had delivered Central American migrants to kidnapping gangs. Agents have also been arrested on charges that they forced female Central American migrants into prostitution.²¹ With reason, human rights advocates have been skeptical that these new laws will relieve migrants' ordeal, mainly due to the transparent nature of authorities colluding with the gangsters and their reluctance to cooperate with officials.²²

Securing rights and security for the future

A year on and the application of these internationally progressive laws must be seriously examined. The current political climate intensifies daily, with weekly deaths reported in relation to narcotraficantes and thousands protesting nationally in response to the unpopular election of Peña Nieto, returning the state to the autocratic rule of PRI who governed for eighty years consecutively until 2000. In the lead up to the highly dramatised and financially driven election, southern border politics has taken a back seat to more polemic issues such as the drug war and US-Mexico security relations.

The most significant challenge that the Mexican government faces in the application of these reforms is its implementation and adherence. Essentially, corruption, collusion and violence have long been institutionalised

and normalised within the Mexican legal and judicial system. To ensure these important changes are applied, the environment of power, authority and law enforcement must change from an attitudinal and behavioural perspective. This requires greater education and training, regulation, monitoring and punishment, as well as an understanding that the role of these authorities is not to reprimand, exploit or violate these migrants, rather to

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uphold their internationally recognized rights and Mexico's obligations to ensure a safe transitory passage during their journey to their migratory destination.

Still clutching onto her father's leg, that small girl now closes her eyes as a group of four men enter the carriage where they sit together with these silent strangers. They carry large guns, smooth, black and solid, slung over their shoulders. They step between the bodies, their heavy boots echoing against the metal of the train. '¿Tienes papeles?' asks the tallest man gruffly, checking for papers of identification or documentation, which they don't carry. Eyes unseeing, the daughter only listens to that which takes place around her. She hears a woman cry as she is led away, the unwilling trade-off for their illegal passage. In her innocence, the girl cannot imagine what they will do to that woman, all she knows is that her future is just as uncertain.

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