



U.S. Support and Assistance for Interdictions, Interceptions, and Border Security Measures in Mexico, Honduras, and Guatemala Undermine Access to International Protection¹

Introduction

Over the last few years, and particularly over the last several months, the governments of Mexico, Guatemala, and Honduras instituted rapid changes to migratory policies in response to burgeoning numbers of citizens of countries in the Northern Triangle of Central America, particularly children and families, attempting to leave their countries of origin. Many of those attempting this journey express fear of remaining in their homelands stemming from record high incidences of violence, increasing disappearances, control of territory by organized crime, and the inability or unwillingness of State actors to address the needs of those targeted for abuse and persecution. These migratory policies, including interceptions and turn-backs of persons seeking to leave their country of origin and interdictions of people in Mexico, have been supported, funded and praised² by the United States government which has aggressively pursued the externalization of its borders to broadly restrict the arrival of Hondurans, Salvadorans, and Guatemalans, including those with protection needs, to U.S. territory.

Migratory policies³ implemented by the implicated States—the United States, Mexico, Guatemala, and Honduras—address the transnational movement of people, including children and families. The sovereign power of States to regulate transnational flows of people is limited by respect for migrants' and refugees' rights. The Inter-American Court for Human Rights has emphasized in advisory opinions and jurisprudence that the goals of migratory policies should take into account respect for human rights. Likewise, migratory policies should be implemented in a manner that respects and guarantees human rights.⁴ The actions taken by States must ensure migrants' and refugees' rights to humane treatment, personal liberty, due process, and an effective judicial remedy. These policies and actions must also respect the principles of equality before the law, equal-protection before the law, and non-discrimination, foundational *jus cogens* principles of international law.⁵

Likewise, even as children enjoy the same rights as adults, they also require special protection, because of their heightened vulnerability.⁶ The Court finds that when designing, adopting, and implementing immigration control policies for persons under the age of 18 years, States must accord priority to a human rights-based approach, from a crosscutting perspective that takes into consideration the rights of the child and, in particular, the protection and comprehensive development of the child following four guiding principles: a) non-discrimination; b) the best interests of the child; c) the respect for the right to life, survival, and development; d) the respect for the opinion of the child in any procedure that affects her or him in order to ensure

the child's participation.⁷

In its December 2013 report on *Human Rights of Migrants and other Persons in The Context of Human Mobility in Mexico*, the Inter-American Commission established that the protection that the authorities afford to migrants from other countries who are either living in or are in transit through its territory must guarantee that immigration policies, laws, and practices are based on a real and not purely formalistic approach to human rights. Thus, any immigration policy, law or practice should be premised on certain basic principles: 1) the right to migrate is a human right; 2) all persons in a state of human mobility—international immigrants, refugees, asylum seekers, persons applying for additional protection, stateless persons, victims and survivors of trafficking in persons, the internally displaced, and domestic migrants—are the titulaires of human rights; 3) all the measures taken by States must be premised on a recognition of the human dignity of persons in a state of human mobility; and 4) in keeping with the above, all the measures that States take must be calculated to respect and ensure the human rights of persons in human mobility.⁸

It is in light of this framework that the actions of the government of the United States, which appears intent on externalizing its border to specifically prevent the arrival of Central Americans to U.S. territory,⁹ despite cognizable international protection concerns among this migratory population, should be evaluated. Even as civil society organizations in Mexico, Guatemala, and Honduras report substantive concerns about the way in which new and/or intensified migration policies and actions are undermining access to asylum and other forms of international protection, the U.S. energetically partners with regional migration authorities, military units and special operations police. These partnerships take the form of training, equipping, and funding law enforcement and military units in Guatemala, Honduras, and Mexico that are instrumental in the confinement or deportation of people, often children, families, and asylum seekers, who are pursuing access to international protection.

Honduran-Guatemalan border

In June of 2014, three Honduran law enforcement units trained by and supported with funding from the U.S. State Department's Bureau of International Narcotics and Law Enforcement (INL) launched an operation to intercept children and families attempting to cross the border from Honduras into Guatemala. These Special Forces units (the Group of Special Tactical Operations (GOET), the Comprehensive Troup of Government Response for Special Security (TIGRES), and the Transnational Unit of Criminal Investigations (UTIC)) joined forces for two tactical operations, Operation Rescue Angel and Operation Coyote 1. All three units received equipment and special training from U.S. Border Patrol, U.S. Immigration and Customs Enforcement, or other U.S. migration control and law enforcement entities.¹⁰

While the ostensible priority of these operations was to arrest smugglers and "rescue" children, in point of fact, civil society and press report actions by these units that, far from saving children, have entailed forcing children back to the situations they are attempting to escape.

Reports abound that the units routinely intercept and deny access to Guatemalan territory to people who express they are in flight for their lives. Civil society reports that there is no screening to see if children and families are fleeing to escape targeted violence, persecution, or torture, or are the victims of trafficking or other exploitation or abuse. Children intercepted by these units have been transported to San Pedro Sula, and may be held for 24 to 48 hours, but again, never receive any screening or follow-up visits from DINAF, the recently created Honduran child welfare agency, to verify their well-being or security situation after they are released.

This has been verified by civil society in Honduras, as well as by the governments of Honduras and the United States. For instance, in an official statement, the White House Press Secretary reported:

Honduran special operations police, with training and funding assistance from INL and CBP, stood up Operation “Rescue Angels” along the Honduran-Guatemalan border. The operation is designed to increase apprehensions of migrants attempting to illegally emigrate to the United States, often via smuggling organizations. The unit has rescued at least 90 children attempting to cross the border with smuggling organizations since the operation began on June 20 and turned them over to the appropriate Honduran authorities.¹¹

Children, both those traveling without and those traveling with their parent or guardian, as well as Honduran adults without government-issued identification, have been prohibited by Honduran authorities from crossing the border into Guatemala.¹² Some media reports also indicate that the units are engaged in cutting off access to Nicaragua.¹³ This October 2014, the *Los Angeles Times* reported on the continued operations by Honduran law enforcement entities on the border with Guatemala. The article described the case of one mother and child who were attempting to leave because of fear of gang recruitment and violence. They attempted to leave Honduras on two occasions and both times articulated their fear of violence at the hands of organized crime. The first time the mother attempted to cross into Guatemala with her son, she was told she had to seek a letter of permission from her child’s father, but when she returned to the border with just such a letter in hand, she was again denied the right to leave Honduras and forced to return to San Pedro Sula.¹⁴

Guatemalan-Mexico border

Another interception program, called “Paso Seguro”, is underway in Guatemala via an agreement between the Mexican and Guatemalan governments. This program has also been encouraged with funding, tactical training, and equipment from the U.S. government; on the Guatemalan side of the border, principally from the U.S. Department of Defense’s Southern Command. According to an official U.S. government statement, the interdiction part of this program has been in place since July 7 and is “a welcome step towards improving Mexico’s ability to exercise greater control along its border with Guatemala.”¹⁵ This program has involved the construction of five comprehensive border transit care centers primarily used to

detain migrants until they are repatriated, as well as improved coordination between the eight federal agencies related to migration, including the Guatemalan army and navy.¹⁶

Again, none of the training or funding from the U.S. government has been aimed at ensuring that individuals who are intercepted are screened for protection concerns, nor have any intercepted individuals been referred to Mexico's asylum process. The strategic priority of this operation is to "stem the flow" of migrants without concern or regard for the implications of cutting off territorial access to asylum for those displaced by violence.

Mexico

Mexico's enhanced immigration controls

Starting in July 2014, the Mexican government significantly increased its efforts to intercept migrants traveling through its territory. On July 7, 2014, Mexican President Peña Nieto announced the Southern Border Program (*Programa Frontera Sur*) and established a new Coordination Office for Comprehensive Attention to Migrants on the Southern Border (*Coordinación de Atención Integral de la Migración en la Frontera Sur*), led by former Mexican Senator Humberto Mayans.¹⁷

While there is no public document that lays out Mexico's Southern Border Program, Peña Nieto has said that the program will include elements such as humanitarian assistance; an expanded temporary visa program for visitors from Guatemala, Belize, Honduras, and El Salvador to work in Mexico's four southern border states; and improvements in the conditions in migrant detention centers and shelters for children. It will also include a greater focus on the biometric registration of migrants and enhanced intelligence operations to attempt to break up criminal groups that abuse migrants. Despite Peña Nieto's statements about humanitarian assistance, the thrust of the program and its impact has been chiefly seen through increases in interdictions and repatriations of migrants, often without any of the safeguards required by Mexico's domestic and international legal commitments to ensure people in need of humanitarian protection are identified and given meaningful access to asylum or another form of complementary protection.

When the Coordination Office for Comprehensive Attention to Migrants on the Southern Border was created, the Mexican government announced that part of the efforts would also include establishing Comprehensive Attention Centers for Border Transit (*Centros de Atención Integral al Tránsito Fronterizo* (CAITF)), in order to better coordinate amongst Mexican agencies processing of persons and their belongings at the border between Guatemala and Belize. These centers may operate at the official ports of entry or at other locations.¹⁸

As of August 2014, the Mexican government has also prohibited migrants from riding on cargo trains to travel north to the U.S.-Mexico border through enforcement operations, increasing the speed of the train, and physical barriers in several areas that impede migrants from

climbing aboard. Reports from migrant shelters also suggest that additional mobile checkpoints have been set up along the main highways headed north. New checkpoints have been established in Tehuantepec, Oaxaca, and in Veracruz State. In early September, elements of Mexico's new Gendarmerie—a new 5,000-strong division of Mexico's Federal Police with military and police training—also arrived in the southern border state of Chiapas, complementing the 400 Federal Police deployed there in 2013.¹⁹ Reports also indicate that the Gendarmerie have been deployed along Mexico's Northern Border with the U.S. to intercept migrants and refugees before they reach U.S. territory, helping to explain reports by deported migrants and media of turn-backs at the U.S./Mexico border followed by deportations by Mexican authorities.²⁰

This recent increase in enforcement builds upon efforts by the administration of Peña Nieto (and by former Mexican president Felipe Calderon) to have greater control by security forces of roads and terrain inland from Mexico's southern border, principally through checkpoints, patrols, and surveillance.²¹ The augmented security presence has been complemented by efforts to improve documentation and record-keeping about border-crossers at the official ports of entry.

Increased immigration control in Mexico is evident in the number of migrants that have been apprehended and repatriated by Mexican officials in 2014. In October 2014, Mexico's National Migration Institute (INM) reported that between January and August 2014 Mexico detained and repatriated to their countries of origin 63,092 Central American migrants. Of these, 12,038 were minors. This is significantly higher than the first eight months of 2013, where a total of 49,201 Central American migrants were repatriated, including 5,097 minors. In fact, in the first eight months of 2014 Mexico has repatriated more Central American children than it did for all of 2013 (8,446).²²

U.S. support of Mexico's immigration controls

The United States government has been a significant supporter of the Mexican government's border security operations. One of the "four pillars" of U.S. security assistance to Mexico through the Merida Initiative is support to "create a 21st century border" (pillar 3). This assistance is to "[f]acilitate legitimate commerce and movement of people while curtailing the illicit flow of drugs, people, arms, and cash."²³ While this assistance has primarily focused on Mexico's northern border with the United States, much of the assistance currently being allocated will be delivered to Mexico's southern border. This shift in assistance also reflects stated priorities of U.S. foreign policy. In his testimony before the Senate Appropriations Committee on July 10, 2014, Counselor of the Department of State, Ambassador Thomas A. Shannon, affirmed that one of the five strategies developed to "stem the flow of migrants, screen them properly for international protection concerns, and then begin timely repatriation," is to improve "the ability of Mexico and Guatemala to interdict migrants before they cross into Mexico and enter the established smuggling routes that move the migrants to our border."²⁴

While a specific breakdown of all U.S. assistance provided to Mexico's southern border area is not available, the following information, based on research conducted by the Washington Office on Latin America and included in the report, *Mexico's Other Border: Security, Migration, and the Humanitarian Crisis at the line with Central America*, is an estimate of this assistance. This estimate does not include the additional \$86.6 million in assistance through the Merida Initiative that the Bureau of International Narcotics and Law Enforcement (INL) announced in June 2014 for additional non-intrusive inspection equipment and communication technologies.

As of February 2014, the State Department reported that the Merida Initiative has allocated \$112 million in technology for border security, "including non-intrusive inspection equipment, improvement of infrastructure, and personnel training in the areas of border security." An unknown, likely smaller, additional amount—much of it for Mexican Navy/Marine facilities and training—has come from the Defense Department's counter-drug budget.

To date, U.S. assistance at the southern border includes, but is not limited to the following.

- Non-intrusive scanning equipment, like portable VACIS scanners, x-ray vans, and CT-30 contraband detection kits.
- Biometric kiosks and technology.
- Facilities construction for the INM, Customs, Marines, and Federal Police.
- Training of above agencies, plus Chiapas State Police and state prosecutors.
- Intelligence-sharing on drug shipments, terrorist risks, and organized-crime groups. Maintenance of a small ICE Homeland Security Investigations office "to build capacity in the identification of aliens from countries of national security concern who are released from the Tapachula detention facility."²⁵
- "Patrol boats, night vision equipment, communications equipment, maritime sensors, and associated training" from the U.S. Defense Department to improve coastal capabilities.²⁶
- Donated helicopters, including UH-1H Huey and SAC-333 models, are occasionally stationed near the southern border in Tapachula, Chiapas; Ciudad del Carmen, Campeche; and Chetumal, Quintana Roo.²⁷
- Periodic Mexico, Guatemala, and Belize Border Region Workshops, sponsored jointly by U.S. Northern Command and U.S. Southern Command. "These workshops bring together national security forces to address communications, border security, standard operating procedures, and air, land, and maritime surveillance."²⁸
- A "Document Verification for Travelers" program for the INM that, according to a State Department International Narcotics and Law Enforcement Affairs Bureau document, "provides technical assistance, equipment, hardware and other services," like construction assistance, for an INM document and biometric laboratory and "a document issuance point at various Mexican entry points (beginning on southern border with Guatemala)."²⁹ Nationwide, the program

cost an estimated US\$5 million in 2011 and US\$5 million in 2012. Another US\$6 million in those years (5 in 2011 and 1 in 2012) went to improve database management, biometric recording and comparison, document archives, and other services at Mexican entry points and internal checkpoints throughout the country.³⁰

- Training on interdictions, operation of checkpoints, and capacity building by U.S. Customs and Border Protection.

Multiple U.S. agencies have been involved in providing training to state and federal Mexican officials to identify potential human traffickers and victims of human trafficking and other related crimes.³¹ Apart from these efforts, which are minimal in comparison to the prodigious support for immigration control measures including interdictions, checkpoints, detention, and deportation, it is unclear whether any additional U.S.-provided training or funding has been directed at ensuring that migrants and refugees who are intercepted are screened for protection concerns. Tellingly, the Mexican government's Commission of Aid to Refugees (COMAR) has little presence along the 1149.07-kilometer-long (714-mile-long) southern Mexican border, with only three offices in the region. Compared to the substantial resources at the disposal of the INM and other Mexican law enforcement entities involved in the interdiction, apprehension, and deportation of foreigners, COMAR's presence and capability is anemic.

Screening for international protection in Mexico

Despite Mexico's stated commitment to refugee protection within its domestic legal framework, particularly the 2011 Mexican Asylum and Subsidiary Protection Law, the asylum system in Mexico can best be described as inadequate to meet the burgeoning needs in the region. Under the Mexican asylum law, Mexico committed itself to offer asylum or other forms of humanitarian relief to persons forced to migrate to Mexico "because of circumstances which have emerged in their country of origin or as a result of activities carried out while in the national territory, their well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership in a particular social group or political opinion, or that their lives, safety or freedom could be threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."³²

This statutory language incorporates both the 1951 Geneva Convention 'refugee' definition and the understanding of 'refugee' articulated within the 1984 Cartagena Declaration. Importantly, articles 15, 16 and 20 of the Mexican asylum law require that every foreigner subjected to an immigration control process must be informed about the possibility of claiming asylum in Mexico. This obligation to provide information about humanitarian relief rests with COMAR or the migration officials present when the foreigners are detained.

While the letter of the Mexican Asylum Law is clear, it has yet to be fully implemented and many civil society organizations report that the last year has seen significant backsliding in authorities' acknowledgement of their asylum and international protection obligations. Although Mexican migration authorities and other enforcement agencies are increasingly receiving trainings on how to detect migrants who may have been victims of crimes, including human trafficking, and affirmatively inform migrants of their right to seek protections under Mexican law, these trainings frequently fail to be reflected in practice. Further, U.S. government interdiction and removal trainings implemented by U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) do not include reference to Mexican authorities' obligations to affirmatively inform Central Americans of their right to seek asylum in Mexico. Mexico is routinely deporting children and families who would merit international protection. In fact, independent Fulbright researcher Elizabeth Kennedy reported that out of over 700 interviews with children deported to El Salvador and 300 Salvadoran adults, only one child reported having been referred to the COMAR for screening and evaluation.

Between 2002 and 2012, the Mexican state granted refugee status to only 1,221 foreign-born nationals. In 2013, Mexico only accepted 23.5 percent of the requests for asylum made by Guatemalans, Salvadorans, and Hondurans.³³ Not including the temporary border work visas available for Guatemalans and Belizeans, Mexico only granted 9,028 new temporary or permanent residency permits to Central Americans in 2013 and only 142 of these were for humanitarian reasons.³⁴

Among the conclusions of the December 2013 report of the Inter-American Commission was the finding that despite progressive legislation which formally guarantees the human rights of migrants and the rights of asylum seekers and refugees, *“rather than improve, the situation of migrants in an irregular situation in Mexico has become much worse as the years have passed. And yet, the State has not adopted a comprehensive public policy geared to preventing, punishing and redressing the acts of violence and discrimination of which migrants in Mexico are victims and to protecting them from that violence and discrimination. The measures the State is taking notwithstanding, the violence and discrimination that migrants in Mexico encounter is very troubling.”*³⁵

These findings echo concerns raised by civil society organizations in Honduras, Guatemala, and El Salvador who report that many of those deported by Mexico in recent months have cognizable claims for asylum or other forms of humanitarian relief. While Mexico, with U.S. assistance, has rapidly increased its capacity to apprehend, detain, and deport Central American migrants, these immigration control procedures are rarely accompanied by the sort of screenings and status determinations required by Mexico's domestic legal infrastructure or international law *jus cogens* and treaty obligations.

Routine screenings to determine if an individual has a well-founded fear of persecution or torture, or is the victim of human trafficking, are not part of the intake process when Central Americans children and adults are interdicted by Mexican migration authorities or Federal

Police. This is particularly disturbing in light of the fact that civil society organizations and researchers that have interviewed returned migrants have found that many of those interviewed left their countries of origin due to antecedents that gave rise to credible claims for international protection. Many of the accounts documented by civil society organizations and researchers should have, at the very least, triggered a serious evaluation of the migrants' cases for asylum status or other forms of complementary humanitarian relief by Mexican authorities.

The **following cases** are a sample of those collected by researchers and civil society groups working in Honduras and El Salvador from children and families who were deported from Mexico:

1) Boy is deported from Mexico to El Salvador despite gang threats; father is subsequently murdered.³⁶

A sixteen-year-old Salvadoran boy left El Salvador because he lived in a gang controlled neighborhood, faced daily threats from the gang, and several of his friends and classmates had been killed when they refused to join the gang. Additionally, his father was a business owner who had received threats from the gang, and demands that he pay extortion fees, "*la renta*." The child was intercepted in Mexico. He was never screened for protection concerns, nor offered the opportunity to apply for asylum. He was simply deported back to El Salvador. Two weeks after his return, his father was murdered by the gang. He lives in fear and extreme vulnerability in his family's home and is afraid to go out on the street.

2) Honduran boy is deported by Mexican authorities twice; killed after second attempt to seek safety beyond Honduras' borders.³⁷

A seventeen-year-old boy journeyed twice to Mexico fleeing threats from a gang in San Pedro Sula, Honduras. On both occasions he was deported without any evaluation of his potential claims for international protection. Not long after the second deportation from Mexico the child was found dead, presumably the victim of the gang that had pursued him.

3) Girl is pursued to be the girlfriend of adult gang leader, witnesses crimes and murder, flees to Mexico, and is deported back to Honduras.³⁸

A seventeen-year-old girl living in a gang-controlled territory in San Pedro Sula became the "love interest" of the chief of the gang that controlled the sector where her family lived. She was at first flattered by the attention and was convinced by the gang leader to move out of her family's home. The gang leader moved her into a gang house, where she became terrified as she witnessed the gang's operations as well as the abuse and murder by the gang of one of her friends, another girl her age. Her father helped her flee the gang house and return to her family's home. The entire family then began to receive death threats. Her father sent the girl, her little brother, and her mother north. They entered Mexico and sought help from a local NGO to try to acquire a humanitarian visa. Nonetheless, Mexican authorities detained the girl, her brother, and mother and, though they clearly expressed their fear of return to authorities, deported them back to

Honduras without giving them the option to apply for asylum. The girl and her family now live in fear in their *colonia* (community), afraid to leave the house. The children no longer attend school.

4) Mother deported to El Salvador from Mexico after receiving death threats from a gang when she sought justice for her daughter's rape.³⁹

A family of three, a mother, and her daughters, a 16-year-old and a 2-year-old, were the victims of gang violence and threats in El Salvador. The mother was a business owner, operating a small store out of her home in a territory controlled by a local gang. The gang began demanding that she pay \$50 to \$100 a month in "*renta*." The 16-year-old girl was raped by one of the gang members and she and her mother reported the crime to the police in El Salvador (PNC). Although the police would take no action to arrest the perpetrator, they referred the girl and her family to the Attorney General of the Republic (FGR). The Attorney General took the case but soon after, the girl and her family began to receive death threats from the gang. The mother sent her older daughter on ahead and she was able to reach the United States. Then the mother journeyed north with her 2-year-old. She was intercepted with her 2-year-old daughter in Mexico by Mexican migration authorities. She was never screened for protection concerns or given the opportunity to apply for humanitarian relief, and was deported back to El Salvador. She continues to live in precarious circumstances, still the subject of threats by the gang and forced to pay exorbitant extortion fees. She only leaves her home to go to church.

5) Mother journeyed to Mexico from El Salvador with her 14-year-old son and her 11-year-old daughter to escape gang violence but all three were summarily returned.⁴⁰

Several years earlier the boy was caught in the crossfire as gangs battled over territory in the urban sector where the family resided. The boy received severe injuries, underwent several surgeries, and was unable to attend school for two years. The family then relocated to another neighborhood where they hoped they would find safety. Instead the situation in the new neighborhood proved even worse, with gang violence reaching critical levels and the children approaching prime recruitment age. Although police were present in the neighborhood, they "see nothing." The mother feared for the lives of her children. The family ventured north to Mexico but was interdicted by authorities who never gave them the opportunity to seek asylum or another form of protection. They have been deported back to the dangerous situation they fled and now never leave their house.

6) 9-year-old girl deported to Honduras by Mexican authorities after fleeing kidnapping ring.⁴¹

A nine-year-old girl journeyed north from Honduras with her aunt because she feared being the victim of a gang involved in the kidnapping of girls in her *colonia*. Over the last several months, a number of her friends had been kidnapped and held for ransom by the gang that controlled the settlement where she lived, a marginal *colonia* on the outskirts of San Pedro Sula. Girls whose families were not able to pay the ransom would

be found dead and brutalized, a warning to other families to cooperate with the gang's demands. The gang chose girls carefully and targeted them on their way to or from school. Those with family members living in the United States were particularly targeted because the gang assumed these families had extra resources available through their relatives. The girl's mother has lived in the U.S. for over eight years and she and her family became increasingly afraid that the gang would come to know she had a U.S. connection. The family decided to send the girl north with her 27-year-old aunt and the aunt's two children, as her aunt too had experienced gang threats in recent months. The four were interdicted near Palenque, Mexico and, although they attempted to tell their story to Mexican authorities, they were deported without ever having the chance to apply for asylum or other complementary humanitarian protection. The four attempted the journey again but with the same results. The girl now continues to live in fear, and while she is watched closely by her grandmother who accompanies her to and from school each day, the gang threats persist.

U.S. assistance to Mexico has significantly contributed to increasing the Mexican State's ability to implement the interdiction, detention, and deportation of Central American migrants. The U.S. has continued to pursue this policy despite the above evidence and despite acknowledging that Mexico has not established adequate mechanisms for screening migrants for international protection concerns. Providing such assistance in the face of demonstrable disregard for the protection policies required by the 2011 legislation enables practices that undermine Mexico's domestic laws on the protection of asylum seekers and the human rights of migrants.

Relevant Law

In light of the aforementioned facts, we highlight the following relevant law and findings of the Inter-American Human Rights System.

State authorities are intercepting and interdicting people who have international protection needs, particularly children, and restricting their access to territories where they might receive asylum.

In the December 2013 report on Mexico, the Inter-American Commission mentioned:

While the principal international and regional instruments recognize one's right to leave any country of one's own free will, even one's own country, in order for this right to materialize States have to take measures to facilitate and guarantee human mobility to all persons. The Commission believes that immigration policies, laws and practices that criminalize migration, or those that take a dual approach—on the one hand recognizing that migrants have human rights, but at the same time regarding them as a threat to national sovereignty or security—contain an inherent contradiction and are at odds with what a human-rights-based immigration policy should be. The prima facie assumption that migrants pose a threat to the national sovereignty and security of States implies a

*prejudgment that migrants are criminals; it also denies the right of all persons to leave their countries at will and fails to recognize the contributions that migrants make in their countries of destination.*⁴²

Additionally, Article XXVII of the American Declaration provides:

Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

In interpreting this language, the Commission found that *the right to seek asylum protected under Article XXVII of the American Declaration encompasses certain substantive and procedural guarantees.*⁴³ *The IACHR has held that Article XXVII ensures an asylum seeker at a minimum a hearing to determine his refugee status.*⁴⁴ *The Inter-American Commission has further cited to other international organs for basic due process standards relevant to a refugee determination hearing.*⁴⁵

The Commission has stated that Article XXVII would be meaningless if Member States could exclude broad classes of refugee claimants through domestic law without implementing their obligations under Article XXVII and international refugee law.⁴⁶

In the case of Haitian interdiction, the Commission found that international law has developed to a level at which there is recognition of a right of a person seeking refuge to a hearing in order to determine whether that person meets the criteria in the Refugee Convention.⁴⁷ In *John Doe et al v. Canada*, the Commission clarified that *“the right to seek asylum requires that a person be heard to see if he or she is at risk of persecution⁴⁸--it is the act of hearing the person that implements the most fundamental element of the right to seek asylum—and it was that essential procedural opportunity that was denied to the John Does.”*⁴⁹ *“Consequently, the IACHR concludes that Article XXVII provides a baseline of due process for refugee claimants to seek asylum in foreign territory”*⁵⁰.

After examining if the responsibility to seek asylum in the context of Article XXVII of the American Declaration may be shared between States, the Commission established that even if this responsibility is not absolute in international law, *“every Member State has the obligation to ensure that every refugee claimant has the right to seek asylum in foreign territory, whether it be in its own territory or a third country to which the Member State removes the refugee claimant. To the extent that the third country’s refugee laws contain legal bars to seeking asylum for a particular claimant, the Member State may not remove that claimant to the third country. To ensure that a refugee claimant’s right to seek asylum under Article XXVII is preserved, before removing a refugee claimant to a third country, the Member State must conduct an individualized assessment of a refugee claimant’s case, taking into account all the known facts of the claim in light of the third country’s refugee laws. If there is any doubt as to the refugee claimant’s ability to seek asylum in the third country, then the Member State may not remove the refugee claimant to that third country”.*⁵¹

Analogously, in the context of Article XXVII of the American Declaration, Member States must also be responsible for the manner in which their actions undermine the rights of refugee claimants to seek asylum in a foreign territory. In light of the Commission’s findings in *John Doe*, Member States are surely obliged not to use resources and diplomatic pressure in a way that undermines the rights of refugee claimants to seek asylum. The manner in which the U.S. government has encouraged, supported, and stood-up forces in the region engaged in the interception, interdiction, and deportation of persons without requisite safeguards are well outside the bounds of international law.

Children’s access to territory where they might access international protection is being particularly restricted.

With respect to children, paragraph 83 from the AC. 21/2014 established that *“the border authorities should not prevent the entry of foreign children into national territory, even when they are alone, should not require them to produce documentation that they may not have, and should proceed to direct them immediately to personnel who are able to assess their needs for protection based on an approach in which their condition as children prevails. In this regard, it is essential that States allow a child access to the territory as a prerequisite to the initial assessment process. Furthermore, the Court considers that a database must be created to register children who enter the country in order to ensure an adequate protection of their rights”*⁵².

Actions by State entities violate the principle of non-refoulement.

In interpreting Article XXVII of the American Declaration, the Court has examined treaties, customary and soft law instruments, and found that the principle of *non-refoulement* constitutes a norm of customary international law, and therefore is binding on all States, whether or not they are parties of the international instruments in which the principle is enshrined.⁵³ The principle of *non-refoulement* can be invoked by any person over whom the State is exercising authority or who is under its control, regardless of whether she or he is on the land, rivers, or sea or in the air space of the State.⁵⁴ Further, all States implicated in the interdictions and interceptions herein examined, including the United States government, which has provided support, training, equipment, and funding for these efforts, are parties to the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol, and have ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment within which the principle of *non-refoulement* is enshrined.

Based on this principle, States are bound not to return (“refouler”) or expel a person—asylum seeker or refugee—to a State where her or his life or liberty may be threatened as a result of persecution for specific reasons or due to generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order, nor to a third State from which she or he may later be returned to the State where she or he suffered this risk—a situation that has been called “indirect

refoulement.⁵⁵

According to this principle we argue States are not permitted to facilitate and support immigration control actions of other States, which 1) prevent persons from accessing territory where their international protection claims will be evaluated; and 2) lead to the *refoulement* of persons with protection concerns – a process which we would name *refoulement-by-proxy*.

It is important to mention that in the Canada Report, the Inter-American Commission concluded that: *“The obligation of non-return means that any person recognized or seeking recognition as a refugee can invoke this protection to prevent their removal. This necessarily requires that such persons cannot be rejected at the border or expelled without an adequate, individualized examination of their claim.”*⁵⁶ *“The IACHR notes that the individualized assessment with respect to the risk of indirect refoulement does not necessarily involve the same level of due process required for a hearing on the merits of asylum claim or other claim for protection.”*⁵⁷

In addition, the Commission clarified that in the case of a child *“the prohibition to return, expel, deport, repatriate, reject at the border, or not to admit or in any way transfer or remove a child to a State when the child’s life, security and/or liberty is at risk of being jeopardized because of persecution or threat, generalized violence or massive violations of human rights, among others, nor where the child is in danger of being subjected to torture or other cruel, inhuman or degrading treatment, or to a third State from which she or he may be sent to one in which these risks may be encountered, receives additional protection in other human rights norms, a protection that extends to another type of gross human rights violations, understood and analyzed from a perspective of age and gender, as well as under the rationale established by the Convention on the Rights of the Child itself, which makes the determination of the best interest surrounded by the due guarantees a central aspect when adopting any decision that concerns the child and, especially, if the principle of non-refoulement is involved.”*⁵⁸

Therefore, the Commission considers that some type of standardized protection should exist for children who have not been recognized as regular migrants nor qualify under refugee status, but whose return would, however, be contrary to the general obligations of *non-refoulement* under international human rights law.⁵⁹ The Commission found that some countries of the region such as Mexico, Nicaragua, and Costa Rica, have established a mechanism that contemplates a type of protection similar to that granted to asylum seekers and refugees that would prevent a person from being placed in a situation in which her or his life, liberty, safety, or integrity would be endangered.⁶⁰ Such a mechanism would be particularly suitable for separated or unaccompanied minors.

Under the international legal regime, migrants must be adequately screened by trained individuals to review protection concerns, including risks of persecution, torture, and trafficking. The interdiction and deportation of migrants without such protections violates international law. The U.S. government’s involvement in interdictions and deportations from Mexico, and interceptions in Guatemala and Honduras, despite clear evidence and reports

delineating the failures of these governments to evaluate whether persons (including children) are victims of persecution, torture, or trafficking, or have well-founded fear that they are at-risk of persecution or torture, constitutes a violation of the principle of *non-refoulement* and U.S. international legal obligations.

¹ This chapter was prepared by the Jesuit Conference of the United States and the Washington Office on Latin America (WOLA).

² “U.S. Response to Central American Migrants at Southwest Border,” The White House, Office of Press Secretary, 1 Aug. 2014, <http://iipdigital.usembassy.gov/st/english/texttrans/2014/08/20140802304773.html?CP.rss=true#ixzz3GdKG8ic0><http://iipdigital.usembassy.gov/st/english/texttrans/2014/08/20140802304773.html?CP.rss=true#ixzz39GflgGUd>; “Statement by Secretary Johnson about the Situation at the Southwest Border,” U.S. Department of Homeland Security, 8 Sep. 2014, <http://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border>; See also Miller, Todd. “Mexico: U.S. Border Patrols’ Newest Hire.” *Al Jazeera America*, 4 Oct. 2014, <http://alj.am/1vw7pVE>.

³ According to the IAHCR, “the migratory policy of a State includes any institutional act, measure or omission (laws, decrees, resolutions, directives, administrative acts, etc.) that refers to the entry, departure or residence of national or foreign persons in its territory.” CIDH, AO. 18, (17 Sep. 2003), par. 163.

⁴ CIDH, OC. 18, *Juridical Condition and Rights of the Undocumented Migrants*, (17 Sep 2003), par. 129.

⁵ *Ibid.*, par. 101.

⁶ CIDH, AO. 21, *Rights and guarantees of children in the context of migration and/or in need of international protection*, (19 Aug. 2014), par. 66.

⁷ CIDH, AC. 21 *Rights and guarantees of children in the context of migration and/or in need of international protection*, (19 Aug. 2014), par. 68, 69.

⁸ IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*, (20 Dec. 2013), OEA/Ser.LV/II. Doc.48/13. par.402.

⁹ “The Guatemalan border with Chiapas, Mexico, is now our Southern border,” Assistant Secretary of Homeland Security for International Affairs Alan Bersin, in remarks at the Border Issues Conference hosted by U.S. Mexico Chamber of Commerce event, September 19, 2012, celebrating the level of cooperation achieved between DHS and INM. See also Miller, Todd. “Mexico: U.S. Border Patrols’ Newest Hire.” *Al Jazeera America*, 4 Oct. 2014, <http://alj.am/1vw7pVE>.

¹⁰ “Honduras amuralla con militares las fronteras hacia Guatemala,” *La Tribuna*, 29 Jul. 2014, <http://www.latribuna.hn/2014/07/29/honduras-amuralla-con-militares-las-fronteras-hacia-guatemala/>; Carcamo, Cindy. “Elite Honduran Unit Works to Stop flow of Children to the U.S.” *Los Angeles Times*, 9 Jul. 2014, <http://www.latimes.com/world/mexico-americas/la-fg-ff-honduras-border-20140709-story.html#page=1>; Carcamo, Cindy. “Wrenches Thrown into Careful Plans to flee Honduras,” *Los Angeles Times*, 12 Oct. 2014, <http://www.latimes.com/world/mexico-americas/la-fg-ff-honduras-journey-narrative-20141012-1-story.html#page=1>.

¹¹ “U.S. Response to Central American Migrants at Southwest Border,” Office of Press Secretary.

¹² “Honduras amuralla con militares las fronteras hacia Guatemala,” *La Tribuna*.

¹³ Carcamo, Cindy. “Elite Honduran Unit Works to Stop flow of Children to the U.S.”; US Funded Unit in Honduras Stops “drop in a bucket” Child Exodus,” *Pan-American Post*, 9 Jul. 2014, <http://panampost.com/panam-staff/2014/07/09/us-funded-unit-in-honduras-stops-drop-in-a-bucket-of-child-exodus/>; See also “Unaccompanied Minors: Humanitarian Situation on the U.S. Border” *The UN Refugee Agency*, <http://unhcrwashington.org/children>, reporting that from 2008 to 2013, Nicaragua, Belize, Mexico, Costa Rica, and Panama collectively experienced a 712% increase in asylum claims from the Northern Triangle countries.

¹⁴ Carcamo, Cindy. “Wrenches Thrown into Careful Plans to flee Honduras.”

¹⁵ “U.S. Response to Central American Migrants at Southwest Border,” Office of Press Secretary.

¹⁶ Report from Fr. Rafael Moreno, Jesuit Migration Mexico, 25 Jul. 2014.

¹⁷ Presidencia de la República, Mexico, “Pone en marcha el Presidente Enrique Peña Nieto el Programa Frontera Sur,” 7 Jul. 2014, <http://www.presidencia.gob.mx/articulos-prensa/pone-en-marcha-el-presidente-enrique-pena-nieto-el-programa-frontera-sur/>.

¹⁸ Diario Oficial de la Federación, “Acuerdo por el que se instruye la constitución de los Centros de Atención Integral al Tránsito Fronterizo (CAITF),” 8 Jul. 2014, http://www.dof.gob.mx/nota_detalle.php?codigo=5351464&fecha=08/07/2014.

¹⁹ Martín Pérez, Fredy. “Llegan gendarmes a Tapachula, Chiapas,” *El Universal*, 1 Sep. 2014, <http://www.eluniversal.com.mx/estados/2014/llegan-gendarmes-a-tapachula-chiapas-1034787.html>.

²⁰ “Deportan a 5 mil niños a Honduras.” *Hilo Directo*, 19 Jun. 2014, <http://hilodirecto.com.mx/deportan-a-5-mil-ninos-a-honduras/> (describing the apprehension and deportation of over 300 Honduran youth, intercepted as they attempted to cross the Border between Mexico and the United States).

²¹ For example, field research conducted by the Washington Office on Latin America found that in the 140-mile stretch between Tapachula and Tonalá in Chiapas, there were 11 checkpoints, each manned by one or more of the following agencies: Federal Police, Federal Ministerial Police, Chiapas State Police, Army, Navy, National Migration Institute, Customs, Federal Attorney General’s Office, Chiapas State Attorney General’s Office. Isacson, Adam, Maureen Meyer, and Gabriela Morales. *Mexico’s Other Border: Security, Migration, and the Humanitarian Crisis at the Line with Central America*, Jun. 2014, http://www.wola.org/news/new_wola_report_mexicos_other_border.

²² Secretaría de Gobernación, “Eventos de extranjeros devueltos por la autoridad migratoria mexicana, según continente, país de nacionalidad y tipo de resolución, 2014,” http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos

²³ The U.S. Embassy- Mexico, “Fact Sheet: the Merida Initiative, An Overview,” Jul. 2014, <http://photos.state.gov/libraries/mexico/310329/july2014/Merida-Initiative-Overview-jul14.pdf>.

²⁴ Ambassador Thomas A. Shannon, U.S. Department of State, Testimony to Senate Appropriations Committee, 10 Jul. 2014, <http://www.appropriations.senate.gov/sites/default/files/hearings/Shannon%20Testimony%207%2010%2014.pdf>.

²⁵ U.S. Immigration and Customs Enforcement, “Meeting with Secretary Alejandro Poire Mexico’s Secretariat of Governance (SEGOB).”

²⁶ U.S. Congress, Senate, Committee on Armed Services, Department of Defense Plans and Programs Relating to Counterterrorism, Counternarcotics, and Building Partnership Capacity.

²⁷ U.S. Department of State, End Use Monitoring Report - 2009, Sep. 2010, <http://www.state.gov/j/inl/rls/rpt/eum/2009/index.htm>.

²⁸ U.S. Congress, House Armed Services Committee, Statement of General Charles H. Jacoby, Jr., United States Army Commander, United States Northern Command and North American Aerospace Defense Command, 20 Mar. 2013, <http://docs.house.gov/meetings/AS/AS00/20130320/100395/HHRG-113-AS00-Wstate-JacobyG-20130320.pdf>.

²⁹ U.S. Embassy-Mexico, “Mexico-Detailed Advanced Acquisition Plan,” Unclassified cable case No. F-2011-06095, Doc No. C05160615, 21 Nov. 2010, <http://www.wola.org/files/20100921-NASAcquisitionPlan.PDF>; Secretaría de Gobernación, Comisión Mexicana de Ayuda a Refugiados, *Estadísticas COMAR 2013*, <http://bit.ly/1qC6jZf>.

³⁰ Isacson, Adam, Maureen Meyer, and Gabriela Morales. *Mexico’s Other Border: Security, Migration, and the Humanitarian Crisis at the Line with Central America*.

³¹ This has included the U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI); the Department of Justice’s Office of Prosecutorial Development, Assistance and Training (OPDAT); and the Department of State’s Bureau of International Narcotics and Law Enforcement. See for example, “HSI participates in human trafficking awareness seminar for Mexican officials,” 10 Jun. 2014, <http://bit.ly/1sGRzAM>; “HSI, Mexican Government Host Human Trafficking Awareness Training,” 27 Aug. 2013, <http://www.hstoday.us/briefings/news-shorts/single-article/hsi-mexican-government-host-human-trafficking-awareness-training/5f9cba1eb1278b13e7cda87dd1c2b768.html>.

³² Mexican Asylum and Subsidiary Protection Law 2011 available at: http://www.comar.gob.mx/work/models/COMAR/Resource/114/2/images/1404_LeySobreRefugiados.pdf.

³³ *Estadísticas COMAR 2013*.

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- ³⁴ Secretaria de Gobernación, Unidad de Política Migratoria, *Boletín Mensual de Estadísticas Migratorias*, 2013, <http://bit.ly/1qC6nbn>; Secretaria de Gobernación, Unidad de Política Migratoria, *Boletín Mensual de Estadísticas Migratorias*, Enero a Abril de 2014, <http://bit.ly/1qC7yHD>.
- ³⁵ *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*, par. 399
- ³⁶ Case on file with researcher, Elizabeth Kennedy.
- ³⁷ Case on file with author, interview with Morgue Director Hector Hernandez, San Pedro Sula, Honduras.
- ³⁸ Case # 1 on file with audio from *Radio Progreso*, Servicio Jesuita a Migrantes.
- ³⁹ Case on file with researcher, Elizabeth Kennedy, July 29, 2014 interview
- ⁴⁰ *Ibid.*
- ⁴¹ Case # 2 on file with audio from *Radio Progreso*, Servicio Jesuita a Migrantes
- ⁴² *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*, par.403.
- ⁴³ See IACHR, *Cases of Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg*, (The Bahamas) Report No. 48-01 (merits), Case Nos. 12.067, 12.068, 12.086 (4 Apr. 2001), par. 172, [hereinafter the “Michael Edwards cases”].
- ⁴⁴ IACHR, *Haitian Interdiction Case*, (United States) Report N° 51/96 (merits), Case No. 10.675 (13 Mar. 1997), par. 90.
- ⁴⁵ IACHR. Merits Report No. 78/11. Case 12.586, John Doe et al. (Canada). (July 21, 2011), par.91, 92.
- ⁴⁶ *Ibid.*
- ⁴⁷ *Id.*
- ⁴⁸ Based on one of the five enumerated grounds for asylum.
- ⁴⁹ IACHR, “Second Progress Report of the Special Rapporteurship on the Rights of Migrant Workers and Their Families,” *Annual Report 2000*, (16. Apr. 2001), par. 99A.
- ⁵⁰ IACHR. Merits Report No. 78/11. Case 12.586, John Doe et al. (Canada). (21 Jul. 2011), par.92.
- ⁵¹ *Ibid.*, par. 94.
- ⁵² CIDH, AC. 21 (19 Aug. 2014), *Rights and guarantees of children in the context of migration and/or in need of international protection*, par 83.
- ⁵³ *Ibid.*, par 211.
- ⁵⁴ *Ibid.*, par 219.
- ⁵⁵ *Ibid.*, par 212.
- ⁵⁶ IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106 Doc. 40 rev., para. 25 (February 28, 2000).
- ⁵⁷ IACHR, Report No. 78/11, Case 12.586 John Doe et al v. Canada, par. 111.
- ⁵⁸ IACHR, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106 Doc. 40 rev., (28 Feb. 2000), par. 233.
- ⁵⁹ *Ibid.*
- ⁶⁰ *Ibid.*, par. 238.