

THE REGIONAL MIGRATION STUDY GROUP

NEW APPROACHES TO MIGRATION MANAGEMENT IN MEXICO AND CENTRAL AMERICA

By Francisco Alba and Manuel Ángel Castillo



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Francisco Alba and Manuel Ángel Castillo
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While the two authors share responsibility for the contents of this report, Francisco Alba assumes a greater share of responsibility for the analysis on Mexico and Manuel Ángel Castillo does so for the Central American country case studies. Both authors' exchange of ideas and discussion are reflected to a greater degree in the sections covering the repercussions of Mexico's law on migration and the discussion of regional migration issues.

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Executive Summary

Over the course of the past three decades, migration has emerged as a critical policy issue for Mexico and Central America. While typically most policy attention has focused on Mexican migration to the United States, Central American transit migration through Mexico has gradually increased in size and visibility. Historically, Mexico's southern border was fluid and open to the cross-border movement of agricultural workers, trade, and families who lived in what was widely regarded as a unified economic zone. Since these movements had few impacts beyond the border region, they were never regarded as "problematic" by regional governments.

For much of the 1990s, Mexican authorities expressed no clear or coherent preference to either control or openly tolerate Central American transit migration.

Two crises in the 1980s changed this status quo. First, as civil wars erupted across much of Central America, hundreds of thousands of refugees, particularly from Guatemala, fled to Mexico. Over time and especially after peace was reestablished in Central America during the early 1990s, a growing number of Central Americans from the Northern Triangle countries of El Salvador, Guatemala, and Honduras entered Mexico for economic rather than humanitarian reasons and became incorporated into the traditional flow of Mexicans northward. Perhaps not by accident, as Mexico sought closer economic ties with the United States in the context of the North American Free Trade Agreement (NAFTA), the country began attempting to curb unauthorized transit migration through its territory. In 1993 the National Migration Institute (Instituto Nacional de Migración, INM) was established to institutionalize the government's efforts to manage migration.

For much of the 1990s, Mexican authorities expressed no clear or coherent preference to either control or openly tolerate Central American transit migration. For instance, special visas were made available for cross-border agricultural workers and visitors while the restrictions on tourist visas granted at Mexico's diplomatic offices throughout Central America were tightened. In the aftermath of September 11, 2001, as US policy has shifted toward a more restrictive stance, the attitudes and responses of the Mexican government increased in number and complexity, but have not gained clarity of purpose. There is one consistent concern, however: a defense of the basic rights of all migrants, independent of their legal status. While the origins of this interest lie in Mexico's desire to protect its migrants abroad, it has also become characteristic of Mexico's policy toward migrants within its territory. Yet the political rhetoric in defense of migrant rights contrasts with the reality on the ground: Central American migrants continue to be victimized by organized criminal agents as well as by local and national security forces whose integrity has been compromised.

Until recently, Mexico's main law governing immigration was the sweeping 1974 *General Population Law*, which focused on family unification and was framed as a response to the challenges of the era — notably a rapidly growing population and large-scale emigration from Mexico. However, since as early as the 1980s, there have been calls — particularly from Mexican civil society — for Mexico to reform its migration laws in order to improve policy coherence and implementation, as well as to improve protections for migrants in Mexico who are notoriously vulnerable to abuse. These demands gained traction after 2001 and typically center on three concerns:



- The extraordinarily high degree of discretion that the Mexican regulatory framework granted to immigration agents, whose actions often approached arbitrariness
- The concentration of migration policy authority in a single executive agency that focuses primarily on control and enforcement
- The near-absence of oversight of migration policy from the legislature and judiciary.

These reform efforts culminated in the passage of a new Migration Law (*Ley de Migración*), approved unanimously by the Mexican Congress in April 2011. The law aims to develop a migration policy that respects the human rights of migrants, is comprehensive in its coverage, facilitates the international movement of people, meets the country's labor needs, ensures equality between Mexican natives and immigrants to Mexico, recognizes the acquired rights of long-term immigrants, promotes family unity and sociocultural integration, and facilitates the return and reintegration of Mexican emigrants. At the time of the writing of this report, the law's broad and objective terms were being translated into operable regulations, so it is not yet possible to judge the full range of the law's impacts.¹ However, the law has already reduced bilateral tensions with Central American governments and, has granted Mexico new moral authority when advocating on behalf of migrant rights in the United States.

I. Introduction

Until recently, the outflow of Mexicans to the United States dominated the attention of Mexican politicians, policymakers, and migration researchers, but public attention has shifted in recent years to the phenomenon of transit migration. Over the past two decades, Mexico has increasingly become a destination for Central American migrants seeking to enter the United States; many remain in Mexico for extended periods and, in some cases, settle permanently.

These flows have created new challenges for Mexican and Central American policymakers. In Mexico, a policy framework for the enforcement of immigration laws has gradually emerged over the past two decades although, until recently, the legislative framework lagged substantially behind on-the-ground realities. The Mexican government's response to the rapid emergence and growing visibility of transit migration culminated with the enactment of a new immigration law in May 2011, known as the *Ley de Migración*. In Central America, governments are only beginning to secure a level of economic and political stability to begin to address the challenges their compatriots encounter abroad.

This report examines the evolving response of the Mexican and Central American governments to Central American transit migration through Mexico. It is organized around four main themes:

- A brief background on the migration phenomena in Mexico and its traditional regulatory framework.
- Case studies of migration management in Guatemala, El Salvador, and Honduras.
- Analysis of Mexico's attempts in recent years to create a formal framework for migration management.
- A discussion of the implications of emerging national institutional frameworks on the management of regional migration issues.

¹ The regulations were published in the *Diario Oficial* on September 28, 2012, and were scheduled to take effect on November 9, 2012.



II. Migration Policy in Mexico

A. Background

During the first half of the 20th century, Mexico was the destination for thousands of European immigrants and, to a lesser degree, East Asians and Middle Easterners, although their numbers did not reach those found in other Latin American countries such as Argentina and Brazil. In the late 19th and early 20th centuries, Mexican immigration laws followed trends in most Latin American countries and in the United States, as when the United States moved to limit East Asian immigration in the late 1800s.² In contrast to the United States, however, European immigration continued at a strong pace during the 1920s and 1930s as Mexico became a prominent destination for Spanish, Russian, and other Eastern European migrants fleeing political turmoil. By 1950 Mexico was home to 182,000 immigrants, with the largest inflows having occurred during the 1920s.³ Immigrant arrivals from Europe slowed substantially after World War II. Almost coincidentally, by the same time, emigration had emerged as the primary migration policy concern of Mexican policymakers.

Since the Bracero Program, a temporary labor arrangement between the United States and Mexico that ran in various forms from 1942 to 1964, Mexican emigration to the United States has been characterized by two features: (1) its massive scale and (2) the large share of illegal migration (around one-half of the total flow, although this share has varied over time).⁴ As a result, the Mexican population in the United States has historically been highly vulnerable to abuses by US employers, US society, and, in some instances, US government policy. In light of these abuses, Mexican government policy has and continues to emphasize the defense of migrants' basic human rights regardless of legal status. When bilateral negotiations and advocacy with the US government have proved ineffective,⁵ Mexico has pursued this agenda in multilateral forums such as the United Nations, where it was a leading proponent in the drafting and adoption of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Their Families.⁶ More recently, the government has shifted its approach to the defense of the rights of Mexicans in the United States to one of so-called soft power, focusing on public diplomacy and community organizing.⁷

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2 For a review of Mexican migration legislation, see Instituto Nacional de Migración (INM), ed., *Compilación Histórica de la Legislación Migratoria en México, 1821-2002* (Mexico City: INM, 2003).

3 Instituto Nacional de Estadística y Geografía (INEGI), *Los Extranjeros en México* (Aguascalientes, Mexico: INEGI, n. d.), www.inegi.gob.mx/prod_serv/contenidos/espanol/bvinegi/productos/estudios/sociodemografico/ext_en_mex/extraen_mex.pdf.

4 While the number of *braceros* contracted during the program's early years was modest, eventually an annual average of more than 200,000 Mexicans were employed through the initiative; meanwhile, a similar estimated number of migrant workers found jobs outside the formal program.

5 For a general overview of the migration relations between the two countries, see Francisco Alba, "Respuestas mexicanas frente a la emigración a Los Estados Unidos" [Mexican Responses Regarding Emigration to the United States], in *Los grandes problemas de México, Vol. III: Migraciones internacionales* [Mexico's Great Problems, Vol. III: International Migration], eds. Francisco Alba, Manuel Ángel Castillo, and Gustavo Verduzco (Mexico City: El Colegio de México, 2010). In English, see Francisco Alba, "Rethinking Migration Responses in a Context of Restriction and Recession: Challenges and Opportunities for Mexico and the United States," *Law and Business Review of the Americas* 16, no. 4 (2010): 659–72; and Francisco Alba, "Mexico: A Crucial Crossroads," *Migration Information Source*, February 2010, www.migrationinformation.org/Profiles/display.cfm?ID=772.

6 The convention has been ratified by 45 countries, mostly migrant-sending countries.

7 See Aaron Terrazas and Demetrios G. Papademetriou, "Reflexiones sobre el compromiso de México con Estados Unidos



Mexico's legislative framework governing migration policy during most of this period was the 1974 general population law (*Ley General de Población*), drafted as the country's policymakers sought to simultaneously address the then-pressing challenges of rapid population growth, insufficient employment creation to keep pace with demographic change, and deal with the usual concerns regarding unauthorized movements.⁸ For instance, the law required that departing Mexican nationals demonstrate that they had been authorized to enter another country and that departures occurred through authorized ports of entry/exit. In reality, these provisions proved difficult to implement and likely encouraged Mexicans seeking opportunities abroad to avoid formal channels. The law's provisions on *immigration to Mexico* prioritized family-based admissions and included relatively restrictive provisions on employment-based admissions. More importantly, the law provided a significant degree of administrative discretion to government officials.

B. Conflicting Demands on Migration Management

Despite the very visible role of migration in Mexican foreign policy during the 1970s and the first half of the 1980s, migration did not attract the same level of interest in Mexico from the rest of the government or the general public. This status quo changed in the 1980s, as three developments reoriented Mexican public policy in the area of migration:

- Enactment in the United States of the *Immigration Reform and Control Act* (IRCA) in 1986
- The inflow of Central Americans seeking refuge from that region's civil wars
- A drive toward economic liberalization and, eventually, North American economic integration, following Mexico's 1982 economic crisis.

Historically, the southern border areas of Mexico had maintained close economic relations with the border regions of Guatemala and Belize; cross-border flows of goods and people were common, and the region was widely considered an integrated economic entity. However, the border gained a practical importance as civil war erupted in Guatemala and other parts of Central America. Between 1981 and 1983, an estimated 200,000 Guatemalans sought refuge in Mexico (only 46,000 were officially registered with the United Nations High Commissioner for Refugees [UNHCR]). For the most part, Guatemalan refugees remained in Mexico's southern border states, but many eventually settled and remained in Mexico after the return of democracy to Guatemala in 1983 and the end of violence in 1996. (Mexico's first general law on asylum was enacted in 1990.)

When peace returned to the region, the cross-border economic activity that characterized the prewar period resumed and intensified. Following the recommendations of bilateral consultations between the Mexican and Guatemalan governments, Mexico instituted a series of reforms to facilitate and legalize these cross-border movements. In 1989 the Mexican government created short-term multiple-entry visitor visas allowing Guatemalans residing in border regions to enter Mexico's southern border region (known as the *Forma Migratoria de Visitante Local*, FMVL). In 1997 these visas were expanded to include agricultural workers (*Forma Migratoria de Visitante Agrícola*, FMVA) and in 2008 to include general laborers (*Forma Migratoria de Trabajador Fronterizo*, FMTF).⁹ The visas vary in the amount of time they

en materia de migración, con énfasis en los programas para las comunidades de mexicanos en el exterior" [Reflections on Mexico's Engagement with the United States on Migration with an Emphasis on Programs for Mexicans Abroad] in *Mexicanos en el exterior: Trayectoria y perspectivas, 1990-2010* [Mexicans Abroad: Evolution and Perspectives, 1990-2010], ed. Secretaría de Relaciones Exteriores (SRE) (Mexico City: SRE, 2010).

8 A comprehensive description of migration laws and regulations in force at the start of 2011 can be found in the section on Mexico in Organization of American States, *Migración Internacional en las Américas: Primer Informe del Sistema Continuo de Reportes de Migración Internacional en las Américas (SICREMI), Informes Nacionales* [International Migration in the Americas: First Report from the Continuous Reporting System on International Migration in the Americas (SICREMI), National Reports] (Washington, DC: Organization of American States, 2011).

9 Juliana Díaz Mansilla and Luisa Fernanda, "Frontera sur de México: políticas regionales para la protección de los derechos a la salud, al trabajo y a la identidad de las mujeres migrantes" [Mexico's Southern Border: Regional Policies for Protecting



allow a migrant to remain in Mexico, the degree to which the visa holder can engage in profitable activity, and the areas where the visa is valid. For the most part, however, these visas are valid only in Mexico's southern border states and are designed to control the movement and activities of Central American migrants.

Mexico's policy of normalizing cross-border flows faced new challenges when the humanitarian and, initially, local movements from Guatemala and other Central American countries into Mexico began to incorporate themselves into the much larger flows of Mexicans northward toward the United States. While most Mexican migration to the United States historically originated from the central highland states — such as Jalisco, Michoacán, and Zacatecas — by the early 1990s Mexicans from the southern states of Oaxaca, Chiapas, Veracruz, Guerrero, and others began to migrate northward as well. Central Americans who had settled in southern Mexico increasingly accompanied Mexicans on the journey to the United States.

Around the same time and in the context of preparations for the entry into force of the North American Free Trade Agreement (NAFTA), the Mexican government adjusted its provisions governing legal immigration. In particular, the reforms aimed to facilitate the entry of business visitors, investors, technicians, and professionals (especially those from the United States and Canada). Another, notable, result of closer integration with the United States and Canada was that Mexico's northern partners increasingly pressured the country to limit the movement of Central Americans toward the US border.

In the context of preparations for the entry into force of NAFTA, the Mexican government adjusted its provisions governing legal immigration.

In response to the growing flow of Central Americans, Mexico expanded the sanctions associated with irregular entry into Mexico and increased the requirements for the granting of tourist visas for nationals of various Latin American countries, including Guatemala, El Salvador, Honduras, and Nicaragua. Mexican consulates accredited to these countries began asking that Central Americans seeking to visit Mexico demonstrate economic solvency (similar to the threshold required by US consulates in the region). Moreover, although Mexican law had provisions for transit visas, Mexican authorities in Central America began requiring that Central Americans transiting through Mexico hold a valid visa to enter their final destination. These measures were clearly designed to stem the flow of Central Americans northward, but instead encouraged Central Americans to enter Mexico via irregular channels and to rely more on human smugglers.

Most recently, the Mexican government's direct assault on drug trafficking and criminal organizations has inadvertently increased insecurity and violence across the country. This generalized violence adds to the risks that migrants encounter crossing Mexico; some have been the direct targets of criminal groups seeking extortion rents. For instance, the transnational criminal groups known as *maras* (MS-13 among others) — initially formed by criminals deported from the United States, and now active throughout North and Central America — have taken a prominent role in kidnapping and extorting protective services from

Women Migrants' Health, Work, and Identity] in *Mujeres migrantes en el Soconusco. Situación de su derecho a la salud, a la identidad y al trabajo*, Primera edición [Women Migrants in Soconusco: The State of their Right to Health, First Edition], eds. Nancy Perez García and Genoveva Roldán Dávila (Mexico City: Iniciativa Ciudadana y Desarrollo Social, A.C., 2011).



migrants crossing Mexico.¹⁰ There is some debate over the degree to which drugs, arms, and other illicit flows travel through the region along the same avenues as migrants, but there is clearly some overlap. While abuses against migrants at the hands of both public and criminal agents have been a longstanding risk of Central American transmigration through Mexico, there is a distinct sense that the journey has become more dangerous since the Mexican government began to confront organized crime.

C. An Outdated Institutional Framework

Until the 1980s, the small number of immigration enforcement actions in Mexico was managed on a virtually case-by-case basis by a practically invisible General Directorate on Migration Services within the Interior Ministry (Secretaría de Gobernación, SEGOB), which issued extremely discretionary guidance and decisions.¹¹ By the early 1990s, however, it became obvious that this ad hoc structure was inefficient and unsustainable. In response, the government created the National Migration Institute (Instituto Nacional de Migración, INM) as an autonomous agency within SEGOB responsible for the development and administration of the country's migration policy. As security came to dominate migration policy in Mexico, INM was incorporated into the Mexican National Security Council in 2005.

Since its inception, INM has grown considerably in size and responsibilities. Between 2000 and 2011 the number of INM detention centers doubled from 22 to 50;¹² and INM's total budget grew by two-thirds, from about \$90 million to \$151 million, between 1999 and 2010.¹³ Between 2001 and 2006, the number of detentions of migrants by INM increased from 151,000 to 183,000.¹⁴

Migrants who transit through Mexico without proper documentation follow relatively well-known routes. Thus, they can be stopped anywhere, not only along or near Mexico's southern border. Detention centers are also scattered along these same routes, even though they are more numerous in cities and localities in the southern and northern states. Repatriation is most often done overland. The functioning of detention centers and repatriation operations are the responsibility of the Migration Control and Verification Coordination as well as of the INM Regional Delegations.¹⁵

10 In general, Central American countries do not have effective policies for the reception and reintegration of deported persons with criminal backgrounds. The programs that do exist — such as the Welcome Home Program (Programa Bienvenido a Casa), implemented by the US and Salvadoran governments — have had limited results.

11 For a review of the historical evolution of the Mexican government institutions responsible for migration affairs, see INM, "Antecedentes del Instituto Nacional de Migración," n. d., www.inm.gob.mx/static/Centro_de_Estudios/Biblioteca_Digital/98.Antecedentes_INM.pdf.

12 The term *estación migratoria* is roughly translated as "detention center," although, unlike in the United States, such centers have many more functions than holding unauthorized immigrants pending deportation.

13 In 2010 dollars. Peso values adjusted using annual average exchange rate for the reference year. 1999 value from Secretaría de Crédito y Hacienda Pública, Subsecretaría de Egresos, "El Presupuesto de Egresos de la Federación 1995-2000," September 2000, www.shcp.gob.mx/EGRESOS/PEF/pef/1995_2000/pef19952000.pdf; 2010 estimate from Universidad Autónoma de Nuevo León, *Programa Anual de Evaluación 2010: Programa de Servicios Migratorios en Fronteras, puertos y Aeropuertos* (Monterrey, Mexico: Universidad Autónoma de Nuevo León, 2010), www.inm.gob.mx/static/transparencia/programa/PAE_2010_INM.pdf.

14 Eventos de aseguramiento. INM, *Boletines de Estadísticas Migratorias* (Mexico City: INM, various years).

15 For a critical view of these centers' operation, see, among others, Comisión Nacional de los Derechos Humanos de México [Mexican National Human Rights Commission] (CNDH), *Informe especial de la Comisión Nacional de los Derechos Humanos sobre la situación de los derechos humanos en las estaciones migratorias y lugares habilitados del Instituto Nacional de Migración en la república mexicana* (Mexico City: CNDH, 2005), www.cndh.org.mx/lacndh/informes/espec/estmigrat.htm; Sin Fronteras IAP, *Situación de los derechos humanos de las personas migrantes y solicitantes de asilo detenidas en las Estaciones Migratorias de México, 2007-2009*, Primera edición (Mexico City: Sin Fronteras IAP, 2009); Sin Fronteras IAP, *Perspectiva jurídica y social de la detención de migrantes en Iztapalapa, Distrito Federal y Tenosique, Tabasco* (Mexico City: Sin Fronteras IAP, March 2011).



The rapid growth of INM has led to unavoidable challenges:

- **Underinvestment in physical and human capital.** The agency has been criticized for underinvesting in facilities and the professionalization of its workforce. According to publicly available Mexican government budget documents, the majority of INM agents have annual salaries between \$8,000 and \$14,000 — placing them at the bottom tier of the Mexican middle class.¹⁶
- **Abuses by INM agents.** INM has come under renewed scrutiny as abuse, extortion, and violence against migrants transiting through Mexico have gained public visibility, and in light of evidence that INM agents and officials are sometimes complicit in these abuses.
- **Limited capacity to sanction abuses.** Abuses of migrants by INM officials are widely perceived to extend beyond a handful of corrupt agents and to instead reflect systemic challenges — notably, limited capacities to investigate, prosecute, and punish offenders. In the handful of cases where the agency has followed up on complaints of abuses by its agents, prosecution has been mishandled.
- **Jurisdiction conflicts with other public security forces.** Agents of other public security forces in Mexico (e.g., state and local police agents) have occasionally undertaken immigration control, verification, and detention operations, despite the fact that only INM agents are authorized to enforce immigration laws. Since state and local police agents are not trained to enforce immigration laws, abuses and errors are common.

Partly as a result of these persistent challenges, INM ranks low in public trust and credibility: several legislators and civil-society groups actively oppose the expansion of INM's resources or responsibilities; some have even called for its dissolution.¹⁷ However, there is evidence that INM is trying to improve its public image and, in doing so, gradually becoming more effective. Between August 2010 and May 2011, INM sanctioned or dismissed 200 agents for crimes against migrants; by contrast, during the entire six-year term of President Vicente Fox (2000-06), a total of 193 INM agents were sanctioned for corruption.¹⁸

D. Civil Society's Role as Advocate for Migrants' Rights

Mexican civil-society groups have played a powerful role in advocating in defense of migrants' rights and, in many instances, are the main providers of humanitarian assistance and legal services to migrants detained in Mexico. Prior to the 1980s, Mexican civil society had not organized around the issue of migrants' rights, but the wartime inflow of Central American refugees provided an impetus for mobilization. New groups were established, but perhaps more critically, existing civil-society organizations (CSOs) assumed the mantle of defender of migrants' rights.

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) has played a prominent role in the defense of migrants. Initially an autonomous agency within SEGOB, CNDH became fully independent of the government by the late 1990s. Since the mid-1990s, the commission has published periodic reports on the conditions of Mexican migrants in transit, including abuses encountered. In 1995, the commission issued its first report on the state of human rights of Central Americans crossing the country's southern border.¹⁹ The report confirmed what many advocates had

16 Estimated from salaries reported for "Agente Federal de Migración C" and "Agente Federal de Migración B" in the Mexican government's 2012 budget, www.apartados.hacienda.gob.mx/presupuesto/temas/pef/2012/temas/tomos/04/r04_appcd.pdf. Salaries converted into US dollars at current exchange rates.

17 Ricardo Gómez and Julián Sánchez, "Solalinde pide desaparecer el Instituto de Migración" [Solalinde Calls for the Disappearance of the Migration Institute], *El Universal*, August 2, 2011, www.eluniversal.com.mx/nacion/187664.html. The article quoted a Catholic priest, Alejandro Solalinde, who runs a shelter for migrants in the state of Oaxaca.

18 "Enfrentan proceso 40 agentes de INM," *Reforma*, May 16, 2011, www.terra.mx/noticias/articulo/1111466/Enfrentan+proceso+40+agentes+de+INM.htm.

19 CNDH, *Informe sobre violaciones a los derechos humanos de los inmigrantes — Frontera Sur, Primera Edición* [Report on



long suspected — that Central Americans were crossing Mexico in a virtual state of lawlessness and had little confidence in public authorities. The report offered a series of recommendations, including the creation of special protection forces in the southern border region (similar to Beta Groups in the northern border region).²⁰ By 2005, as human-rights violations committed against migrants in transit continued to escalate, the commission created a new special inspector general to monitor the human-rights conditions for transmigrants and to combat human trafficking.

III. Migration Policy in Guatemala, El Salvador, and Honduras

A. Background

In contrast to Mexico, where migration to the United States is a longstanding historical phenomenon, large-scale migration from Central America to the United States is more recent.²¹ Prior to the last quarter of the 20th century, Central American migration was mostly an intraregional phenomenon: local cross-border movements were common but longer-distance movements comparatively rare. The civil wars that engulfed the region starting from the late 1960s and 1970s changed this status quo.²² At first refugees sought protection in neighboring border regions — particularly in Mexico’s southern border region. (A relatively small number of refugees were resettled outside the region.) Over time these refugees came into contact with Mexicans seeking opportunities in the United States and became incorporated into the broader flow northward.

*Large-scale migration from Central America
to the United States is more recent.*

After peace returned to Central America in the 1990s, the process of economic migration initiated during the civil wars became self-reinforcing and attained unprecedented dimensions. Although the data are unreliable, particularly for the early years, the numbers of detentions (*aseguramientos*) and deportations (*repatriaciones*) performed by Mexican migration authorities have generally increased.²³ The composition

Human Rights Violations Committed against Immigrants: Southern Border, First Edition] (Mexico City: CNDH, April 1995).

20 Beta Groups (Grupos Beta) were established in Mexico’s northern border region in the early 1990s

21 See Kate Brick, A. E. Challinor, and Marc R. Rosenblum, *Mexican and Central American Immigrants in the United States* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/MexCentAmimmigrants.pdf.

22 Nicaragua has consolidated its reputation as a country of origin for South-South migration; to date the majority of its emigrants go to neighboring Costa Rica. Other cross-border movements have emerged among Nicaragua, El Salvador, and Honduras. Abelardo Morales Gamboa, *La Diáspora de la Posguerra: Regionalismo de los Migrantes y Dinámicas Territoriales en América Central* [The Post-War Diaspora: The Regionalism of Migrants and Territorial Dynamics in Central America] (San José, Costa Rica: Latin American Faculty of Social Sciences, 2007); José Luis Rocha, *Expulsados de la globalización*, Primera edición [Expelled from Globalization, 1st Edition] (Managua, Nicaragua: Institute of Nicaraguan and Central American History, Universidad Centroamericana [IHNCA-UCA], 2010).

23 It is important to keep in mind that these indicators are imperfect measures. They record actions carried out by migration authorities, and do not necessarily reflect the evolution of the flow. These data increased up to the year 2005, with estimates on the order of more than 225,000 events; since then, a downward trend was observed (around 65,000 events in 2010). There is some debate over the causes of this decrease, which began before it was possible to refer to the effects of the financial crisis in the United States. Ernesto Rodríguez Chávez, Salvador Berumen Sandoval, and Luis Felipe Ramos Martínez, *Migración centroamericana de tránsito irregular por México. Estimaciones y características generales* [Irregular Central American Transit Migration through Mexico: Estimates and General Characteristics] (Mexico City: Center for Migration



of the flow has evolved over time: while Guatemalans are the most numerous, Hondurans recently replaced Salvadorans as the second-largest group of migrants detained by Mexican authorities. Despite these trends, there is also substantial evidence that many Central Americans are succeeding in crossing Mexico: the number of Central Americans from Guatemala, Honduras, and El Salvador deported by US authorities increased by 89 percent between 2005 and 2010, albeit in a general context of increasing deportations.²⁴

According to the 2009 *Survey of Migration on Mexico's Southern Border* (*Encuesta de Migración en la Frontera Sur de México*), about 61,000 nationals of Guatemala, Honduras, and El Salvador were deported from Mexico in 2009.²⁵ While over half of the Guatemalans were destined for Mexico, a small share of the Hondurans (2 percent) and Salvadorans (15 percent) intended to remain in Mexico. Hondurans reported

spending between two weeks and one month in Mexico while most Guatemalans and Salvadorans spend less than a week in the country. The border crossing at Tecún Umán (near the Mexican city of Tapachula on the Pacific coast) was the most common border crossing among Hondurans (50 percent) and Salvadorans (69 percent), while about one-third of Guatemalans crossed at Tecún Umán and another third crossed at La Mesilla, about 100 miles further inland. Hondurans were much more likely than Guatemalans and Salvadorans to rely on traffickers to enter Mexico.

B. Migration Policies in Central America

Despite important improvements over the past two decades, governments in Central America continue to be characterized by weak public administrations, ad hoc decision-making, and an underdeveloped policy infrastructure.²⁶ This section reviews the state of migration legislation in the region. First, it should be noted that there is a wide gap between legislative aspirations and on-the-ground realities. A general lack of specificity in the laws leaves ample scope for government discretion. Corruption, abuse, and irregular application of the laws are common.

I. Guatemala

Guatemala's current legislative framework governing migration was enacted in 1998 and establishes standard procedures for the entry and exit of foreigners, temporary and permanent residents, and the detention and deportation of violators.²⁷ Functional responsibilities lie with a General Directorate for Migration Affairs within the Interior Ministry (Ministerio de Gobernación). Since 2004 nationals of Guatemala, El Salvador, Honduras, and Nicaragua (known as the CA-4 countries) have had the right to move freely throughout the member countries without a passport. However, the CA-4 agreement does not grant work authorization, and nationals of CA-4 countries found working illegally in another member country can be deported.²⁸ In 2009 Guatemala deported 584 individuals, mostly from Nicaragua (32 percent), El Salvador (26 percent), and Honduras (23 percent).

In general, Guatemala's migration legislation has been criticized for the high level of discretion that it

Studies, National Migration Institute, Ministry of Interior; 2011), www.inm.gob.mx/static/Centro_de_Estudios_Investigacion/APUNTES_N1_Jul2011.pdf.

24 Ibid, 4; US Department of Homeland Security (DHS), *Yearbook of Immigration Statistics*, various years (Washington, DC: DHS, various years), www.dhs.gov/files/statistics/publications/yearbook.shtm.

25 Government of Mexico, *Informe del Estado Mexicano sobre Secuestro, Extorsión y Otros Delitos Cometidos contra Personas Migrantes en Tránsito por Territorio Mexicano*, Anexo 4 (Mexico City: Government of Mexico, 2010): 80, www.seguridadcondemocracia.org/administrador_de_carpetas/migracion_y_seguridad/pdf/INFORME%20MIGRANTES-CIDH.pdf.

26 Hugo Beteta, *Central American Development: Two Decades of Progress and Challenges for the Future* (Washington, DC: Migration Policy Institute, 2012), www.migrationpolicy.org/pubs/RMSG-CentAmDevelopment.pdf.

27 See República de Guatemala, "Ley de Migración," www.migracion.gob.gt/index.php/migracion/marco-juridico/ley-de-migracion; and República de Guatemala, "Reglamento de la Ley de Migración," July 20, 1999, www.migracion.gob.gt/images/documentos/reglamentodemigracion.pdf.

28 Dirección General de Migración (DGM), República de Guatemala, *Anuario Estadístico: Información y análisis de los eventos migratorios relevantes* (Guatemala: DGM, April 2010), www.migracion.gob.gt/index.php/estadisticas.



grants to government officials, corruption among migration officials, and for the limited attention it affords to protection of migrants' rights.²⁹ For instance, standard deportation procedures in the country do not allow migrants to contest government decisions. Recent proposals to reform Guatemala's migration legislation aim to create an autonomous migration agency within the Interior Ministry (similar to the reforms enacted by Mexico in the early 1990s) and to establish a law enforcement agency mandated with enforcing immigration law.³⁰ (Under the current framework, the National Civilian Police enforce immigration law.)

2. El Salvador

The basic law governing migration in El Salvador was first enacted in 1958 and updated in 1993 and 2004.³¹ Most of the law's provisions are standard, although unlike migration laws elsewhere in the region, it contains provisions for the entry of seasonal agricultural workers from other Central American countries. Responsibility for migration affairs is housed within the Justice and Public Security Ministry of El Salvador. There are no institutional reforms pending.

Of the three Central American countries examined in this report, El Salvador arguably has the most sophisticated migration controls. An advanced passenger information system allows migration authorities to compare airline passenger lists against criminal records, digitized passports are used at air and land ports of entry, and there is a well-developed plan to control border regions. As a result, in 2009, Salvadoran authorities were able to prevent the entry of 11,109 inadmissible individuals and deport 330 nationals — most of them Nicaraguans and Hondurans.³²

3. Honduras

During the 1980s, Honduras was a major destination country for refugees fleeing violence elsewhere in the region. However, over the past two decades, the foreign-born population of Honduras has declined dramatically, from 270,000 in 1990 to 24,000 in 2010.³³ Honduras's main immigration law was enacted in 2004, and responsibility for migration policy was delegated to the Ministry of Justice and the Interior (Secretaría de Gobernación y Justicia). The law contains standard provisions, including fairly strict limits on the permanent entrance of foreigners. Meanwhile, according to some reports, the country's immigration agents are highly corruptible, and individuals linked to international criminal organizations have been able to obtain Honduran nationality to avoid prosecution elsewhere.³⁴

4. International Treaties

Despite limited institutionalization of migration policies in Central America, the countries of the region have been responsive to international commitments in the field. Guatemala, El Salvador, and Honduras are all parties to the UN Convention Relating to the Status of Refugees and received technical support from UNHCR during the humanitarian crises that affected the region during the 1980s.

More recently, approval in the United Nations of the International Convention on the Protection of

29 Mesa Nacional para la Migraciones en Guatemala, "Boletín Electrónico de Información y Análisis," August 2009, www.seguridadcondemocracia.org/administrador_de_carpetas/migracion_y_seguridad/pdf/hacia_una_reforma_migratoria_en_Guatemala.pdf. The authors thank Línely Cruz Clavería of the Migrants Commission of the Guatemalan Congress for providing background information for this section.

30 See Comisión de Migrantes, Congreso de la República de Guatemala, "Exposicion de Motivos," accessed October 16, 2012, www.comision-migrantes.info/wp-content/uploads/2009/12/INICIATIVA-DE-LA-NUEVA-LEY-NACIONAL-DE-MIGRACION4.pdf.

31 See Agencia de la ONU para los Refugiados (ACNUR), "Ley de Migración, Decreto Legislativo N° 2772, del 19 de diciembre de 1958, publicado el 23 de diciembre de 1958," www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/1943.

32 Ministerio de Justicia y Seguridad Pública, *Memoria de Labores 2009-10* (San Salvador: Ministerio de Justicia y Seguridad Pública, 2011), www.seguridad.gob.sv/MemoriaLabores2010/Memoria_Labores_2010.html.

33 UN Population Division.

34 James Bosworth, "Honduras: Organized Crime Gained Amid Political Crisis," in *Organized Crime in Central America: The Northern Triangle*, eds. Cynthia Arnson and Eric Olson (Washington, DC: Woodrow Wilson International Center for Scholars, 2011).



the Rights of All Migrant Workers and Their Families opened another space for debate as well as an opportunity for addressing migrants' rights. The ratification of the convention by Guatemala and El Salvador permitted the instrument to reach the necessary number of ratifications to enter into force in July 2003; Honduras ratified the convention in 2005. Since entering into force, the member countries have committed to comply with the convention's requirements, such as the periodic submission of reports to the UN Committee on Migrant Workers. In general, these reports have focused on the rights abuses encountered by transit migrants but have overlooked the conditions of migrants from other Central American countries despite frequent complaints from civil-society organizations regarding the conditions that detained migrants encounter in local detention centers as well as abuses by local authorities.

IV. Migration Issues in Intraregional Relations

Since migration emerged as a regional challenge in the 1980s, the issue has occupied a key place in Mexico's bilateral relations with its Central American neighbors. As the characteristics of regional migration flows have evolved, collaborative responses (or attempts there at) have multiplied. Mexico has signed agreements with Central American governments for the orderly and secure repatriation of nationals from those countries,³⁵ as a way of extending the concept of shared responsibility for the flows crossing the southern border. Additionally, initiatives on migration cooperation have been promoted within the framework of the Regional Conference on Migration (RCM). In general terms, while these agreements contain an important humanitarian component, they also typically oblige signatories to accept the involuntary return (i.e., deportation) of their nationals.

Since migration emerged as a regional challenge in the 1980s, the issue has occupied a key place in Mexico's bilateral relations with its Central American neighbors.

The Evolution of Regional Cooperation

Mexican cooperation with Central America has evolved rapidly over the past two decades, often in a reactive and ad hoc fashion.³⁶ During the 1970s Mexican foreign policy experts considered the United States to be Mexico's only meaningful bilateral diplomatic partner.³⁷ However, the civil wars and refugee crises of the 1980s changed this predominant viewpoint and the Mexican government began paying greater attention to Central America. The Contadora Group — a joint initiative of the Colombian, Mexican, Venezuelan, and Panamanian governments in the early 1980s — aimed to contribute to the re-establishment of peace and political stability in Central America. Migration coordination has also taken a leading role since the late 1990s.³⁸

35 In 2002 and 2004 agreements were signed with Guatemala and in 2005 with El Salvador. In 2006 a Memorandum of Understanding on Repatriations was signed with the CA-4 Group. Given the fact that the prior memorandum had been in force for three years, in 2009 another Memorandum of Understanding on the Dignified, Orderly, Swift, and Secure Overland Repatriation of Central American Nations was signed between Mexico and the governments of Guatemala, Honduras, El Salvador, and Nicaragua.

36 Mónica Carreón Diez, Rodolfo Córdoba, and Luis Herrera-Lasso, "Frontera Sur de México: migración y seguridad," in *México, país de migración*, ed. Luis Herrera-Lasso (Mexico City: Siglo XXI Editores, 2009), 227–57.

37 Rosario Green, "México: la política exterior del nuevo régimen," in *Continuidad y cambio en la política exterior mexicana*, ed. Centro de Estudios Internacionales (Mexico City: El Colegio de México, 1977).

38 Comisión Mexicana para la Cooperación con Centroamérica, *La Cooperación Mexicana con Centroamérica, 1991-1995* (Mexico



Bilateral cooperation. In the 1980s the Mexican government began establishing specialized mechanisms to coordinate migration policy with Central American governments, particularly Guatemala, through the Binational Commission in 1986. At that time, the issue of Guatemalan refugees in Mexico dominated the bilateral agenda and was therefore the primary focus of bilateral cooperation. In 1989 the Binational Sub-commission on Migration Issues was created as a specific space within the commission to address topics beyond the humanitarian crisis — for instance, temporary agricultural workers and the beginnings of large-scale illegal transit migration. In 2002 the ad hoc Group on Temporary Guatemalan Migrant Workers was created to focus on temporary agricultural workers in Mexico’s southern border region.

The Regional Conference on Migration. In 1996 Mexico hosted the first meeting of the multilateral group known as the Regional Conference on Migration (RCM), at the time referred to as the Puebla Process. The RCM is an intergovernmental forum at the vice-ministerial level that meets annually and serves as a forum for the exchange of information, coordination, and cooperation on migration issues.³⁹

A preliminary evaluation of RCM’s activities roughly identified two stages:

- From its creation through 2002, RCM developed an agenda that prioritized three issues: (1) the protection of migrants’ human rights, (2) the relationship between migration and development, and (3) technical cooperation toward the management of regional migration flows.
- The September 11, 2001, terrorist attacks in the United States modified RCM’s agenda. From the following year, RCM’s focus shifted to illegal migration, the war against terrorism, organized crime, and human trafficking.

High-level groups. Border areas are uniquely prone to violence and illicit activity; Mexico’s border regions require special policy attention. With an eye toward confronting terrorism and organized crime, as well as combating crimes linked to migration and illicit traffic in merchandise, Mexico, Guatemala, and Belize created a mechanism called the High-Level Group on Border Security (GANSEF is its Spanish-language acronym) in 2002. Since then, the group has met periodically to review its strategies targeting border control.⁴⁰

The CA-4 and Central American regional integration. As a consequence of the Central American countries’ efforts to advance regional integration under the auspices of the Central American Integration System (SICA), in 2002 and 2005 four nations — Guatemala, El Salvador, Honduras, and Nicaragua — ratified the agreement, known as CA-4, permitting their nationals to move throughout the territories of the other three countries with only an identification document. While the agreement grants intraregional mobility for a maximum of six months, it does not authorize the holder to work or carry out other profitable activities.⁴¹ In 2004 Mexico formally joined SICA as a regional observer state. Mexico’s participation thus far has focused on crime and violence, the narcotics trade, money laundering, human trafficking, and illegal arms sales rather than on migration.⁴²

City: Secretaría de Relaciones Exteriores [SRE], 1995), http://dgctc.sre.gob.mx/pdf/cmca_inventario1995.pdf; Comisión Mexicana para la Cooperación con Centroamérica y el Caribe, *La Cooperación Mexicana con Centroamérica y el Caribe 2003* (Mexico City: SRE, 2003), http://dgctc.sre.gob.mx/pdf/cmca_Informe2003.pdf; Comisión Mexicana para la Cooperación con Centroamérica y el Caribe, *La Cooperación Mexicana con Centroamérica y el Caribe 2006* (Mexico City: SRE, 2006), http://dgctc.sre.gob.mx/pdf/InformeCMCC_2006.pdf.

39 Currently, the conference is made up of the countries of North and Central America as well as the Dominican Republic; it also admits South American countries and representatives from a range of international organizations operating in the region in the capacity of observers.

40 Manuel Ángel Castillo, Mónica Toussaint, and Mario Vázquez, “Centroamérica,” in *Historia de las Relaciones Internacionales de México, 1821-2010*, vol. 2, ed. Mercedes de Vega (Mexico City: Archivo Histórico Diplomático/Secretaría de Relaciones Exteriores).

41 See *Acta de Acuerdos Carta del CA-4* [Minutes of the Charter Agreements of the CA-4] signed by the vice-ministers of the four countries at the SICA General Secretariat, San Salvador, El Salvador, May 11, 2000, based on a previous agreement of the presidents in April 1998, and *Acuerdo Regional de Procedimientos Migratorios CA 4 para la Extensión de la Visa Única Centroamericana: Alcances del Tratado Marco y la Movilidad de Personas en la Región* [Regional Agreement on CA-4 Migration Procedures for Extending the Single Central American Visa: Reaches of the Framework Treaty and the Mobility of Persons in the Region], Tegucigalpa, July 2005.

42 SRE, “Participación de México,” August 17, 2011, www.sre.gob.mx/index.php/sistema-de-la-integracion-centroamericana-sica/530.



Plan Puebla-Panamá. In 1998 the Mexican Ministry of Foreign Affairs created the Mexican Institute for International Cooperation, bringing together under a single agency the government’s collaborative activities with Central America and the Caribbean. Two years later, in 2000, the Mexican government launched a new policy based on the idea that Mexico and Central America constitute an area with common problems and interests. As a result, the 2001-02 Mesoamerican Cooperation Program was established with the Plan Puebla-Panamá (PPP) as its central component. The PPP initiative sought, among other aims, to generate employment and through it to reduce the pressure on its citizens to emigrate in search of better life opportunities. The plan focused on eight areas: energy, transportation, regional integration of telecommunications, tourism, commercial exchanges and regional competitiveness, human development, and sustainable development. It included several projects to advocate and manage migration reform in the United States.⁴³

The Mesoamerican Initiative. In 2007 PPP was rebranded as an effort to move forward toward the integration and development of Mesoamerica. Colombia also became part of this new initiative. The main projects have focused on infrastructure creation and making the region more competitive.

The Mérida Initiative. This plan, conceived as a comprehensive long-term strategy against transnational organized crime, was launched during an official visit of US President George W. Bush to Guatemala and Mexico in March 2007. The initiative allocates US funding and technical expertise to Mexico and Central America to build the region’s capacity to combat the transit of drugs, arms, people, and financial resources linked to criminal organizations. The initiative includes funding for training and capacity-building at Mexico’s INM. Initially, US cooperation with Central America was channeled through the Mérida Initiative (and overseen by the US Embassy in Mexico City), but in 2010, a separate funding stream for related activities in Central America was established under the auspices of the Central American Regional Security Initiative (CARSI).

V. Toward a New Migration Law in Mexico

A. Domestic and International Pressures to Update Migration Laws

Since the 1980s, there have been calls to update and modernize Mexico’s migration laws and regulations, mostly from civil-society organizations and migrants-rights groups within Mexico. For the most part, these proposals have advocated a more proactive government policy, but generally remained vague on implementation. By the early 2000s, however, more concrete legislative proposals had emerged in response to growing perceptions of flaws in the country’s migration policies. These critiques focused on three issues:

- The *high degree of discretion* with which migration authorities have historically acted — without clearly establishing criteria for the application of prevailing laws and regulations. As a result, many decisions verging on being arbitrary and are dealt with on a case-by-case basis.
- The *absence of participation by other executive agencies in the migration policy*. Since its inception, INM has dominated the development and implementation of Mexican migration policy with little input from other executive agencies whose areas of expertise are highly relevant to immigrants and transmigrants, for instance, the ministries of labor, health, and social security, and the children’s welfare agency (Sistema Nacional para el Desarrollo Integral de la Familia).

⁴³ Manuel Ángel Castillo and Mónica Toussaint, “Seguridad y migración en la frontera sur” [Security and Migration on the Southern Border] in *Los Grandes Problemas de México: Vol. XV, Seguridad nacional y seguridad interior* [Mexico’s Great Problems: Vol. XV, National Security and Internal Security], eds. Arturo Alvarado and Mónica Serrano (Mexico City: El Colegio de México, 2010).



- The *absence of checks and balances* in the legislative branch, in terms of its obligation to review the laws in force and oversee executive operations, and in the judicial branch, in terms of its responsibility to guarantee access to justice and due process in the cases of abuses committed against migrants, as well as to establish measures to provide redress for harms suffered by the victims.

Along with domestic advocates, external actors have also called for Mexico’s immigration laws and regulations to be updated. In recent years, Central American governments have dramatically increased their pressure and activism in defense of their nationals transiting through Mexico. For instance, during official visits the presidents of El Salvador and Guatemala have both raised the issue of migration, which has become a regular topic of bilateral discussions. In particular, they requested that due processes be completed for INM and local police agents accused of abuses against migrants. National and regional legislatures, notably the Regional Parliamentary Council on Migration (COPAREM), have also issued statements advocating reform, and Central American diplomats in Mexico have expanded their actions in the area of protection of their nationals in transit. The broader international community — including the UN Commission on the Rights of Migrant Workers and Their Families, the UN Special Rapporteur on the Human Rights of Migrants, and the Inter-American Commission on Human Rights — has also issued statements in favor of reforms.

In recent years, Central American governments have dramatically increased their pressure and activism in defense of their nationals transiting through Mexico.

In late 2010 and early 2011, these efforts culminated with the approval and enactment of a new migration law — the *Ley de Migración*. Most observers agree that the law moved through Congress extraordinarily rapidly, probably facilitated by the public outrage following the discovery in San Fernando, Tamaulipas, in August 2010 of the corpses of 72 Mexican, Central American, and South American migrants who presumably were killed by criminal organizations.⁴⁴ Congress approved the law unanimously, a practically unheard-of accomplishment given the country’s fragmented and highly politicized legislature.

B. Provisions of the 2011 Ley de Migración

At its signing, the *Ley de Migración* was presented by President Felipe Calderón as the most comprehensive advance in Mexican migration policy in 80 years.⁴⁵ Having been unanimously approved by Congress and broadly supported within the executive, the law is not only a sign of a general political consensus on the issue, but also an exercise in pragmatism and negotiation. While the law has generated high expectations in civil society, there remains substantial skepticism that meaningful on-the-ground changes will actually result.

The law identifies eight policy priorities, roughly corresponding to the priorities of the Mexican government in the area of migration management:⁴⁶

- Unrestricted respect for the human rights of migrants
- Coherence, comprehensive focus, a welcoming environment for migrants, and international solidarity

44 Initially 72 corpses were found; subsequent investigations uncovered additional victims, raising the total fatality count to 193.

45 President Felipe Calderón, Speech during the enactment of the Migration Law, Los Pinos Official Residence, Mexico City, Federal District, May 24, 2011.

46 Article 2.



- Facilitation of international mobility of persons
- Complementarity in labor markets
- Equity between Mexicans and foreigners
- Recognition of immigrants' rights
- Family unity and sociocultural integration
- Facilitation of Mexican emigrants' return and reintegration into society.

In addition to the above objectives, the law states that Mexico's migration policy should consider "Mexico's humanitarian tradition and its undeniable commitment to human rights, development, and national, public, and border security"⁴⁷ — considerations that, at times, can appear contradictory and will doubtlessly require the agencies mandated with its implementation to enjoy a degree of discretion as they prioritize certain objectives over others.

Regulations for the law were published in September 2012, and there remains substantial scope for revisions given the law's broad objectives. Only once the regulations have been operational for some time will the extent of the law become clear. Notably, the law maintains the current institutional structure of migration management, with INM retaining most policy and operational responsibilities. However, several reforms are already obvious:

Policy formulation. In the past, migration policy development was assigned to an interagency board namely the National Population Council (CONAPO), presided by the Secretary of SEGOB, and also including the Foreign Ministry, the Labor Ministry, and others. According to the new law, SEGOB and INM retain the primary responsibility for policy development, although in consultation with other agencies.⁴⁸

Visa categories. The new law eliminates the old distinction between immigrants and nonimmigrants and replaces them with four categories of foreigners:

- Visitors — no work authorization, valid up to 180 days
- Temporary residents — multiple-entry, four-year visa with the option of requesting work authorization
- Temporary resident students — multiple-entry, four-year visa for academic and vocational studies, research, and training
- Permanent residents — indefinite residence with the automatic right to work.

Transitions of permanent residency. In addition, the new law facilitates the process for transitioning from temporary to permanent residency, creates new identification cards for temporary and permanent residents, and establishes a point system for temporary residents who seek expedited access to permanent residency status.⁴⁹

⁴⁷ Ibid.

⁴⁸ Article 18 of the Migration Law establishes that "the Secretariat shall have the following functions in the area of migration: I. Formulate and direct the country's migration policy, taking into account the opinion of authorities which for this purpose are established in the Regulation, as well as the demands and positions of the other Powers of the Union, federative entity [i.e., states] governments, and civil society."

⁴⁹ For a global review of points systems, see Demetrios G. Papademetriou, "Selecting Economic Stream Immigrants through Points Systems," *Migration Information Source*, Migration Policy Institute, May 2007, www.migrationinformation.org/usfocus/display.cfm?ID=602.



According to some media reports, INM is considering granting visitor visas to migrants in transit with the aim of allowing them greater access to justice and legal protection.⁵⁰ However, such a policy would likely encounter opposition from the United States and Canada. In any event it remains to be determined exactly how INM will operationalize its new mandate to more comprehensively protect the rights of unauthorized transit migrants.

C. Domestic and International Implications

Civil society. Although much remains undetermined as the regulations governing the *Ley de Migración* are of such recency, the process that led to the law's revision set an important precedent. Legislators and government officials consulted civil-society organizations extensively regarding the priorities for reform. For example, during a series of interviews and dialogues between Mexican senators and civil society under the auspices of the August 2011 Peace Conference (Caravana Paso a Paso Hacia la Paz), the senators were very sympathetic and adopted several important recommendations from the CSOs, such as the right of transit migrants to contest cancellation of visas.

State governments. The enactment of the *Ley de Migración* appears to have served as a catalyst for similar reforms across the Mexican government and federal system. Although it is a prerogative of the federal level to legislate on migration matters — regulation and control — states can and have enacted laws and regulations regarding the protection of migrants' rights and relations with their diasporas. A bill has already been introduced at the state level in Tlaxcala with the aim of standardizing the states' regulatory frameworks on migration.⁵¹ Many observers hope that the new legislative framework will prompt state governments to re-evaluate their policies affecting migration management and allow for greater cooperation between the state and federal governments.

Relations with Central America. During the drafting of the law, Mexican government officials were receptive to suggestions from Central American governments. This has reduced diplomatic tensions and, more generally, generated goodwill.⁵² Several Central American countries lobbied openly for the law⁵³ and expressed their satisfaction upon its approval.⁵⁴ Still, the recent détente in bilateral relations will again be tested once regulations are published and INM is forced to decide between the written law's competing priorities. Give the high expectations of many Central American governments, it will be extremely difficult for the Mexican government to live up to the hopes of its southern neighbors.

Relations with the United States. In contrast with Mexico's relations with Central America, major repercussions are not foreseen in the country's relations with the United States. As previously mentioned, Calderón referenced the importance of coherence between Mexico's policy toward Central American migrants and its expectations for the treatment of Mexicans in the United States.⁵⁵ However, most

50 Fabiola Martínez, "Dará el INM opciones de visa a migrantes de Centroamérica" [The INM Will Provide Visa Options for Central American Migrants], *La Jornada*, August 15, 2011, www.jornada.unam.mx/2011/08/15/index.php?section=politica&article=017n1pol.

51 A bill has been presented in the state of Tlaxcala for a new *Ley de Atención y Protección a Migrantes y sus Familias* [Law on Attention to and Protection for Migrants and Their Families], which would repeal the *Ley de Protección a Migrantes de Tlaxcala* [Law on the Protection of Migrants from Tlaxcala] that was approved at the end of 2010 and entered into force in January 2011, because the concepts and provisions in the latter do not coincide with and are counter to the recently approved federal law. Juana Osorno Xochipa, "Tlaxcala analiza ley de protección a migrantes" [Tlaxcala Analyzes the Migrant Protection Law], *El Universal*, August 23, 2011, www.eluniversal.com.mx/notas/788078.html.

52 "Reconoce Honduras labor de Granier [Gobernador de Tabasco] a favor de migrantes" [Honduras Recognizes (Governor of Tabasco) Granier's Work in Favor of Migrants], *Milenio*, May 8, 2011, <http://impreso.milenio.com/node/9004045>.

53 By way of example, "Guatemala gestiona ante el Parlamento mexicano la aprobación de la ley migratoria" [Guatemala Negotiates the Approval of the Migration Law with the Mexican Parliament], article written by EFE News Agency with a dateline of Guatemala, April 16, 2011.

54 Lorena López, "México y El Salvador trabajarán unidos en pro de los migrantes" [Mexico and El Salvador Will Work Together in Support of Migrants], *Milenio*, June 21, 2011, <http://impreso.milenio.com/node/8979367>, a headline reflecting the trend of the conversations on the issue during the visit of President Mauricio Funes to Mexico.

55 Calderón, Speech during the enactment of the Migration Law; spot promoted by the Senate in July 2011.



observers agree that Mexican policymakers overestimate the degree to which such arguments will resonate in the United States.

D. Criticism

The law's most immediate challenge was the drafting of regulations, hardly an insignificant undertaking given its scope. With regulations recently issued, there will be an institutional learning curve as INM agents and other law enforcement officials must relearn procedures for enforcing immigration laws. Critically, the law represents an important shift for the Mexican government on the basic rights that unauthorized migrants in Mexico retain. Enforcing these changes could prove particularly difficult given the current climate of heightened security concerns and generalized violence. Many developing and emerging countries have a record of enacting ambitious and sweeping laws, but then failing to follow through with implementation, often because they lack the financial resources to fulfill their legislative aims. Some observers have expressed concerns that the same might happen in Mexico given the *Ley de Migración's* ambitious scope.

Moreover, despite its claims to be comprehensive, the law is uneven in addressing the various aspects of migration policy. At times, the text appears overly concerned with procedure at the expense of broader policy.⁵⁶ In some instances, the law is overly specific; in others, it remains vague. The degree of specificity and detail given to the transit migration phenomenon far exceeds the space and importance dedicated to the phenomena of immigration, emigration, and return. The extent to which the regulations will be capable of adequately addressing questions about discretion and the constitutionality of certain measures remains uncertain. Overall, there is a tension between flexibility and predictability in the law. On the one hand, INM agents must be given scope to rapidly respond to the specificities of each case; on the other, there must be a minimum threshold of coherence and uniformity in decision-making.

There will be an institutional learning curve as INM agents and other law enforcement officials must relearn procedures for enforcing immigration laws.

Perhaps the most compelling concern is about the real objectives of the *Ley de Migración*. The law is unambiguous in its defense of the rights of migrants irrespective of their legal status. This stance is typically viewed as a government response to public outrage and pressure from Central American governments, in light of growing evidence of abuses against migrants transiting through Mexico. However, more skeptical observers suspect that this unequivocal position might be as much a response to the human-rights situation of transit migrants in Mexico as it is a response to the situation of Mexican migrants in the United States.

As described above, Mexico's foreign policy has long sought to defend Mexicans in the United States from abuses. However, the Mexican government is often criticized — both in the United States and Mexico — for failing to live up to the standards it expects of the United States. According to this view, the *Ley de Migración* represents an attempt by the Mexican government to bring coherence to its own treatment of migrants and its expectations for the treatment of Mexicans abroad. During his speech at the signing of the law, Calderón

⁵⁶ An example of the above is the establishment of a system of points for the management of immigration to the country (Art. 57). However — and surprisingly — the law's articles provide few elements regarding the definition and guidelines of such a system, which in turn could guide the development of regulations.



claimed that he was convinced the law would reduce the vulnerability experienced by migrants in Mexico and was clear regarding his expectations that “the Mexican government is doing what we have requested for many years; for example, from the United States: decriminalize migration and pay attention more sensibly and sensitively to the complex reality we live.”⁵⁷

Echoes of this interpretation were also evident in comments in the Mexican Congress during the legislative debate on the law. During the legislative process, one of the most compelling arguments used to win votes was that the Mexican State’s migration policy should be coherent with the rights that it demands for its compatriots abroad.⁵⁸ Once the law was enacted, several themes resonated with the Mexican public and were repeated by policymakers, but one of the most prominent was the following: Now that the Mexican state’s new migration policy guarantees migrants’ rights in Mexico, the country can legitimately demand that the rights of its nationals abroad be protected.⁵⁹

In light of this purely political calculus, the *Ley de Migración* seems far less ambitious and far less visionary than often perceived. Instead, it is more akin to an answer without a master plan or a damage-control strategy that proposes partial answers to patch up an obsolete and dysfunctional system. Most experts agree that Mexico’s immigration policy should respond more to its domestic demographic and labor-market needs, development priorities, and institutional capacity rather than its foreign policy objectives. Indeed, there is compelling evidence that over the next one to two decades, Mexico could become an important permanent destination for immigrants — most likely from Central America.⁶⁰ The experiences of Southern European and East Asian countries suggest that policymakers in growing middle-income countries (such as Mexico) are often caught off-guard as their countries rapidly change from migrant-sending to migrant-receiving societies, and that policies and institutions lag substantially behind on-the-ground shifts.

57 Calderón, Speech during the enactment of the Migration Law.

58 Regarding this, see the article, Andrea Becerril and Víctor Ballinas, “El Senado aprueba *Ley de Migración*; no criminaliza a extranjeros indocumentados” [The Senate Approves Migration Law; Does Not Criminalize Undocumented Foreigners], *La Jornada*, February 25, 2011, www.jornada.unam.mx/2011/02/25/index.php?section=politica&article=015n1pol.

59 Such messages were part of radio and television advertising by the Senate of the Republic during the month of July 2011.

60 See, for instance, Aaron Terrazas, Demetrios G. Papademetriou, and Marc R. Rosenblum, *Evolving Demographic and Human Capital Trends in Mexico and Central America and their Implications for Regional Migration* (Washington, DC: MPI, 2011), www.migrationpolicy.org/pubs/RMSG-human-capital.pdf.



VI. Conclusion

For more than a quarter of a century, Mexico has found itself trapped between two worlds. On one hand, widespread experience with emigration and concerns regarding the vulnerability of Mexicans in the United States inspire a certain degree of tolerance of the hundreds of thousands of Central Americans who cross Mexican territory. As a result, Mexican policymakers are sensitive to the challenges of protecting migrants' human rights. On the other hand, the recent rise in insecurity as well as progressive economic integration with the United States (and the political pressures from the North that accompany this process) have prompted the Mexican state to formalize its migration legislation. Between these two ideals, Mexico confronts limited state capacity in terms of human and financial resources. The unavoidable contradiction of having one of the world's richest countries to the north, and some of the world's poorest countries directly to the south, is reflected in Mexico's migration policy.

The *Ley de Migración* attempts to close the gaps among the country's international commitments in the area of migration management, its moral aspirations, and the practical constraints of public resource allocation and the compromises necessary for policy implementation. As is often the case, lofty legislative aims are easily stymied by a lack of political will to ensure its strict application, lack of institutional capacity, and financial resource limitations. These challenges do not diminish the fact that the law represents an important advance and laudable achievement; but its mere existence does not resolve deeply rooted problems such as inefficiency, corruption, or a lack of institutional coordination. (For the most part, migration legislation in Central America is similarly aspirational and even more underdeveloped.)

The Ley de Migración represents an important advance and laudable achievement; but its mere existence does not resolve deeply rooted problems.

From the perspective of regional relations, it is highly probable that the *Ley de Migración* will become an important reference point in the discussion on migration in North and Central America. There are already indications which suggest that, at least initially, migration relations between the Central American countries and Mexico will enter a period of détente. But substantial unknowns remain, and the period of goodwill is likely to fade. Caught as it is between the interests of its northern and southern neighbors, Mexico now faces a serious dilemma: how far to facilitate or limit the transit migration of Central Americans. Some sort of middle ground is more likely. If the country is able to simultaneously limit Central American transit migration while making the process safer and more humane for Central American migrants, it will have succeeded in carefully managing a perilous balancing act.

Beyond the immediate concerns of transit migration, the *Ley de Migración* appears poorly equipped to address Mexico's long-term migration challenges. Policy typically lags structural change (such as demographic shifts), and there is little indication that Mexico's new law and existing institutional framework are capable of envisioning unexpected migration as an opportunity for regional competitiveness rather than as another disturbing intrusion.



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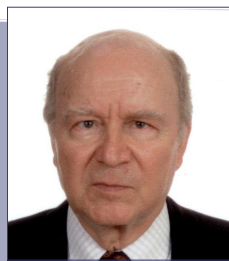
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