

BORDER OBSERVATORY:

THE U.S, MEXICO AND THE PERSECUTION OF MIGRANTS ON BOTH SIDES OF THE BORDER

“I think we would have been in a significantly worse position in McAllen [Tex.] and the Rio Grande Valley if it wasn’t for the work that Mexico was doing on their southern border.”

--Gil Kerlikowske, U.S Commissioner of U.S Customs and Border Protection 2014-2017 (during the Obama administration)¹

Mexico faces a potentially historic presidential election on July 1st, which may result for the first time in the victory of a center-left candidate, Andrés Manuel López Obrador. López Obrador does not represent either of the two political parties - the centrist Partido Revolucionario Institucional (Institutional Revolutionary Party or PRI, in power from 1929 through 2000 and again since 2012) and the center-right Partido Acción Nacional (National Action Party or PAN, in power between 2000 and 2012) which have dominated Mexican political life. Remarkably, given longstanding Mexican migration to the U.S., this is the first time that issues related to migrant rights have emerged as a major theme in presidential elections, primarily in response to President Trump’s rhetoric and policies.

The presidential debates have included the positioning of these issues as a central topic, particularly in the campaign’s second debate held in Tijuana on May 20th. Little of substance as to migrant rights issues was proposed by any of the candidates, other than a consensus that Mexican consulates should step up efforts in defense of Mexican nationals in the U.S and receive repatriated Mexicans and migrants in transit more generously and humanely. Suggestions were made that Mexico should exert leverage to demand greater protection for Mexican migrants in the U.S. in return for security cooperation and drug war efforts. But neither the candidate of the PRI (former foreign relations and treasury secretary José Antonio Meade) nor the candidate of a coalition led by the PAN (Ricardo Anaya, former president of the Chamber of Deputies) were held accountable during for failures to lead or support initiatives to defend migrant rights during their tenure, or for complicity in longstanding abuses against both Mexican migrants and migrants in transit.

Mexican citizens residing in the U.S. and elsewhere will participate as voters in the election in larger numbers than ever before. Regardless of who wins, a key test of the administration that will be inaugurated on December 1st will be its effectiveness in addressing the migrant rights issues highlighted below, part of the broader ethical and political imperatives for Mexico to overcome its crisis in human rights since the drug war became militarized under former President Felipe Calderón.

¹ Cited in https://www.washingtonpost.com/world/national-security/us-gathers-data-on-migrants-deep-in-mexico-a-sensitive-program-trumps-rhetoric-could-put-at-risk/2018/04/06/31a8605a-38f3-11e8-b57c-9445cc4dfa5e_story.html?utm_term=.167df85861ec; see also “Washington usa al gobierno mexicano para afinar sistemas de espionaje antimigratorio” por J. Jesus Esquivel, *Proceso* 2166 (6 de mayo 2018), p. 28-31: <https://www.proceso.com.mx/532984/washington-usa-al-gobierno-mexicano-para-afinar-sistemas-de-espionaje-antimigratorio>

The Trump administration has repeatedly asserted² Mexico's failure to act effectively to contain migration flows. In reality, Mexico and the U.S. have a long, though often hidden, history of cooperation on security issues dating back to the Cold War, which has recently included increasing collaboration on joint management (or "governance") of migration flows. This includes the transfer of the overall burden of immigration enforcement from U.S. to Mexican territory. In 2014, for the first time, the number of Central Americans deterred, detained and deported by Mexico exceeded those in the U.S., a trend which has persisted during the last four years.³

Mexico's increasing role in the deterrence and containment of migrants in transit towards the U.S. has been accompanied by large scale abuses of their rights through tens of thousands of forced disappearances ("kidnappings")⁴ and rampant sexual abuse and rape affecting between 60 and 80% of migrant women⁵. Also significant is the targeted killing of migrants in contexts such as the San Fernando (Tamaulipas) massacre, which claimed 72 victims from 6 countries in August 2010⁶; the mass graves discovered there in April 2011 with another 193 victims; as well as the Cadereyta (Nuevo León) massacre with 49 victims in May 2012⁷. Together, these actions may amount to "crimes against humanity" within the framework of the Rome Statute of the International Criminal Court.

There is no official count of the number of disappeared migrants in Mexico, but current estimates which include those victims of forced disappearances at some time but who have since been regained their freedom, vary between 70,000 and 120,000, based on special reports by the country's Comisión Nacional de los Derechos Humanos (CNDH, National Human Rights Commission) published in 2009 and 2011. The reports documented 9,758 cases between September 2008 and February 2009, and another 11,333

²<https://www.reuters.com/article/us-usa-immigration-trump/trump-urges-mexico-to-block-illegal-immigrants-from-el-salvador-idUSKCN1G71CM>; <https://www.nytimes.com/2018/04/03/us/politics/trump-border-immigration-caravan.html>; <https://www.reuters.com/article/us-trade-nafta-trump/trump-says-may-tie-mexican-immigration-control-to-nafta-idUSKBN1HU1ZE>; <http://time.com/4473972/donald-trump-mexico-meeting-insult/>; <http://fortune.com/2018/04/06/trump-rape-mexico-immigration/>

³ <https://www.wola.org/2015/05/assessing-the-alarming-impact-of-mexicos-southern-border-program/>; <https://www.wola.org/2015/06/mexico-now-detains-more-central-american-migrants-than-the-united-states/>; <https://www.wola.org/files/mxgt/report/>; <https://www.crisisgroup.org/latin-america-caribbean/mexico/addressing-migration-crisis-mexicos-southern-border>

⁴ <http://fundacionjusticia.org/cms/wp-content/uploads/2013/06/ANEXO-17-INFORME-CIDH-Migrantes-no-localizados-y-restos-no-identificados-en-Mexico.pdf>;

<https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>;

<https://odihpn.org/magazine/armed-violence-missing-mexico-central-america/>;

<https://pulitzercenter.org/reporting/search-missing-migrants>;

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22036&LangID=E>;

<https://www.bu.edu/law/files/2017/12/IHRC-Statement-Global-compact-for-migration.pdf>

⁵ <https://splinternews.com/setsession?r=https%3A%2F%2Fsplinternews.com%2Fis-rape-the-price-to-pay-for-migrant-women-chasing-the-1793842446&sessionId=5eda1626-2043-4e15-9576-bace41fecab4>;

<https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1282/22PRLPJ713.pdf?sequence=1&isAllowed=y>

⁶ <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB445/>; <http://www.truth-out.org/news/item/26658-san-fernando-migrant-massacre-how-us-mexican-and-latin-american-governments-share-responsibility>

⁷ <https://migrationdeclassified.wordpress.com/2014/05/29/mexican-court-orders-release-of-documents-on-massacre-investigations/>

during the first six months of 2010⁸. These estimates have been adopted as a framework by the Inter-American Human Rights Commission, Amnesty International, and in a joint report issued by the Washington Office on Latin America (WOLA) and the Miguel Agustín Pro Human Rights Center in Mexico City⁹.

This overall pattern includes the exacerbated vulnerability of migrants to the depredations of sectors of organized crime which have specialized in their exploitation, such as the Zetas¹⁰, which is aggravated by the complicity of Mexican civil, police and military authorities at the federal, state and local levels. An International Tribunal of Conscience which included leading jurists from both the U.S. and Mexico¹¹ argued that the San Fernando massacre and mass graves, together with the Cadereyta case, should be approached as representative examples of a broader pattern of “migrant genocide”, with joint responsibility by both the U.S. and Mexico.¹²

These longstanding trends are particularly troubling in light of efforts currently underway to reach an agreement between the U.S. and Mexico that could result in Mexico’s designation as a safe “third country” within the context of asylum claims¹³, perhaps as part of some kind of package deal which may include concessions as to the renegotiation of NAFTA and the exemption of Mexico from steel and aluminum tariffs¹⁴. These measures may mean that asylum seekers from Central America or Caribbean nations, such as Haiti or Cuba, could be denied the right to seek asylum in the U.S. and forced to return to Mexico as an ostensibly “safe” alternative to being sent back to their home countries. In a similar way, the European Union’s 2013 “Dublin Regulation” has been used to compel asylum seekers to pursue cases in countries where they first arrived (such as Greece or Italy), where claims are more likely to be denied.

Mexico is a country where asylum is very difficult to obtain¹⁵, which is not only unsafe for migrants in transit, but whose own citizens have fled to seek asylum in the U.S. and elsewhere in increasingly large numbers. Meanwhile, record numbers of Central Americans and others who have been prevented from

⁸ http://www.imumi.org/attachments/article/275/informe_secuestro_extorsion_otro_delitos.pdf;
http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secsmigrantes.pdf

⁹ <http://www.oas.org/es/cidh/migrantes/docs/pdf/informe-migrantes-mexico-2013.pdf>;
<https://www.amnestyusa.org/wp-content/uploads/2017/04/amr410142010eng.pdf>;
<https://www.wola.org/sites/default/files/downloadable/Mexico/2010/DangerousJourney.pdf>;

¹⁰ <https://www.crisisgroup.org/latin-america-caribbean/central-america/easy-prey-criminal-violence-and-central-american-migration>

¹¹ The Tribunal’s convenors and participants included former UN Special Rapporteurs for migrant and indigenous rights Jorge Bustamante and Rodolfo Stavenhagen, as well as former California Supreme Court Associate Justice and UC Davis law professor Cruz Reynoso, see:
https://www.huffingtonpost.com/azadeh-shahshahani/tribunal-finds-mexico-and_b_8824162.html

¹² http://www.nlginternational.org/report/Final_Preliminary_ITC_Verdict.pdf

¹³ For a detailed overview as to the complexities and implications of this issue, see:
<https://www.womensrefugeecommission.org/rights/resources/1638-safe-third-countries-for-asylum-seekers>

¹⁴ <https://www.proceso.com.mx/534654/eu-pretende-convertir-a-mexico-en-filtro-para-solicitantes-de-asilo-y-centro-de-detencion-migratorio>

¹⁵

<https://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep-SPANISH.PDF>;
<http://www.jornada.unam.mx/ultimas/2018/02/25/sistema-de-refugiados-en-mexico-al-borde-del-colapso-cndh-2149.html>; https://sinfronteras.org.mx/wp-content/uploads/2017/06/InformeAsilo_2016_WEB_02.pdf

reaching or entering the U.S. have sought asylum in Mexico and their rates of denial there have increased commensurately.¹⁶ A “safe third country” designation for Mexico would undermine the right to asylum on both sides of the border. Convergent violations of this kind, with two or more states colluding to deny the rights of migrants and asylum seekers, have become increasingly common in the Western Hemisphere, the Euro-Mediterranean region, and in East Asia as part of broader trends towards “global migration management” or governance.

The Trump administration has sought to intensify efforts by previous administrations to elicit Mexico’s cooperation with U.S. immigration enforcement priorities through the \$2.5 billion dollar Mérida Initiative, and through mechanisms like *Programa (or Plan) Frontera Sur*. This has included over \$2.3 billion dollars allocated “to fight organized crime and associated violence” through “enhanced police capabilities, border security training and equipment, and greater logistical cooperation between the two countries’ immigration and national security agencies”¹⁷, including \$600 million to pay for “bilaterally agreed upon projects” that involve “building the capacity of Mexican law enforcement agencies [and] supporting the Government of Mexico’s efforts to strengthen border management and security”¹⁸.

These efforts include training by the U.S. Border Patrol of Mexican immigration officials¹⁹. This is especially disturbing given the record of impunity and lack of accountability as to serious human rights abuses by ICE, CBP, and the Border Patrol, including extrajudicial executions and cross border shootings²⁰. It is not surprising given this context that the same kinds of abuses that have been documented in the U.S.-Mexico border region in our recent report, *Sealing the Border*, are being reproduced at Mexico’s southern border, amid reports that U.S. immigration agents have at times been physically present at Mexico’s notorious Siglo XXI detention center in Tapachula, Chiapas (at the Guatemalan border), which is the largest of its kind in the Western Hemisphere.²¹

The Washington Post has recently reported²² how a total of at least 8 DHS officials have been based at facilities of this kind in southern Mexico and in Mexico City to install “scores of screening terminals to collect migrants’ fingerprints, ocular scans and other identifying features, including tattoos and scars”, pursuant to a \$58 million dollar contract with CSRA, Inc., a data technology company based in Falls Church, Virginia²³. This has resulted in data gathered on more than 30,000 migrants at detention centers in Tapachula and Iztapalapa, its planned expansion to centers in Tijuana, Mexicali, and Reynosa, as well as U.S. funding for the construction of telecommunications towers at 10 Mexican bases along the

¹⁶ <https://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep-SPANISH.PDF>

¹⁷ http://www.centerforhumanrights.org/PDFs/IACHR_PFS_Petition.pdf, p. 26-27

¹⁸ (id.)

¹⁹ (id.)

²⁰ <http://immigrationimpact.com/2017/08/02/border-patrol-abuses-rarely-result-in-any-serious-disciplinary-action/>; <https://www.hrw.org/news/2018/03/26/us-foia-suit-border-guards-rights-abuses>; <https://holdcbpaccountable.org/abuses/>; <http://www.thedisappearedreport.org>; http://www.southernborder.org/deaths_by_border_patrol; <https://washingtonmonthly.com/magazine/mayjune-2013/over-the-line/>

²¹ http://www.centerforhumanrights.org/PDFs/IACHR_PFS_Petition.pdf, p. 26-27

²² https://www.washingtonpost.com/world/national-security/us-gathers-data-on-migrants-deep-in-mexico-a-sensitive-program-trumps-rhetoric-could-put-at-risk/2018/04/06/31a8605a-38f3-11e8-b57c-9445cc4dfa5e_story.html?utm_term=.167df85861ec

²³ Proceso 2166, id.

Guatemalan border²⁴. All of these initiatives are intended to be models for other countries in the region, beginning with those in Central America.

These biometric data detection mechanisms are framed as “bilateral programs” intended “to build Mexican capacity in a way that benefits our security”²⁵. The program is not officially intended to collect data on Mexican citizens, but there is widespread concern in Mexico among human rights monitors that it could easily be adapted for such use given the Mexican government’s use of spyware against human rights defenders and journalists.²⁶

Hope Border Institute will continue to work for full respect of the rights of migrants, on both sides of the border, and to hold the U.S and Mexican governments accountable for violations of their rights, in collaboration with our colleagues among the region’s human rights community and those who have been affected, regardless of the outcome in the upcoming elections.

²⁴ (id.)

²⁵ (id.)

²⁶ <https://www.nytimes.com/2017/07/10/world/americas/mexico-missing-students-pegasus-spyware.html>;
<https://www.nytimes.com/2017/06/22/world/americas/mexico-pena-nieto-hacking-pegasus.html>