Collective document of civil society organizations and networks from Central America, Mexico, and the United States

Regional hearing: Human rights situation of the persons that make part of the Caravan of Migrants
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1. **Introduction**

On October 12, 2018, the first group of the so-called *Caravan of Central American Migrants*, made up of more than 7,000 people displaced by the context of widespread violence and poverty in Honduras, departed San Pedro Sula, Honduras. This group includes thousands of people with specific protection needs: children and youth, families, pregnant women, elderly adults, journalists, people in the LGBTI+ community, people with disabilities, and human rights defenders. Thereafter, there were three other large groups that joined this first group. A second group left San Pedro Sula, Honduras on October 12, and the last two groups left El Salvador on October 31 and November 1 respectively, making the dynamics of this large exodus complex and posing challenges to respond to migrants and asylum seekers with rights-based policies. Since this is a context of mass exodus in which people are fleeing widespread violence and poverty, for example fleeing for their life, as a group of civil society organizations that defend migrants from across the region, we will henceforth refer to the group as a ”Central American exodus” in this document.

The exodus demonstrates that the region faces a new migration paradigm. Migrants organized to form a collective migrant entity, with its own voice, that decided to walk as a group to reduce risk and vulnerability to which they are exposed along the migration route. The Central American exodus emerged as a response to the policies of exclusion and displacement in the countries of origin. Thousands of children, adolescents, women, and men migrated with the aim of finding concrete and decent conditions of well-being and protection either in Mexico or the United States. This Central American exodus should be understood as an expression of resistance and desperation of a large segment of the population that decided to deal with the adverse poverty, violence, and exploitation in their homes for the sole purpose of staying alive and obtaining safety for their families and communities.

The requests for precautionary measures submitted to the IACHR on October 21 and November 14, 2018 specified the characteristics of the exodus as a group pertaining to a specific geographic location and as a collective entity of rights with a common bond. Therefore, the IACHR should issue recommendations and precautionary measures recognizing the exodus as such.

This document includes the most important aspects that the IACHR should consider to issue recommendations to the governments of Central America, Mexico, and the United States to protect and guarantee the life and physical integrity of migrants and asylum-seekers. Additionally, the document also serves to inform other actors of the human rights violations committed against the members of the exodus. Below is information on the root causes that provoked the exit of thousands of people and the responsibility of the countries of origin, the policy of criminalization and closing of borders that has been implemented by all States in the region, as well as the pattern of harassment, deterrence, detention, and deprivation of liberty, arbitrary detentions, and mass deportations used by the Mexican government to deter and fragment the exodus, which continues to put the lives and physical integrity of individuals at risk. Following this section, there is also a summary of the policies of the U.S. government that have limited and restricted access to asylum at the border and at the interior of the country, as well as direct policy responses to the Central American exodus at the border between the United States and Mexico. At the end, we list our demands to the IACHR and the relevant governments.
2. **Context of systematic and generalized violations to human rights.**

2.1 Country of origin context

**Causes**

The Central American exodus formed mainly by people from Honduras and El Salvador is nothing more than a reflection of the day-to-day crisis, violence, and widespread human rights violations that individuals suffer in their home countries, as was stated by a group of UN experts in a statement from October 26, 2018. Honduras has 8.5 million inhabitants and the lowest rate of annual occupancy in Latin America according to ILO (53 percent); with 910,000 children excluded from the education system; with homicide rates of the population between 15 and 19 years that reach 102.8 homicides per every 100,000 inhabitants; and with figures that exceed $200 million in payments for extortion annually. These figures reflect the situation of individuals who have no option but to pay, to die or flee.

The citizens of Honduras, who decided to flee collectively, suffer the consequences of a State that maintained the instability in the country through the coup in 2009 and is currently led by a president who assumed power via fraudulent elections. A high percentage of Honduran society categorized the election as electoral fraud. The policies that ensued failed to protect the population, causing more violence and displacement. This has meant, for example, a 75 percent increase in the budget for defense and security over the past 4 years, compared to a 25 percent increase in education and health budgets. As the IACHR has stated in its report, "part of this insecurity would come from the same police force, military police, and army through the illegitimate use of force, in some cases in complicity with organized crime."

**Criminalization and militarization of the border**

Particularly disturbing were the reactions of the governments of Honduras and Guatemala during the first weeks of the Central American exodus. Various senior officials of the Honduran government criminalized and accused, individually and collectively, a number of leaders of promoting the exodus. The Minister of Foreign Affairs, along with the Minister of Human Rights of Honduras, accused a social leader of organizing, instigating, and manipulating people while at the same time calling on the Public Prosecutor to take actions against him. The government blamed the entire responsibility of the exodus on him as a representative of the "radical political opposition in Honduras." A statement issued by the Ministry of Foreign Affairs clearly suggested that there were political interests behind the exodus. Moreover, President Juan Orlando said on different occasions that the exodus was organized by groups interested in destabilizing the country, statements which were reinforced by the Guatemalan President Jimmy Morales.

In light of these allegations, the National Human Rights Commission of Honduras (CONADEH by its Spanish acronym) affirmed in a statement that "forcibly displaced Honduran migrants are poor and vulnerable including children, women, adolescents, elderly people, people with disabilities, and members of the LGBTI community, who come from various municipalities of almost all the main points of Honduras." Migrants travel in large groups for increased protection to their life.
The greatest impact is on their right to petition for international protection or work and to lower the expenses often associated with their irregular migration.\textsuperscript{xiv}

In addition to the criminalization and harassment, the governments of Honduras and Guatemala tried to stop the exodus at the border point of Aguascalientes. The Honduran police and military were utilized to prevent Honduran citizens from leaving their own country (contrary to Article 22(2) of the American Convention on Human Rights). Guatemalan anti-riot forces of the National Police on the Guatemalan side of the border were also present. Some unaccompanied children, who at the end of 2018 were located in Tijuana, provided testimonies to NGOs that Honduran authorities prevented them from leaving the country, hitting them with sticks when they tried to do so.\textsuperscript{xv} On October 20, the National Migration Institute of Honduras issued a statement that announced the temporary closing of the border point of Aguascalientes, and for several days the windows at customs at the border were closed to prevent individuals of the exodus from being able to enter in a documented form. Yet, the citizens of Central America can do so legally with their identification card through the CA-4 Agreement. Once in Guatemala the National Police (PNC by its Spanish acronym) also attempted to stop the exodus through roadblocks. All of this occurred in clear violation of the recently approved Guatemalan immigration law that explicitly states that migrants in Guatemalan territory have the right to protection from the State, including protections to their integrity, life, and freedom (Art. 10).

In addition to the harassment documented toward the individuals of the exodus, those who accompanied them were also criminalized. Such is the case of the journalist Bartolo Fuentes, who was accused of leading the exodus for political reasons and who was immediately arrested by the Guatemalan authorities and deprived of his liberty in a shelter located in Zone 5 in Guatemala City, where he remained for 72 hours until he was deported back to Honduras. The argument made for his deportation was that his entry into the country was not registered. However, registration was not possible, because the windows at the customs stations along the border were closed during those days.

Except in specific and isolated cases, neither the State of Guatemala nor Honduras offered any kind of humanitarian assistance in response to the situation outside of their regular institutional frameworks. Only the migrant shelters run by the Catholic Churches, some municipalities, and the Guatemalan Ministry of Health provided some assistance for shelter, food, clothing, and medical needs. However, it was evident that the shelters had insufficient capacity to meet demands.

\textit{Returns and deportations, violations to the principle of non-refoulement}

On October 20, the presidents of Guatemala and Honduras launched a "Safe Return Plan" that according to the president of Honduras, in addition to allegedly creating a humanitarian corridor, would provide immediate help to migrants with a budget of more than 600 million lempiras.\textsuperscript{xvi} According to official statistics, from October 15 to November 19, 7,077 people returned voluntarily, of which 3,116 were minors.\textsuperscript{xvii}

However, the monitoring and accompaniment by various civil society organizations at border points, as well as at the central bus station and via cases documented, \textit{demonstrated that this}
plan reflected numerous irregularities and failed to comply with any of the recommendations that the IACHR had previously made.\textsuperscript{viii}

Relevant findings on the Return Plan

Lack of transparency and informed consent in the returns. The testimonies of people interviewed by civil society organizations expressed that confusion and uncertainty motivated them to return to Honduras, especially after the intensification of the use of force in the Suchiate River (on the border between Guatemala and Mexico) and the condition of detention in order to access humanitarian aid in Mexico. This particularly affected those who arrived in a situation of extreme vulnerability, who also claim to "have been persuaded" not to seek asylum in Mexico. Such is the case of a 35-year-old Honduran man interviewed on November 6 after his deportation from Mexico. He suffered from claustrophobia and was deprived of his liberty, remaining in immigration detention on the fairgrounds set up in the city of Tapachula, Mexico without any adequate attention, undermining his personal, physical, and mental integrity (Article 5.1 of the ACHR). Also, despite the man’s expressed interest in applying for asylum, the response of the authorities was to encourage him to return to his country without offering another alternative for proper attention to his mental health.\textsuperscript{ix}

Violations of human rights in the return process. According to the monitoring of civil society, "returnees" were mixed with deportees who were not part of the exodus, and individuals of the exodus were detained and deported. There was no information from the governments on the number of people who requested the voluntary return or who had been deported. Specifically, the statistics provided by Honduran authorities on the numbers of "voluntary returnees" never matched the figures that the Guatemalan government would provide when the returns originated there nor would match civil society records. Several cases of violations of the right to seek and apply for asylum (article 22.7 of the ACHR) were identified and included being deported or persuaded by Mexican immigration authorities to return when they expressed interest in obtaining refugee status in Mexico. Finally, it is worth noting that the usual return protocols for the protection of individuals were not respected, since there were many instances of mass land and air returns arriving in the country during the late hours of the night. Authorities also enabled a temporary border for returns in Aguascalientes that had not existed as such for years precisely because of the poor conditions there. Civil society organizations also collected testimonies from people who arrived with highly contagious diseases, without a plan from authorities on how to respond adequately.

Lack of needs assessment and reintegration plans in the country of origin. According to the monitoring carried out and interviews with returnees, at best, these individuals benefited from the services that already existed for deported individuals, implemented mostly by civil society organizations. These have always been insufficient and continue to be, given that Honduran authorities did not allocate resources for receiving deported individuals. The only effort that could be verified was the presence of various State institutions (the National Human Rights Commission, National People’s Registry, and DINAF or the Child Welfare Agency) at the temporary return point at the border in Aguascalientes during the same days. However, this did not translate into concrete benefits. Even more serious, in many cases, the individuals returned in the late hours of the night did not have access to basic services, and the only assistance they
received was being taken to the bus station with a return ticket to their community of origin, where they had to wait until the early hours of the morning for the bus to depart.

2.2 Context in Mexico: Southern Border and Northern Border.

2.21 Southern Border

On the southern border of Mexico, civil society organizations, human rights organizations, and community and collective groups organized since the arrival of the first large contingent of Honduran migrants to conduct human rights monitoring and assist in the protection of individuals in critical situations. Civil society monitoring groups were created in Chiapas, Oaxaca, and Veracruz. The following information is a result of the daily monitoring and documentation carried out by this group from Mexico’s southern state of Chiapas to the state of Oaxaca. In Chiapas, there was also the observation of the United Nations High Commissioner for Human Rights.

The monitoring group identified and documented systematic human rights violations perpetrated by Mexican authorities against vulnerable individuals who have been arriving in Mexico including women, children and adolescents, elderly, persons with disabilities, and LGBTI populations. It should be noted that according to the first statistics taken by the Municipality of Suchiate of individuals who entered from October 19th via the Rodolfo Robles International Bridge on the border between Guatemala and Mexico, a total of 7,233 people were registered, of whom more than 30 percent were girls and boys (a total of 2,377) and another 30 percent were women (in total 2,234). This indicated that at least 60 percent of the population were individuals with specific international protection needs. The text below is a summary of the rights violations that were documented.

Non-compliance with guarantees to the rights to life and integrity of individuals who entered Mexico and irreparable damages they suffered, including grave human rights violations, criminalization, and closure of borders

The Mexican government’s response to the exodus has been based from a security instead of from a humanitarian perspective. The federal police led the operation and in every moment that they had the opportunity, they managed to block the passage of individuals, often repressing them. They employed hundreds of agents in riot gear in the use of force. In addition, on October 29, 2018, a helicopter flew at a low altitude over the middle of the border by the Suchiate River between Guatemala and Mexico. This was documented as causing confusion and terror among the people.

The Human Rights Ombudsman of Guatemala noted that "according to information gathered at border crossings, tense situations were created and there were conflicts that led to the use of non-lethal weapons (tear gas or rubber ammunition) by Mexican security forces to prevent the passage of migrants; children and youth were specifically at serious risk due the use of such weapons." In addition to the aforementioned, agents of the National Migration Institute (INM by its Spanish acronym) and of the federal, state, and municipal police hindered access and transit through Mexican territory. Entry was only allowed to people that would come in under the condition of submitting themselves to immigration detention. This procedure was performed deceptively, since
people were told they would be transferred to a shelter, which was not true. The people waited out in the open and without humanitarian assistance at the Ciudad Hidalgo International Bridge at the border crossing between Mexico and Guatemala for hours and up to three days to be transferred.

**The conditioning of humanitarian aid on detention during the humanitarian emergency**

From October 19, the date on which the first group of the exodus came to the border crossing between Guatemala and Mexico, a humanitarian emergency on the international bridge worsened. The long wait of the group to enter Mexico caused thousands of people not to have access to food, water, health, and medical services. These needs were only responded to by some degree from the Guatemalan side of the border. The Ministry of Health and civil society organizations provided water, food, and medical services. The decision of the Mexican government to close the border and increase the wait time to enter Mexican territory on a regular basis put at risk the life and physical integrity of thousands of people.

People were finally transferred to an immigration detention center in Tapachula for registration and access to the asylum procedure or deportation. Thereafter, they were transferred to municipal property used for entertainment purposes, the “fairgrounds” which were set up as an annex to the detention center. This made it difficult to provide a comprehensive and coordinated response from various institutions and contributed to the uncertainty affecting the general state of the people, especially to the families that were separated. The conditions of deprivation of liberty were in no case acceptable for boys, girls, and adolescents. They remained in detention without information on their situation or the immigration procedure that had begun and the length of time they would suffer these conditions. On the day the fairgrounds were declared closed, the individuals who had been detained there were granted freedom under the alternative to detention initiative and with the humanitarian assistance from UN High Commissioner for Refugees (UNHCR).

Due to the conditions along the bridge preventing a regular border crossing, a sizeable portion of the group did not want to be subject to detention and they were forced to enter across the Suchiate River. On their journey through Mexico and given the absence of humanitarian assistance from the State, churches, local population, civil society organizations, and some municipalities demonstrated solidarity with the exodus by providing assistance to the group. There was also the participation of the International Committee of the Red Cross and the National Human Rights Commission (CNDH by its Spanish acronym).

Along the road from the border to the city of Tapachula, the exodus was frequently outdoors in the evenings and lacked water and access to medical care. This led to the presence of diseases in the population as a whole, but more frequently in young girls and boys, who were affected by conjunctivitis, heat stroke, dehydration, diarrhea, cough, and fever.

As the days wore on, the signs of burnout and exhaustion became more frequent amongst the adult population. On October 22 on the road to Huitxtra, a young 22-year-old Honduran man fell from a moving vehicle at the city limits of Tapachula and lost his life. During the journey, there were other less serious accidents and numerous situations of risk and insecurity, given the presence of organized crime on a sizeable portion of the route.
Mexican security forces made use of power and intimidation towards displaced individuals and defenders who participated in the monitoring, observation, and documentation. They did it as a strategy to create tension and harassment, and to frighten, discourage, and undermine the spirit of the people on the exodus. Many people were discouraged and requested assistance to return to their home countries. Other people opted to stay in the region to try to regularize their status.

Between October 19 and November 21, three contingents of individuals tried to reach the larger contingent, with approximately 200 to 300 people each. All the people were arrested before arriving in the city of Tapachula. Only another contingent of approximately 1,500 people managed not to be stopped.

On October 26, information was disseminated of the so-called Plan "Estás en tu Casa (You are home)" by former President Peña Nieto.xxxii The options of regularization that the Mexican State offered under the plan were the arguments used by the police and immigration agents to justify the harassment and violence of their operations, as well as the offers that then were not met. The response of the Mexican State, far from respecting the implementation of precautionary measures and protection, served to deter and fragment the exodus.

**Cruel and inhumane treatment during the deprivation of liberty in immigration detention**

After the crossing of the exodus into Mexico, the daily work of civil society organizations that monitor the Siglo XXI immigration detention center in Tapachula documented cases of torture by Mexican immigration agents and police officers against individuals who were detained and falsely accused of crimes.

The testimonies of individuals deprived of their liberty in the Siglo XXI detention center in Tapachula noted having been subject to beatings and humiliation by both the municipal police and migration agents during their transfer from Tapachula to Tijuana, violating the right to personal integrity (Article 5.2 of the ACHR) as they were subject to cruel, inhumane, and degrading treatment during the arbitrary deprivation of liberty. The case of a young Honduran man who joined the exodus in the town of Arriaga, Chiapas with his brothers exemplifies this. He managed to arrive in Tijuana on November 24 and was arbitrarily detained by Tijuana municipal police and then handed off to the INM in that city. This demonstrates the pattern of systematic and constant cruel and inhumane treatment within detention centers. His testimony recounts how security guards in the detention center in Tijuana forced him to undress and to do exercises when he refused to be touched by them. He was later beaten in the migrant detention center in Iztapalapa in Mexico City by security guards, held to the floor in a violent manner in front of migration enforcement agents, and threatened to be taken to an isolated cell if he did not sign a voluntary return form to be deported back. His case is an example of how, despite being a victim of these crimes by authorities in other parts of Mexico, he was subsequently deported from the detention center in Tapachula without being given the opportunity to have access to request humanitarian protection.xxxiv

The Central American exodus that began in October experienced many differences along the days in relation to its collective decision-making and the manner in which the group advanced their journey on the road, in some parts with the support of public transportation, in other parts via
walking. These contrasts have also marked the response of local populations who assisted them along the way and the actions of governmental institutions who differentiated between acts of great solidarity, to indifference, to hate speech.

In the absence of access to information from the Mexican State and from the arrival of the exodus to Mexico City this past November 4, civil society organizations from Mexico and the United States developed joint efforts to provide legal guidance on the asylum process in the United States and other complementary forms of protection and possibilities of regularization with residents and citizens in the United States.xxv

2.22. Northern Border

Harassment and lack of protection and humanitarian assistance on the Jalisco - Tijuana route

Since the arrival of the exodus to the state of Jalisco, between November 12 and 13, 2018, a pattern of harassment and deterrence was documented, carried out by federal and state governments which consisted in not providing the minimum conditions of humanitarian assistance (water, food, health, medical support, nor shelter to sleep) for migrants as well as dispersing them in different shelters, cities, and even states of Mexico. This was in addition to the threat and use of disproportionate force by Mexican authorities, which left people in a greater condition of vulnerability and lack of protection in contexts where violence from organized crime is common.

Xenophobia and hate speech accompanied people of the exodus, since then until their arrival in Tijuana between November 14 and 25, 2018.

Given this situation, on November 14, precautionary measures were requested to protect the more than 7,000 people due to the high risk they faced along the route from Jalisco to Tijuana. The physical integrity of the people created irreparable damage in transit, like the death of a young 17-year-old Honduran man in Tecate, Baja California, and upon arrival in Tijuana.

Lack of decent conditions to receive people in Tijuana

Since the arrival of the first group of people in the exodus, the city of Tijuana has been a hostile environment due to the responses of the Mexican municipal, state, and federal government, and some anti-immigrant groups among the local population. By November 26, there were 8,084 people in all of the state of Baja California.

The first members of the exodus who arrived on November 14, along with some human rights defenders, suffered acts of aggression from the local population in Playas de Tijuana as they slept the first night on the streets of this area.

After these events, the local government enabled the Benito Juárez Sports Complex as a shelter. However, the conditions of this place put at risk the life and integrity of the people. It is a small space for the amount of people, mostly occupied by improvised camping facilities and people
who slept out in the open, even in the rain. The space for recreation and services to assist people gradually reduced. During the time it was open, there was a worrying situation of insufficient hygiene and bathrooms. There were overflowing trashcans and stagnant water. In addition to limited help, there was no water or sufficient food.

In these circumstances, on November 30, the local government enabled another space as a shelter, known as El Barretal, which is a space utilized for concerts. At the beginning, this generated a lot of distrust with migrants since the place is located 12 miles (20 km) away from the border, which meant being away from the places they were familiar with such as places to conduct their immigration proceedings, the lines of registration for the wait list to apply for asylum in the U.S., and areas to look for a job. In addition, they feared being separated and taken to an unknown place, which was in one of the most dangerous neighborhoods of Tijuana.

Many people chose to remain living in the streets around the Benito Juárez Sports Complex. This group was comprised of families with children, adolescents, and young men. The conditions in which these families found themselves worsened; they slept on the street and did not have access to any service. In addition, they faced constant harassment of anti-immigrant groups and the permanent threat that the municipal police would evict them.

In the new shelter, El Barretal, site conditions have not improved substantially. Until the end of December 2018, the bathrooms were insufficient for the amount of population that exceeded 3,000 individuals. There are eight showers without drainage, of which four worked, and without any sort of physical separation between men and women. There were not enough toilets. Many people were sleeping outdoors, with the risk of weather conditions worsening and being left again without a space for rest. The aid and food was controlled by the Mexican Navy. It was not sufficient for all people, and there was no clarity on the authorities responsible for the space. There was also no security or protection at night. Women who have to use the bathroom at night were at risk because they had to walk through the whole site to get to the bathrooms and the area near there is very dark and unprotected. On December 14, authorities in El Barretal announced that restrictions would be implemented on December 17 for security reasons, including that all individuals eating and sleeping there would have to be registered. That same day some individuals started to leave because they did not want to be registered. They said they were going back to Benito Juarez Sports Complex.

**Arbitrary deprivation of liberty by Mexican municipal police agents in Tijuana and deportations of migrants and individuals in need of international protection**

The pattern of deterrence and harassment referred to above, mass arbitrary arrests, and irregular deportations, have been happening ever since the individuals of the exodus arrived in Tijuana. The pattern has been to stop people in an arbitrary manner both within the shelter facilities, as well as in their surroundings, depriving them of their liberty in municipal police facilities and, subsequently, in migrant detention centers. These actions violate the right to personal liberty (Article 7.2 and 7.3 ACHHR) and to judicial guarantees.

Such violations have been documented through the testimonies of migrants who were placed at the disposal of the National Institute of Migration (INM) by agents of the municipal police in Tijuana,
Baja California, who said that the police are conducting migration enforcement operations close to the Benito Juárez Sports Complex, where humanitarian aid to the exodus is being provided. Migrants are asked for their official identifications, and the police proceed to arrest them without due process since they are not carrying identification or by making false accusations for administrative offenses. It should be noted that in no case were these operations carried out in accordance with the law or in relief and coordination of migratory authorities, depriving migrants of their physical liberty arbitrarily without due process and contrary to what is set forth under Mexican Migration Law, therefore, violating Article 7.2 and 7.3 of the ACHR. In addition to these violations, there have been abuses by the municipal police in Tijuana, who in addition to performing physical revisions of people, have also been documented as taking their belongings such as money or mobile phones, or handcuffing them. When being detained by police in Tijuana, migrants interviewed reported that they were moved to a unit of the municipal police, where the agents took their information and made them sign documents without giving further information or explanation of what it was, nor were they given a copy. Therefore, their legal rights were violated, according to what was indicated in Article 8.1 and 8.2 of the Convention. In the cases that were accompanied, people refer to having been transferred to the Immigration Office of the National Migration Institute in Tijuana, Baja California in less than 24 hours.

In addition, families of single mothers with children in immigration detention accompanied by civil society organizations mentioned that at the time of being arrested by the National Migration Institute, they expressed a well-founded fear of return to their home countries. However, they were still placed at the disposal of the INM without the possibility of having contact with the Mexican Commission for Refugee Assistance (COMAR). Cases such as these suggest that the migration authorities are acting against the best interests of the child, violating not only article 95 (Chapter XIX) of the Mexican General Law of the Rights of Children and Adolescents, which prohibits the any deprivation of liberty of children and the return and deportation of any girl or boy when their life, safety, and/or freedom are in danger, as well as the 4th Article of the Constitution of the United Mexican States on the State’s responsibility to ensure and comply with this principle and ensure their rights fully. In turn, it is important that the IACHR pays attention to the particular situation of this population, due to systematic violations against the rights of the child (Article 19 of the ACHR) from the entry of the first exodus on October 19 through Mexico’s southern border, when agents of the federal police attacked this group with tear gas, including boys, girls, and adolescents, as well as pregnant women, putting at risk their right to life (Article 4.1 of the ACHR).

It should be noted that civil society organizations documented specific cases of individuals seeking asylum that were detained in cities in northern Mexico, such as Tijuana or Hermosillo, and deprived of their liberty in the migrant detention centers managed by the INM in these cities. They then were transferred to the migrant detention center of Iztapalapa in Mexico City and subsequently to Tapachula. On average, the organizations observed that the transfers made by the National Institute of Migration from the migrant detention center in Tijuana to the migrant detention center in Tapachula (that is, from Mexico’s northern border to southern border), were being carried out in an expedited way and conducted in a period of 5 days maximum approximately, when the average time of transfer from one station to another is usually 3 weeks. These actions by migration enforcement authorities reflected that asylum-seekers or individuals in need of international protection were not only deprived of their liberty in an arbitrary manner, but were also sought to be deported as quickly as possible. This violated their right to seek and receive asylum (Article 22.7)
as well as the principle of non-refoulement, or the right not to be expelled or returned to another country where the individual’s life is at risk (Article 22.8).

**Mexican & U.S. practices increase vulnerability for unaccompanied children along the border**

Civil society organizations documented the precarious situation of unaccompanied children in the city of Tijuana in their access to apply for asylum in the United States as well as in the physical situation where several of them are staying. The situation of children in the El Barretal space is quite precarious. There have been cases documented of children eating from the floor or having to sell their bodies in order to eat.

When Mexican officials detect unaccompanied children, they take them into DIF (National System for Integral Family Development by its Spanish acronym) custody and the children are presented with the option of being repatriated or seeking asylum in Mexico. Children do not receive information about the option of seeking protection in the United States, unless they have a parent in lawful immigration status. Children with a parent in the United States who does not have authorized immigration status are processed for repatriation to their country unless they express a fear of return. While Mexican law requires the Ombudsman for the Protection of Children and Adolescents (Procuraduría de Protección de Niñas, Niños y Adolescentes in Spanish) to conduct best interest determinations (BID) prior to repatriating unaccompanied children, BIDs are not conducted in most cases. Because unaccompanied children do not receive information about the option of seeking protection in the United States, regardless of whether they have close family there or not, unaccompanied children sometimes attempt to evade identification and contact with DIF. In Tijuana, unaccompanied children prefer to stay on the outskirts of Benito Juarez or to remain on their own, rather than risk identification and being prevented from seeking protection in the United States. These children are not receiving medical or mental health services, shelter, and are incredibly vulnerable to being harmed or targeted by bad actors.

INM officials outside the San Ysidro port of entry do not permit unaccompanied children to access the port, even if they are accompanied by an attorney. According to INM, Mexican law requires them to stop unaccompanied children and to turn them over to DIF. In practice, this means that unaccompanied children cannot access or seek protection in the United States.

Customs and Border Protection (CBP) has turned some unaccompanied children away from the San Ysidro port of entry and sent them back into Mexico, in violation of U.S. law. Unaccompanied Mexican asylum seeking children have in some cases not been processed in accordance with Form 93 and TVPRA (Trafficking Victims Protection Reauthorization Act) and have instead been sent back to Mexico directly from the port.

**Violent actions perpetrated by Mexican and U.S. authorities along the border wall**

Finally, to complete the picture of what happened in the city of Tijuana, it is necessary to mention the violence that individuals from the exodus faced on November 25, 2018.

Around 10:00 am, between 500 and 700 people came out in a peaceful march of the Benito Juárez Shelter to the Chaparral International Entry Point, before the blockade by various elements of the federal and municipal police in the vehicular bridge of El Chaparral. Hundreds of migrants decided to encircle the fence and opened way to the vicinity of the Tijuana River. This made people disperse aimlessly, some approaching the wall through the train tracks, others through the river, and a few more in El Chaparral Entry Point.
In these various points, CBP repeatedly launched tear gas bombs and rubber bullets, regardless of the presence of women and children in the area. It is reported that at least three people were injured by rubber bullets and tear gas cans, one of them is a migrant rights defender.

In the context of the Central American exodus in the City of Tijuana, the following are particular concerns:

1. There is a humanitarian emergency situation with thousands of people who are members of the exodus. There is limited and insufficient humanitarian aid in the spaces and shelters in the city without taking into consideration the specific needs of the group.
2. The pattern of deterrence, harassment, arbitrary arrests, and irregular deportations that puts at risk the life and physical integrity of people, in addition to violating their human rights and the right to seek asylum.
3. The harassment and criminalization toward migrants, as well as to those who accompany them and defend them.
4. The lack of recognition of the collective nature of the exodus. The responses are at an individual level for collective problems.

2.3 U.S. policy context and impact on migrants’ rights

Restrictions on the right to seek asylum in the United States

The United States government has used the Central American exodus as an excuse to justify the tightening of immigration law along the border and to justify the need to restrict access to asylum for migrants, in ways that violate international human rights and U.S. law. These actions are in addition to months of rhetoric criminalizing migrants and treating migrants as a national security threat, without recognizing their international protection needs.

There are multiple actions that have been taken by the current government of the United States in order to deter and prevent the arrival of migrants, not only directed toward the members of the exodus, but also toward the migrant population in general. These will have an effect on the future arrival and the rights of individuals, families, and children:

- The president issued a final interim rule, followed by a proclamation on November 10, xxxii denying the possibility of obtaining asylum for applicants who enter the border irregularly between port of entry. The proclamation is intended to limit the right of asylum to those who present themselves at a port of entry, denying the possibility to seek asylum to those who entered between ports and violating the right of asylum, due process, and the principle of non-refoulement. This action has been taken in spite of the fact that U.S. law and international law do not restrict the right to seek asylum irrespective on where the applicants have entered to the United States. The proclamation was announced alongside measures that CBP officers have been applying in many cases, where they are not accepting individuals who present at ports of entry to access the asylum process, as described in more detail below. The proclamation gives asylum seekers the option of deciding between waiting for months to present themselves at an official port of entry and remaining in Mexico with the danger of violence and deportation by Mexican authorities, or risking immediate deportation with irregular entry without having had the opportunity to express their protection needs. On November 20, the
Federal Court of Appeals in the Ninth Circuit issued a ruling temporarily until December 19 to impede the implementation of that proclamation. The Department of Justice asked the Supreme Court to maintain the rule on December 21. The Supreme Court ruled that it would not reinstate the president’s asylum ban. It is not clear when the proclamation will be implemented again. However, the threat remains that it could be implemented again. Also, there is litigation in the federal court in Washington, D.C. that seeks to revoke the proclamation of the president in regards to the specific case of six asylum seekers.

- CBP has been limiting access to asylum to individuals that present themselves at the ports of entry along the border of the United States for months. Border Patrol agents, on many occasions collaborating with Mexican authorities, simply refuse to process people who are asking for asylum, preventing their entry to the United States at official ports of entry and returning them to Mexico without consideration of their asylum application. This action has been taken despite the fact that the law of the United States requires the processing of any individual who arrives at the border and requests asylum. This has been documented through the last year and a half along the border, including not only in Tijuana but also in El Paso, Texas. At some border points and with increasing frequency, the Border Patrol has implemented restrictions on the number of asylum seekers accepted on any given day at a port of entry, via an unlawful, informal practice called "metering," creating a situation in which applicants are left stranded on the Mexican side of the border for weeks and even months. There are informal reports that, as of December 18, there were up to 5,000 individuals on such a waiting list in Tijuana. Applicants are not informed when they will be processed or how much they have to wait, and the numbers of how many individuals will be accepted change on a daily basis and have no rationale behind them. The waiting time is different in each place, and it is not reported when this practice will stop being used. According to recent reports of local organizations providing assistance from the Mexican side of the border, unaccompanied children in particular find themselves with greater difficulty in accessing asylum protection at port of entry and have been rejected by Border Patrol agents if they were not with an adult. There are reports that CBP has rejected some unaccompanied children from the San Ysidro port of entry, returning them to Mexico, in violation of U.S. law. Unaccompanied Mexican children who request asylum in some cases have not been processed according to Form 93 and the Reauthorization Act for the Protection of Victims of Trafficking in Persons and have been returned to Mexico directly from the port of entry.

- According to the numbers of arrests at border since June 2018, the number of children and families in detention per month has been mysteriously stable (4,000 per month). The numbers show a deliberate effort to reduce the access of asylum seekers at the ports of entry. The restriction of access to asylum at ports of entry, described as “metering,” works in a complementary manner with other restrictions on the right to asylum and due process. In practice, this measure constitutes a flagrant violation of the right of asylum and the principle of non-refoulement, to deny the entry into the territory to people who express their intention to seek protection. Additionally, it violates the right to due process, to the extent that it prevents applicants from starting the asylum procedure.

- The government has tried to justify this practice, stating that there is not enough space in detention centers for the number of people who are applying for asylum at the border. However, the law does not require the detention of all individuals seeking asylum and, under international law, the government should not use detention so broadly. At the same time, public information indicates that there are actually available spaces in detention centers and the lack of capacity that exists is due to the policy of prolonged detention, which must also be questioned, in such a way that it provides evidence that the
government has adopted a practice of limiting the numbers of people who may seek protection at the border, contrary to international and U.S. law and due process. Al Otro Lado and others, for example, have filed a lawsuit against the practice of returns to Mexico at the border, and a federal court in California has issued a decision allowing the case to advance, but there is still no precautionary measure or other decision to stop the action of the government.

- The Department of Justice issued a decision in June 2018, Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018), which restricts the right of asylum, limiting the possibility of seeking asylum for victims of domestic violence as well as gang members. This decision was addressed mainly to Central Americans and came after months of statements stating that Central Americans were seeking asylum with fraudulent claims. Restrictions on the interpretation of the social group concept by the Attorney General's decision in the Matter of A-B case attempts to significantly restrict access to asylum for individuals who are persecuted by non-state actors. This effort to reinterpret the social group concept has a significant impact for victims of gender-based violence and violence by organized crime groups. Matter of A-B violates the right of asylum and the right to the integrity or personal safety of asylum seekers. On December 19, a judge ruled that this decision was unconstitutional and ordered an injunction against it, banning its implementation temporarily.

- In previous months, the government of the United States has also made a number of proposals and actions for using Mexico as a filter for people seeking asylum in the United States. In May 2018, the media reported the negotiation of an agreement called Safe Third Country Agreement. This agreement would mean that those who had passed through Mexico would be forced to seek asylum there, and those who did not do so first, upon arriving to the United States border, would be returned to Mexico. International organizations and civil society in both the United States and Mexico denounced this proposed agreement or any similar one that would limit the right to seek asylum in the United States and would violate national and international law. In addition, they argued that Mexico cannot be considered, in any way, a safe country for all asylum seekers. The Mexican government stated that it would not sign the agreement.

- Since then other proposals have been floated between the United States and Mexico and one in particular, the Migration Protection Protocols (MPP), appears to be moving forward as of December 20, 2018. As announced by the Department of Homeland Security, the MPP plan seeks to force asylum seekers to remain in Mexico throughout their U.S. immigration proceedings. The Mexican government said it would implement the plan on a temporary and humanitarian measure. Beyond the announcement, no details have been shared on its implementation. By stating that individuals arriving to the United States at a port of entry or between ports will be returned to Mexico for the duration of their proceedings, this plan violates immigration law authorized by the U.S. Congress that lays out the process for asylum seekers to have their claims heard in the United States. This also violates the right to due process and non-refoulement and is prohibited by the decisions of the Inter-American Court, which has stated that States should not refuse requests for asylum at the border or prevent the entry of individuals into the country where they are requesting asylum. It also contravenes the statements of UNHCR in the sense that “The asylum should not be rejected solely by the fact that it can be obtained from another State” and that the wish of the applicant must be respected in terms of deciding the country that will have the obligation to process the application for asylum. This measure means that individuals subjected to this process would be in danger of violence or deportation while waiting in Mexico.
Other collaborations between the two countries to limit asylum seekers from arriving to the United States have included the proposal, announced last September, to reallocate $20 million from the State Department to the Department of Homeland Security (DHS) to support Mexico in the deportation of individuals of non-Mexican origins.\textsuperscript{xiii} This would be different from specific funds which had been allocated previously through the Merida Initiative, through which Mexico has received continued support from the United States to strengthen the construction of a border infrastructure in the southern state of Chiapas and for the installation of biometric equipment through which both countries are already exchanging information on migrants detained in Mexican territory.

After formally ending the policy of family separation in the southern border of the United States in June 2018, the government has continued a practice of family separation in some cases. It has also adopted a restrictive interpretation of the concept of family to include only biological mothers of young children. For example, parents are often detained in a detention center miles away from the family detention center where the wife and children are. In other cases, sons and daughters of 18 years of age were separated from their parents and siblings. The policies described also violate the right to family unity and the rights of the child, as pointed out by the Inter-American Commission on Human Rights in the report on their visit to the United States in 2015.\textsuperscript{xliv}

3. **Specific requests to the Inter-American Commission on Human Rights**

1. **Site visits.** We urgently request site visits to the various points of the territories where the different groups of the exodus have crossed:
   a) Border crossings among them official and non-official entry points, such as the border point of Tijuana/San Diego and other along the border between Mexico and the United States. Special attention should be paid to the situation of unaccompanied children seeking to leave countries of origin, in transit, and seeking protection in the United States.
   b) Visits to the emergency humanitarian spaces where the exodus is located in the city of Tijuana, as well as other shelter spaces.
   c) Visits to the border points between Mexico and Guatemala, as well as between Guatemala and Honduras.
   d) Monitoring visits to immigration detention centers and other places of deprivation of liberty of migrants in Mexico.

2. The adoption of precautionary measures requested October 21 and November 14, 2018. According to this, urge the Mexican State to implement them.

3. To remind the governments of Mexico, United States, Guatemala, Honduras, and El Salvador of their responsibility regarding human rights with their nationals and foreigners who enter or attempt to enter their territory, particularly when it comes to asylum seekers, in dialogues with officials of those governments or via public statements. Including the following:
a) Comprehensive protection in accordance with international law for the population that is part of the exodus, as well as for all persons from Central America or Mexico who are forcibly displaced;

b) The recognition of displaced persons as individuals in need of international protection with real options to access refuge and/or asylum protection in the countries of destination;

c) Recognition of the right of persons to leave the country of their nationality and respect for their right of free movement, as well as the prima facie recognition of persons subject to international protection;

d) The guarantee and protection of the right to seek asylum, the efficient application of protocols in matters of refuge and/or asylum in the United States and Mexico, and the non-arbitrary detention of asylum seekers;

e) The protection of the right to family unity and the consideration of the best interests of children in all decisions and measures that affect them;

f) The guarantee and protection of the right to information and consular assistance; as well as the review of return and reintegration plans in Central America;

g) The guarantee of the right to health and dignified conditions for girls, boys, women, and elderly who are part of the Central American exodus, avoiding the deprivation of their liberty at all costs;

h) The unrestricted application of the principle of non-refoulement and the non-use of public and military force for the containment and dispersal of migrants settled and in transit in Mexican and U.S. territory;

i) The non-criminalization of organizations accompanying and defending the human rights of those on the Central American exodus, as well as of any person forcibly displaced;

j) The consolidation of migratory policies that are rights-based and recognize human security, the processes of social integration, and international protection as cornerstones of an inclusive policy;

k) Respect for the right to freedom of mobility or the right to leave the country of nationality and the non-use of the militarization of borders or the excessive use of force by migrant enforcement agents, security, and/or police forces at borders and along the migratory route to prevent the free movement of people;

l) The punishment and prevention of any act of torture or cruel, inhumane, and degrading treatment against persons in immigration detention;

m) Provide recommendations that emphasize the recognition of the Central American exodus as a collective entity and that offers solutions from that perspective.

4. To urge the U.S. and Mexican governments not to implement any program, agreement, or budget that would put migrants and asylum-seekers at greater risk and that would expose them to a violation of their rights to due process and to seek asylum, as proposed by the Remain in Mexico and Third Safe Country proposals that have been reported in the press and that civil society organizations have opposed.

\[i\] According to the statement, “The UN Committee for the protection of the rights of all migrant workers and


iii ICEFI, Plan International, Central America: regional analysis of investment in childhood and adolescence, Guatemala, December 2016, p. 149

iv http://www.nrc.org.co/2017/01/13/honduras-esconderse-o-huir/
v https://www.laprensa.hn/honduras/854572-410/imperios-de-la-extorsion--estan-en-honduras-y-el-salvador


xi https://www.elheraldo.hn/minisitios/hondurenosenelmundo/1226444-471/honduras-y- guatemala-denuncian-motivos-politicos-en-caravana-de-hondure%C3%B1os-hacia-eeuu


xiii A report of the Human Rights Procurator of Guatemala confirms that according to the House of the Migrant in the capital city, they accounted that 35% of the population served were minors. There were children and unaccompanied minors.


xv Testimony collected by KIND staff in Tijuana, Mexico, Dec. 2018


xviii IACHR expresses concern over the situation of the exodus of migrants coming from Honduras and calls on the States in the region to take measures for their protection. October 23, 2018 http://www.oas.org/es/IACHR/prensa/comunicados/2018/225.asp

xix This testimony was provided by a 21-year-old youth of Honduran origin on November 28, 2018 to the SJR Mexico team at the Tapachula Migration Station. Despite the interest in filing a complaint and having been interviewed by UNHCR, he was deported the next day.

xx See here for a list of the members of this civil society monitoring group: http://vocesmesoamericanas.org/tag/caravana-migrante/page/5/

xxi IDH expresa preocupación por la situación de la Caravana de migrantes proveniente de Honduras y llama
a los Estados de la región a adoptar medidas para su protección. 23 de Octubre de 2018

xvii https://thinkprogress.org/melvin-gomez-honduras-first-confirmed-death-migrant-caravan-d9a5c115fbb/
xviii El Presidente Enrique Peña Nieto anuncia el Plan “Estás en tu casa” en apoyo a los migrantes
centroamericanos que se encuentran en México
Comunicado conjunto No. 7 SRE-SEGOB, https://www.gob.mx/sre/prensa/el-presidente-enrique-pena-
nieto-anuncia-el-plan-estas-en-tu-casa-en-apoyo-a-los-migrantes-centroamericanos-que-se-encuentran-en-
mexico?idiom=es

xix Such testimonies were provided by migrants and asylum-seekers that the Jesuit Migrants and Jesuit
Refugee Service (JRS Mexico SJM- Mexico) accompany. The cases described in relation to the arbitrary
deprivation of liberty corresponds to two different cases but that show similar patterns with regard to the act
of the agents of the municipal police in Tijuana in Baja California. The first case is a young man of 22 years
of age, of Honduran nationality, who was arrested by the municipal police in Tijuana on November 19, 2018
and accompanied by the legal team of the SJM- SJR Mexico when it had already been transferred from
Tijuana to the Immigration Office of Iztapalapa in Mexico City. Derived from this case we managed to file a
complaint with the National Human Rights Commission for violations of integrity, personal freedom and
transit, due process, and personal guarantees. The second case corresponds to a young man of 22 years
of age, of Honduran nationality, who was arrested by agents of the municipal police on November 24 in
Tijuana but who was interviewed in the Immigration Office in Tapachula just before being deported, so it is
not possible to proceed to make any complaint or report.

xx Documented provided by Alianza Americas.
xxi Testimony collected by KIND staff in Tijuana, Mexico, Dec. 2018.
xxii Documented provided by the , Migration Affairs Program from the Iberoamericana University in Mexico
City-Tijuana, http://tijuana.iben.mx/?doc=quienessomos/observacion.html

xxiii KIND, The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and
Endangering the Lives of Children at the U.S. Border, https://supportkind.org/resources/the-protection-
 gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-
children-at-the-u-s-border/

xxiv Ibid.

xxv Ibid.

xxvi Documented provided by the , Migration Affairs Program from the Iberoamericana University in Mexico
City-Tijuana, http://tijuana.iben.mx/?doc=quienessomos/observacion.html
xxvii Presidential Actions: Presidential Proclamation Addressing Mass Migration Southern Border United
States, Nov. 2018 https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-
mass-migration-southern-border-united-states/

xxviii https://www.washingtonpost.com/politics/courts_law/supreme-court-denies-trump-administration-
request-to-immediately-enforce-new-asylum-rules/2018/12/21/e9cda32-03c8-11e9-b6a9-0a5c26c9e4_story.html

xxix Hope Border Institute, Sealing the Border, https://www.hopeborder.org/sealing-the-border

xxx Dara Lind, Border Asylum Trump Metering, Ports,

xxxx KIND, The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and
Endangering the Lives of Children at the U.S. Border, https://supportkind.org/resources/the-protection-
 gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-
children-at-the-u-s-border/

policy/


xxxxiii https://thehill.com/regulation/court-battles/422078-judge-strikes-down-bulk-of-trump-administration-
policy-cutting-off/?userid=16460

xxxxiv NGO Statement on U.S.Mexico STC Agreement, 5.22.18.,

xxxxv DHS Press Release, Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal
illegal-immigration

xxxxvi https://www.gob.mx/sre/prensa/posicionamiento-de-mexico-ante-la-decision-delgobierno-de-eua-de-
implementar-la-seccion-235-b-2-c-de-su-ley-de-inmigracion-y-nacionalidad
