

PUBLIC POLICIES ON MIGRATION AND CIVIL SOCIETY IN LATIN AMERICA

The Cases of
Argentina, Brazil, Colombia and Mexico



Coordinator: Leonir Mario Chiarello

**PUBLIC POLICIES ON MIGRATION AND CIVIL
SOCIETY IN LATIN AMERICA**

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General Coordinator and Editor

Leonir Mario Chiarello

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The Scalabrini International Migration Network (SIMN) is a not for profit organization created in 2006 to safeguard the dignity and the rights of migrants, refugees, seafarers, itinerants and people on the move worldwide. This publication consists of four studies concerning the definition of Public Policies and the role of Civil Society in four Latin American countries: Argentina, Brazil, Colombia and Mexico.

The opinions expressed in this book are solely those of the authors and do not necessarily reflect the opinions of the Scalabrini International Migration Network (SIMN).

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AND CIVIL SOCIETY IN LATIN AMERICA
The cases of Argentina, Brazil, Colombia and Mexico

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To conclude, we would like to thank all of the readers who, as a result of the reflections and proposals presented in this study, agree to the definition, implementation and evaluation of public policies, programs and projects intended to promote the respect for the dignity and the rights of everyone and all human beings, including migrants.

New York, June 2013

Leonir Mario Chiarello
Executive Director

Scalabrini International Migration Network

Preface

The growing socioeconomic rift between countries, the impoverishment of vast sectors of the population, social inequality, a lack of social cohesion, economic crises, slow growth in job offers that impact the rate of unemployment, natural disasters and violence are among the primary factors motivating the emigration of millions of Latin Americans to the north of the American continent or to other countries in the region.

However, some of the destination countries for migrants have restrictive policies that force millions of people to maintain an irregular migration status, which is associated with the exploitation of labor, violation of human rights, social vulnerability, human trafficking and other consequences. In this multifaceted context, the management of migration flows requires public policies regarding migration that are explicit and include migrant populations.

One of the integral issues regarding the definition, implementation and evaluation of public policies on migration is the diagnosis of the elements involved in migratory processes and their impact on societies of origin, transit and destination. A lack of awareness of these factors in many cases leads to inadequate or inefficient public policies for the reception and integration of migrant populations.

In addition, when defining and developing policies and programs intended to ensure the dignity and the rights of migrants and their families, adequate governance of migratory flows requires the co-responsibility of governments and actors in the civil societies of the countries of origin, transit and destination. In this, consensus between the governmental actors and actors in civil society is a *sine qua non* condition necessary to guarantee the legitimacy and efficacy of public policies regarding migration.

The growing involvement of civil society in the definition, execution and evaluation of migration policies and programs implies a substantial change in the character of these policies and programs. As a consequence, although public policies on migration were conceived as “state policies,” the active intervention of civil society and its results allow us to now define them as “society’s policies.”

In terms of the social actors involved and the themes that constitute their rationale, the expanded character of these policies is an indication of the important changes in international standards and the position that some countries have adopted. In this study, the spectrum of arguments that serve as the basis for the definition of public policy on migration has widened, whether it is based on security (in general, the main argument of host countries), the cost-benefit calculations of migration, or prioritizing the human rights of migrants (as is the case in the majority of countries in Latin America).

The agreed priority role that ethical foundations take in the definition and execution of public migration policy allows for an observation of the displacement that is taking place from a conception defined as “state policy” to one that could be seen as “humanitarian policy.”

Future public policies on migration will encounter a special challenge in the way they articulate the relationship between civil society and governments. This articulation could either be directed toward the denial of rights for migrants, as is increasingly observed in public opinion across most of the developed world, or the acceptance of the principle of human development for migrant people as a basis of all policy, which has been taken on by different civil society organizations that are dedicated to defending these rights.

As a response to these challenges of the definition of execution and evaluation in public policy regarding migration, the Scalabrini International Migration Network (SIMN) has implemented a system for monitoring public policy about migration and permanently links decision makers regarding matters of migration. One of the specific activities of this monitoring system is to carry out research about critical aspects of international migration and their ties to public policy.

After having carried out an exploratory study on public policy regarding migration in the Americas,¹ the SIMN Network proposed the current research project regarding public policy on migration and the participation of civil society in the definition, execution and evaluation of such policies in the four largest countries in Latin America: Argentina, Brazil, Colombia and Mexico.

This investigation offers a current diagnosis of the main trends of migratory flows and the initiatives put in place by political and social actors that work in the field of migration in these four countries. Additionally, this investigation allows decision makers working on migration issues and related fields to consider new factors when defining and implementing new public policies and programs relating to migration.

In the first chapter of this investigation Lelio Mármora, in collaboration with Gabriela Altilio, María Laura Gianelli Dublanc and Yamila Vega present the main trends of migration in Argentina, the policies and laws implemented throughout history regarding the subject of migration in this country and, finally, a broad panoramic assessment of activities undertaken by actors in civil society in relation to the definition, implementation and evaluation of Argentinian public policies and programs on migration.

In the second chapter, a team of investigators coordinated by Neide Patarra and integrated by Duval Magalhães, Paulo Parise, Dirceu Cutti, Helion Póvoa Neto and Mariana Aydos, and in collaboration with Elizângela Lacerda present a diagnosis of migration throughout the history of Brazil, as well as the primary normative and

¹ Mirkin, Barry (2011) *La migración internacional en el Hemisferio Occidental: un estudio exploratorio*. Scalabrini International Migration Network, New York.

regulatory elements on which migratory governance of the country has been based. They conclude with a discussion of the main perceptions and actions on the part of social actors regarding the promotion of the rights of migrants and public policy on migration.

In the third chapter, Roberto Vidal, Rosa María Martín, Beatriz Eugenia Sánchez and Marco Velásquez present an extensive overview of migration, refugees, and displacement in Colombia, a description of policies that have been developed regarding migration, refugees and displacement, and the details of the regulatory framework of public participation in the definition of public policies on migration, refugees and displacement in the country.

In the fourth chapter, following Jorge Durán's examination of the main trends in migration, emigration, transmigration and refuge in Mexico, Cecilia Imaz presents the legal and institutional frameworks of Mexican public policy. Then, Rodolfo Casillas analyzes the humanitarian effort for migrants promoted by civil society organizations, focusing his attention on hostels and migrant homes. Finally, Florenzo María Rigoni presents a sapiential analysis of Central American migratory flows in Mexico.

The research on public policy regarding migration and civil society in Argentina, Brazil, Colombia and Mexico shows that the men, women, adolescents and children who migrate, are displaced or become refugees are rights holders and central actors in the construction of a culture of coexistence in which everyone can enjoy the inalienable rights inherently granted to them by virtue of what they are: human beings. In this sense, the consultation and coordination between the actors of the state and the participants in civil society, including migrants, are priorities on the social and political agendas of these countries.

Leonir Chiarello and Lelio Mármora

September 2011

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Introduction

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Migration is a global phenomenon. However, a good part of society and the media's attention is focused on the restrictive policies developed by countries such as the United States, Australia, and certain countries of the European Union, to name a few. Seldom do we get an insight into the underlying problems surrounding the issue of migration in developing countries, and studies on this particular topic tend to be from the perspective of a third country that is uninvolved in the migration pattern in question. Here in lies the importance of this book.

Public Policy on Migration and Civil Society in Latin America: The Cases of Argentina, Brazil, Colombia and Mexico identifies migration trends in four Latin American countries and analyzes initiatives being carried out by political and social actors working in the fields of immigration, emigration, transmigration, refuge assistance, and displacement. The purpose of this analysis is to provide decision makers with evidence to facilitate the definition and enforcement of public policies and programs on migration that are aligned with the challenges presented by the current global climate. The information on which the book is based was gathered in the second half of 2011 and, thus, presents timely and valid information.

This book is an impressive effort to describe the problems surrounding migration, a dynamic and changing phenomenon. The analysis of the characteristics of migration in these four Latin American countries reveals many shared issues and similar areas of policy development. However, it also documents significant differences that are worth evaluating for the sake of a better understanding of the phenomenon itself and the methods adopted by the authorities and society alike to deal with these issues. This work is also a timely contribution in the sense that it illuminates a comparison of how countries make decisions and act in relation to certain issues, and this allows for the exploration of other horizons, or at least suggests the need to consider different approaches.

The book is divided into four large chapters, each of which is dedicated to studying the migration policies of one of the four largest countries in Latin America: Argentina, Brazil, Colombia and Mexico. For each chapter a group of independent

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researchers was formed under the leadership of Lelio Mármora for the chapter on Argentina, Neide Patarra for Brazil, Roberto Vidal for Colombia, and Cecilia Imaz for México. All chapters are organized in a similar way, including an analysis of the migration policies of the country in question, followed by an examination of the public policies on migration developed in this country, and then a description of the participation of civil society in the design and enforcement of public policies and programs on migration. The fourth section of each chapter offers recommendations and suggestions to enable the participation of the civil society in the design of public policies on migration. This format varies a bit. For example, in the chapter on Colombia, issues such as internal displacement and the conditions of refugees and asylum seekers are emphasized with a greater focus on the legislations and methods adopted by the authorities, while in the chapter on Argentina more emphasis is placed on the participation of civil society in the definition and implementation of public policies and programs on migration.

Each chapter contains specific recommendations for each of the topics discussed. In this way, starting with Argentina, it is known that the country, traditionally, has been the recipient of a large inflow of manual laborers because of its economic needs. This policy of openness, however, has been interrupted at different points in time by events such as the Great Depression of 1929 and the Second World War, and twice by the advent of military dictatorships; in 1955 and in the second half of the 1990s.

At the beginning of the twentieth century, migrants played a decisive role in the creation of Argentina's workers' unions. Some leading business sectors affected by the union movement responded by promoting policies to expel foreigners who were seen as subversive. Nevertheless, it was migrant organizations that decisively influenced the development of policies of social integration and assistance in fields such as education and health care.

In recent decades, civil society has also contributed to the definition of public policies on migration, placing an emphasis on the protection of the human rights of migrants. The past few decades have also seen Argentina go from being a host country for immigrants to a producer of migrants. Traditionally, Argentina received waves of immigrants from overseas—mainly Europe—and from adjacent countries such as Uruguay and Chile. When this movement declined, there was an increase in the immigrant flow from Bolivia, Paraguay, and Peru. In addition, there was also development in the flows from Eastern Europe and Asia. The most recent phenomenon has been the migration of Argentines to other countries.

A central aspect of the study carried out by the Argentinian work group is the recognition of the significant participation of civil society in the definition and promotion of a law that would replace the statutes from the time of military dictatorship. During the design phase of the new law, migrant institutions, churches, centers for human rights, and research centers were directly involved. In this case, as in many others, the participation of civil society is seen as a fundamental factor in enabling the monitoring of regulations that could distort the purpose of laws. The

chapter on Argentina discusses, for example, the settlement of migration agreements between Argentina, Peru, and Bolivia at the end of the 1990s, purportedly designed to regulate and protect Bolivian and Peruvian migrants living in Argentina. These legal instruments are shown, despite the demands of civil society, to contain some regulations similar to the Videla Law from the time of the dictatorships,² thus highlighting the difficulties that Argentina has experienced in the process of its transition to democracy.

Another highly fascinating aspect of the situation in Argentina is the importance of a bottom-up policy, a policy that genuinely responds to the problems migrants face when settling in local communities. While migrants may find broad opportunities for participation, they also run the risk of being marginalized and discriminated against. In order for migrants to move in a positive direction in terms of citizens' rights, it is crucial for national policy to stem from local needs and demands.

The case of Argentina is interesting as well because the issue of migration has been the subject of debate in many regional and international forums. Likewise, the discussion that has developed within the Southern Common Market (MERCOSUR) is worthy of mention, as policies such as integrated migration control—for the sake of promoting better migration management—have been proposed and approved. There is also a residence agreement within MERCOSUR, although these initiatives have not yet been fully implemented.

The recommendations in this chapter include the need to inform Argentine society objectively about the causes, characteristics, and effects of migration through various channels, as well as the suggestion that more spaces for citizen participation need to be generated around the subject, such as in the mass media. In addition, the chapter ends with a captivating reflection on the implications brought about by the concepts of *multiculturalism*, centered on “tolerance,” and *interculturalism*, which implicitly carries with it the valuation of the problems of integration and of participation of minority groups in global society.

The chapter dedicated to Brazil begins with a discussion of the observable tendencies of international migration in recent times that are part of the global productive restructuring processes. This analysis asserts that in the current climate of globalization it is essential to consider the expansion and effective enjoyment of

² Law 22,439, better known as the “Videla Law”, is not only questionable because of its origins, but also because of its message, and content. In it, the immigrant was considered a threat to national security and public order. This piece of legislation established an unlawful mechanism of control and denied access to fundamental rights that were guaranteed by the constitution to all residents of the country, and also enabled the National Migrations Office and its auxiliary police forces to order and execute detentions and expulsions of foreign people, without any kind of intervention or control from the Judicial Power, thus violating basic procedural safeguards. This situation was exacerbated by the obligation this law imposed on all officials and public employees to denounce immigrants that did not have legal residence. This requirement created a state of great vulnerability for migrants without legal residence, as it prevented them from making use of judges, teachers, doctors and other administrative services, due to the risk of being expelled from the country.

increased human rights by migrants. This is important because international migratory movements represent a contradiction between the interests of dominant groups in globalization and those of individual countries, since the latter continue to uphold the traditional goal of safeguarding their sovereignty. In this sense, in order for migration policy to enjoy legitimacy and efficacy, it should be closely linked with understandings of human rights.

The history of Brazil with regard to migration is better understood when seen from the perspective of the transition from an extractive economy to a colonial one that later moved into a phase of mercantilism, which was deepened by the move of the Portuguese royal family to the country at the beginning of the nineteenth century (1808). During this period, the wealth that resulted from the mining industry in Minas Gerais and sugar production in the northeast, remained in the country and strengthened the internal market, which had been profoundly changed by the presence of the royal court in R o de Janeiro.

In the first decades of the nineteenth century there was not only a wide availability of land and slave labor released from depleted mining operations, but also capital flows which allowed for the expansion of a product that offered a promising future in international commerce, at first in the Rio de Janeiro region and later in the Paraiba valley. This product was coffee.

At the same time, the transformation from colony to kingdom and, eventually, into a fully independent, strong national economy attracted many Portuguese. These people came to Brazil with still incipient ideas of industrialization that lasted for the entirety of the initial period of the coffee cycle, which would become the most exported product and, therefore, the main economic support of Brazil.

The most profound changes to this economic model, which was initially supported by the slave system, would begin to arise toward the middle of the nineteenth century when new forms of production would have an impact on society. The gradual substitution of slave labor by waged labor and the consequent development of the internal market would demand, with progressively more force, improved means of transport, machinery for the production of coffee, and the emergence of the first manufacturing sites. This created the conditions for rupture with the previous colonial system.

The first stage of immigration to Brazil lasted some three centuries and was characterized by the traffic of African slaves, which brought four million captives to the colony. At the beginning of the nineteenth century, migration policy was diversified in a way that attracted not only Portuguese migrants, but also Germans, Italians, and Brazilian nationals from the south of the country in equal measure.

In the stage of European immigration to Brazil that lasted from 1877 to 1903, nearly two million people entered the country, with a predominance of Italians (almost half of the entire influx), Portuguese, and Spaniards. This influx of immigrants was characterized by the inclusion of poor people from these European

nations and, in Brazil, they were employed in the coffee production industry, settling mainly in São Paulo and Rio de Janeiro.

At the beginning of the twentieth century a process of agricultural colonization began, and from 1903 to 1930 it brought a new wave of Europeans. During this period, another two million migrants came into the country. The first restrictive measures on immigration were implemented in 1930 as a result of the Great Depression of 1929. These measures were eventually integrated at the constitutional level in 1934 and 1937.

In the meantime, the first half of the 1930s saw an influx of Japanese. Parallel to the way in which the influx of immigrants was being controlled, Brazil began to present a pattern of internal migration, leading to coining of the phrase “metropolization of the population,” with massive contingent populations abandoning rural zones and settling in large cities looking to seek a better quality of life and work. As an example, in Paraná between 1940 and 1970, the population soared from 1.2 million to 6.9 million.

In contrast, in the 1980s—the “lost decade” when economic growth stalled—unemployment and economic stagnation prevailed. As a consequence, greater return migration from big cities to the origin of migrants was observed. In this way, rural-urban migration was in decline when compared to urban-urban migration.

Today, similar to what was noted in the Argentine example, we see a growing migratory flow of Brazilians to foreign countries. Brazil has gone from being a host to migrants to a producer of them. In 2009, according to the Brazilian Ministry of Foreign Affairs, there were more than three million Brazilians living abroad while there were only 750,000 foreigners living in Brazil. Those who have emigrated can be found across all of North America, Europe, South America, Asia and, especially, Japan.

In terms of immigration, this study analyzes agreements established with French Guyana, Peru, and African countries such as Angola. The study examines the relationship between Brazil and Angola that has established a migration network that is maintained across institutional, commercial, and personal social networks.

With regard to return migration of Brazilians living abroad, although there is a lack of exact figures, there has been an observable increase. It must also be highlighted that Brazil has a migration policy to “attract brains” in response to the productive and economic needs stimulated in the country by globalization. In 2010, more than 56 million foreigners with high levels of education were “captured” by Brazil through the use of this policy.

This chapter also discusses the management of migration in Brazil in light of integration initiatives in South America. It also highlights that so-called *irregular* migration should be viewed from a humanitarian perspective, not one of criminalization—a point that was heavily emphasized by the government of Lula da Silva. This point is of great importance given that, particularly from 2001 onward, countries such as the United States have developed approaches that seek to equate

migrants with terrorists for reasons of “national security.” Furthermore, there is also mention of the problems relating to slavery, slave labor, and human smuggling networks, which even now, in the twenty-first century, continue to be a great scourge in Brazil.

As has already been explained, migration policy in Brazil has put an emphasis on the human rights of migrants, but it also follows economic and social logic. This study shows that the topic has been the subject of a wide national debate. This has involved the participation of different sectors of society and migrants themselves with the hope of hearing their perspectives on the problems they face and the solutions they seek. The chapter ends with a detailed review of institutions, regulations, and programs aimed at addressing the complicated migratory dynamic of the country.

The third chapter is dedicated to the public policies on migration of Colombia. In contrast to the countries mentioned above, Colombia’s international migration did not constitute a significant demographic process. In this regard, it is understandable that Colombian society has a “defensive” attitude toward the topic of migration, mostly because the debate has developed amid ignorance, denial, and invisibility.

Given the characteristics of Colombia, the chapter shown in the book establishes a distinction between the analysis of “voluntary” international migration, internal displacement, and refugees. This distinction is drawn because, while these groups share similar characteristics, there are also critical differences that should be highlighted.

Colombia has not been a place of interest for foreigners, which explains their low percentage of the population. In contrast, since the middle of the last century there has been a sustained outflow of Colombians, which the study divides into three stages: 1965 to 1975, the 1980s, and 1995 to 2000. In 2005, 3.3 million Colombians were living abroad, equal to 8 percent of the country's population. The main destination countries of Columbian migrants are the United States, Spain, and Venezuela.

The next topic considered by this study is the forced displacement of the population, which has been a constant in Colombia, although it was not acknowledged as a problem until the end of the twentieth century. Because of this delayed acknowledgement, studies on this subject are all fairly recent. Various works on the topic have concluded that displaced people are from all ethnicities, profess all forms of religious belief, and represent diverse political ideologies. Consequently, no pre-existing identity can be defined for the displaced population. They are civilians who had to flee in order to save their own lives. The document explains the meaning of the concept of displacement.

According to the information collected for this book, we know that Colombia is the country with the highest number of internally displaced people in the world, far exceeding both the Democratic Republic of Congo and Pakistan. There is no consensus among the statistics: According to the official data, the internally displaced

people within Colombia number 3.5 million, but non-governmental organizations estimate the number to be over 5 million. The population of Colombia is 46 million, which means that the figure of displaced people ranges from 7 to 10 percent of its population.

Why does internal displacement exist in Colombia? The reasons most commonly cited by are violence, the burning of crops or homes, the conquest of villages or settlements, controlled access to a certain areas, and confinement practices. It is important to note that, although armed groups such as the Revolutionary Armed Forces of Colombia (FARC) are responsible for armed conflict and displacement, it cannot be confirmed that all cases of forced exodus are consequences of this war. The economic model based on the mining industry and extensive large-scale agriculture is also a contributing factor to the displacement of farmers.

It is also important to highlight that, despite the fact that the displaced population tends to be the one of the most vulnerable sectors of society, studies and surveys have found that those who have been displaced rarely intend to return to the place from which they were expelled. The Colombian state, meanwhile, has developed an increasingly complex social policy to assist internally displaced people, which have led to difficulties addressing the problem. One thing to point out when it comes to the participation of civil society in the assistance of internally displaced people is that, although the Colombian government has opened channels of communication with those affected, the Constitutional Court does not demand that recommendations by representatives for the displaced are binding, but circumscribes its approach to the level of dialogue with the authorities.

In this vein, the book concludes with various recommendations that range from budget issues and suggestions for involving the migrant population in policy formation to attempting to standardize definitions of “internally displaced people” by creating a unified and reliable census of the displaced population, setting up guidelines on the subject of repatriation, developing sustainable plans for repatriation, generating access to humanitarian aid, restructuring income-generating programs, revision of the housing guarantee program, among other suggestions. On matters pertaining to refugees, the book recommends a just and efficient system and not simply a mechanism of control. Instead, there needs to be a legal framework corresponding to integral migration policies based on the principle that migrants are entitled to human rights.

The final chapter of the book is dedicated to the review of the migration policy of Mexico. As a result of its geographical location and level of development, Mexico shows a high rate of emigration and low immigration. The country is a main producer of emigrants to the United States, but it additionally faces a complex challenge in protecting and assisting migrants who pass through the country in order to gain entry into the United States.

In the past, the Mexican population used migration as a kind of pressure release valve. When families had seven children, on average, migration was seen as population

control. In contrast, among families with two children or fewer, it has not appeared to be the most desirable option. Studies indicate that when Mexico experiences sustained economic growth, migration will decline. Nevertheless, a factor that should not be overlooked is the increasing age of the Mexican population, which will have serious repercussions for migration dynamics. In any case, emigration, for the time being, represents a loss of human resources that are crucial to the country, mainly because remittances, despite their importance, do not compensate for the loss of population. (Remittances make up only 2 percent of Mexico's gross national product).

Despite the fact that the United States has developed restrictive policies regarding immigration, the Mexican government has, for the past decade, opted to address this challenge through the use of agreements and reforms to the legal frameworks and the involvement of international organizations. It is also worth noting that Mexico is directly affected by the criminalization of immigration implemented by the United States as a result of the terrorist attacks of September 11, 2001.

Immigration, internal migration, transit migration, and relocation of refugees are processes that have drawn the attention of the authorities at different points in time. For example, transit migration has always existed, but in the last few years it has become a serious problem of safety and human rights, especially for emigrants from Central America passing through national territory who are exposed to numerous dangers. Corruption, extortion, robbery, threats of rape, kidnapping, murder, and mass killings are ever more frequent dangers for migrants.

It is also important to highlight one of the policies applied by the Mexican authorities, namely that of “externalizing” the problem, especially in the case of the southern border, in order to move the “migration problem” outside the national boundaries.

This study categorically affirms Mexico's status as a country of emigrants. In fact, according to the World Bank, Mexico is one of the first countries in the world to be an exporter of human resources, with the direct participation of 10 percent of the population and indirect participation by 40 percent. The report goes on to provide various statistical facts on the profile of emigrants, including their place of origin, age and professional profile. The second part of the chapter on Mexico presents the national legal framework for migration and its links with international legislation on the matter.

In the third section of the chapter, which deals with the role of civil society, the biggest emphasis is given to the work carried out by shelters and homes for migrants. A refreshing part of this section, which even employs colloquial language — breaking away from the somber tone with which these issues are usually discussed— is the material written by Flor Maria Rigoni on the topic of Central Americans in Mexico. The author approaches subjects that are widely known but that are rarely included in the “solutions” put forward by authorities—including human trafficking and networks of corruption that have developed to the detriment of migrants.

Nevertheless, Rigoni touches on some aspects that are worthy of reflection, namely the incursion of drug trafficking on the problem of migration and vice versa.

Rigoni acknowledges that, for a long time, Mexico did not have a policy or body of law regarding migration, leaving such matters to develop according to the laws of the market, where the prevailing view held that migration was a pressure release valve and included value of remittances. It was not until the May 24, 2011, that the first law on migration came into effect in Mexico. However, the law will not do much to battle the lack of collective awareness of migration in Mexican society. Mexican migration, according to the author, is defined by three different factors: politics, the labor market, and unforeseeable causes.

The chapter on Mexico concludes with a few recommendations, including that the ministry of the interior should clearly define a policy on migration; that the government's relationships with humanitarian organizations should be rekindled; that studies by the Commission for Human Rights should be more efficient; that only authorized officials should carry out migratory verification activities; and that social services for university graduates in shelters and migrant homes should be promoted.

In sum, this work establishes a standard to be taken into account by all current studies on the comparative politics of migration. Its relevance is undeniable, especially considering the debate on the subject that is developing in the United States, a debate in which President Barack Obama has been an active participant.

For Mexico, the country of emigrants that is increasingly exposed to the migration dynamics of people flowing to the United States and Canada from Central America—and even from more remote origins in South America, Africa, and Asia—the challenge is enormous. Migration continues to be a changing phenomenon contributing to the reconfiguration of territorial dynamics, the development of new links and social relationships between different actors, and the formation of new processes of social differentiation.

CHAPTER I

PUBLIC POLICIES AND PROGRAMS ON MIGRATION IN ARGENTINA The Participation of Civil Society

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Introduction

Public policies on international migration in Argentina have been closely related with the different proposals, reactions or activities of civil society. The perpetually unsatisfied demand for manual labor in different sectors of economic activity promoted active policies of openness and migratory promotion since Independence. However, this framework of openness, which in some periods has been changed to active encouragement, has been interrupted at different points in time by explicit and implicit restriction policies, as was the case during the economic crisis of 1929, the Second World War, the military dictatorships starting in 1955 and the second half of the 1990s.

On the other hand, the introduction of migration into the social structure and economy of Argentina had different reactive effects both on a political level and in terms of public perception. These reactions could be seen at the beginning of the twentieth century, when an active role was taken up by immigrants with the foundation of workers' unions, which provoked a negative reaction from leading sectors, embodied in a law that allowed the expulsion of foreigners who were considered dangerous to social peace. However, migrant organizations accompanied policies of integration and social aid for migrants, particularly in areas such as health care and education.

In the last decades, the role of civil society, in its varied forms, has been essential both in the definition of public policy regarding migration and in its development, playing a role of particular importance in the protection of migrants' human rights. These decades have also seen changes in migration flows not only in arrivals to the country but also in emigration. Traditional overseas migration ceased, just as some migrant flows from neighboring countries, such as Chile and Uruguay, continued and migration from neighboring countries, such as Bolivia, Paraguay and other South American countries like Peru increased over time. New migration flows from Eastern Europe and Asia emerged, and a process of emigration from Argentina to foreign countries began to take place. These changes, in turn, determined transformations in migration policies and programs.

In this way, emigration from neighboring states, which was ignored until a law was passed during the last military dictatorships, has been recognized in current regulations and has been the target of special programs, such as "Patria Grande" (Great Homeland) aimed at migratory normalization. In addition, repatriation programs that were pervasive during the return to democracy in the 1980s have been followed by partnership programs and programs aimed at the repatriation of Argentinians with qualifications from abroad. At the same time, in the hope of increasing public participation among Argentinian emigrants, the Ministry of the Interior developed a special program, named Provincia 25. These policies and

programs are based on an institutional structure and their foundations are in different parts of the state, although since the middle of the last century the Ministry of the Interior has had the primary mandate regarding this subject.

Inter-agency coordination for the definition and management of migration policies and programs is generally structurally weak and has only been explicitly active in broader political issues, such as the *Consejo Federal de Población–COFEPO* (Federal Population Council).

Current policies on international migration are outlined in a law put into place in 2004, which clearly defines the respect for migrants' human rights. This law of protection and openness to migration is directly associated with the progress made in Mercosur, particularly with the Open Border Residence Agreement for Citizens of Mercosur and Associated Countries (*Convenio sobre libre residencia de los ciudadanos del MERCOSUR y países asociados*) and in the South American Plan of Human Development of Migration (*Plan sudamericano de desarrollo humanos para las migraciones*) from the South American Conference on Migration. These advances in free circulation and residence have been continually supported and accompanied by different civil society organizations, such as research centers, grass-roots organizations, or non-governmental organizations, which have contributed to the consolidation of an open public policy for international migration connected to regional integration and respect for migrants' human rights.

The general objective of this document is to analyze the role of the state and civil society in the development of public policies regarding migration in the Argentine Republic. Using the existing data available, we will begin with a brief description of immigration and emigration flows, highlighting the forms of integration into the labor market of the current migration flows originating from neighboring countries and Peru. In the second part, we will analyze the evolution of migration policies up to the present time, taking into consideration the different changes that have taken place over the last century. In the third part, we will present the institutional structures involved in the definition and development of public policies and programs regarding migration. The legal framework that contains and directs these policies will be analyzed on its different levels and evolution, including the different bi-national and regional conventions to which Argentina has adhered. A chapter has been dedicated to international migration programs, both traditional and new programs targeted at immigrants who settle in the country and those implemented as a result of the new migration movements of Argentinians to foreign nations. Although the above sections analyze the roles of the state and civil society, the final part deals with civil society and its role regarding international migration policies and programs. We organized a sample consisting of thirty organizations representing different activities and undertook structured interviews with their organizers. In this, we analyze the forms of participation of research centers, grass roots organizations, intermediation organizations and non-governmental organizations. This work presents proposals on citizen participation in the management, information and awareness raising associated with the definition of public policies and programs regarding international migration.

PART I

GENERAL ANALYSIS OF MIGRATION DYNAMICS IN ARGENTINA

The evolution of international migration in Argentina has changed over time, from the large flow of emigrants from overseas at the turn of the twentieth to the twentieth century to a second wave after the end of Second World War to the end of the 1950s. Additionally, the country has received continuous migration from bordering countries with some of these emigrant groups still maintaining a strong presence among the total of foreign population, although at present migration represents a substantially smaller portion of the population than it did at the beginning of the twentieth century.

Current migrations show employment patterns in specific production and service sectors, whereby the most noticeable are Bolivian emigrants, who have become a significant factor in the horticultural production supplying the main urban centers. On the other hand, since the 1960s, a movement of emigration from Argentina to other countries began, which was quite prominent during the 2000–2001 crisis, transforming Argentina into an emigration country.

1. Immigration

1.1. General Features of Immigration Movements (1869–2000)

Traditionally, Argentina has been a migrant recipient country. Throughout the past century, it had a strong presence of foreign population, which represented approximately 30 percent of the overall population in 1914. This fact positioned Argentina in relative terms as a country with one of the largest number of immigrants worldwide. Three decades later, the size of the foreign population in Argentina was basically the same (approximately 2 million), but in terms of the proportion of the overall population of the country, it had dropped by half (15 percent) and continued to fall over the years. In 2001, immigrants represented 4.2 percent of the overall population, but showed a slight increase in 2010, representing 4.5 percent.

This fall in the proportion of immigrants can be explained by a reduced flow of immigrants from overseas while those from neighboring countries, who represented 2.4 percent in 1869, continue to represent a similar relative proportion, which in 2010 amounted to 3.1 percent. At the beginning of the twentieth century, Argentina was the country with the highest foreigner-to-total population ratio. However, according to the 2010 census, today it ranks as number 112 out of 230 countries surveyed with 4.5 percent (United Nations 2009). The above indicates that Argentina not only ranks much lower than traditional immigration countries, such as Australia

(21.9 percent), New Zealand (22.4 percent), Canada (21.3 percent) or the United States (13.5 percent), but also in the Latin American context it has been surpassed by Costa Rica (10.5 percent) or Belize (15 percent), and at present it is positioned with similar ratios as Dominican Republic (4.2 percent), Venezuela (3.5 percent) and Panamá (3.4 percent).

On the other hand, according to the most recent estimates of the Continuous Reporting System on International Migration in the Americas (SICREMI), in 2009 permanent migration flows into Argentina were proportionally similar to those received in France and Germany and three times higher than those in Japan, the three countries which had the lowest continuous immigration per capita this year (OAS 2011).

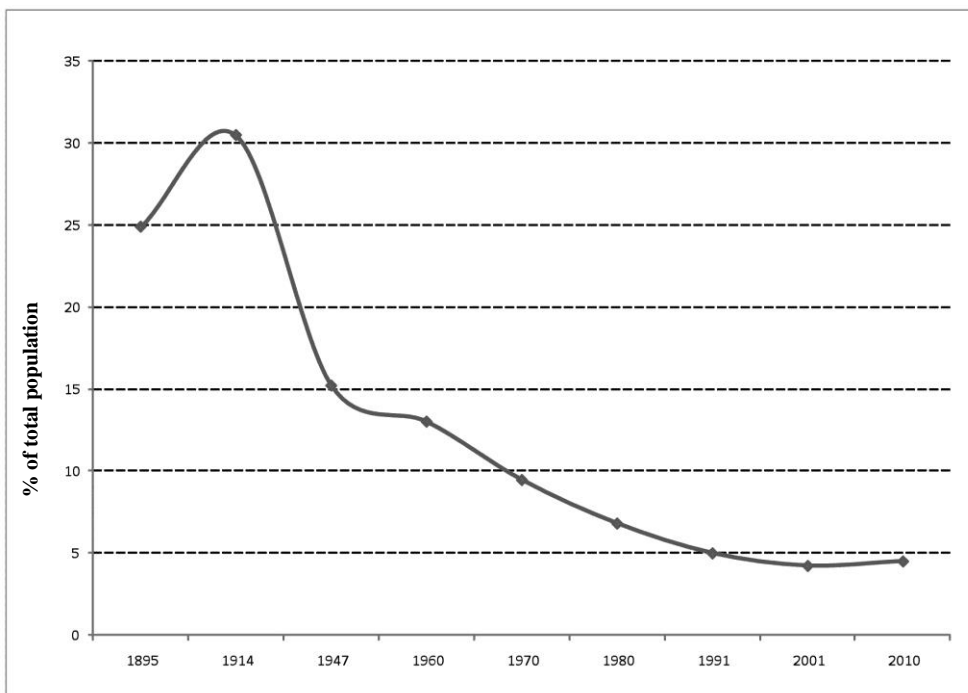
Table 1. Foreign population classified by neighboring or non-neighboring country of origin.

National population censuses 1869–2010. Country total

Census Year	Total Population	Total Foreign Population	Percentage of Foreigners-to-Total Population	Foreign Population from non-neighboring Countries	Foreign Population from non-neighboring Countries as a Percentage of the Total Population	Foreign Population from neighboring Countries	Foreign Population from neighboring Countries as a Percentage of the Total Population
1869	1,737,076	210,189	12,1	168,970	9,7	41,360	2,4
1895	3,954,911	1,004,527	25,2	890,946	22,3	115,892	2,9
1914	7,885,237	2,357,952	29,9	2,184,469	27,3	206,701	2,6
1947	15,893,827	2,435,927	15,3	2,122,663	13,3	313,264	2,0
1960	20,010,539	2,604,447	13,0	2,137,187	10,7	467,260	2,3
1970	23,390,050	2,604,447	9,5	1,676,550	7,2	533,850	2,3
1980	27,947,447	1,912,217	6,8	1,149,731	4,1	753,428	2,7
1991	32,615,528	1,628,210	5,0	811,032	2,4	817,428	2,6
2001	36,260,130	1,531,940	4,2	608,695	1,6	923,215	2,6
2010	40,117,096	1,805,957	4,5	560,903	1,4	1,245,054	3,1

Source: Pacea and Curtis (2008) and Population, Household and Housing Census 2010 (INDEC).

**Figure 1. Foreign population as a percentage of total population.
National population censuses 1869–2010. Country total**



Source: National Population Directorate (Dirección Nacional de Población), 2010. Population Censuses.

1.2. Characteristics of Immigration Movements toward Argentina in the Last Three Decades (1980–2010)

The 1980 and 1991 censuses show that Paraguayans and Chileans accounted for more than 60 percent of the total migrant population in Argentina, but in 2001, Bolivian migration accounted for 55 percent of the migrant population in Argentina, along with the Paraguayans. According to the results of the 1980 population census, the stock of immigrant population in Argentina amounted to 1,912,217 people, whereby 1,149,731 were foreigners from a non-neighboring country and 753,428 were from a neighboring country. In terms of the relative weight of each collectivity, among those from overseas the largest groups were Italian and Spanish immigrants. However, in the case of the foreigners from neighboring countries, the largest groups were the Paraguayans (35 percent), followed by the Chileans (29 percent), the Bolivians (16 percent), the Uruguayans (15 percent) and the Brazilians (6 percent). The 1991 population census showed that the stock of foreigners from neighboring countries was of 818,000 people while the stock from non-neighboring countries was 811,000 because fewer people were flowing in from the old sources of migration and the earlier cohorts were dying out. Paraguayans were still the largest group of

migrants from neighboring countries, although their relative weight dropped in comparison to previous censuses (31 percent), as other groups have been growing.

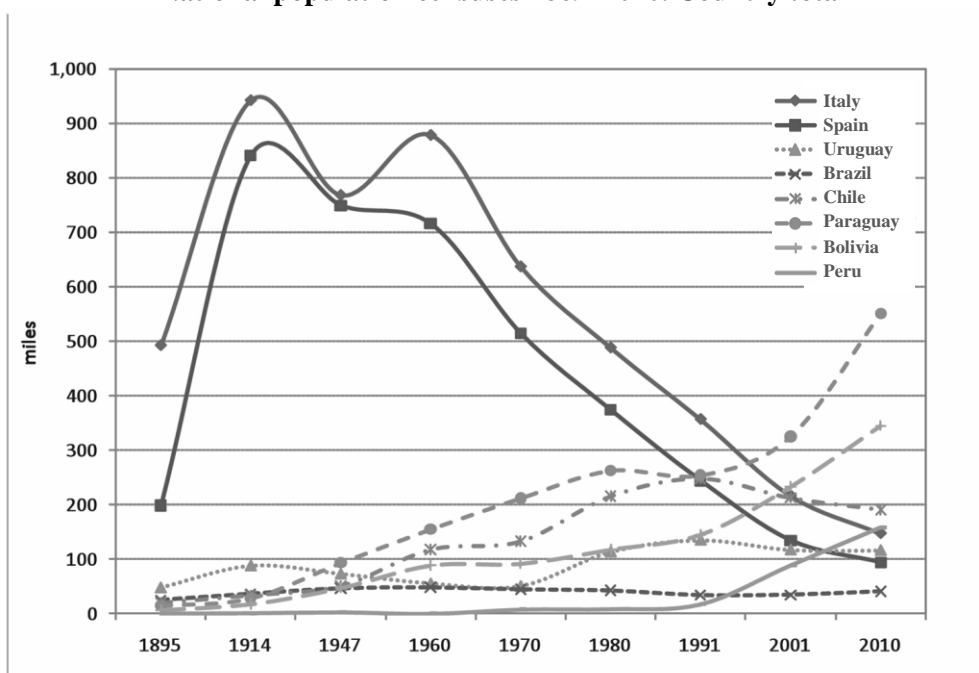
In 2001, available data reported 608,000 emigrants from non-neighboring countries and 923,000 emigrants from neighboring countries, of which the largest groups were from Paraguay, Bolivia and Chile. However, the dynamics of this population shift in the last decade reveals that although Chileans and Uruguayans constitute the largest migrant groups they did not remain constant in comparison with the others. This result is a consequence of the greater dynamism of Paraguayans and Bolivians in the period between the censuses.

After 2001, a decline in the earlier migration flows from overseas became more pronounced, as did a reduction in the number of migrants born in Chile and Uruguay. The most salient characteristic of more recent migrations is the increase of migrants from the plurinational states of Bolivia, Paraguay and Peru, particularly of women in economically active age groups in Paraguay and Peru. Other migrant groups that have arrived in the last two decades are from South Korea, continental China, Taiwan, the former Soviet Union (especially Ukraine), the Dominican Republic and some African countries (mainly Senegal and Nigeria).

By 2010, the process observed in 2001 became more pronounced, displaying similar characteristics with regard to migrants' countries of origin. Two interesting features about this migrant population were its feminization and age distribution. In 2010, the number of migrants consisted of 974,000 women compared to 831,000 men. The population between the ages of 15 to 64 represented 71 percent of the total migrant population, whereas this age group represented only 64 percent of the total population of Argentina. This proportion is even starker in the group of migrants from other countries in the Americas, where those between 15 and 64 years of age represented 80 percent of the population.

Thus, different processes have characterized the dynamics of migrant movements in the last decades: continuous and more pronounced migrations from traditional neighboring countries; an increase in immigration from non-neighboring Latin American countries; a reduction of some traditional migration flows; the interruption of traditional migrations from overseas; and the emergence of new migration movements from overseas.

**Figure 2. Census of foreign population in Argentina.
National population censuses 1869–2010. Country total**



Source: National Population Directorate (Dirección Nacional de Población), 2010, and Population, Household and Housing Census 2010 (INDEC).

a) Continuous and Pronounced Migrations from Traditional Neighboring Countries

Recently, Bolivians and Uruguayans are the only traditional immigrant groups that have increased in number in a significant way. In 2010, available data show that the largest migrant groups living in Argentina are Paraguayans (550,000), Bolivians (345,000) and Chileans (191,000). Likewise, an evaluation of the dynamics of this migration in the last decades indicates that although Chileans represent a significant portion, their migration flows are not continuous in comparison with other groups. This can be explained by the fact that Paraguayans and Bolivians have been the most dynamics group of immigrants from neighboring countries during the period between the 1991 and 2010 censuses.

In the last decades, Paraguayan immigration constitutes the largest group of foreigners. However, between 1980 and 1991, a slight decrease can be observed, which was evened out in 2001. This small reduction can be interpreted as a result of the events that affected the Argentine economic structure during the 1980s. Nonetheless, in the following years, Argentina adopted the currency Convertibility Plan that turned the country into a more attractive destination for this group of migrants and for migrants from other neighboring countries who could benefit from the exchange rate. Therefore, if during the 1991–2001 period, Paraguayan immigration

intensified and the stock of Paraguayans grew almost 30 percent, this number would be even greater in the years from 2001 to 2010, which show a 70 percent increase in the number of Paraguayans residing in Argentina.

Bolivians are the other most dynamic group in recent years. These migrants also benefited from the favorable exchange rate, and their labor force found incorporation in specific sectors of the labor market. Also, the relative economic disadvantage of this bordering country, along with the already existing migrant networks in Argentina, has had an impact on the intensification of this flow. While in the 1980 and 1991 censuses, Bolivian immigrants represented a constant 17 percent of the total population of immigrants from neighboring countries, in 2001, this group grew to represent 22 percent, thus surpassing Chileans. By 2010, Bolivian immigrants represented 36 percent of the overall immigration from neighboring countries. Overall, the sum of Paraguayans and Bolivians represents, at present, half of the foreign population living in Argentina (Population Census 2010).

b) Increase in Immigration from Non-Neighboring Latin American Countries

Although Peruvian migration is smaller than Bolivian or Paraguayan migration, it has grown more dynamically. In 2001, the Peruvian population in Argentina was about 88,000 people; by 2010, it had reached 157,000 people. In this, Peruvian migration constitutes a very special case, not only because of the Peruvian community's size (it is larger than the Uruguayan community, and only the Paraguayan, Bolivian and Chilean communities are larger than the Peruvian), but also because it is the immigrant group that experienced the greatest growth in relative terms during the 1990s. In the 1980s, the dire economic situation and widespread political violence caused mass emigration from Peru. Argentina became one of the major destinations of the so-called Peruvian exodus in the last two decades.

c) Reduction of Traditional Migration Flows

Two of the traditional migrations from neighboring countries have reduced their flow into Argentina: Chilean and Uruguayan. The flows of Uruguayan and Chilean immigrants are the most emblematic in terms of their dynamism. With regard to these groups, it is important to take into consideration that in the period between the 1970 and the 1980 censuses, their growth had less to do with the attraction Argentina may pose and much more to do with the political situation and the factors that expel people from these sending countries. This accounts for a growth, in absolute values, of registered Uruguayans from 51,000 to 114,000 and of Chileans from 133,000 to 215,000 in that period. In 2001, the volume of these groups remained constant, with 212,000 Chileans and 118,000 Uruguayans, but by the year 2010 they had decreased to 191,000 and 116,000, respectively. Briefly, the reduction in Chilean immigration is related to an improvement of the economic conditions in their country, whereas the fall in Uruguayan immigration has to do with a shift in destinations, such as to the US and Spain (Cerrutti 2009).

d) *Interruption of Traditional Immigration from Overseas*

In the period of mass immigration (1870–1930), mostly Italian and Spanish immigrants arrived in Argentina, but there was also an inflow of nationals from many other countries, including France, Austria, Germany, Russia and Portugal. By 1914, almost one third of the population of Argentina was foreign born. Although Italians continued to be the largest group, the Spanish (the second largest group) were the largest contingent to arrive in the period immediately before the First World War. In absolute and in relative terms, there was a reduction in French migration, which was smaller than the Russian but larger than the Turkish. Migration flows were predominantly of working-age males (National Population Directorate–Dirección Nacional de Población 2010).

Census data show that from the mid-twentieth century Argentina lost its position as a priority destination for *intercontinental* migrants, particularly for those of European origin, both in absolute and in relative terms between 1914 and 2001. As shown in Table 1, from 27.3 percent of the total population in 1914 they represented only 13.3 percent in 1947, 10.7 percent in 1960, 7.2 percent in 1970, 4.1 percent in 1980, 2.4 percent in 1991, 1.6 percent in 2001, and 1.3 percent in 2010.

e) *Emergence of New Migration Movements from Overseas*

Although Asian migration to Argentina began in the 1960s, it increased significantly in the 1980s, 1990s and 2000s, which increased its visibility. The 2010 population census counted about 30,000 Asian-born residents, originating mostly from China, Korea and Japan, these three being the countries of origin of about 20,000 of those Asian immigrants. As a consequence of the bilateral agreements signed between Argentina and Korea in the 1980s, those years saw an increase in Korean immigration. A more systematic inflow of Chinese contingents also dates back to the 1980s, reaching its peak in the 2000s with some 9,000 migrants of that nationality recorded in the 2010 census, although no bilateral agreements supported these flows (National Population Directorate–Dirección Nacional de Población 2010).

Largely, Korean immigrants have carved out an independent niche for themselves in small- and medium-sized clothing manufacturing, low-cost food and clothing retail, and wholesale businesses and as importers of various products. Chinese immigrants, in turn, are largely known as owners of small- and medium-scale self-service businesses. They also work in businesses related to the gastronomy sector, such as the import and export of food products and food processing, as well as in the pharmaceutical sector (Pacceca y Courtis 2008).

In 1994, during the dissolution of the former Union of Soviet Socialist Republics, the Argentine government set forth special migration provisions for nationals of some eastern European countries. In 2001, there were over 8,000 immigrants from Ukraine in Argentina.

1.3. Incorporation of Immigrants from Neighboring Countries and Peru in the Labor Market

To understand how immigrants from neighboring countries and Peru are incorporated into the labor market in Argentina, an important factor to consider is the concentration of this population in the area of Buenos Aires and its conurbation. In 2004, 74.5 percent of working immigrants from neighboring countries and Peru lived in the greater Buenos Aires area. In 2010, this percentage increased to 79 percent vis à vis the 55 percent of Argentines working in that area over the total population of the country.

In general, and regardless of the country of origin, immigrants are incorporated predominantly in personal service areas (for women: domestic service, childcare and care of the elderly), labor-intensive areas (construction for men, manufacturing for both sexes), commerce and agriculture. In a considerable number of cases, employment is attained through a network of people from the same country of origin. As a result, there are labor sectors in which certain nationalities or regions are more represented than others. It must be noted also that labor incorporation does not depend on education levels or work experience, which implies that many immigrants and refugees are usually overqualified for the kind of jobs they have (Pacecca y Curtis, 2008).

Immigration from neighboring countries is concentrated in a reduced number of productive sectors. Baer, Benítez and Contartese (2011) carried out a study in 2011, based on the Household Survey for the first semester of 2010, which indicated that in urban centers 22 percent was employed in construction; 19 percent in retail; 18 percent in domestic service; and 7 percent in the textile, clothing and footwear industries; the rest were spread among several sectors, services and industries.

When compared with the native Argentine work force, men are over-represented in the construction industry and women in the domestic service sector. With regard to the incorporation of immigrants in the different labor markets in Argentina, it is worth noting the specific forms that this incorporation has adopted in the case of Bolivian immigrants who at first replaced the internal migrant work force in border areas and gradually moved toward the main urban centers, taking up jobs in the construction, services and, especially, horticulture sectors.

According to an analysis carried out by Roberto Benencia (2011), the share of Bolivian-born workers is remarkable, in the construction and service sectors and in the horticultural activity in the greenbelts surrounding cities such as the following:

- The Buenos Aires horticultural area (AHB, is its acronym in Spanish), which is the most important horticultural belt in the country because of the large number of productive facilities (about 1,200)
- The metropolitan area of Córdoba, where, in 2002, 50 percent of the workers in horticultural activity were of Bolivian origin (Coppi 2002)

- Río Cuarto, the second most important city in the province of Córdoba, where 70 percent of the undertakings are worked by Bolivians, 38 percent of whom are workers from the locality of San Lorenzo (Tarija), and both own and rent their residences (Benencia y Geymonat 2006, Benencia y Ramos 2008)
- The urban conglomerate of Villa María and Villa Nueva in the humid pampas of Córdoba, where during the early 1990s Bolivian tenants, sharecroppers and laborers settled and became 40 percent of the total labor force in these activities (Pescio y Oliva 2003)
- The areas of influence in the localities of Colonia Santa Rosa (Salta) and Fraile Pintado (Jujuy), where Bolivian immigrants represent an important share in the horticultural undertakings, whether they are owned by locals or by Bolivians; and in Lules (Tucumán), where 65 percent of the members of the Bolivian community are employed in horticultural activities (Rivero Sierra 2008)
- Rosario, province of Santa Fe, where the presence of immigrant Bolivian families working as sharecroppers has been observed in the horticultural greenbelt of this urban center (Albanesi et al 1999)
- Goya, province of Corrientes, where Bolivians work in forced fruit horticulture; and in Mar del Plata Bolivian, where immigrants have been incorporated into the horticultural labor market as sharecroppers and at present represent an important share of the producers of horticultural produce and traders of fresh vegetables in the green belt of this city (Lucífora 1994)
- The locality of Pedro Luro, on the Colorado River, near Bahía Blanca, where the production of onions for export had an important boom thanks to the incorporation of the Bolivian work force, mostly originating from Oruro, which soon represented 20 percent of the local population (Albaladejo, Lorda & Duvernoy 2000)
- The city of Bahía Blanca, where horticulture used to be led by European immigrants and in the last two decades has become a business led mostly by Bolivian families (Kraser & Ockier 2007)
- General Roca, province of Río Negro (Ciarallo 2006), Trelew, province Chubut (Sassone, Owen & Hughes 2004), and Ushuaia, province of Tierra del Fuego, where the presence of Bolivian salaried laborers has been observed in the recollection of horticultural crops in greenhouses (Mallimaci 2008)

Of note, Benencia states, “the greatest novelty with regard to these phenomena is that both in Río Cuarto and Trelew, Bolivian horticulturists were the main actors in opening new lands for horticulture where none existed” (Benencia 2011).

2. Emigration of Argentines

The beginning of emigration of Argentines dates back to the 1960s. From that time, different moments can be identified where the phenomenon became more significant. The most salient exodus of scientists and intellectuals from Argentina started in 1966, with the beginning of the Onganía dictatorship, known as the “Argentinean Revolution,” which was led by the then Lieutenant General Juan Carlos Onganía. One of the first interventions of the new government was to have the police disrupt the universities and step in, an event that was to go down in history as “*La noche de los bastones largos*” (“The Night of the Long Batons”). Political persecution forced many valuable minds to leave the country, such as César Milstein, Nobel Prize winner of medicine and pharmacology in 1984. Between 1960 and 1970, 185,000 Argentines immigrated mainly to the USA and Spain; some 200,000 immigrated in the next decade (Gurrieri 1982).

Another moment of significant emigration is associated with political exile during the 1976–1983 period, beginning with the coup d’état on 24 March 1976 and ending when democracy was reinstated toward the end of 1983. Thousands of Argentines went into exile, particularly in Europe. Political emigration also had economic motives, such as the deterioration of the wages of professionals and technicians and less qualified workers.

Two other moments can be discerned. The third moment occurred in the years between 1989 and 1992 with intense deterioration of economic conditions and disastrous hyperinflation. The fourth moment of emigration corresponds to the 1998–2001 period (Calvelo 2007).

Table 2. Argentine-born population censused in other countries, by country of residence (1980–2000)

Country of residence	1980	1990	2000
Total	307,000	400,111	603,721
Latin America	153,913	175,346	212,539
Bolivia	17,503	17,829	27,094
Brazil	26,333	25,468	27,531
Chile	18,656	34,415	48,176
Paraguay	40,414	47,846	63,006
Uruguay	23,885	26,256	26,256
Mexico	5,503	4,635	6,388
Venezuela	10,835	9,070	8,592
Rest of LA	10,484	9,827	5,496
North America	75,713	89,096	137,235
Canada	6,826	11,110	12,015
USA	68,887	77,986	125,220
Europe	39,470	87,430	193,668
Rest of the World	38,604	48,239	60,279

Source: Calvelo, (2007).

As the number of Argentines abroad increased between 1960 and 2000, their incidence with regard to the overall population of the country went from 0.5 percent in 1960 to almost 2 percent in the year 2000, a point when the non-native population amounted to 4.2 percent. The censuses carried out in the 2000s indicate that there were some 604,000 Argentines living abroad, whereby the largest concentrations were in the US, Spain, Paraguay, Italy, Chile and Israel, with totals ranging from 125,000 to 40,000 Argentines; Brazil, Bolivia and Uruguay ranked in second place, with almost 30,000 Argentines in each of these countries; and the remaining exiles were in other countries, such as Canada, Australia and Japan (Calvelo, 2010).

In the early 2000s, in the US and Spain, almost half of the Argentines had local citizenship (in Spain, 55 percent, including those with Italian citizenship). The access to citizenship in the US has been linked primarily to the period since immigration (most immigrants arrived twenty years ago or had US citizenship before), whereas in Spain it had more to do with family ties (descendants of Spanish immigrants to Argentina).

Of note is the high percentage of Argentines with higher education in the US and Spain. Taking into account those 25 years of age or older, 35 percent of Argentines in the US and 19 percent in Spain have higher education degrees. In both destination countries, Argentines have higher percentages of higher education degrees than the native population.

Recent immigration to Spain is believed to be motivated predominantly by the search for work opportunities, whereas those who have arrived more recently to the US are mainly students. Emigration has become more pronounced since the 2001 crisis. Regarding potential emigrants, field research carried out between February 2004 and February 2005 indicated that Spain was the first destination of choice for more than half of those 35 years of age or older with higher levels of education, especially university graduates (Novick 2007).

By 2008, the number of total emigrants was 806,369, representing 2.2 percent of the overall Argentinean population. In 2005, the destination country that hosted the largest number of Argentines was Spain, with 229,009 people, corresponding to 28.40 percent of the population. In second country of residence was the US with 144,023 Argentines, representing 17.86 percent of the overall Argentine population abroad. It must be noted that remittances to Argentina increased from US\$100 million in 2001 to US\$850 million in 2006 and to US\$920 million in 2008, as reported by the International Monetary Fund and the Inter-American Development Bank (Texidó 2008).

A remarkable feature of Argentine emigration is the level of qualification. Argentina was the Latin American country that contributed the largest number of scientists and technicians to the US in the 1990s.

The three main features of qualified Argentine emigration must be noted. On the one hand, qualified emigrants represent a high percentage of overall Argentine emigration. About one third of the Argentine migrants between 15 and 64 years of

age have a secondary education. On the other hand, these migrants with a secondary education represent a relatively low percentage (about 6 percent) of the overall Argentine population with a secondary education living in Argentina. However, as the education levels rise, this percentage increases significantly. Argentines with PhDs living abroad in 2003 represented more than 40 percent of those that held degrees in Argentina (Lucilo 2011).

Particular features that can be highlighted are the following:

- Toward 2000, there were about 157,400 Argentines with higher education degrees living abroad, representing slightly more than 30 percent of the total Argentine population abroad of 15 years of age and older
- Toward 2000, Argentines with higher education living abroad represented about 6.5 percent of the total number of Argentines and residents in Argentina who had higher education degrees
- In 2001, Argentines with higher education in OECD countries represented about 5 percent of the Argentines and residents in Argentina with degrees in higher education
- In 2003, Argentine scientists and engineers living abroad amounted to about 35,000 and represented about 10 percent of the total number of scientists and engineers living in Argentina
- In 2003, close to 5,000 Argentine science and engineering PhDs living abroad represented 18 percent of the total researchers living in Argentina and represented close to 43 percent the PhDs living in the country
- In 2003, Argentine researchers living abroad represented 18 percent of the total researchers living in Argentina (Lucilo 2011).

To summarize, a change can be observed in the international migration flows to and from Argentina in the last decades, transforming this country into a receiving and a sending country of migrants.

Present trends of international migration movements in the country appear to show a situation in which emigration from other South American countries is increasing, whereas a relative reduction in the number of Argentineans immigrating to foreign countries can be observed, although it continues to be typically highly qualified.

PART II

PUBLIC POLICY ON MIGRATION IN ARGENTINA

Public policies on international migration in Argentina have developed, throughout history, within a general framework of openness, but with certain periods of restriction corresponding to different moments of the political and economic process of the country. The last of these restrictive periods, which rendered migration from neighboring countries invisible, occurred during the last military dictatorship, between 1976 and 1982. During this period, a law was enacted and enforced for more than 20 years after the transition to democracy.

Since 2004, Argentina has had a new migration law (Law 25,871), enacted and supported by different associations in civil society that focuses entirely on the human rights of immigrants. This legislation responds as much to the strengthening of democracy and citizen participation in the country itself as it does to the ratification of different international instruments and agreements, the evolution of integration spaces and processes and the multilateral consensus adopted both in the Southern Cone and in the South American region in general. The legal framework for migration policies has been accompanied by the creation of new institutional mechanisms and programs aimed at regularizing the situation of foreigners in irregular situations and at linking with Argentines abroad and fostering their return to the country.

1. Evolution of Public Policies on Migration

International migration policies in Argentina, and in other countries, have always been associated with some kind of predominant principle that has changed over history. The different readings of such policies have stressed diverse aspects from certain perspectives, characterizing each period according to the views of whoever analyzes it. There is consensus, however, that the Argentina clearly had open immigration policies during the nineteenth and beginning of the twentieth centuries, welcoming millions of immigrants based on two fundamental principles: the need of a labor force and a larger population. A good income and employment opportunities established the conditions for a continuous and sustained inflow of migrants according to the adopted policies.

The idea of the immigrant as someone who contributes to the country's economic, social and cultural development was uncontested during this period. It is worth highlighting that in 1875 the Argentine National Congress began to process a new legal framework to attract and channel the immigrants the country needed. The executive and a parliamentary commission drafted projects that served as the basis for the first Immigration Law of 1876 (Law 817), known as the Avellaneda Law,

which centered on the selection process of immigrants and the care of the immigrants during the crossing, their arrival to the country and their settlement in the best possible conditions. This law was enacted to serve the fundamental purpose of promoting immigration. It provided the general legal framework for the mass immigration process that took place between 1890 and 1914. None of its provisions, just as none of the regulations of 4 March 1880, made reference to control, prevention or repression measures. This law was conceived in a liberal era: "Its liberalism is formulated in terms of generosity toward and protection of the immigrant" (Romagnoli 1991).

The growing participation of immigrants in the creation of worker associations and socialist and anarchist political movements became a greater concern for the ruling classes. The image of a threat to the established order and social cohesion served as grounds for additional legislation, such as the Law of Residence 4,144/1902, the Law of Social Defense 7,209/1910 and the regulations under the Avellaneda law (Decree of 31 December 1923).

These anti-immigration manifestations have been interpreted as a sudden turn from the image of the hard-working immigrant to that of the "public enemy." Perhaps this characterization, which has become widespread, focuses on the reaction of a ruling group and the legislation that followed and not on the reality experienced by Argentine society regarding immigrants. As immigrants continued to arrive, be received and accepted by society at large, policies remained liberal and fostered immigration (the decade following the Residence Law saw the largest inflow in Argentinean history). The above-mentioned legislation was barely enforced during the decades it was in effect.

The 1930s were characterized by restrictions to migration, whereby decrees, such as Decree 13,335 of 1932 and Decree 8,972 of 1938, regulated the entry of foreigners, applying criteria based on impediments which varied according to a migrant's country of origin. The principles on which this policy was based were the mass unemployment generated by the world economic crisis and issues of internal security with regard to immigrants deemed "incompatible" with the national order, culture and traditions.

A turn took place in 1947 when Perón came into power and the Law on Immigration, Colonization and Population (*Ley de Bases sobre Inmigración, Colonización y Población*) repealed the above-mentioned restrictive laws and returned to promoting immigration. The inclusion of these policies in the planning processes of the Five-Year Plans was based on the principles of spontaneity, selectivity and channeling, as well as the criterion of social justice. The spontaneity principle referred to allowing any type of immigration without subsidies or consideration of origin (a principle which was explicitly enshrined in Article 38 of the Constitution of 1949, which condemned any type of racism). The principle of "selectivity" was based on the need to attract qualified human resources for the industrial development plan that the government had launched. The "channeling" principle was linked to the colonization of rural areas, especially of unproductive large states.

Between 1947 and 1955, approximately 900,000 immigrants settled in the country, 88 percent of who were from overseas and 12 percent from bordering countries. This last fact is significant in terms of today's perspectives on immigration policies as flows of immigrants are being recognized, valued and regularized within a conception of Latin American integration. Agreements introducing temporary workers from bordering countries began during the first two Perón governments, and in 1953 an agreement was signed with Chile to grant documents in a direct manner to the nationals of that country living in Argentina. It was also during this period, specifically in 1949, that the first program to grant civil society participation to migrants was geared at immigrants of Jewish origin who had arrived without any documentation (Avni 1983).

The years following the military coup of 1955 alternated between restriction and regularization, depending on the civilian or military nature of the individual government. Irregular immigrants, the numbers of which increased during the military governments, were regularized by the amnesties offered under civilian governments (Mármora 1983). A special situation was the immigration amnesty of 1973, which had the purpose of welcoming immigrants from neighboring countries who were flowing into Argentina in an attempt to escape the military dictatorships in their countries of origin.

The approval of Law 22,439 of 1981, known as the "Videla Law," implemented the principle of national security as the foundation of immigration policies. Migrations (except those from Europe) were deemed a threat to national security, which required the enforcement of all forms of control and the use of police power and all extraordinary faculties granted to the migration directorate. The fact that this law remained in force for more than 20 years after the transition to democracy is evidence of the resistance encountered by attempts to repeal it.

In turn, during the 1980s and 1990s, the "securitization" norm coexisted with different processes of regularization of immigrants from neighboring countries. A special phenomenon, which created some distance from the principles and perspectives dominating these policies, occurred in the second half of the 1990s. Some analysts see this period as characterized by the emergence of xenophobia in Argentine society against immigrants from neighboring countries who were heavily restricted and even persecuted by the police.

However, a closer look reveals that these prejudices were promoted as a function of one of the largest "migration businesses" worldwide, which consisted of a contract signed between the Argentinean government and Siemens to print new identity documents and deploy IT control systems at border-crossing points. The contract, according to some officers of the company, had been obtained after government officers were bribed. When it was nullified in 2001 by the next government, the company started legal proceedings before the International Centre for Settlement of Investment Disputes (ICSID) against the Argentine state, which Siemens renounced after the international courts, received evidence of the irregularities this corporation had committed.

During that same period, other state organisms, such as the ministry of foreign affairs, began to sign bilateral agreements with Bolivia, Peru and Paraguay, which opened the possibility of regularization and guarantees of fair treatment for immigrants from those countries. These agreements, together with all those that had been subscribed to since the 1960s, signaled the beginning of a new phase of immigration policies in Argentina.

In December 2003, after a five-year discussion and consensus-forming process with the participation of government, parliament and civil society, Law 25,871 was passed. The corresponding regulations were drawn six years later, following the work of a commission made up of representatives of different governmental and non-governmental institutions. This law, which was based on the principle of freedom of movement of persons, favored the social integration of foreigners so that they could enjoy the same conditions as Argentine nationals and the elimination of all forms of racism, racial discrimination and xenophobia (Giustiniani 2004). Beyond its intrinsic value, this law was of crucial importance in the creation of the regional agreements that at present allow citizens of the MERCOSUR countries, Chile and Bolivia, free residence in signatory countries.

In this context, the Argentinean government implemented the *Patria Grande* program, which in recent years has facilitated the regularization of hundreds of thousands of immigrants from other South American countries. The rationale, in this case, was based on the human development of migrations as the basic principle of any migration governance that is established.

2. The National Legal Framework and its Relationship with International Legal Frameworks

2.1. The National Legal Framework: Constitutional Principles

The Argentine Republic is fundamentally a country of immigrants. The spirit of the 1853 Constitution and its amendments is to welcome immigrants and solidify the migration tradition (Gianelli 1998). The rights and guarantees that the constitution enshrines are a clear indication of the importance of immigration for Argentina and of the spirit to welcome immigrants. The 1853 Constitution was approved with a clear migration policy and under the motto “to rule is to populate,” coined by the ideological father of the charter, Juan Bautista Alberdi (Sagües 2006). Thus, the preamble proposes “to promote general wellbeing and guarantee the benefits of freedom, for ourselves, for our prosperity and for all the people in the world who want to live on Argentinean soil” (CMW/C/ARG/1 2010).

According to the Constitution, the promotion of immigration is the responsibility of the federal government (Article 25), the National Congress (Article 75, section 18) and the provinces (Article 125). Also, the Constitution provided that “the federal government may not restrict, limit or burden with any tax whatsoever the entry into the Argentine territory of foreigners who arrive for the purpose of tilling the soil,

improving industries and introducing and teaching arts and sciences” (Article 25), whereby it is the responsibility of Congress to enact laws of naturalization, nationality and to promote immigration (Article 75, sections 12 and 18). Accordingly, a) the federal government has the exclusive power to authorize or deny entry to foreign persons into the country; b) the legislative power in general, and regarding migration issues in particular, is the exclusive responsibility of Congress; c) the nation and the provinces can carry out concurrent actions to promote immigration (Gianelli 2001).

The Constitution grants civil and social rights to all inhabitants, regardless of whether they are nationals or foreigners. As set forth in Article 16 of the Constitution, “[A]ll its inhabitants are equal before the law and admissible to employment without any other requirement than their ability.” Article 20 of the Constitution, the cornerstone of the national migration policy, explicitly highlights the equality of rights of immigrants with reference to nationals, as clearly stated in the text:

Foreigners enjoy within the territory of the Nation all the civil rights of citizens; they may exercise their industry, trade and profession; own real property, buy and sell it; navigate the rivers and coasts; practice freely their religion; make wills and marry under the laws. They are not obliged to accept citizenship or to pay extraordinary compulsory taxes. They may obtain naturalization papers residing two uninterrupted years in the Nation; but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic (CMW/C/ARG/1 2010, Sagües 2006).

As for the interpretation of these articles, jurisprudence laid down by the Supreme Court establishes that Argentine nationality must be a requirement to perform functions in positions related to national security and sovereignty, within reason and provided it does not represent the intent of persecution or hostility,³ whereby it is unconstitutional to prevent a foreign national to work, for example, as a harbor master or as a teacher in a private school.⁴ A particular case has been that of “interned” foreign nationals, who during wartime are members of the military of another country and thus have restrictions imposed on their mobility and may even be forcibly transported. In the “Lange” case, the Supreme Court maintained that the interned person was not in strict legal terms an “inhabitant” with regard to the constitutional rights to which foreigners are entitled.⁵ At the same time, the Supreme Court has deemed constitutional laws that have established the deportation of illegal immigrants⁶ or the deportation of foreigners on the grounds of public order and social peace,⁷ although said measures are subject to the test of reasonableness.⁸

³ Supreme Court of Justice, “Radulescu,” *Rulings*, 290:83.

⁴ Supreme Court of Justice, “Repetto,” *Rulings*, 311:2272.

⁵ Supreme Court of Justice, “Lange,” *Rulings*, 207:125.

⁶ Supreme Court of Justice, “Ferreira Hernández,” *Rulings*, 271:272.

⁷ Supreme Court of Justice, “Maciá y Gassol,” *Rulings*, 151:211 and “Deportados en el transporte Chaco,” *Rulings*, 164:344.

2.2. Argentine Legislation Concerning Migration

Since the transition to democracy in 1983, two major periods can be identified with regard to the human rights situation of migrants: 1) enforcement of Law 22,439, approved in 1981 during the last military dictatorship, and 2) the repeal of that law and the adoption of the new migration law in December 2003 (CELS 2008). Law 25,871 is the first piece of legislation concerning migration that was drafted and adopted under a democratic government. It also implied a significant leap, as it expressly enshrined migration as a human right and formally recognized the rights of immigrants to health, education, justice and social security, among others (CELS 2008). Law 25,871 was achieved thanks to the strong advocacy of human rights organizations, organizations of the immigrant communities, religious institutions, academic institutions, research groups, union representatives and other social organizations, which staged actions and developed strategies to press the National Congress to repeal the General Law of Migrations and Immigration Promotion of 1981 (FIDH-CELS 2011).

In the mid-1990s, when the population commissions had already been created in the Senate and the Chamber of Deputies, and social organizations had advocated for change, the National Congress launched initiatives to modify the law that had been passed under the military dictatorship (Novick 2004). Until 1994, amendments introduced by Congress to Law 22,439 suggested minor changes with regard to fine amounts, cautions, service fees and some areas of responsibility. Thus, Law 23,564 was passed in 1988, Law 23,860 in 1990, Law 24,008 in 1991 and Law 24,393 in 1994 (Novick 2004, Courtis 2006).

In 1994, the reform of the Constitution included the incorporation of several human rights treaties, and parliament actively undertook the design of migration projects (CELS 1997, Courtis 2006). In this regard, between 1994 and 2003 several initiatives were put forward proposing an amendment of the law that had been initiated under the military. The proposals by the following deputies are worthy of note: Cafiero (1996 and 1998), Carrió (1996), Mondelo and Dellepiane (1997), and Pichetto (1998). At the same time, some bills were submitted proposing to repeal Law 22439 altogether, such as the initiatives put forward by Deputy Muñoz and others (1994), Totto and others (1995), Mondelo and others (1999), as well as the one submitted by the population commission of the Chamber of Deputies (1999). Several projects regarding migration regularization were submitted, including one regarding the approval of the International Convention on the Protection of the Rights of all Migration Workers and Members of their Families and another on internal migration. These proposals show the intense activities of parliament while they perceived that civil society did not accept, as part of the democratic rule, that the legislation passed under the military dictatorship should still be in effect (Novick 2004, Courtis 2006) (See ANNEX I).

⁸ Supreme Court of Justice, “Argüello,” *Rulings*, 268:406 and “Ferrocarriles del Estado Argentino,” *Rulings*, 270:419.

Toward the end of 2003, two main factors dominated: 1) the failure of several legislation projects, some of which pretended to impose policies that were even more restrictive than those under Law 22,439, and 2) the *De La Torre vs. the Argentine state* process filed before the Inter-American Commission on Human Rights, which highlighted how the current legislation was incompatible with the standards regarding the human rights of migrants. These factors greatly contributed to the approval, in December 2003, of the bill submitted by the representative for the socialist party Rubén Giustiniani. Representatives of migrants, several public institutions and civil society took part in the debates (FIDH-CELS 2011).

As noted in the previous section, migration is a foundational characteristic of the Argentine Republic. Pursuant to constitutional principles, Law 25,871 defines the scope and sets forth the objectives of Argentinian immigration policy, guided by the principle of integrating foreigners in such a way that they enjoy equal rights to those of nationals and having as its main purpose the enforcement of the rights enshrined in Article 20 of the Constitution (CMW/C/ARG/1 2010). The law defines an “immigrant” as any foreign person who wishes to enter, travel through, reside or settle, whether temporarily or permanently in the Argentine Republic (Article 2).

Article 3 of this law determines the objectives of the immigration policy as follows:

- To establish the fundamental policies and strategic foundations concerning immigration in compliance with the international commitments assumed by the Republic with regard to immigrants’ human rights, integration and mobility
- To contribute to fulfill the demographic policies set forth by the national government regarding the size, growth rate and geographical distribution of the country’s population

On the other hand, that same Article 3 sets forth as objectives the promotion of the following rights, the integration and the protection of migrants:

- To promote and disseminate information on migrants’ obligations, rights and guarantees in accordance with the Constitution, international commitments and current legislation, remaining faithful to the humanitarian and open tradition toward migrants and their families
- To guarantee the right to family reunification
- To contribute to, enrich and strengthen the cultural and social fabric of the country
- To promote integration of individuals in Argentine society admitted as permanent residents
- To ensure that any individual who requests admission to the Argentine Republic, whether on a temporary or permanent basis, has the benefit of the same non-discriminatory admission criteria and procedures pursuant to the rights and guarantees set forth in the Constitution, international treaties, bilateral agreements and the current legislation

- To promote the incorporation and integration of legal migrants into the labor market in order to make the best use of their personal and working capacity to contribute to the economic and social development of the country
- To facilitate the entry of visitors to the Argentine Republic to promote commerce and tourism as well as cultural, scientific, technological activities and international relations

Article 3 also specifies as objectives compliance with the following multilateral commitments regarding criminal actions:

- To uphold the international order and justice by denying entry and/or permanent stay in the Argentinian territory to individuals involved in activities that legislation has deemed as illegal
- To promote information exchange as well as technical assistance and training of human resources at the international level to effectively prevent and combat international organized crime

This law sets high standards for the protection of the rights of migrants and it serves as the foundation for the implementation of public policies that seek to integrate migrants to society. This law includes other provisions, such as the right of all migrants to health and education in the Argentine Republic, even those whose migration status is irregular. Also, the state guarantees the right to family reunification of immigrants with their parents, spouses and children on the grounds that family is a necessary and important source of support for immigrants. Overall, this migration law does the following:

- Confirms equal treatment as that granted to nationals
- States the rights that immigrants are entitled to, ensuring equal access to social services, public goods, health, education, justice, work, employment and social security
- Sets forth immigrants' right to be informed about their rights and duties
- Establishes the possibility for immigrants to participate in or be consulted on decisions regarding life and the communities in which they live
- Enshrines the right to family reunification
- Guarantees access to education and health, regardless of the migration status of the foreign person

This law introduced into Argentinian migration legislation the “criterion of South American nationality” for the admission of foreigners, whereby nationals from any other South American country can invoke this nationality criterion without having to certify their activity or seek any other criterion, such as that of worker,

student, pensioner or investor, to be admitted and be allowed residence in the country. Their nationality constitutes sufficient grounds to enter and remain in the country.

Lastly, admission, entry, permanence and departure of people are governed by the provisions of the migration law, its regulatory decree (Decree 616/2010) and all other legislation deriving from them. Also, the General Law for the Recognition and Protection of Refugees (26,165) and the Law on the Prevention and Punishment of Human Trafficking and on Assistance to the Victims (26,364) apply.

2.3. Linkage with International Instruments on this Subject

The current legal order in the Argentine Republic is linked with different legal instruments that have different hierarchies and jurisdictions, all of which are in accordance with the provisions of the National Constitution (hereinafter, NC) in this regard. Pursuant to Article 31 of the NC, treaties are considered a supreme law of the nation, and the executive has the capacity to enter into these agreements (NC, Article 99, section 11) while their approval or rejection corresponds to the legislative power (NC, Article 75, paragraph 22).

After the amendment of the National Constitution of August 1994, the new constitutional text sets forth in Article 75, paragraph 22, that

[T]reaties and concordats have a higher hierarchy than laws. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; in the full force of their provisions, have constitutional hierarchy, do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They may only be contested by the National Executive Power after the approval of two-thirds of all the members of each House. In order to attain constitutional hierarchy, the other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each House, after their approval by Congress.

Subsequently, Congress granted constitutional hierarchy to the Inter-American Convention of Forced Disappearance of Persons of 1994 (Law 24,820 of 1997) and in 2003 to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968 (Law 25,778 of 2003).

The above-mentioned international human rights instruments have constitutional rank and rule over the national and provincial legislation. Several Supreme Court sentences have confirmed this preeminence. Accordingly, since the constitutional reform of 1994, Articles 20 and 25 of the National Constitution are complemented by

the specific migration provisions from the hierarchically superior international human rights instruments. Thus, the constitution includes the following rights and their respective articles:

- Universal Declaration of Human Rights: Articles 13 (circulation and residence), 14 (asylum) and 15 (nationality)
- American Declaration of the Rights and Duties of Man: Articles 8 (circulation and residence), 19 (nationality) and 27 (asylum)
- American Convention on Human Rights: Articles 20 (nationality) and 22 (circulation and residence, expulsion, principle of non refoulement)
- International Covenant on Civil and Political Rights: Articles 12 (circulation and residence), 13 (expulsion), 24 (nationality of children) and 27 (ethnic, religious or linguistic minorities)
- International Convention on the Elimination of all Forms of Racial Discrimination: Article 5 (circulation and residence, nationality)
- Convention on the Elimination of all Forms of Discrimination against Women: Articles 9 (nationality) and 15 (circulation and residence)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Article 3 (principle of non refoulement)
- Convention on the Rights of the Child: Articles 6 (nationality), 9 and 10 (family reunification), 11 (prohibition of deportation), 22 (refugee children) and 30 (ethnic, religious or linguistic minorities)

The constitutional status of human rights treaties has had a positive impact on the access to justice because with this constitutional reform it is now possible for any act of a public authority in any of the three branches of government, be it federal or provincial, that violates any of the provisions of these human rights treaties to be declared unconstitutional without prejudice to the subsidiary remedies open to the inhabitants of the country in the human-rights protection bodies within the regional and universal systems. It must be noted also that in 2008, the Argentine Republic completed ratification of all existing international and regional human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (See ANNEX II).

2.4. Bilateral and Regional Agreements

2.4.1. Bilateral Agreements

In the last 60 years, migration policies in Argentina have been directly linked to bilateral agreements. During the postwar period, these agreements were concerned primarily with facilitating European immigration; in the 1960s and 1970s, bilateral agreements were created concerning the free circulation and social security for

immigrants from neighboring countries. In the last two decades agreements have centered on the right to residency, on many occasions as a way of implementing sub-regional agreements. Of the signed agreements, the most important are the Convention on Migration from Central and Eastern Europe to Argentina and the Argentina–Bolivia Agreement and Argentina–Peru Agreement.

a) *Convention on Migration from Central and Eastern Europe to Argentina*

In 1994, the Argentine authorities enforced a special migration facilitation program for citizens from Central and Eastern Europe (approved by means of Resolution MI 4,632/94). This migration program had its origin in an invitation from President Carlos Menem before the European Parliament offering the simplification of administrative migration processes for immigrants from the following Central and Eastern European countries: Poland, Czech Republic, Slovakian Republic, Hungary, Croatia, Yugoslavia, Slovenia, Bosnia Herzegovina, Albania, the Russian Federation, Armenia, Georgia, Ukraine, Latvia, Estonia, Lithuania, Belorussia, Bulgaria, Macedonia, Moldavia and Romania.

The program was not a coherent and structured promotion policy. It only facilitated a massive and disorganized entry of people who, based on economic and political motives after the collapse of the Soviet Union, sought to improve their living conditions. Because there were no concrete assistance and guidance measures, the people who arrived under this regime were forced to improvise different strategies to integrate into the host country (Marcogliese 2003).

The special treatment that this program offered was, in concrete terms, to facilitate access to migration documentation. In practical terms, this implied that the migrant had to prove after a year in the country that he/she had worked legally in Argentina, show the statutory and tax documentation of his/her employer and pay a retribution fee equivalent to US\$200. Failure to do so implied that the immigrant would remain in an irregular situation or would have to leave the country. Despite the deficiencies in the implementation of this program, between 1994 and 2000 some 10,000 persons obtained temporary residence under this program (Marcogliese 2003).

After the first term set forth by Resolution 4,632/94 was over, immigrants from the Russian Federation and Ukraine received, as a special consideration, several extensions. In this way, the program continued until 31 December 2001.

b) *Argentina–Bolivia Agreement and Argentina–Peru Agreement*

In 1998, Argentina signed bilateral migration agreements with Bolivia, Peru and Paraguay. In 1999, Laws 25,098 and 25,099 approved the agreements with Bolivia and Peru, respectively. The agreement with Paraguay was not approved by the Parliament of that country, and as a consequence it was not submitted for approval to the Chamber of Deputies in Argentina. Finally, it was dropped (Calvelo & Vega 2007).

The Argentina–Bolivia agreement was intended to regularize the status of Bolivians in order for them to carry out their activities as independent or dependent workers. This agreement also applied to the migrant’s family members (spouse, children under the age of 21 or disabled children, and parents). The requirements were proof of identity, a birth certificate, a lack of criminal records certificate in Argentina and abroad, a psychological and physical fitness examination, identification of employer (if employed) or registration with tax collection institutions (if independent) and payment of a fee.

The Argentina–Peru Agreement followed the same criteria and set the same requirements as the above-mentioned one. The agreements with Bolivia and Peru set forth a 180-day term to regularize the migration status and to fulfill a set of requirements with the Argentinean tax authorities. Although these requirements were considered rather “stringent,” they were a significant improvement for a large number of immigrants (Calvelo & Vega 2007).

In September 2000, Law 25,318 was passed approving an optional protocol to the agreement signed with Bolivia in 1998, the purpose of which was to provide a 365-day extension to the terms set forth to claim a three-year, temporary resident permit, after which it was possible to become a permanent resident in the country. In the case of the agreement with Peru, Law 25,889 was passed in 2004 approving the optional protocol to the convention on migration signed with that country in 2002, based on the one signed in 1998, which had similar contents to the protocol signed with Bolivia (Calvelo & Vega 2007).

c) Other Bilateral Agreements

Law 26,240 of 2007 approved the 2005 agreement between Argentina and Brazil to grant permanent resident permit to those holding transitory or temporary resident permits. The provisions of the law set forth that Brazilian nationals in Argentina and Argentinean nationals in Brazil may change their temporary or transitory resident permits for permanent permit, if required and provided that they fulfill the established requisites.

Article 6 granted the following rights to Brazilian and Argentinean nationals: to enter, leave, circulate and remain freely in the territory of the host country; to carry out any activity, whether as independently or on behalf of someone else, under the same conditions as the nationals of the host country; to enjoy the same civil, social, cultural and economic rights and liberties as the nationals of the host country, in particular the right to work and carry out any legal activity under the conditions provided by law, the right to petition from the authorities; to enter, remain, transit and leave the territory; to freely associate for lawful purposes and practice their creed. It provided that the members of the family that do not hold the nationality of one of the state’s party to the agreement shall be issued a resident permit for the same term as the one held by the person he or she depends on. With regard to equal treatment, the agreement established that immigrants shall enjoy, in the territory of

the parties, a treatment that shall not be less favorable than the one received by the nationals of the host country concerning the enforcement of labor laws, especially regarding payment, working conditions and social security. Also, the agreement recognized the right of immigrants to freely transfer their earnings and personal savings to their country of origin, especially the money needed to support their families. With regard to the rights of the children of immigrants, the agreement determined that those born in the territory of one of the parties shall be entitled to have a name, birth certificate and nationality and to enjoy the fundamental right of access to education under the same conditions as the nationals in the host country. In this, the agreement established that “access to preschool educational institutions or to public schools cannot be denied or restricted on account of the irregular immigration status of the parents.” Therefore, both parties committed to analyze the feasibility of signing conventions of reciprocity on provisional measures.

On 28 March 2011, by resolution of the Ministry of the Popular Power for Internal Relations and Justice of Venezuela (Official Gazette 39,643), the regulations that enabled regularization of the migration status of Argentinean nationals in Venezuela were drawn, as well as those granting resident permits to those requesting it by only having to certify their nationality.⁹ In order to implement this measure, the Venezuelan *Servicio Administrativo de Identificación, Migración y Extranjería* (SAIME—Administrative Service of Identification, Migration and Immigration) would carry out a “Special Plan to Regularize the Status of Argentinian Nationals.” This benefit is a product of the direct action of the *Comisión Binacional de Alto Nivel Argentina—Venezuela* (COBAN—Argentina-Venezuela High Level Bi-National Commission), which began to function in May 2009 and involved meetings and negotiations between the *Dirección Nacional de Migraciones* (DNM—National Migration Directorate) and SAIME to achieve facilitation of free circulation, as well as deal with legal, consular and migration matters to promote and strengthen the relations and cooperation with regard to these topics.

The Directorate for International and Social Affairs of the *Dirección Nacional de Migraciones* (DNM) actively participated in this task force with the main objective of obtaining equal treatment for Argentinean residents in Venezuela through the application of the “criterion of nationality,” a benefit that was incorporated into the Argentinean legislation for the Venezuelans who wish to settle in Argentina.

In August 2011, two agreements were entered into with Uruguay specifically on the services and functions of the *Dirección Nacional de Migraciones*.¹⁰ The first agreement concerned border issues and aimed at generalizing the integrated migration

⁹ SAIME, *Plan especial de regularización para el pueblo argentino* (*Special normalization plan for the Argentine People*), information brochure. http://www.saime.gob.ve/images/peliculas/regularizacion_argentinos.pdf. Dirección Nacional de Migraciones, *Beneficios para argentinos en Venezuela* (Benefits for Argentines in Venezuela), institutional document, 30 March 2011. http://www.migraciones.gov.ar/accesible/?mostrar_novedad=726

¹⁰ Dirección Nacional de Migraciones, *Acuerdos que fortalecen la relación argentino-uruguaya* (*Agreements to strengthen Argentina-Uruguay relationships*), institutional document, 2 August 2011. http://www.migraciones.gov.ar/accesible/?mostrar_novedad=917

control with shared registry that applied to all persons moving between the two countries through the authorized checkpoints. The Argentinean and Uruguayan immigration officers would carry out immigration controls in their own checkpoints, verify the travel documentation and carry out registration in the IT system through a single common processing. It would be implemented, provided that the infrastructure was in place on both sides of the border: Gualeguaychú–Fray Bentos, Colón–Paysandú, Concordia–Salto, Puerto Monte Caseros–Bella Unión, Buenos Aires Harbor–Colonia and Montevideo, Aeroparque–Carrasco Airport.

The second agreement, on border crossing, represented real progress in fast control mechanisms for the residents of the border areas, pursuant to MERCOSUR regulations. This agreement allowed the use of a border crossing card (TVF–*Tránsito Vecinal Fronterizo*), which allowed migrants to visit a neighboring country for 72 hours, which would be valid for three years and issued by the member state where the applicant lived. The applicant must submit an ID and proof of address. The residents of the following border crossing points were entitled to the benefits of this agreement: Gualeguaychú–Fray Bentos, Colón–Paysandú, Concordia–Salto, Puerto Monte Caseros–Bella Unión.

2.4.2. Regional Agreements

At the regional level, the Argentine Republic is a member of two integration processes: the Southern Common Market (MERCOSUR) and the Union of South American Nations (UNASUR). In the framework of MERCOSUR, immigration was included in the agenda of this regional bloc beginning in 1991, when the Treaty of Asuncion was approved. The countries that formed part of this bloc were the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay as member states. The Plurinational state of Bolivia, the Republic of Chile, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Bolivarian Republic of Venezuela also participated as associate members.

The Common Market Council (CMC) is the highest-level agency of MERCOSUR. It has the mandate to conduct the integration process and the decision-making authority to ensure compliance with the objectives set forth in the Asuncion Treaty. On 17 December 1996, the CMC created, by means of Decision 07/96, the Meeting of Ministers of the Interior of MERCOSUR to discuss issues such as immigration, security and others that fall within the capacities of those ministries, in order to further cooperation, coordination of policies and the creation of common mechanisms to strengthen regional integration. This meeting provided the framework for one of the most significant steps in the field of migrations in the region: the approval in 2002 of the “Agreement on Residency for Nationals of the MERCOSUR Member states,” the most important regional regulation on immigration issues, which was endorsed by the presidents of the member states as well as by the presidents of Bolivia and Chile. This agreement is considered a historical milestone of integration. It is worth noting that at present ten countries participate in the Meeting of Ministers

of the Interior of MERCOSUR and Associate states. The instruments agreed on in these meetings are binding on the countries that subscribe to them, and they set the guiding principle for immigration policies in Latin America (CMW/C/ARG/1 2010).

In the beginning, immigration issues were discussed jointly with security issues; however, in the last year, the Meeting of Ministers of the Interior has severed the two subjects and created separate groups, consisting of specialists in immigration matters on the one hand and in security matters on the other. The groups meet up in separate sessions, but occasionally, when relevant, they join efforts to look for balanced solutions from both perspectives (CMW/C/ARG/1 2010). Significant advances have been achieved through this mechanism, among which the following deserve to be mentioned: the adoption of important multilateral declarations and agreements to facilitate freedom of circulation and protection of human rights as well as to strengthen regional cooperation to combat crimes that violate them, such as the illegal smuggling of migrants and human trafficking, among others (See ANNEX IV).

As for the Union of South American Nations (UNASUR), the process begins on 8 December 2004 by means of the Cuzco Declaration. Subsequently, on 23 May 2008, the Constitutive Treaty was signed in Brazil, which went into effect in March 2011, after the ninth ratification instrument was submitted. The members of this integration process are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela. UNASUR has the following specific objectives:

- The consolidation of a South American identity through the progressive recognition of the rights of nationals of a member state resident in any of the other member states, with the aim of attaining a South American citizenship (Article 3, section i)
- Cooperation on issues of migration with a holistic approach, based on an unrestricted respect for human and labor rights, for migratory regularization and harmonization of policies (Article 3, section k)

2.4.3. South American Conference on Migration

This process began in 1999, when some governments, with the technical support of the IOM, held in Lima the South American Meeting on Migrations, Integration and Development (CSM). All South American countries participated with the exception of Guyana and Suriname. In this meeting, governments acknowledged the importance of migration flows within the region and the need to maintain regular consultation on this matter, from which future meetings would emerge. The founding members—Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela—convened again in 2000 for the first South American Conference on Migrations in Buenos Aires, and it was agreed that Guyana and Suriname should be invited to participate in the process.

From 2001 to 2010, CSM meetings II to X have taken place in Santiago, Quito, Montevideo, La Paz, Asunción, Caracas, Montevideo, Quito and Cochabamba, respectively. In addition to the annual Conferences, several Technical Consultation Meetings (RTC), workshops, seminars and forums have been carried out on issues of relevance to the twelve CSM member states.

The most recent conference (Cochabamba 2010) provided an opportunity to establish this process as a significant political step toward consensus building on migration issues in the region with regard to participation in international discussions on this subject. During this meeting, the South American Human Development Plan for Migration and the Declaration of Migration Principles and the Overall Guidelines of the South American Conference on Migration were also approved. These documents reaffirmed the commitment to guarantee respect for the human rights of migrants and the members of their families, in accordance with international human rights treaties. Accordingly, some guidelines and action plans were defined as a path to be followed by South American governments in migration matters (Mármora 2010).

3. Institutional Framework

At the national level, within the executive branch of power, several ministries, bodies and institutions are in charge of managing and administrating the different aspects of migration (see ANNEX III). Their responsibilities have been defined in the following legal acts:

- Law 225,205 on ministerial responsibilities, which establishes a general framework of reference, whereby it is possible to identify the main government officials who are directly and indirectly responsible for migration issues and the degree of responsibility in the exercise of functions that have been allocated to them
- The decrees relating to the organizational structure of each ministry, as they identify the functions at each level and of the decentralized bodies that participate in the management and administration of migration issues
- The Migration Law and its regulations
- Other current relevant legislation

In order to adequately measure the defined degree of responsibility, the bodies with direct or joint responsibility for the following have been taken into account:

- Formulation and definition of migration policies
- Enforcement of migration legislation
- Protection of the rights of migrants, independently of their migration status

Additionally, other government offices will be mentioned that deal with migration issues.

3.1. Functions of the Main Institutions of the Executive Branch Involved in Migration Issues

3.1.1 Ministry of the Interior

a) National Migration Directorate

The *Dirección Nacional de Migraciones* (DNM–National Migration Directorate), a unit within the Office of the Secretary of the Interior (Ministry of the Interior), is the authority in charge of enforcing Migration Law 25,871, which sets forth the basic policies and strategies on migration. Pursuant to Administrative Decision 20/2008 issued by the head of the Cabinet of Ministers, approving the organizational structure of the DNM, the functions of the national directorate is as follows:

- To oversee compliance with the current migration legislation by defining the corresponding enforcement procedures
- To control migration with regard to the people entering and leaving the country by land, sea, river or air through authorized points in the national territory
- To get involved in the admission of foreigners throughout the national territory by setting up the controls that shall ensure that those who are allowed to remain in the country have submitted the correct documentation and to oversee their compliance with the current migration regulations
- To intervene in all matters related to migration that may be linked to the application of international policies adopted by the state, including those relating to Argentinean citizens living abroad, as well as issues relating to social aspects of migration
- To represent the state in all legal actions in the jurisdiction
- To intervene in the administration of human resources and of the assets and facilities of the directorate
- To participate in the planning for the yearly budget, calculating expenses and the resources to be allocated to the directorate

b) National Refugee Commission

The *Comisión Nacional de Refugiados* (CONARE–National Refugee Commission) is an inter-ministerial body, created by means of Law 26,165, which provides recognition and support to refugees. Its main functions are to process the applications to be granted refugee status, that is, to grant or deny recognition of this condition and to encourage the design of public policies that support social assistance and long-lasting solutions for refugees, such as integration to the locality and resettlement.

The commission works within the Ministry of the Interior and is made up of representatives from the Ministries of the Interior, Foreign Affairs, Justice and Human Rights, Social Development and the *Instituto Nacional contra la Discriminación*

(INADI—National Institute Against Discrimination). Other participants without the right to vote are a representative of the civil society, designated by the commission, and the UNHCR, which assists the members of the commission in the application of the terms of the 1951 Convention and other international instruments of refugee legislation.

c) *National Population Directorate*

The purpose of the National Population Directorate—*Dirección Nacional de Población*—is to design, carry out and evaluate the population and migration policies and to formulate the programs that shall implement them. Its main responsibilities with regard to migration include the following:

- Submit proposals on, design and follow up population policies ensuring that they incorporate demographic aspects based on the classification and processing of data related to human potential in the formulation of the programs designed from those policies
- Design indicators and applied research on the behavior of the demographic variables and their social, economic and regional characteristics
- Produce dissemination material for the activities developed on population and migration issues and to provide a specialized library service
- Maintain liaisons with national and international bodies, governmental and non-governmental organizations, as well as with all bodies that produce basic information on the behavior of demographic variables
- Promote technical training for government agents on population and migration with assistance from international, national and private entities in order to improve their technical and scientific level

3.1.2 Ministry of Foreign Affairs, International Trade and Worship

Law 24,190 on ministries assigns the Ministry of Foreign Affairs, International Trade and Worship the capacity to intervene in the design and execution of migration and immigration policies at an international level from the point of view of foreign policy.

a) *Bureau of Consular Affairs*

The Bureau of Consular Affairs, which answers to the Secretariat of Consular Affairs, is responsible for the following:¹¹

¹¹ Decisión Administrativa 10/2002 del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto (Administrative Decision 10/2002 of the Ministry of Foreign Relations, International Trade and Worship).

- Supervise the Consular Corps regarding the decisions on people entering the country
- Intervene in affairs regarding identification, legalization and all other consular functions
- Intervene at the place of origin in the regulatory formalization of the repatriation of Argentinean citizens
- Intervene in the audit of the accountability of the consular missions regarding registration and collection of the fees for the *Dirección Nacional de Migraciones* (DNM–National Migration Directorate)
- Intervene in the process of granting consular visas on passports and travel documents, pursuant to the current norms, and turn it over to the *Dirección Nacional de Migraciones* (DNM–National Migration Directorate) when appropriate
- Intervene in matters that may produce a change or modification of the migration norms of the republic
- Intervene in matters relating to migrations that may imply infringement of current norms

In recent years, this bureau expanded to include a consular network and incorporated new technical specifications for the safety-laminated film to protect visas granted by the consular missions. Also, in the period between 2009 and 2010, the bureau installed the *Sistema Informático Consular* (SIC–Consular IT System)¹² in fifty-nine consular missions and create the online Consular IT System for Argentine citizens to process consular paperwork via the Internet. On the other hand, the bureau activated the National Recidivism Registration System, from which criminal record certificates can be instantly obtained in a safe way at any consular mission. It also modified the requirements to obtain the first passport abroad for citizens 16 years of age and older with the support of the Argentine federal police and implemented the issuance of machine readable travel documents¹³ (Memoria Anual 2009 and 2010).

¹² The *Sistema Informático Consular* (SIC—Consular IT System) was created by professional officials of the *Dirección de Informática de la Cancillería Nacional* (IT Directorate of the National Ministry of Foreign Affairs). This system connects the headquarters of the Ministry of Foreign Affairs with all the Argentine diplomatic and consular missions abroad.

¹³ Diplomatic, official, and consular passports are issued through the SIC. This system connects the main headquarters of the Ministry of Foreign Affairs with all diplomatic and consular missions of the republic. The document is digitally processed from the application submitted by Argentine nationals living abroad to the approval and printing of the requested document. The time between the application and the final issuance of the document is two weeks (15 days), whereas with the previous method it used to take 30 days or more. The system is in full operation and in 2010 the first 1,000 machine readable travel documents were sent to embassies and consulates. The new passports and their safety elements comply with ICAO international norms and prevent attempts at falsification and/or adulteration.

b) *Bureau for Argentines Abroad*

Law 24,190 on ministries clearly states that the Ministry of Foreign Affairs, International Trade and Worship, through the Bureau for Argentines Abroad, which answers to the Bureau of Consular Affairs, is responsible for the protection and support of Argentines abroad (Pérez Vichich 2011). This entity incorporates strategies to support emigrants, broadening the traditional functions of consular systems to cover the needs and demands for protection of citizens who have emigrated beyond the notion of “diplomatic protection” under international law.¹⁴ These strategies include paperwork and documentation which affect or could affect Argentines living abroad, whether they be of an individual, social, natural or political character, amongst which the following should be mentioned: locating the whereabouts of individuals; guidance with regard to legal, medical and notarial assistance; support to detained or imprisoned Argentine nationals; the defense of Argentine citizens on trial; and assistance during catastrophes.

c) *Human Rights Directorate [Sub-Secretariat for Foreign Policy]*

The Human Rights Directorate, which answers to the Office of the Undersecretary for Foreign Policy, is primarily responsible for identifying, designing and proposing plans, programs, projects and objectives for foreign policy regarding human rights, as well as for implementing the foreign policy associated with these issues before special international bodies, entities or commissions. Likewise, this directorate participates in the study of the amendments required in the legislation to comply with the international commitments acquired with regard to human rights when entering and terminating conventions and when establishing the eligibility of refugees.

This entity has the primary responsibility for the Argentine Republic’s participation in the sessions of the United Nations and in the Organization of American states (OAS) associated with human rights.

d) *National Foreign Service Institute*

The National Foreign Service Institute (*Instituto del Servicio Exterior de la Nación*–ISEN) was created on 10 April 1963. Since its foundation, the institute has facilitated the training and consolidation of a corps of highly qualified professional diplomats, renowned internationally for their education and excellence. Since the new migration law was adopted, ISEN updated its curricula in order to improve the assistance to Argentinean nationals abroad and strengthen their ties to the country. At the same time, the institute incorporated migration issues as a specific course in the training and education programs for these professionals.

¹⁴ According to international law, diplomatic protection allows the state to provide reparation for damages unlawfully caused to one of its citizens by another state. It only applies when the legal system does not recognize the rights of the foreigner or refuses to acknowledge them.

3.1.3 Ministry of Justice and Human Rights

a) *Human Rights Secretariat*

The *Dirección Nacional de Atención a Grupos en situación de Vulnerabilidad* (National Directorate for Vulnerable Groups), which answers to the Office of the Undersecretary for the Protection of Human Rights, plans and coordinates specific assistance and human rights actions for socially vulnerable groups, applying, whenever appropriate, the principle of positive discrimination on a temporary basis. It creates, proposes and evaluates public policies, norms and activities associated with human rights, such as bioethical issues and the genetic identification of persons. It oversees the effective enforcement of national and international norms that guarantee human rights and fundamental liberties taking into account the situation of vulnerable groups, including among them migrants. This governmental entity is also in charge of coordinating actions to strengthen participation in citizen oversight of the enforcement of economic, social, cultural and collective rights, especially those of vulnerable groups, as well as assisting witnesses of human rights violations. In this, the directorate has developed different interventions to protect and promote the human rights of migrants and members of their families.

b) *National Institute against Discrimination, Xenophobia and Racism*

This institute is a decentralized entity created by means of Law 25,515 of 1995. Since 2005, the institute was located in the Ministry of Justice and Human Rights. The activities of the *Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo* (INADI–National Institute against Discrimination, Xenophobia and Racism) are addressed to all persons whose rights have been affected because of discrimination on the grounds of ethnic origin or nationality, age or physical appearance. It is responsible for guaranteeing that these persons enjoy the same rights and guarantees as the rest of society, that is, it must ensure equal treatment for them.

A feature of this institute is the active participation of non-governmental organizations (NGOs). In this, the INADI has a board of directors, which consists of representatives of four ministries (Foreign Affairs, Education, Justice and Interior) and three non-governmental organizations (*Asamblea Permanente por los Derechos Humanos* [APDH–Permanent Assembly for Human Rights], *Delegación de Asociaciones Israelitas Argentinas* [DAIA–Delegation of Argentine Jewish Associations] and *Federación de Entidades Americano-Árabes* [FEARAB–Argentine Confederation of Arab Entities]). On the other hand, Article 14 of the law that created the INADI sets forth that an advisory committee must be set up, composed of 10 representatives of NGOs with extensive experience in the struggle for human rights and against discrimination, xenophobia and racism. The members of the advisory committee are appointed for four years and serve on a voluntary basis.

The INADI has a complaints center to receive, analyze, provide assistance and advise persons and groups who feel they are victims of discriminatory practices. Once the veracity of the event is verified, conflict resolution is sought by means of

legal guidance, administrative management, mediation and free sponsorship. This area also keeps a record of the discrimination cases reported nationwide in order to define a statistical plan.

It must also be pointed out that the *Foro de la Sociedad Civil sobre Migrantes y Refugiados* (Civil Society Forum for Migrants and Refugees) operates within the INADI. These forums offer training on the rate of discrimination and anti-discrimination policies, they co-manage the initiatives of the INADI or articulate with other ministries and/or provincial or regional governments. The objectives of the forums are to develop proposals for anti-discrimination interventions, monitor antidiscrimination public policies of the state, collaborate in the investigation and training activities of the INADI, collaborate in the construction of national complaints and follow up bureau and maintain a mediation system for the INADI.

3.2. Inter-Institutional Coordination

Although there have been several attempts at inter-institutional coordination to manage migration policies, at present only superior instances have survived, such as the *Consejo Federal de Población* (COFEPO, the INADI Federal Population Council), which has as one of its functions the coordination of migration. COFEPO was created so that the provinces and the nation can define the problems, the potential and the capacity to integrate the population to the development plans (Rivas 2010).

Thus, COFEPO acts as a fundamental political tool to study issues, seek solutions and analyze alternatives for population matters, among which international migration is of key importance. In addition to being an adequate space to agree on and coordinate guidelines for plans and projects to be developed by the provincial and national governments, COFEPO also provides the setting for the evaluation of socio-demographic information and the design of data collection mechanisms linked with direct participation of the provinces and the national bodies dealing with this issue.

COFEPO was created by Decree 2,613 on 22 December 1993 and carried out a number of actions until early 1995, but it did not develop any further activities until 2002. In the following years, it was barely active. In this context, in 2008, the Ministry of the Interior established that it was necessary to effectively reactivate this entity in order to strengthen the inter-institutional link between national and provincial officials. In the 1990s, there had been two proposals to restructure COFEPO, which were submitted as bills before the Chamber of Deputies, but they were not pursued any further.

In a review of the difficulties or obstacles faced by this attempt at the coordination of population policies through the Federal Population Council, several concrete issues could be identified (Rivas 2010). First, there was evidence of the political will of the competent authorities to promote the creation of an entity in charge of coordination when COFEPO was created in December 1993 and later when it was re-launched in 2002. However, its functioning lacked continuity, which

pointed at the existence of other factors affecting its ability to operate in the long-term. At the same time, there were budgetary difficulties affecting its sustainability.

Another difficulty was the lack of a clear structure and a working definition in its functions. Although once created COFEPO began to carry out activities such as meetings and conferences, during its first phase between 1993 and 1995 it did not establish a set of regulations regarding its structure and functions. It operated based on the provisions of Decree 2,613/93, which only set forth the general framework for COFEPO; all the other elements were vague.

Accordingly, COFEPO's second phase began addressing these issues by submitting a proposal for regulations that was approved at the meeting that took place in 2002. After the approval of this first version of the regulations, the Federal Population Council adopted a two-tier structure that reflected the way it worked: 1) on a decision-making level, and 2) on a technical level. A government official was in charge of the decision-making level while the directors of the statistics bureaus of the provinces were in charge of the technical level. This system was excessively complex for the organization's activities because it relied too heavily on the decision-making ability of the representatives, while the provinces lacked someone with specific competence on the subject. For this reason, it was difficult to find a valid interlocutor with expert knowledge of population issues.

3.3. Other Government Entities Dealing with Migration

a) Parliamentary Commissions

The legislative branch has designated special bodies to act in the field of human rights and migration. The Senate, integrated by the representatives of the 23 provinces and the capital federal, created a Commission on Rights and Guarantees in December 1983. The Chamber of Deputies followed this example, creating its own commission on 30 September 1992. In both cases, the commissions were integrated by members of parliament from all political parties represented in Parliament. These commissions decide on all matters relating to the enforcement, promotion, defense and dissemination of civil, political, economic, social and cultural human rights, as well as on the projects associated with the full enforcement of the rights and guarantees recognized by the National Constitution and the laws of the republic.

On the other hand, in 1990 the Chamber of Senators created the Commission on Population and Development, and in 1991 the Chamber of Deputies set up the Commission on Population and Human Resources. The main function of these commissions was to formulate migration policies.

b) The Ombudsman

On 1 December 1993, the National Congress passed Law 24,284 by means of which the legislative branch created the Office of the Ombudsman. The ombudsman performs his/her duties without instructions from any area of government. The office

has, however, a mandate to protect the rights and interests of individuals and the community in the face of acts, deeds or omissions by the public administration. The functions of the ombudsman include ex-officio initiations or, at the request of the relevant investigations, clarification of actions carried out by the public administration that could infringe on the rights and interests or diffuse the collective interests.

The only prior experience in the Argentine Republic with an ombudsman's office was in the city of Buenos Aires. The reform of the National Constitution, approved on 22 August 1994, introduced a new article dedicated to the ombudsman.

c) *Migrant Commission*

In 2008, by means of Resolution 1,858/08 of the Office of the Public Defender of the Nation (Public Ministry of Defense), the Migrant Commission was created to promote the defense and protection of the rights of foreign individuals living in Argentina. International Human Rights Law required that the state provides free legal services and that it strengthens community instruments to enable disadvantaged social sectors better access to legal protection and appropriate information on their rights to relevant judicial resources to enjoy said protection. Article 51 of the Organic Law of the Public Ministry set forth the duties and responsibilities of the general defender of the nation. As the highest-ranking authority of the Public Ministry of Defense, the defender must “defend the physical integrity and the rights of defendants in criminal cases and other cases if the defendants cannot afford an attorney one or are absent” and “promote and implement policies to facilitate access to justice for the most discriminated sectors.”

The main objective of the Migrant Commission is to detect the problems that arise during the deportation of foreigners. The process consists of identifying the legal needs, the existing mechanisms, the way they work within the legal framework and the deficiencies in the system to address these issues. Once the actors involved have been identified and the problems defined, an inter-institutional network is established to guarantee that the detained migrants are aware of their rights and have access to justice.

d) *Commission for the Integrated Assistance and Protection of Refugees and Applicants for Refugee Status*

The *Comisión para la Asistencia Integral y Protección al Refugiado y Peticionante de Refugio* (Commission for the Integrated Assistance and Protection of Refugees and Applicants for Refugee Status) was created in 2007 within the Office of the Public Defender of the Nation (Public Ministry of Defense) to accompany and look after the protection and legal representation of the children and adolescents who are unaccompanied or have been separated from their families and who are seeking recognition of refugee status in the Argentine Republic. Since its creation, the commission seeks to protect and guarantee all the human rights of its wards.

4. Migration Programs

4.1. Immigration Programs

Historically, international migration policies have been accompanied by programs that allow them to implement actions. In this way, since the end of the nineteenth century different immigration programs and, in many cases, even colonization programs have been promoted on the parts of the state, private organizations and companies (Freidenberg 2009). Changes in migration policy following the global crisis of 1929 and during the Second World War determined in turn the suspension of these kinds of programs.

During the postwar period, the policies of the five-year plans of the justicialist party governments brought back the implementation of these programs within a framework of immigration that was channeled, selective and aimed at assimilation. However, reality surpassed the categories of established policies as much as those of the existing programs.

As mentioned previously, this is the time when programs promoting overseas immigration and programs directed at temporary rural workers from neighboring countries began to appear. This period also saw the beginning of a type of program that would also appear sporadically over the following decades: one designed to normalize irregular migrants, also defined as “migration amnesties.” In this context, in 1948, the justicialist government declared amnesty for 10,000 irregular Jewish immigrants, which was implemented when the community associations *Sopromitis* and the Israeli Organization of Argentina (OIA, for its acronym in Spanish) presented the proposal to the authorities (Avni 1983). These programs recurred and were carried out by civilian governments with the active participation of civil society following the successive military dictatorships (Mármora 1983).

Of the programs carried out in the last few decades, it is worth highlighting the program ordered in 1974 by Presidential Decree 87/74 by means of which around 150,000 migrants were given legal status and which was implemented with education and health care programs. This program, along with programs to receive refugees from neighboring countries, included active participation on the part of international organizations, such as the UNHCR, in addition to civil society organizations, such as the *Comisión Católica Argentina de Migraciones* (CCAM—Argentinian Catholic Commission for Migrants) and other religious and secular organizations (Mármora 1975). In addition, in 1984 a decree was handed down enabling permanent residency for foreigners who registered their residence in the country before 30 November 1983. A law approved in 1992 granted naturalization to immigrants who had arrived before 31 December 1991.

In 2006, the *Dirección Nacional de Migraciones* (DNM—National Migration Directorate) created the National Program of Migratory Documentary Normalization, also known as the *Patria Grande* program, in compliance with Migration Law 25,871, which was handed down in 2004 to execute the objective of facilitating the naturalization of immigrants native to member countries of MERCOSUR and

associated countries. The “criteria for nationality” of Law 25,871 (Article 23, item L) created a new framework for the naturalization for the migrant population of the MERCOSUR area. The main objective of the *Patria Grande* program was to standardize the situation for all migrants of MERCOSUR and associated countries. The program had its origins in the new migration law based on the fulfillment of international treaties on the subject of human rights, integration and the mobility of individuals. If an immigrant was registered as “native” to a MERCOSUR member or associated country and had no criminal record, the immigrant could obtain a temporary residence of two years, at the end of which it is possible to obtain residence on a permanent basis.

Because it was created primarily as a program to resolve the irregular situation of an important part of the foreign population that effectively resided in Argentina, the *Patria Grande* program also established having entered the country before the 17 April 2006 as a requirement to be eligible to initiate the process.

As part of the integration process for different communities of immigrants, the DNM established direct intervention at the federal, provincial and municipal level for the reception of the paperwork. At the same time, they arranged for the participation of civil society and, through the support of multiple NGOs, achieved a greater scope of outreach within the migrant population. Once an organization is recognized as a collaborative social institution, it can assume the task of officially offering, at their premises, assistance to migrants to get together the proper paperwork and help in the completion of the enrollment application through the DNM webpage when a migrant requires it. As a fundamental aspect of the operative design of the program, these institutions receive the paperwork and then forward it to the DNM offices. In this way, the high demand from hundreds of thousands of people who began their naturalization process could be met (Calvelo and Vega 2007).

The number of people who initiated normalization procedures through these means was numerous—around 500,000 individuals. The distribution of immigrants according to their country of origin shows that in most cases these individuals were from Paraguay and Bolivia with proportions of 60 percent and 24 percent respectively. Together these two groups represented 84 percent of the total number of naturalized immigrants. Peruvians, representing 11 percent of procedures initiated, constituted the third collective of numerical importance that was normalized under the remit of the *Patria Grande* program. Attached is a list of different institutions that participated in the initial steps of the *Patria Grande* program in Buenos Aires, as well as a list of the main parties in the Buenos Aires area (See ANNEX IV).

4.2. Programs on Emigration

In the early 1960s, the emigration of Argentine citizens became a matter of concern. The state emphasized the necessity of regaining human resources that had been educated in the country and had moved to more developed countries. As a response to the growing immigration of Argentines to other countries, or qualified

human resources, a series of actions and programs targeted at establishing links with emigrants and return programs were introduced. Based on Pazos (2009), the following examples can be cited:

- Following Decree 7,558/65, the Special Commission for the Study of Migration of Highly Qualified Scientists, Technicians and Workers was created
- In 1974, the National Commission on Demographic Policy was created with the aim of developing a population policy in which the return of Argentinians who had previously emigrated was included. Under the dictatorship, following Decree 3,938/77, national policies on population were approved, which were later repealed by Decree 1,033/92
- In the Triennial Plan of 1973 for National Reconstruction and Liberation, the necessity of reducing emigration and propitiate repatriation was posed
- In 1984, in accordance with Decree 1,798, the National Commission for the Return of Argentinians living abroad was created under the authority of the Ministry of Foreign Affairs, International Trade and Worship
- In 1991, Law 24,007 was approved, followed two years later by Decree 1,138, which allowed voting for those living abroad, provided they had previously enrolled voluntarily in the electoral roll
- There are two institutional spaces that collaborate in the definition of policies on linking and repatriation and, in general terms, they safeguard the rights of nationals abroad: 1) the *Dirección de Argentinos en el Exterior* (Directorate of Argentinians Abroad) within the Bureau of Consular Affairs in the Ministry of Foreign Affairs, International Trade and Worship, and 2) the *Dirección Nacional de Migraciones* (DNM–National Migration Directorate) in the Ministry of the Interior. Both provide assistance to the consulates on the regulations and information necessary to comply with the requested documents
- On the normative aspect, two pieces of legislation came into being in 2004: 1) a new law on migration and 2) Decree 1,601/04 regarding citizenship, which simplified complex formal proceedings, allowing the declaration of nationality to be carried out by consulate officials, instead of having to go through a federal judge

In 1984, the National Commission for the Return of Argentinians Living Abroad was created as an advisory organ to the executive arm of government. By the end of that year, as part of its activities, the commission disseminated information about conveniences provided to returning nationals such as discounts for the transportation of personal effects through the Argentine Shipping Lines Company (*Empresa Líneas Marítimas Argentinas*–ELMA), recognition of the validity of studies completed abroad as well as degrees earned, amnesty to deserters of compulsory military service and the import of personal and household effects with no duties or fees (Calvelo 2008).

In 1991, Law 24,007 was approved. (It was regulated by Decree 1,138/93 and modified by Decree 2,010/93.) This law sets forth the right to participate in national elections for Argentinian citizens who are effectively and permanently residing abroad, dependent on their registration in the electoral roll for residents abroad (Novick 2007).

In the mid-1990s, the Bureau of Consular Affairs of the National Ministry of Foreign Affairs, International Trade and Worship created the Directorate of Argentinians Abroad aimed at assisting and advising Argentinian citizens living abroad with regard to consular issues.

In 2004, Migration Law 25,871 (regulated by Decree 616/10) was introduced, which delineated the foundations for a new national policy on the issue of migration. Title IX, “Regarding Argentinians Abroad,” set forth that the Argentinian government could sign agreements with states where Argentinian emigrants reside in order to ensure equality or assimilation of the labor and social security rights that are in force within the host country (Article 102). Article 103 stipulated that any Argentinian who lives abroad for more than two years and decides to return to the country can introduce the goods they own that are related to their work activities, free of import duties, fees, contributions and other charges. These goods include cars and personal and home effects up to an amount determined by the relevant authorities. Finally, Article 104 referred to the services that Argentinian embassies and consulates should provide in order to keep Argentinians living in other countries informed regarding the immunities and other exemptions offered when returning to the country.

With regard to programs directed at establishing contact with and repatriating Argentinian citizens who live abroad, it is worth highlighting two that are currently in practice: the Raíces (Roots) program and Provincia 25.

a) *R@ICES Program*

In 2003, the Network of Argentinian Researchers and Scientists Abroad Program was created under the jurisdiction of the Ministry of Science, Technology and Productive Innovation (*Ministerio de Ciencia, Tecnología e Innovación Productiva*–MINCYT). The program sought to strengthen the scientific and technological capabilities of the country by developing policies of communication with Argentinian researchers who live abroad, as well as activities aimed at promoting the residence of these researchers in the country and the return of those interested in developing their activities in Argentina (Pazos 2009). Its primary objectives included spreading scientific and technological activity carried out in the country to others; increasing the level of communication between researchers who reside in Argentina and those living abroad; improving the quality and availability of information regarding highly qualified Argentinian researchers and professionals who live abroad; integrating Argentinian researchers who live abroad into the activities of the Focus on Neglected Areas of Research Initiative (*Programa de Atención a Áreas de Vacancia*–PAV); and involving the production sector of the country, foundations and other NGOs in the activities of the program.

The MINCyT has repatriated 834 Argentine scientists and technologists since 2004. The following indicators have been identified concerning the figure mentioned above. An analysis of the distribution of researchers and technologists according to area of expertise shows that the largest proportion of professionals can be found in the area of biological and health sciences (37 percent), while the second largest proportion is to be found in exact and natural sciences (31 percent). Concerning the fields of social sciences, humanities, agrarian sciences, engineering and material sciences, they make up the remaining third in almost equal parts. Meanwhile, 3 percent of the total figure is concentrated in technology, including other areas of engineering (Menville 2011).

Another program to take note of is the Back to Work project, which started in 2007 and is linked to the RAICES program, based in the Argentinian Ministry of Foreign Affairs and the Bureau of Consular Affairs. The program was intended to provide for the less skilled segment of the population and to facilitate access to job offers in the country to Argentinians living abroad, regardless of their level of qualification. This was based on memoranda of agreements between the Ministry of Foreign Affairs, International Trade and Worship and the Ministry of Science, Technology and Innovation with a number of companies and business chambers that committed to distributing their job offers across a network of consulates (124 in 77 countries) among citizens residing outside of the country. In 2008 and 2009, various meetings were held among different ministries and areas of government seeking to find a way to increase participation in the project. There have been more than a few difficulties in making this initiative operational, despite the apparent simplicity of the concept. According to Pérez Vichich (2011), the program suffered reversals in the months that followed the international financial crisis and the concomitant decrease in the supply of new jobs, but it has been recovering some of its pace.

b) Provincia 25 Program

Pursuant to Resolution 452 on 3 December 2007, the Provincia 25 program was created and based in the Ministry of the Interior. The enforcement of this program is the responsibility of the secretariat for the provinces, in cooperation with other organs of the state. The program was aimed at all people with Argentinian nationality living abroad.

In institutional terms, the program is pursuant to the Law on Ministries, which states that said ministry has the faculty to “intervene in institutional issues which play a part in the rights and freedoms of the population of the Republic” (Article 16, item 3) and therefore requires specific attention according to their interests, demands and needs. Additionally, it is the responsibility of the Ministry of the Interior to “intervene in the planning and execution of electoral legislation, registration processes and the National Registry of People” (Article 16, item 10), and in the “elaboration and application of laws that govern the inherent aspects of internal and foreign migration” (Article 16, item 17).

The following are organically dependent on the same Ministry: the National Electoral Directorate, with its competencies in electoral issues; the National Population Directorate and the National Migration Directorate on the topic of migrations; and the National Registry of Persons, which keeps an ongoing and up-to-date record of the most important background information on the lives of people according to their births, identifications, marriages, deaths, changes of address, etc. The aims of the program consist of the following:

- Promote a strengthened relationship between the state and Argentinian citizens living abroad
- Optimize and streamline the paperwork procedures that Argentinian citizens abroad require and which fall within the competence of the Ministry of the Interior
- Promote the exercise of political rights
- Guarantee political representation and electoral participation

The program proposes the creation of institutions to represent the communities of Argentinians living abroad, promoting their integration.

For its execution, the program proposes that Provincia 25 should have its own specific representation in the National Congress. The program consists of seven objectives:

- Ensure the execution of electoral rights of Argentine citizens living abroad by lowering costs and simplifying formal procedures
- Create representative institutions for the communities of Argentinians living abroad by promoting the integration of these citizens in cooperation with the organs of the state and NGOs
- Propose the specific parliamentary representation of the Provincia-25 population in Congress
- Facilitate the process to obtain documents for Argentine citizens living abroad
- Guard and assist Argentinians living abroad with regard to their social rights
- Develop and implement tools for permanent, accessible and secure communication with the program and the state
- Generate the necessary information regarding the population of Provincia 25.

According to Pazos (2009), from these objectives, five lines of action can be drawn, all of which are based on the participation of NGOs:

1. Citizen participation

- Analysis and modification of the electoral legislation in force to include the population of Provincia 25

- Modification of procedures to make them compliant with resulting legislation
 - Initial implementation of new policies and procedures
2. Documents
 - Coordination of the activities with the relevant offices of the Ministry of the Interior in order to redesign the administrative procedures that facilitate obtaining documents
 - Coordination with the state bodies designing or executing the above mentioned proposals
 3. Protection of social and labor rights, i.e., offers for return, establishment of social security benefits, promotion of investment activities, access to credit, promotion of tourism to Argentina, approval of educational qualifications, recognition of driver's license obtained abroad, obtaining the criminal background check
 - Identification of the claims associated with the social rights of Argentinian emigrants
 - Coordination with other organizations and different areas of the Ministry of the Interior
 4. Communication
 - Design and implementation of communication strategies
 - Design and launch of a webpage for Provincia 25
 5. Information
 - Definition of a basic data protocol available across different areas of government
 - Establishment of an integrated information database regarding the characteristics of the population and living conditions
 - Definition of a registration system
 - Periodic reports that assess the respect for the human rights of Argentinians living abroad and their living conditions

On the date of issuance of this resolution (December 2007), following its own statement of reasons, there were 1,053,000 people living abroad; however, electoral participation has been very low and has been decreasing over time.

Because the vote is calculated according to the most recent residencies in Argentina, the program proposes a modification of the electoral register. This situation poses a paradox in that people residing abroad constitute a group of citizens

that the state recognizes as part of the country and as holders of political rights the enjoyment of which has been diluted. Hence, it is necessary to unify their representation in order to promote democratic participation. This means facilitating the execution of electoral rights that were consecrated in Law 24,007 in 1991.

The advances in migration policies, legislation and management that have developed over the past decades are a response not only to active participation and the influence of civil society but also to the inclusion of this issue in the process of regional integration. These advances are reflected in executive, legislative and judicial power and are visible in institutions in different instances where attention for the migrant is present. The inclusion of the human rights of migrants, including free circulation and residence and citizen participation, is a distinctive trademark of these policies. The concretion of these laws and institutional forms can be witnessed not only in programs aimed at immigration but also those directed at Argentinians living abroad.

PART III

CIVIL SOCIETY PARTICIPATION IN PUBLIC POLICIES AND PROGRAMS ON MIGRATION

1. Civil Society and Migration

In the debate surrounding the issue of migration and the definition of the policies and programs on migration, a primary question arises about how to formulate an issue and have it included in the public agenda of governments and who has the capacity to do so. The state itself, to a greater or lesser extent, tends to become the principal actor when setting up its agenda. However, in this process, interactions with other social forces take place and this has an impact on the proposals that are eventually made.

The main line of citizen participation in the design of policies regarding international migration is the conception and practice of the relationship between the state and civil society. This relationship is not simple and is in many cases loaded with preconceptions. For this reason, it requires objective reflection.

The fact of the matter is that civil society has advanced in the last few decades in terms of its influence as well as its presence in the construction and management of policies and programs regarding migration. The participation of civil society has been prominent with respect to the actions that contribute to the protection of the human rights of migrants.

At this point it must be noted that this participation does not always take up the spirit detailed above. Just as there are civil actions in support of migrants, there are also civil society movements, increasingly over the last few years in many countries and regions, which are more or less structured and defined by their anti-migration actions. The organized civilian groups that operate on the US-Mexico border, xenophobic organizations in certain European countries and the violent actions carried out by the citizens in South Africa, among others, are some examples of this. The extent to which these organizations influence or accompany the definition of public policy on international migration is a subject that has yet to be thoroughly analyzed.

These reservations notwithstanding, it is evident that civil society is one of the forces acting in support of the rights of migrants across different stages of the creation of public policies. The field of migration in Argentina has also been affected by this contribution. In the following, we present the main lines of collective action in which the organizations that work in relation to migration in the country are involved, highlighting in particular the organizations that seek to influence migration programs.

The diversity of proposals is vast, partially because they are the logical consequence of the multiplicity of needs and demands among different groups of migrants. It is therefore necessary to distinguish those actions that, beyond the fact of participation, result in a positive impact on the state agenda and policies over the last ten years. From the active role that the Argentinian state adopted throughout the conception and sanctioning process of the Law on Migration 25,871, it is possible to infer that, as the issue became part of the government agenda, a position was assumed, leaving behind the option of inaction or of preserving the *status quo*. What requires to be analyzed now is the role that civil society has played in the conformation of this process.

According to Manuel Garretón (2002), one of the consequences of the reconfiguration of the relationship between the state and society that has taken place over the last few years in Latin America is the emergence of new social actors and a redefinition of the lines of collective action. Recently, in debates on public issues, the region has witnessed the active participation of an actor which, for lack of a more precise term, is known as civil society. Several factors have strengthened the role of this social actor: the fall of the authoritarian regimes in Latin America during the 1980s and the consequent increase in the political participation of citizens; the process of globalization; the crisis in classic models of political representation experienced in many countries by the exhaustion of bipartisan models and which led to questioning the political class as a whole; the downsizing of the state following the Washington Consensus and, as a consequence, the transfer of its traditional attributions to other social actors; and, above all, the practice of new forms of citizenship and of the exercise of political rights.

The concept of civil society tends to be defined more by what it is not than what it effectively is. As Norbert Lechner states, we are dealing with

an ambiguous term with varying connotations and a controversial nature, which serves mostly to signal a problem. The ambivalence of the term is precisely what lends the term its political efficacy in that it can be used without actually having to specify what is meant by civil society (Correa 2009).

A classic notion of the term is the one purported by Walzer (1995), who understands it as a space of uncoerced human association, as well as a set of relational networks that fill this space.

On the other hand, for Habermas (1998), civil society fulfills a transcendent role in the public-political space in defining it as a set of

non-governmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the "lifeworld." Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere. The core of civil society comprises a network of associations that institutionalizes problem-solving discourses on questions of general interest inside the framework of organized public spheres.

When naming civil society, organizations commonly define it in terms of non-governmental and non-profit organizations. In this sense their objectives

are of interest or should be of interests to people outside of their membership; in this sense they can be considered public (...) joining or leaving them is a voluntary act, and they are self-governing; in this sense, they are unlike state organizations and resemble other private organizations (Leiras in Acuña and Vacchieri 2007, 19).

This group of organizations is characterized by their heterogeneity of origin, the objectives and the format that differentiates them from one another, and by the fact that, although they are not dependent on the state, they operate in the public sphere. They generally produce goods of a public or a collective nature and/or seek to represent the demands of certain specific groups, an example of which could be migrants.

If we take a look at the dismantling of the classical national and popular matrix, which was in force in Latin America until the 1970s, and the changes brought about by the military regimes within the new social and cultural scenario of globalization, it is evident that traditional politics have lost the exclusive centrality as the unique form of collective action, and that this function has now moved to other forms of action with their own dynamics and actors (Garretón 2002). The reference principles of these actors at present cannot be contained within the limits of notions of ideology or of the *polis*, as they associate based on categories derived from social belongings, such as being young, female, indigenous or migrant. Collective actions of civil society, and more specifically those of migrants, are organized around the achievement of social democratization, which implies a redefinition of the concept of citizenship and the reformulation of the notion of modernity.

A substantial element of the history of citizenship is the struggle for the expansion and deepening of rights. A classic analysis of the subject distinguishes between the rights of civil, political and social character where states sovereignly define the criteria for the access to these same rights. In general, the notion of citizenship is associated with the membership of a state, which would prevent foreigners from becoming rightful citizens and enjoying the full extent of the associated rights (Marshall 1950). However, as Nora Pérez Vichich (2009) points out, authors such as Bottomore and Marshall establish a distinction between the formal denomination of citizenship, granted by nationality, and “substantive citizenship” constructed around the capacity to exercise rights in a way that is independent of nationality. This implies that the state one belongs to can be just one of many places where “substantive citizenship” may be localized.

Claiming this notion of citizenship goes hand in hand with the spread of an approach that advocates the defense of human rights, which is one of the central claims of actors in civil society in actions relating to migration. A redefinition of the concept of civil society does not imply the existence of an essentially new actor emerging as a result of the process of globalization; rather, it has been present since before the configuration of national states under other names with other features and ways of operating, carrying out social assistance through different means, guided by religious or humanist ideals (Correa 2009).

Currently, the world is made up of migrant associations, non-governmental organizations, pastoral care organizations for migrants and other groups, which are collectively known as civil society. These entities have their roots in other kinds of associations, also inspired by the spirit of the migrants at the beginning of the twentieth century.

The mutualist movement, or associations for mutual aid, predominated in terms of quantity and persistence during the time that European immigrants began to arrive around 1880. In this, social and cultural clubs and charitable organizations came to be, the principal objectives of which were to gather funds to assist in sanitary matters or in case of unemployment among their members and family groups and serve as a space for social activity and recreation (Di Stefano et al. 2002). The rise of mutualist associations seems to have stemmed from the previous associative experience of many migrants, above all Italians, and the necessity of generating ties of solidarity in a host country. In this, the Spanish Mutual Aid Society came to be in 1857 and the *Unione e Benevolenza* in 1858, the latter formed as an Italian institution even before the official constitution of the Italy. Following this, thousands of similar institutions multiplied across the country and, according to historical records, toward the beginning of the twentieth century at least one in three Italian immigrants residing in the country was a member of one of these. In addition to mutual aid activities, these organizations tended to commemorate anniversaries and national holidays and, in some cases, included among their objectives the building schools in which to teach children their members. The original purpose of the Galician Center, created in 1907, was culturally centered around maintaining and disseminating the language and traditions of Galicia, although later these were realigned to include aid activities. At the same time, many of these organizations developed ties with other social institutions, such as the Italian Hospital, the Spanish Hospital and the Spanish Bank of Río de la Plata, which allowed them to broaden the spectrum of the benefits they offered.

The affluence of immigration stemming from Europe, which was in the throes of full industrial development, and the founding of organizations dedicated to the defense of workers' rights (socialists and anarchists) produced a strong imprint in the traditional social charity organizations in Argentina and led to the rise of the first trade union associations.

Another kind of association set up by migrants of that time were those known as *sociedades de instrucción* (teaching organizations), which emerged from the initiative of Spanish people from Galicia with the intention of aiding and maintaining their communities of origin. The first of these was set up in Buenos Aires in 1904. It was called La Concordia and gathered the natives of the parish of Fornelos da Ribeira in Pontevedra. From that moment on, the number of these organizations grew steadily. Between 1904 and 1936, a total of 327 organizations were set up in Buenos Aires alone (Di Stefano et al. 2002). In general, they ran on modest budgets and some lacked their own meeting premises.

During the beginning of the twentieth century, mutual aid organizations maintained their size by eliminating nationality as a necessary criterion for membership. Their development was also affected by a membership, which put greater pressures on their economic budget. A crucial factor was the active role of the Argentinian state—not only in the mass implementation of policies with regard to health (with vaccination campaigns and the construction of public hospitals), but also in the creation of free public schools and the consolidated presence of a welfare state, which minimized the original need for aid that led to the creation of aid organizations.

On the other hand, the rise of workers' unions directly competed with mutual aid organizations for migrant membership in the services they offered. Due to these factors, as well as to the gradual integration of overseas migrants and the Argentinization of society, the phenomenon of migrant aid associations was sustained but could not renew itself. It began to function alongside other modes of association in which the migration factor no longer played a determining role.

With the passing of time and the changes experienced in the socio-political context, new demands and needs were being addressed by migrant aid organizations. Many of them integrated Argentine members and subsisted over time. Other organizations were created as a consequence of the continual arrival of new migrants to the country, which, although smaller, still addressed substantial needs and concerns in terms of participation and self-organization.

The members of these organizations sought to attain the so-called “substantive citizenship,” which can only be consolidated via the following methods: first, through the definition of migration laws and programs that regulate the access to social, political and economic rights; second, with the conformation of formal and informal mechanisms that facilitate access to social goods; and third, with the acceptance that migrants have of themselves as persons who have rights (Pereyra 2005).

As for the political incidence of civil society organizations in the definition of public policies and programs regarding migration, not all of the organizations saw involving themselves in a discussion on the policies that affect the groups they supported on their agenda as a priority. A first distinction to make, then, would be between the entirety of civil society organizations and the subgroup that seeks to influence public policies. These are organizations that “develop strategies supported by arguments on public interest to promote or resist social changes which, if implemented, would come into conflict with the social, cultural, political or economic values or interests of other groups and organizations” (Leiras in Acuña and Vacchieri 2007, 22). With regard to the term incidence, Leiras (2007) sets it apart from participation, reserving it for those interventions that change the content or alter the course of public policy in some way. However, it is somewhat confusing to determine incidence, especially in those cases where inaction (usually not visible) is a valid strategy used by actors who wish to block the course of a particular policy. On the other hand, the cases of positive incidence can seem numerous at first glance,

although one has to take into account other possible factors that permanently affect the definition of policies, such as the weight of public opinion or the stance taken by the media.

The needs or demands that concern a social group span a vital cycle, from posing an issue and having it included into an agenda up to the point of its resolution into a public policy:

Different actors, who are affected either positively or negatively by the rise and development of an issue, take on a position with regards to it. The behaviors involved in taking on a position tend to modify the network of social relationships and the microcosm of problems that are subject to consideration in the political arena at a given time (Oszlack and O'Donnell 1982).

In this process of taking a position on the part of the various actors, true advocacy coalitions tend to emerge (Sabatier and Jenkins-Smith 1999), made up of different private organizations that share a set of beliefs and that commit themselves to a certain degree of cooperation activities over time. These coalitions can include leaders of opinion in certain groups of interest, officials or legislators, researchers and even journalists who share common political objectives.

In this, it is useful to determine the mechanisms of incidence of civil society and view them in relation to the four levels of the elaboration of a public policy (Leiras 2007). First, with regard to the definition of the public agenda, Oszlack and O'Donnell (1982) write, "we are interested in finding out who identified something as a problem, how this point of view was spread, who and on the basis of what resources and strategies managed to turn it into a topic of concern" (110). In the first stage, we can identify the elaboration of information on the topic of migration that stems from civil society, fundamentally, from the analysis and the research carried out by numerous academic institutions dedicated to collecting experiences and interpreting the numerous dimensions that cover the topic: labor migration, the role of women and the feminization of migration flows, socioeconomic inclusion, the problematic issue of discrimination, the access to rights, the history of collectives in the country and other issues. The results of this research are disseminated through their publication in books, journals, mass media and presentations by researchers in seminars and forums of debate. This research production also becomes a permanent source of information for organizations involved in the issue of migration or for officials and legislators when they need to support their legislative projects.

In the second stage, the moment the policies to be executed are defined, civil society can directly contribute by participating in the process of debate associated with the generation of policies or submitting proposals that differ from the mainstream solutions. Systematic participation in forums or advisory councils organized by organs of the state offer the possibility of discussing and gaining consensus on communal projects that integrate the views of all actors. A factor that highly affects the success of initiatives is the degree of participation that is granted to civil society during the discussion of the project. Argentina has an interesting history in regard to the incidence of civil society in the design of migration policies during

this stage by means of the formation of the above-mentioned Committee of Organizations in Defense of the Rights of Migrants (*Mesa de organizaciones en defensa de los derechos de los inmigrantes*) in 1996, which brought together many civilian organizations, the main objective of which was the abolition of the Videla Law on migration. The meetings, which were held with legislators from the National Congress, were the basis of the migration reform of 2003.

The third stage is the implantation and execution of the chosen policy, where it is established which individuals will be responsible for moving the migration program forward and by which means they will achieve this. Here we see how, in some cases, the state looks for cooperation with civil society to carry out certain tasks that directly influence the success or failure of programs, such as the dissemination of news regarding programs or legislation and of their benefits, or the provision of direct assistance to advice on and support of the processing of the required documentation.

The final stage of citizen participation is comprised of the monitoring and evaluation of the implemented programs, which often occurs through the creation of social observatories that invigilate and control the effective results and the development of ongoing projects. The elaboration of information of the work in progress and its presentation to the authorities are examples of mechanisms of incidence in this stage.

Taking into account the above-mentioned considerations, it can be said that in Argentina numerous civil society organizations are working to establish three stages toward substantive citizenship (achieving full access to social goods and going beyond formalities). In the first stage, the definition of legislation and laws involving the subject of migration, as was mentioned in relation to the committee of organizations formed in 1996, led to the enactment of the current law on migration.

With regard to the second stage, which relates to the formal and informal mechanisms that facilitate or hinder access to the exercise of social goods, we counted multiple examples in which civil society organizations cooperate in programs working toward the normalization of irregular migrants or even actively intervene in those cases in which there has been a violation of the established law (especially when a foreign child without papers is stopped from enrolling into school or identification documents are requested from migrants admitted to the hospital). Organizations like CEMLA, CELS, CAREF and FCCAM intervene in the latter cases, providing information on the changes in legislation that officials are not aware of in many cases and in this way support migrants.

The third stage is the appropriation of these rights by the migrants when they recognize themselves as persons with rights. The participation of different communities in associations and organizations, the multiplication of these and their participation in local and international forums of discussion is paving the way toward a full exercise of substantive citizenship, which will denaturalize social differences and will identify with a global citizenship.

2. The Organizations of Civil Society and the Current Migration Issues

Today, we find a variety and multiplicity of non-governmental organizations, research centers, migrant organizations and providers of pastoral care of migrants working in the country. However, even with this degree of diversity it is possible to come up with a typology that allows for their identification through their modalities of community organizations, the objectives they pursue and the social roles that they fulfill through their activities.

Using the typology for civil society organizations devised by Gerardo De Cárdenas Falcón (2010), the sample of organizations involved with the issue of migration has been distributed into those that have their own grassroots organization structure, intermediation organizations and non-governmental organizations. Research centers constitute a category of their own, which due to their composition and particular objectives cannot be classified under the typology mentioned above; however, on account of their active role in the dynamic between the state and civil society in the issue of migration, they contribute to the process of incidence (see ANNEX VI).

The suggested approach does not intend to account for all the groups that are currently active but rather to map the current main trends in the activities developed by civil society organizations working on the topic of migration on the basis of the interviews carried out with representatives from various organizations (representatives from thirty civilian organizations were interviewed). Particular attention was paid to the analysis of those activities related to generating proposals and including the issue of migration into the political agenda, or in intervening in the definition and implementation and monitoring of public policies that influence the everyday realities in the lives of migrants.

2.1. Research Centers for the Study of Migration

Research is being conducted at universities and by non-academic research groups, formed by academics and social researchers, who are collecting the experiences and interpreting the numerous dimensions of migration. Among these, we find analyses of labor migration, the role of women and the feminization of migration flows, the socioeconomic integration of migrants, the issues of discrimination and social integration and, fundamentally, the history of the communities in the country. The dissemination of the results of this research contributes to raising awareness of the issue of migration and introducing it into the political discussion. These results are published in books and journals. They are also mentioned in the media. Further use and dissemination is reached through the presence of researchers in seminars and forums of debate. These publications serve as sources of information for the organizations involved in the issue of migration and the officials and legislators who seek advice on specific issues.

The research centers that address the study of this topic include the IEHS (*Instituto de Estudios Históricos y Sociales*—Institute of Social and Historical Studies)

at National University of Central Buenos Aires, IDES (*Instituto de Desarrollo Económico y Social*—Institute for Economic and Social Development), and the master's degree program in social demography at National University of Luján. All of these carry out the traditional activities of research institutes: post graduate and doctorate theses, scholarship applications, publication of articles, teaching and seminars on the subject with an approach to migration from a historical perspective.

Additionally, the Center for Latin American Migration Studies (*Centro de Estudios Migratorios Latinoamericanos*—CEMLA) is one of the pioneering civil society institutions in the country with regard to the issue of migration. The continuous efforts of the Congregation of the Missionaries of Saint Charles Borromeo (Scalabrinians) to sensitize public opinion and the Church of Argentina on the reality of migration materialized in 1974 in the creation of the Argentine Scalabrinian Center for Migration Studies and Documentation (*Centro Argentino de Documentación y Estudios Migratorios Scalabriniano*—CADEMS), which from 1985 has been known under the new name, The Latin American Center for Migration Studies (*Centro de Estudios Migratorios Latinoamericano*—CEMLA). As a member of the Confederation of Centers for Migration Studies John Baptist Scalabrini, the objective of CEMLA is to deepen, at a scientific level, the knowledge of different aspects of migrations in Latin America, in particular from a sociological, historical, demographic, judicial and pastoral point of view, as well as to encourage activities that promote a greater understanding of the realities of the lives of migrants in their societal contexts.

CEMLA first opened its doors on 28 December 1985, preceded by the First Conference on Immigration and Identity, which took place in August of the same year, and by the publication of the first edition of *Estudios Migratorios Latinoamericanos*, an academic journal dedicated exclusively to the issue of migration in the subcontinent. Since its beginnings, CEMLA has worked on the preservation and microfilming of documentary sources regarding immigration in Argentina. This activity was carried out in successive steps and the institution's database contains more than three million registered names in the books of entry for migrants from the National Migrations Office.¹⁵ This record is consulted on a permanent basis by descendants and researchers.

In addition, CEMLA is dedicated to the study and analysis of migrations with an approach based on the defense the rights of migrants, for which it has organized numerous activities to publicize the issue. In areas of academic investigation, it develops diverse projects in conjunction with institutions in various parts of the world. Due to its specificity and its activity in this field, the center has become something of a reference point for many specialists and scholars from foreign academic institutions. Furthermore, CEMLA has organized workshops dealing with the subject of communities in Argentina, as well as carried out microfilm projects for

¹⁵ CEMLA keeps the archive of document sources with original lists of the disembarkment of migrants in the port of Buenos Aires, where the entry of the first overseas migration flows arriving to Argentina was recorded.

documents from Italian communities in the country. In 2001, for example, during Argentina's economic crisis, CEMLA carried out a survey on the situation of Italian citizens living in poverty in Argentina and has recently intervened in programs for the prevention of the abuse and trafficking of children, developing educational materials that are distributed in the regions most affected by this situation.

Another aspect to take into account is that CEMLA opportunely participated in the panel of discussion regarding the formulation of Law 25,871 on migration, along with many NGOs, the FCCAM and the Pastoral Care of Migrants of the Archdiocese of Buenos Aires. It was also invited to participate in the advisory commission for the regulation of Law 25,871. CEMLA also partakes at an international level in the formulation of migration policies, participating in different spaces sponsored by the United Nations, such as the Global Forum on Migration and Development (GFMD).

The Study Group for Population, Migration and Development of the Gino Germani Institute at the University of Buenos Aires, which was created in 1994, studies the evolution of the demographic dynamic in the country, including the problem of population policies formulated by different governments. This group has vast experience in the research into and dissemination of the different dimensions relating to the phenomenon, mainly through its permanent seminar on migration, where invited specialists hold discussions annually, as well as through the production of videos and documentaries, and participation in international meetings on population and migration. One of its principal contributions are the chapters pertaining to the human rights situation for migrants at the end of the 1990s, which were included in the annual reports that are jointly prepared with CELS (*Centro de Estudios Legales y Sociales*—Center for Legal and Social Studies).

Over the years, the above-mentioned centers of study have established and maintained relationships with other actors of civil society involved in the issue of migration, such as CAREF (*Servicio Ecuménico de Apoyo y Orientación a Migrantes y Refugiados*—Ecumenical Support and Orientation Service for Migrants and Refugees) or the Archbishopric of the City of Buenos Aires. In addition, they, along with other organizations, supported the Law on Migration presented by then deputy Rubén Giustiniani, president of the Commission on Population of the Chamber of deputies in the National Congress. Furthermore, these centers participate in the discussion of migration policies at an international level by presenting papers in the World Social Forum on Migrations, the Global Forum on Migration and Development and in academic conferences.

On the other hand, the *Grupo de Estudios Sociales sobre Paraguay* (Group for Social Studies on Paraguay), which was formed in 2008 to research the Paraguayan migration processes, focuses on the study of the forms of association of Paraguayan migrants, their incorporation into the labor market and the representation of migrants in the media. In its public interventions, this research group seeks to dismantle xenophobic arguments that are propagated in newspaper articles or by political officials who present misleading perspectives on the issue of migration.

In relation to this, the different research institutes share a view on the societal perception of migration in Argentina, which can be summarized in the opinion put forward by the Group for Social Studies on Paraguay (2011) as follows:

There is a divided perception of the phenomenon of migration. On the one hand, overseas migration is typically viewed in terms of adventure and work: it invokes the image of the immigrant grandparents “who came here with nothing.” On the opposite side, migration from neighboring countries, which developed after the second half of the twentieth century, is more likely confronted with a very different, typically negative perception, associated with social issues whose origins have nothing to do with the migration phenomenon.¹⁶

There are other institutions that go beyond the individual objectives of a typical research center. The GIIPSI, Research Group for Sociocultural Research on and Intervention with the Migrant Population (*Grupo de Investigación e Intervención Sociocultural con Población Inmigrante*), from the faculty of philosophy and literature at the University of Buenos Aires (created in 2007), takes an ethnographic approach to the subject. In addition to carrying out research activities, this center also develops continuing education activities and actions that favor the sociopolitical integration of migrant organizations and their institutional strengthening.

An example of this kind of project is the work that the GIIPSI develops along with the Center for Innovation and Development for Community Activity (*Centro de Innovación y Desarrollo para la Actividad Comunitaria*—CIDAC) from the Barracas neighborhood, where they have carried out research on the needs of Paraguayan residents in the slum Villa 21-24. The GIIPSI also participates in implementing migration management through the organization of mobile consulate visits for documents to be handed over to neighbors. In addition, it organizes educational workshops in human, social and political rights for the migrant community and was one of the organizations involved in the “*Aquí vivo, Aquí voto*” (“I live here, I vote here”) project designed to enroll migrants for local elections and support migrants in the formalities of registration.

Finally, the Center for Human Rights at National University of Lanús (DH-UNLa Center) began its research activities in 2006 with clear objectives geared toward dissemination of information on the topic of migration and the generation of incidence regarding migratory politics from the paradigm in respect to human rights for migrants. Its research objective places particular emphasis on the analysis of the situation of migrants and refugees and, among them, that of children and adolescents in vulnerable situations. Currently, one of its objectives is to disseminate the results of their research on the situation of migrant childhood in the country five years after the passing of Law 25,871, generating courses of action that are conducive to legislative reforms and changes in migration programs.

In the same pursuit, the DH-UNLa Center currently meets with other civil society organizations in a debate forum put together by the General Directorate for

¹⁶ Interview with the Group for Social Studies on Paraguay, June 2011.

Migration to discuss legal alternatives for efficient normalization of the population beyond the borders of MERCOSUR. This process is linked with the creation of an observatory for the rights of migrant peoples, which monitors the effective fulfillment of what is established in the migration legislation that was sanctioned in 2003. This center also provided support to the “*Aquí Vivo, Aquí voto*” campaign and put together presentations for United Nations agencies, in addition to representing civil society in the Global Forum on Migration and Development.

Moreover, the DH-UNLa Center coordinated a research project with the United Nations High Commissioner for Refugees (UNHCR) during 2000 and 2001. The result of this project was the publication of the book, *International Asylum and Protection of Refugees in Latin America: Critical Analysis of the Asylum-Refuge Dualism in the Light of International Human Rights Law*, in Buenos Aires and San José, Costa Rica in 2003 and 2004 respectively. In addition, the activities that the DH-UNLa Center carries out with the Buenos Aires Office of the International Organization for Migration (IOM) are of great importance, such as the project on the promotion and protection of human rights for international migrants in South American countries (2003); the Training Program on Human Rights and Migration (2007); and the study on the revision of international standards in the fields of human rights and migration policy (2007-2008). Many of these initiatives were presented to the South American conference on migration as input to the deliberations of the regional consultative process through the actions of the IOM in its role as technical secretariat.

2.2. Grassroots Social Organizations

These organizations are entities where ties of solidarity and collective interest thrive, springing up in diverse environments like the neighborhood or the inner city; they are motivated by numerous aims that seek principally to satisfy needs that have gone unmet and calls for justice that have gone unanswered (De Cárdenas Falcón 2010). Here we include primarily migrant organizations that, as mentioned before, place an emphasis on mutual assistance among fellow countrymen and provide a space for meeting and recreation for the community in the host country.

The Paraguayan House in Buenos Aires, for example, states its purpose as “a home and shelter for all Paraguayans who are resident or passing through Argentina and to all the inhabitants of this country that identify with its ideals” (Paraguayan House Social Statute, Article 2). The diffusion of Paraguayan culture, another one of its objectives, is achieved through the hosting of courses on the Guaraní language and performances of native dances and the broadcasting of community radio and television programs. The Paraguayan community is very festive and promotes gatherings of resident families through means such as dinners and the organization of festivals with music and traditional foods.

The Center for Itá Residents in Buenos Aires (*Centro de Residentes Iteños*) also organizes these kinds of social gatherings, in addition to offering support services in the area of education, such as IT courses for its members. The Group of Chilean

Hands in Argentina (*Agrupación de Manos Chilenas en Argentina*) shares similar objectives and activities, although it does this with a clear image of solidarity and charity that goes further than the interests of its own community, carrying out aid work on Children's Day and collecting donations for local schools and hospitals. The development of productive social projects and the provision of professional medical and/or psychological advice for cases of domestic violence are other points of focus for the Chilean group.

Meanwhile, the Welcoming Center of Peru in Argentina (*Casa del Perú en Argentina*) provides professional and technical consultation and comprehensively advises on procedures to start socio-productive projects through formal channels in a way that promotes a full integration of Peruvians, overcoming the informality that affects their fellow countrymen. The creation of social housing cooperatives, prevention workshops and healthcare come together with technical supports for artists and sociocultural managers, which continue to the cultural diversity in the host society.

The association United Migrant and Refugee Peruvian Women (*Mujeres Peruanas Unidas Migrantes y Refugiadas*—MPUMR) shares with Chilean and Peruvian groups a preventive approach to healthcare with a specific focus on women. This group has organized numerous workshops for the prevention of violence directed at female Peruvian migrants, in addition to seminars on preventive care against cancer and the spread of HIV/AIDS. The main lines of action are the promotion of access to basic rights, such as accommodation, education and dignified employment, which are summarized in a single mission statement: to prevent violence and discrimination against migrant women.

The defense of human rights and combating acts of discrimination suffered by men and women from Bolivia is the objective of ABOAR, Bolivian Lawyers in Argentina (*Abogados Bolivianos en Argentina*). Legal assistance and advocacy are the primary tools with which they work, in addition to organizing projects that seek to obtain sanctions against offensive messages based on ethnicity or nationality, employed chiefly in public spaces, such as soccer stadiums. In spite of its relatively short life so far, ABOAR also seeks to have an influence on the public agenda by hosting conferences and meetings to raise awareness on the subject of discrimination against Bolivians. Furthermore, this organization is currently working in the development of proposals that regulate the assistance and behavior of the public in local soccer games, where xenophobic behavior from fans is a common occurrence. On the other hand, there are activities that are aimed at influencing the policies defined by the Bolivia. ABOAR has organized conferences with Bolivian congressmen in Buenos Aires to broaden the project on the laws for the treatment of people in Bolivia, inviting other organizations in the community to participate in putting forward suggestions to be included in the project.

The level of incidence in the definition of legislation and migration programs varies dramatically from one group of people to another, involving mainly the degree of internal organization of each of group, the years of activity, the personality of its leaders and, above all, the specific needs of each community and the kinds of rights

that they are denied full access to. Viewed in this way, we found that actions addressing migration programs seek to modify the state of vulnerability that prevents the access to substantive citizenship to migrants, a situation that depends as much on the policies of the host country as on those of their country of origin.

The Peruvian community, which has had a presence in Argentina for over forty years, counts a substantial number of refugees among its ranks, who fled Peru as a result of the political violence during the 1980s. As a result of innumerable drawbacks that refugee seekers had to overcome, such as extensive delays in the processing of refugee claims, many of them chose to raise this issue as a problem in order to incorporate it into the legislative agenda, advocating the sanction of the first legislation to recognize and protect refugees.¹⁷ This legislation replaced the decrees issued by the executive, which were the relevant legislations at the time. MPUMR (United Migrant and Refugee Peruvian Women—*Mujeres Peruanas Unidas Migrantes y Refugiadas*) was present at the preparatory discussion sessions leading up to the sanction of the law, which they organized along with other non-government actors.

With regard to the formulation of instruments of migration policy, MPUMR also participated in the conformation of the Committee of Organizations in Defense of the Rights of Immigrants (*Mesa de organizaciones en defensa de los derechos de los inmigrantes*), which brought together institutions such as CEMLA (Center for Latin American Migration Studies—*Centro de Estudios Migratorios Latinoamericanos*), CELS (Center for Legal and Social Studies—*Centro de Estudios Legales y Sociales*), the APDH (Permanent Assembly for Human Rights—*Asamblea Permanente por los Derechos Humanos*), the International Organization for Migration, FCCAM (Catholic Commission for Migration—*Fundación Comisión Católica para las Migraciones*), CAREF (Ecumenical Support Service and Guidance for Migrants and Refugees—*Servicio Ecuménico de Apoyo y Orientación a Migrantes y Refugiados*), SERPAJ (Peace and Justice Service in Latin America—*Servicio Paz y Justicia en América Latina*), MEDH (Ecumenical Movement for Human Rights—*Movimiento Ecuménico por los Derechos Humanos*) and the migration department at the CTA (Argentine Workers' Central Union—*Central de Trabajadores Argentinos*).

In a context of growing xenophobia generated by a few officials of the national government, the objective of the conference was to fight for the abolition of the Videla Law, or Law 22,439, which was established during the last military dictatorship, and to work toward the elaboration of a new project that includes a focus on human rights for migrants. The organizations met over many months with a group of legislators from the Population Commission in Congress until they came up with a draft that was unanimously agreed upon and successfully approved in December 2003.¹⁸

¹⁷ Law 26165, approved on November 8, 2006.

¹⁸ Law 25871.

The sanction of the law in 2010 presented a significant advance in the official acknowledgment of the validity of social rights for migrants, such as access to health care and education, including for those who are in the country in an irregular condition. In this way the anachronistic vision of the previously existing law was replaced in favor of one that was respectful of the human condition of migrants and that established the formal requisites to proceed with the normalization of the situation of undocumented migrants.

The Paraguayan House, in turn, supported initiatives tied to other grassroots and federal organizations in order to reform Article 120 of the Paraguayan Constitution, which to this day prevents Paraguayans living abroad from voting. This issue was included in the agenda of the Paraguayan government mainly as a result of the pressure from emigrants residing in Argentina, Spain and other countries that host significant Paraguayan communities abroad.

With regard to the execution of Argentine migration programs, migrant organizations and federal intermediation organizations involved themselves directly in the implementation of the normalization plan named *Patria Grande* (Great Homeland), an initiative of the National Migration Directorate (DNM—*Dirección Nacional de Migraciones*), which sought to take advantage of the platform offered by the brand new legislation to grant national identity documents to all migrants from MERCOSUR. The United Migrant and Refugee Peruvian Women worked as one of 560 centers for the production of materials that the DNM distributed throughout the whole country during the duration of the plan. MPUMR was able to establish an office in Villa (shanty town) 31 in Retiro and in Villa 1-11-14 in Flores.

The above shows that civil society contributed human and logistical resources for the implementation of the *Patria Grande* program, which was active between 2006 and 2008. The contacts created between the organizations and the consulates facilitated the distribution of documentation essential to allowing entry to the country, the fees for consultancy appointments and the extension of the opening hours for these consultancies were negotiated.

2.3. Intermediation Organizations

This kind of organization plays a pivotal role between the different agencies of the state, other private business entities and their associates or representatives (De Cárdenas Falcón, 2010).

Among the principal intermediation organizations we find unions, the federations of grassroots organizations, organizations representing churches or inter-institutional coordination entities.

2.3.1. Social Intermediation Organizations

Of the union organizations there exist two entities that actively work on the issue of migration: the Building Workers' Union of the Argentine Republic (UOCRA–*Unión Obrera de la Construcción de la República Argentina*) and the Argentine Workers' Central Union (CTA–*Central de Trabajadores de la Argentina*), in its Capital delegation (CTA Capital).

UOCRA is the organization that has historically represented construction workers in the General Confederation of Labor (CGT–*Central General de Trabajo*). The UOCRA Foundation, created in 1993, is tasked with the development of pedagogical activities centered on training and research within the social network of the union. This foundation offers a wide range of courses in professional training through institutions distributed throughout the country, not only in trades associated with construction but also in literacy and education programs for adults. It also advises and holds courses on safety and environment for companies and public organizations.

The topic of migration has always been present in workers' unions, at first because of the importance of Italian workers in the construction sector, and later, up to the present time, because unions harbor a substantial number of laborers from neighboring countries, mainly Paraguay and Bolivia. Many of these migrants regularly use the training services that the institution offers, above all taking advantage of the system of official skills certifications which can lead to subsequent employment. Some years ago the internal department for Social Research carried out multiple studies to determine what the profile and role of migrants in the construction industry was, arriving at the conclusion that, on the one hand they occupy an important space in the overall composition of the workers in the sector and that, above all, the argument that they represent a threat to the employment of local workers is not based in fact.

From that point on, with the objective of progressing toward status normalization and incorporation of all workers into formal employment, different strategies were developed based on the South-South cooperation between different entities of neighboring countries. With the objective of reaching an agreement on common mechanisms and procedures in job training, agreements were signed with national Labor and Education Ministries, the agency OIT CINTERFOR (the internal organ of the International Labor Organization dedicated to education), and the agencies for work and learning of Brazil, Uruguay and Peru. The objective is to homogenize professional profiles in a way that facilitates the recognition of the competencies of all workers in the different countries involved, regardless of where they were originally trained.

Another activity that promotes social integration of migrant workers is the dignified work program, which seeks to endow workers with the tools they need to negotiate for their collective rights in the framework established by the ILO. Training workshops are offered which include, among other topics, a chapter on labor migration with the aim of encouraging a dialogue between workers and reducing the incidence of discrimination among colleagues and employers.

Regarding participation in the elaboration and implementation of migration programs, the union actively participated throughout the lifespan of the *Patria Grande* program as a source of advice and attention for migrant workers. At the level of incidence of international migration policies, they take part in the “Subgroup No. 10 of Labor, Employment and Social Security” meetings of MERCOSUR, where they have committed to allowing the free circulation of migrant workers within the block.

The Department of Identity within CTA Capital was created in 2006 with the objective of coming up with a definition of citizenship that includes immigrant workers. In coming into contact with the reality of many of their foreign colleagues, the organization became aware of the socioeconomic motives that lead workers to emigrate from their own country in search of better employment opportunities and a better quality of life. The same problems that affect the local workers affect the migrant workers, although the latter find themselves in a more vulnerable position under the conditions of informal employment and labor exploitation which are a threat to those without legal documentation.

We are fighting to gain access to just and adequate compensation, to put an end to the damage done to neighboring communities, to end the acts that violate human rights like discrimination or the abuse that private employers or even the state's own officials inflict, as well as the trafficking of migrants, particularly children, adolescents and women (CTA, 2009).

The Department of Identity, as well as the UOCRA, criticizes the stigmatizing vision that depicts migrants as “thieves” of employment from local workers. This confirms, in a sense, a tendency to overcome outdated union visions that provoke protectionist measures for the national manual labor market. This confirms that when union attitudes overcome the short term protection of salaries or employment and adopt a position of solidarity with foreign workers, we see a vindication in terms of their class (Mármora, 2002).

The activities of the Department of Identity include programs for literacy and training, actions in workshops that employ black market labor where they advise migrant workers with regard to their workers' rights and, fundamentally, advising on the filing of documents for those who are in an irregular migrant status. This Department also participated as an advisor on procedures during the *Patria Grande* program, and its current objective is the registration of migrants, which will allow the effective exercise of the right to vote in local elections. To enable this, the department develops awareness activities among its associates, sharing spaces with other non-governmental organizations involved in these activities and establishing alliances with social actors that share its objectives. In 2010, a cooperation agreement was signed with the Bolivian Workers' Center (*Central Obrera Boliviana*–COB), in which it was agreed to encourage changes in the current legislation that hinders workers from enjoying the full extent of their rights due to their migrant status. Both organizations shall work together to promote the removal of the constraints that prohibit the circulation of workers between the two countries and will seek to guarantee the access to social security for migrant workers (CTA, Agreement of Cooperation–*Convenio de Cooperación* COB-CTA, 2010).

2.3.2. Ecclesial and Ecumenical Intermediation Organizations

Organizations representing churches address the issue of migration from a comprehensive viewpoint and from a point of respect for the human dignity of migrants. As stated in the Aparecida Document (*Documento de Aparecida*) drafted during the Fifth General Conference of the Bishops of Latin America and the Caribbean,

[A]s missionary disciples we are called upon to build up the family of God among everyone, respecting a healthy pluralism that enriches us all with the diversity of gifts that the Spirit grants to us. (...) The pastoral support of migrants is an expression of Christian charity and ecclesial solidarity to those people who have experienced an uprooting (General Vicariate of the Archdiocese of Santiago, 2006).

These principles guide the day-to-day work of the different organizations whose activities include spiritual, social and legal guidance for migrants and refugees, along with the sensitization of the local community and government organisms on the issue of migration, promoting the formation of pastoral associates that are working toward a dignified integration in host societies.

The collaborative work between the different church institutions and the forging of alliances with non-governmental organizations is a dynamic entrenched in the practice of all the entities studied. The Catholic Commission for Migration (FCCAM) has been working in the country for 60 years, carrying out social and legal aid activities for migrants and refugees. The FCCAM works alongside the UNHCR in the program for the local integration of refugees and refugee claimants, who receive advice on how to file asylum claims and are aided for the duration of the process. The FCCAM also intervenes in cases of repatriation and family reunification and provides Spanish-language and professional-training courses. Moreover, the FCCAM develops programs for prevention and assistance in the fields of healthcare and education for the migrant population with the aim of preventing instances of school dropouts, illiteracy, addiction and domestic violence. This organization also offers technical, social and material assistance for access to accommodation, as well as promoting awareness-raising activities for civil society.

The FCCAM was at the forefront of the implementation of the regularization of immigrants developed from 1992 to 1994, allowing for many claims to be accepted. Posing the issue of migration as a problem to be addressed was carried out through articles and news published in its institutional journal or by way of letters sent to public officials. At the end of the decade, the FCCAM integrated the committee of organizations that had a hand in the drafting Law 25,871 and later lent support to the meetings organized between the state and civil society to regulate new legislation. Currently, the FCCAM continues to work with other organizations in a forum of discussion convened by the General Directorate for Migration for the formulation of sustainable legal proposals for the regularization of migrants from outside of the MERCOSUR area. These spaces for discussion with the state are exploited to expose the bureaucratic inconveniences that persist after the implementation of the Law on Migration.

On the other hand, the FCCAM has taken part in the formation of diocesan delegations of pastoral care for migrants in the eight pastoral regions in the country over the last 40 years, according to the distribution of migration flows and the needs within the migrant and refugee population. Among its objectives for 2012, we find the creation of new delegations in order to reach a figure of 50, which will allow for the whole national territory to be covered. The principal active delegations include the Archdiocese of Buenos Aires, Quilmes, Mendoza, Posadas, Humahuaca, Neuquén, Viedma, Bahía Blanca, Rosario, Córdoba, Jujuy and Mar del Plata. In addition, national chaplaincies have been created that are dedicated to the pastoral care for each of the migrant communities, such as the Italian, Portuguese, Paraguayan, Ukrainian and Uruguayan chaplaincies. Every year conventions are organized for the planning and evaluation of performance between the delegates of the different dioceses with the aim of sharing experiences and concerns in the development of their pastoral duties.

For the Pastoral Care of Migrants of the Archdiocese of Buenos Aires, which was created on 1993, as well as for the other diocesan departments of pastoral care for migrants in Argentina, working toward the promotion of the integration of migrants is a way to be a disciple of Christ, accompanying and helping migrants in the development of a just and dignified life. Its activities are focused on providing guidance for the regularization of residence and spiritual support and nourishment to strengthen the resilience of migrants, who in many cases have been victims of situations of labor, family or sexual abuse. Another aspect of its work consists of hosting awareness workshops on intercultural dialogue that are aimed at officials and employees of public offices and companies or school students, in which information is provided regarding the rights of migrant peoples in order to encourage a deeper integration into the host society. In the past few years, workshops have been hosted, including Mental Health and Culture in Emigration; Education, Trafficking and the Trade of People; Migration, Ecology and Development; and Migration, Work and Family.

The Pastoral Care of Migrants of the Archdiocese of Buenos Aires has its headquarters in the parish of *Nuestra Señora Madre de los Emigrantes* (Our Lady Mother of the Migrants) in the La Boca district of the city of Buenos Aires, which is attended by the Congregation of the Missionaries of Saint Charles Borromeo, which are better known as the Scalabrinian fathers. This congregation was formed in 1887 by the Blessed Bishop Giovanni Battista Scalabrini with the intention of helping immigrants and political refugees. The Scalabrinians are currently carrying out their mission on five continents. The Scalabrinian Missionaries arrived in Argentina in 1939 in order to provide social and spiritual accompaniment for Italian immigrants coming into the country. In the beginning, the parish structure was the most adequate instrument to respond to the human and spiritual needs of immigrants. The parishes, placed in strategic locations, served as bases for the missionaries to provide their socio-pastoral services. With the parishes as bases, they also developed a broad spectrum of initiatives such as home visits, programs on radio stations, Italian language newspapers (such as the *Voce d'Italia*, which was founded in 1956 under

the name *Campane Nostre*), the establishment of Italian Catholic centers and the coordination of Catholic institutions grouped into the Federation of Italian Catholic Organizations in Argentina (*Federación de las Asociaciones Católicas Italianas en Argentina*–FACIA), which was founded in 1963 and is still active today.

With the expansion of the congregation from its initial intent to migrants other than those of Italian descent, new horizons of activity have become available. Indeed, in addition to the systematic attention to the Portuguese community since 1971, the pastoral service provided by the Scalabrinians has rapidly expanded to cover immigrants from neighboring countries, in particular Chileans, Bolivians and Paraguayans. In this context, new missionary work was started in Bahía Blanca, Buenos Aires, Rosario, La Plata, Córdoba and San Pedro de Jujuy. Currently, the different communities of migrants are served by chaplains, pastoral teams and diocesan delegates focused on migration issues, offering this service to laypeople as well as religious men and women from other congregations and seminarians in training.

An example of the apostolic work carried out by the Scalabrinians, which seeks to overcome barriers of race, nationality, languages and religious creed, is the apostleship of the sea. Since 1965, this service has provided assistance to people in a state of mobility in Buenos Aires.

Over the years, the Scalabrinian parishes and missions have become centers for the organization of different groups of migrants and the planning of support activities for communities. In 1977, the Federation of Scalabrinian Schools (*Federación de Escuelas Scalabrinianas*–EESS), which brings together the parish schools of the congregation, defended institutional policies in the context of education with regard to the topic of migration.

In connection with the parishes, temporary residences and shelters were born (also known as centers for the care of migrants), which served as places of integral support for migrant people and families. These homes, examples of which are the *Hogar Padre Tarcisio* in Mendoza and the *Hogar de Tránsito* in Córdoba, developed a series of activities that benefit on a daily basis a significant contingent of people in a transitory situation.

The participation on the part of the Scalabrinians in the formation of the Argentinian Catholic Commission for Migrants (*Comisión Católica Argentina de Migraciones*–CCAM, 1951), which is now a Foundation (FCCAM), and its continued presence in the organization continues to be an example of the collaboration between the congregation and the Argentine church that favors immigrants and refugees.

From 2006, the different activities carried out by the Scalabrinian missionaries in Argentina are linked to the global community known as the Scalabrini International Migration Network (SIMN), a network that coordinates missions distributed over five continents, whose principal objectives are as follows: the promotion of research on human mobility, the training and education of

professionals, the coordination of pastoral and sociocultural services for migrants, the strengthening of institutional capacities, the incidence of migratory policy and the sensitization of public opinion on the topic of migration.

Another religious entity that performs an important care and promotion function for migrants is the Congregation of the Missionaries of Saint Charles, Scalabrinians Sisters. As a result of a social diagnosis established in 2005 in the district of La Matanza, these Scalabrinians Sisters decided to create the Center for the Attention to the Migrants (*Centro de Atención al Migrante*). This center works in the areas of advice and document regularization, education and health assistance, and the formulation of public policies that protect the human rights of migrants. Its activities include a comprehensive approach to the social situation of migrants: prevention and treatment of cases of intrafamily violence suffered by migrant women and children, the safeguarding of mental health and the carrying out of literacy workshops and after-school support. The advice, sensitization and campaigns of information on the rights of migrant people for employees of hospitals, schools and health centers are just some of the activities it is involved in. The organization aims to fight against ignorance or the lack of knowledge among administrators with regard to the conditions established in the Law on Migration 25871.

The Jesuit Migrant Services (*Servicio Jesuita al Migrante*–SJM) is an institution of the Society of Jesus (Jesuits) that works on a global scale and has been operating in the country since 2002. Similar to the other organizations, it offers assistance regarding the requirements and places where documentation is processed and the mechanisms for accessing basic social services are supplied. The SJM currently operates in the municipality of San Miguel in the province of Buenos Aires, which is home to an important population of migrants from neighboring countries. The SJM hosts workshops and talks for the sensitization to and prevention of discrimination in schools, professorships and universities.

The SJM maintains coordinated links to other entities of the church that work with migrants, such as the Pastoral Care of Migrants of the Archdiocese of Buenos Aires and the Scalabrinian missionaries. Its chances to influence the programs and local migration policies have been affected by the fact that there are not many spaces for participation and debate in the immediate geographic area where the organization is active. Its aim is to foster the inclusion of the issue of migration in the political agenda of the municipal state, given that the deficiencies and the lack of access to basic social rights among the migrant population in the area merit urgent address.

A nonprofit civil society organization with a strong involvement in migration policies is CAREF, Ecumenical Support Service and Guidance for Migrants and Refugees. Founded in 1973 as an initiative of the Evangelical Church of the Río de la Plata, the Evangelical Methodist Church of Argentina, the Evangelical Church of the Disciples of Christ and the Anglican Diocese of Argentina, CAREF housed and gave asylum to exiled Chilean politicians in the early 1970s. Its activities are guided by an ideal of respect for the dignity of uprooted peoples who, in principle, have had a similar experience to that of Christ and the people of Israel. CAREF seeks to

promote the human rights of refugee claimants, refugees and migrants by means of three areas of work. The first is direct attention by means of the CELS-CAREF-UBA legal clinic, which provides counseling and legal sponsorship with regard to migration issues, alongside the area of social service that guides and accompanies migrants in gaining access to basic social rights and in processing the documentation necessary to settle down in the country.

A second area of activity aims to institutionally empower groups of migrants through the strengthening of citizenship practices. Currently, CAREF promotes projects for reproductive health with Bolivian women and works toward the inclusion into the political agenda the issues concerning the trafficking and exploitation of migrants, as well as sensitization to these topics. With regard to this project, CAREF takes a critical view on the program for the assistance of victims of trafficking and is in favor of the modification of some articles of Law on Human Trafficking 26,364.

The third area of activity of CAREF is to have incidence on public issues. In this, it carries out numerous activities. CAREF developed a good relationship with other civil society organizations during the debate and the formulation process that led to Law 25,871, seeking to have the paradigm of human rights adopted in its many articles. Currently, taking into account certain gaps and contradictions in the practices of the officials of the migration department working at the border and considering certain obstacles that hinder the exercise of the rights of migrants, CAREF proposes the formation of an observatory to monitor migrations. In addition, it participates in the debates about the tools for the documentation of the migrant population from outside of Mercosur, together with CELS, UNLA (National University of Lanús–*Universidad Nacional de Lanús*), the FCCAM and other organizations. At the same time, CAREF is a founding member of Migrants Rights International (MRI), a network of organizations that operates on a global level to promote the human rights of migrants. It has also been present in the Global Forum on Migration and Development, actively participating in the events of the civil society, seeking to influence in this way the definition of minimum standards for the rights of migrants.

2.3.3. Migrant Groups as Intermediation Organizations

The federations of grassroots organizations stemming from migrant groups share the objectives of the groups of migrants that create them. These federations act as intermediaries among migrants, state agencies and private organizations. In the Paraguayan community, for example, we find the FEPARA (Paraguayan Federation in the Argentine Republic–*Federación Paraguaya en la República Argentina*) and in the Bolivian community the ACIFEBOL (Federal Civil Bolivian Association–*Asociación Civil Federativa Boliviana*). Both seek to strengthen the self-organization of their communities and develop the social and political rights of the people they represent.

ACIFEBOL stems from an initiative of various Bolivian grassroots organizations that saw a need to defend themselves at an institutional level against the numerous instances of political power abuses, violence, crime and insecurity felt by the Bolivian community residing in Buenos Aires, in response to what they judged insufficient action on the part of their consulate. Many Bolivians visited its headquarters in search of orientation on the documentation necessary for filing claims for residency and for consultation regarding labor rights, tax payments and conditions to legalize sweatshops and hire workers. Its involvement in migration policies is tied to the participation in the above-mentioned “*Aquí vivo, Aquí voto*” campaign, a joint initiative between CELS, CTA, MPUMR, ACIFEBOL and other migrant organizations. Among its objectives is the taking of a census of foreigners in the electoral register for the city of Buenos Aires, which should guarantee the exercise of political rights that are legally recognized. With this objective, a campaign of awareness has been enacted across many areas of the city on the importance of being registered in order to participate in the Buenos Aires municipal elections. The topic was brought up on many community radio programs and widely listened to throughout the community. A second part of the initiative seeks to promote a legislative reform that secures automatic registration, in addition to requesting a legislative reform of the article in the commune law that does not allow the candidacy of foreigners as potential community leaders.

The FEPARA organizes and facilitates the transaction of the documentation necessary for the registration of Paraguayans in Argentina. In its headquarters the certificate for criminal records and the Paraguayan identity documents, which are requisites established by the National Migration Directorate (*Dirección Nacional de Migraciones*–DNM), are processed. During the lifespan of the *Patria Grande* program, its documentation-processing counter allowed for the registry of 10,000 Paraguayans in Argentina.

In addition to spreading the Guaraní culture, this institution, along with other migrant associations (such as the Casa Paraguaya and the Center for Ita Residents), drove forward the campaign for the reform of Article 120 of the Paraguayan Constitution that allowed Paraguayans outside of the country to regain their civil rights. To this effect, letters were written to contact members of the Paraguayan Congress requesting the approval of the constitutional reform, and meetings were held with the president of the Paraguayan Chamber of Deputies, who traveled to Buenos Aires to address the issue.

On the other hand, the DAIA (Delegation of Israeli Argentine Associations–*Delegación de Asociaciones Israelitas Argentinas*) politically represents the different entities of the Jewish community in the country. Although they don't participate directly in the migratory debate, as the community integrated itself into Argentine society many decades ago its activities promote respect for cultural diversity and the fight against acts of discrimination toward different communities in society, which include migrants from neighboring countries.

The CES (Center for Social Studies—*Centro de Estudios Sociales*) is the department of the DAIA in charge of academic research and responsible for ensuring the accuracy of the documentation of the members of the Jewish community who entered the country during the Nazi period. This organization has analyzed and studied the characteristics of the migration policies of Argentina during the Second World War, the effects on Argentine society and the circumstances of integration. Its magazine, *Índice*, publishes real-life stories about Jewish migrants arriving into the country during the twentieth century. The target audience for their activities is not just the Jewish community and their descendants, but also the general public. In addition to carrying out the annual report on anti-Semitism in Argentina, the center produces articles over the problem of the exclusion of communities in Argentine society (Braylan 2010). This organization also holds workshops on the management of diversity aimed at children from public and private schools, employees in industry and ministers of government in order to reduce the practices of discrimination that can end up victimizing members of different communities in Argentina.

2.4. Non-Governmental Organizations

Although they employ different objectives and means of working in the field of migration, all of the non-governmental organizations considered in this study share a common preoccupation for the defense of the social, economic and political rights of migrants. AMUMRA (Association for United Migrant and Refugee Women in Argentina) is made up of a group of women from different backgrounds and seeks to empower refugee and migrant women and increase their autonomy from a gendered perspective. By means of various mechanisms, AMUMRA intervenes in the defense of the rights of migrant women. These mechanisms include the following: counseling on regularization proceedings, the dissemination of awareness campaigns within communities by means of radio programs; psychological support; the carrying out of craft workshops to train women so that they can be incorporated into the labor force; the organization of cultural and recreation activities; the development of educational materials for community promoters on the prevention of violence; and, above all, intervention in forums of discussion on migration programs, including the forum for migrants and refugees sponsored by the INADI (*Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo*—National Institute Against Discrimination, Xenophobia and Racism) and the forum of the Advisory Council of Civil Society convened by the national Ministry of Foreign Affairs. At the international level, the organization assisted the World Social Forum on Migrations, the 4th Summit of the Americas and the Global Forum on Migration and Development.

The organization of public demonstrations, marches and protests are some of the mechanisms that AMUMRA usually employs in order to appeal for the enforcement of human rights for migrant women. In addition, it participates in the debates on migration legislation. It had a presence in the process of formulation of Law 25,871

on migrations and Law 26,165 on the recognition of refugees. Recently, it intervened in the drafting of the project that regulates the domestic service industry.

From another point of view, the association MyRAR (*Migrantes y Refugiados en Argentina*—Migrants and Refugees in Argentina) has developed its activities around the economic and cultural integration of refugees. MyRAR seeks to overcome welfare assistance by means of micro-loan programs that it carries out with the help of ACNUR and with the Ministry of Social Development. The program includes obligatory training on the crucial tools required to design and execute a productive project, such as making cost calculations, compiling reports, coming up with marketing concepts and creating associations. At the same time, the PIE project *iniciar emprendedores* (entrepreneur start up) grants refugees capital and goods (usually tools) to enable them to set up their own businesses. In addition, the participation of migrants in trade fairs for artisanal products is encouraged or, failing that, the organization helps migrants to find full time jobs through the employment services of one of the many institutions it maintains ties with—all of which have social corporate responsibility programs.

In the area of migration policies, MyRAR has recently influenced the signing of a proposal for a “Protocol for the protection, assistance and search for enduring solutions for children who are unsupervised or have been split up from their families in search on asylum,” gaining the support of the Public Defense Office, the ACNUR, the IOM and other organizations. It has also participated in the Global Social Forum on Migrations and the Global Forum for Migration and Development.

The Space for Migration Studies (*Espacio de Estudios Migratorios*—EEM) is an initiative that emerged among graduates of the master’s program in International Migration Policies at the University of Buenos Aires, the objective of which is to establish a bridge between theoretical research and social involvement in order to actually improve the objective living conditions of migrants. Its interests include the following: offering scientific arguments against the myths of migration that associate the migrants with the worst social problems and to encourage overcoming anachronistic practices in the attention given to migrants that persist in public administration to this day. For the dissemination of these arguments and ideas, the organization publishes a magazine with research and reflection articles, stages a series of filmed discussions and hosts seminars on migration in the contemporary world. At the same time, the EEM provides advice on filing claims for migrant communities and has designed a useful information guide for migrants in Argentina. The EEM participated in an advocacy role in migratory policy for Bolivia, designing a proposal together with the Ministry of Foreign Affairs, the ombudsman, the Secretariat for Migrations and the Pastoral Group on Human Mobility.

There are also non-governmental organizations that work in the field of migration, such as Save the Children, the main focus of which is not migration in and of itself but which undertakes projects that have migrants as a their main object. An example is a project for the prevention of trafficking, smuggling and exploitation of boys, girls and adolescents that it has been carrying out in Argentina since 2005. The

activities of this project include putting together a diagnostic assessment of the situation of infants in the triple border zone between Argentina, Brazil and Paraguay and in the promotion of the rights of children and adolescents by means of prevention workshops aimed at journalists, teachers and key agents in civil society, with the purpose of putting together a network of protection against trading, trafficking and child abuse. Among the products, it has developed the “Educational Guide for Trainers for the Prevention of the Trade, Trafficking and Commercial Sexual Exploitation of Boys, Girls and Adolescents” with the help of CEMLA and the support of the IOM.

The CryMAf (*Centro para el Refugiado y Migrante Africano* – Center for African Refugees and Migrants), was created in 2010 with a comprehensive approach to assisting young refugees from Africa. Its objective is the integration and adaptation of refugees and refugee claimants into Argentinean life. In this spirit, the CryMAf develops activities that seek to cover specific needs: support in migration management, educational support for those enrolled in school and orientation in the search for work. The CryMAf mainly organizes cultural activities in order to facilitate a space for meeting and recreation, such as soccer tournaments and film screenings, to encourage contact with other young people and to avoid isolation and social marginalization. Currently, this organization is developing labor-market-incorporation programs together with other organizations in civil society. It is a young organization that is working to create links with the other actors in the area of migration and refuge.

Among the non-governmental organizations with the highest incidence from their involvement with each stage of the formulation of migration policies is CELS (Center for Legal and Social Studies–*Centro de Estudios Legales y Sociales*), an institution founded in 1979 with the aim of urgently intervening against the systematic violation against human rights during the last military dictatorship. During the 1990s, in the context of a study on political violence, the institution noticed numerous cases of migrants in vulnerable and irregular situations. From then on it decided to expand the areas of work to include the protection and enforcement of economic, social and cultural rights (ESCR). Within this framework, a strategy was developed with different communities in which human rights were at risk, such as migrant communities, to provide legal advice and sponsorship to people who suffered restrictions in the exercise of their basic rights. At the time, the legal framework for migration in Argentina was restrictive in character and included many obstacles that impinged upon the full human rights of migrants and refugees. In this area of activity, CELS intervened with resources and demands that were resolved or dismissed in different local courts, in some cases even going as far as to reach the Inter-American Court of Human Rights, with the aim of offering satisfactory solutions for cases of unjust expulsion or detention of migrants. This work was carried out through an agreement with CAREF and the UBA, signed in 2002, which created the legal clinic for migrants, a place where consultation and assistance is offered free of charge by law students at the UBA to help migrants who need legal advice.

The CELS has been fully involved in forging alliances with civil society organizations to establish the need for a reform of the migration legislation in the political agenda. It participated in the debate panel that led to the establishment of Law 25,871 and later it was part of the consultation panel that drafted the regulatory decree of the same law, thus becoming a body for consultation for governments and civilian organizations when it comes to the defense of the human rights of migrants.

The CELS maintains constant contact with the Ministry of Defense and with official institutions such as the *Dirección Nacional de Migraciones* (DNM–National Migration Directorate). Currently the organization is participating in the debate regarding the legal tools for the legal residence of migrants who come from outside of the MERCOSUR area, such as Dominicans, Haitians and Senegalese migrants. In the past, it supported the “*Aquí vivo, Aquí voto*” campaign which seeks to encourage voter registration among migrants.

At an international level, the CELS has participated in various meetings of the Global Forum on Migration and Development and has contacted many different offices of the UN. For example, in 2004 it presented a paper to the Committee for the Elimination of Racial Discrimination on the state of discrimination in Argentina, with a chapter that analyzed the local access to social rights for migrants. Recently, the CELS participated in the 14th session of the Committee for the Rights of Migrant Workers, presenting an alternative study from civil society on the situation of migration in Argentina. In addition, the state of migration and refugees was analyzed in the report published by the CELS on human rights in Argentina and in special reports that informed on cases of the infringement of these rights.

One of the main challenges for the CELS is sensitizing and generating consciousness with regard to the contents of legislation among the different public agencies that deal with migrants on a day-to-day basis. In doing this, it seeks to avoid instances of discrimination or rejection of access to basic rights, above all when these are based on prejudice or ignorance. On the other hand, the institution carries out a constant monitoring operation on the implementation of migration programs and systematically elaborates critiques and suggestions for the areas where policies are not effective or where there is still a lack of a specific legal or political precedent. The reports it publishes deal with issues such as the demand for a ratification of ILO Conventions 97 and 143 for migrant workers; the denouncement of cases of human trade and trafficking, the obstacles in the bureaucracy of migration such as delays, requirements and economic costs; or the deficiencies in the implementation of the *Patria Grande* program. Its sustained relationship with other actors in civil society, legislators and researchers, which it has maintained for over ten years now, forms a true coalition to work together for the defense of the human rights of migrants, and demonstrates the relevance of the actions of the CELS with regard to the involvement in policies directed at migrants and refugees in the country.

The above information clearly shows that the presence of Argentine civil society in the elaboration of the agenda, the definition, the implementation and the monitoring of migration programs has been fundamental in recent years to further the

consolidation of policies that promote human development of migrants, the respect of the human rights and the dignity of migrants as central topics of its public activities.

It is worth mentioning the great diversity in the objectives and the plural composition of the entities of civil society that approach the topic of migration in Argentina. However, beyond the different approaches that each organization takes to the issue, all of them share the same view of carrying out joint efforts in the pursuit of a better quality of life for migrant or refugee men, women and children.

In following the projects and activities in which these organizations are involved, it is clear that there is an awareness regarding the importance of focused collaboration, particularly with regard to involvement in migration policies and programs. The activities linked to social assistance, support in migration management or research can be carried out individually depending on the infrastructure of each organization. However, it is the initiatives of the network that predominate and have a higher chance of success when it comes to getting an issue included in the agenda, putting forward proposals for policies and executing and monitoring migration programs.

All of the organizations analyzed are working toward making the three levels of substantive citizenship for migrants more effective: definition, implementation and monitoring of public policies on migration (Pereyra 2005). As we have mentioned above, a significant number of civil society organizations is involved in the process of creating the laws and regulations concerning migration by means of the committee of organizations formed in 1996, which at the time achieved the approval of the current migration law and marked the initial kick-off point for the debate surrounding Law 26,165 for the protection of refugees and the regulations of Law 25,871.

With regard to the formal and informal mechanisms that facilitate or hinder access to social goods, it can be affirmed that the concern on the part of civil society is overcoming the gap that currently exists between what is formally established in legislation and the actual access to rights (there are still cases, for example, in which foreign children without documentation are not allowed to enroll in schools or where problems arise in the services provided to migrants in hospitals and other public organizations).

The fact that migrants see themselves as the subjects of rights and organize themselves in common collectives, such as migrant organizations, constitutes one of the main channels toward the construction of citizenship in that it promotes the notion of an identity and gives priority to the defense against violations of basic rights.

In everyday practice, there are many obstacles that interfere in the fulfillment of these objectives: the lack of economic resources for the financing of projects and the absence of infrastructure for the development of activities (above all among grassroots organizations), the insensitivity or lack of cooperation on the part of

authorities and an insufficient inclination to dialogue in some sectors of the state, or the threats coming from sectors opposed to their objectives (particularly in cases of trading and trafficking of migrants in which organized crime networks operate). As Pérez Vichich (2009) holds,

[T]he driving force of the activities that civil society carries out in favor of migrants is the fight against social inequalities and injustice. It is a constant pursuit for the unrestricted introduction of human rights and for their protection and defense once they have been attained. However, without a shadow of a doubt, the activities of Civil Society find their meaning when they are solidified in policies, in legal structures and in political-institutional agreements at a national and international level and this is not possible without the State (44–5).

The role that the state plays in generating spaces for dialogue and recognizing the demands presented by civilian organizations is vital for offering integral solutions to the many communities of migrants and refugees. In addition, the opening of channels for cooperation between the state and civil society should not serve as an excuse for public agencies to disassociate themselves from their responsibilities. On the other hand, we acknowledge that over the past few years non-governmental organizations, migrant organizations and religious organizations have been taking care of actions, such as carrying out awareness activities on migration issues in schools, companies and public offices around the country, to try to make up for the deficiencies of the state in this area.

The entities of civil society have been able to establish alliances among members and combine human and strategic resources for the introduction of a human development paradigm in the field of migration policies. The challenge ahead is to consolidate and increase the reciprocal relationship between the many civil actors and the agencies of the state, seeking to solve pending issues in the treatment of migrants residing in the Southern Cone.

PART IV

PROPOSALS FOR THE CREATION OF SPACES AND INSTRUMENTS FOR CITIZEN PARTICIPATION IN THE DEFINITION AND IMPLEMENTATION OF PUBLIC POLICIES ON MIGRATION

The spaces and instruments of citizen participation in the definition and implementation of public policies on migration are tools that contribute to an effective participation on the part of civil society in those areas that have been identified as key to these objectives.

In this day and age, and particularly in Argentina, it must be said that the most important spaces of activity are those that directly impact (1) the government agencies responsible for the definition and implementation of migration policies, (2) the effective participation and articulation to create and disseminate the information that is needed for the policies that are to be developed, and (3) the need for objective dissemination of the real impact of migration on the economy, culture and society, both in the countries of origin and in the host country.

1. Proposals for Spaces of Citizen Participation in Governmental Decision-making for the Definition and Implementation of Migration Policies

There are spaces of different kinds and scopes of action for citizen participation in Argentina. Firstly, there are those that can be identified as spaces of citizen participation with regard to the activities of the judicial or the executive power. On the other hand, there are different possible actions linked not only to submitting proposals for policies and programs, but also to their evaluation, or even those linked to the support and direct participation in activities geared toward the migrant population. Citizen participation with regard to issues concerning the legislative power is fundamental, as this is the environment in which the laws that will affect the legal situation of migrants are created.

In the case of Argentina, the pressure from civil society on the Population Commission of the Chamber of Deputies was a determining factor for the enactment of the law that replaced the laws of the military dictatorship. The mobilization of migrant institutions, churches, centers for human rights and research centers allowed for a discussion that went on for five years to reach a consensus on the final version of this important piece of legislation. The proposal of laws on different aspects surrounding the protection of migrants constitutes a constant activity, seeking the establishment of a set of statutes that adequately meets the needs brought on by the different problems of the migrant population.

It is acknowledged that the process from the point of writing a law to its regulation and, finally, to its application can lead to a detraction from the original spirit of the law and even end up with opposite results of the intentions that inspired it. For this reason, citizen participation should also establish direct links with the executive power structures at all levels: national, provincial and local. In this, citizen participation in the regulation of the law is indispensable in order to avoid the regulation process from changing the purpose of the law, such as in the case of the last Argentine law, a process that spanned over six years.

An example of the situation to be avoided occurred with the migration agreements entered into by Argentina and the governments of Peru and Bolivia. These agreements, which were prescribed in the late 1990s in order to facilitate the regularization and protection of Peruvian and Bolivian migrants living in Argentina were distorted during the regulation process by the National Migration Directorate because they were incorporated into the existing regulations of the Videla Law. In this example, despite the demands from many civil society organizations, at the regulation stage the impact of the agreements was neutralized.

Monitoring the evolution of legislation is an area of participation that requires constant attention on the part of the citizens. Failure to comply with the law should lead to scrutiny of government agencies, or in the last case to public denunciation. In addition, it is important for civil society to accompany governments that promote the rights of migrants through law and action, manifesting their public approval, as has been the case for the last migration law and its respective regulation. The role of civilian organizations is also key in the direct actions that are carried out—with or without the government—in service of the rights of migrants.

The Argentine experience is a good example of the importance that the participation of civil society has on the different programs for the regularization of migrants, allowing for information to be relayed directly to interested parties, thus avoiding additional intermediation and the related additional costs, as well as facilitating the streamlining of corresponding procedures.

Considering the particular vulnerability of migrants, the role of civil society is also necessary in areas such as social and labor assistance for migrants, not only in providing orientation and information relating to employment but also keeping check of exploitative practices carried out with migrant workers. For instance, cases have been observed in textile factories exploiting Bolivian migrants. These cases were reported to the public authorities.

The participation of citizens in the identification of these activities and their information to the relevant authorities constitutes an input into public policies in this field, as in other fields of particular importance, such as human trafficking and smuggling of migrants. It is in the trafficking and smuggling of people where the actions of civil society have preceded those of the government, turning the struggle against these practices into the design of public policies.

In the social field, there are many valuable experiences that can be used as points of reference. In the area of health, for example, civil society organizations, particularly migrant organizations, can develop an activity of vital importance in the prevention and treatment of illnesses. This has been demonstrated in different cases of hospitals that were established by different communities of foreigners in Argentina.

In the field of education and culture, the role of civil society associations was and continues to be crucial. These organizations can most effectively detect education needs, problems that migrant students may have and the actions that can be carried out to support them.

In the area of culture, linking migrant organizations with government programs allows not only for an extension of the activities of these organizations, but also for a fruitful interaction with the native population. The *cruzando culturas* (crossing cultures) program, designed at the beginning of this decade and carried out by the state in cooperation with the different communities in different parts of the country, is an example of the possibility for the promotion of cultural pluralism without falling into “closed communitarianism.” It is in this aspect that civilian organizations should evaluate the progress of their culture in a new environment, whether they want to stay in ethnic isolation within a multicultural landscape or open up to the input of the culture of the host country, making it richer and creating new forms of cultural hybridization.

The latter approach is what historically has built up the collective consciousness of national communities in Argentina. This collective consciousness, just like any other identity, is in a constant state of change, not necessarily derived from ethnic, religious or national origins, but rather in a process of constant redefinition of the influences from the different migration flows that have arrived in the country over time.

One area of importance for citizen intervention in public policies and programs on migration is local communities. Migrants who arrive or return to local communities are presented with broader opportunities for participation, but also with a greater risk of discrimination. The recognition of their rights as citizens generally goes from the local to the national. In Argentina, foreigners who have residence have the right to participate as voters in all municipal elections, and in some cases, such as in the case of the province of Buenos Aires, they can be elected by constitutional decree to any office barring that of president of the Republic. The activities of civil society in this case consist mostly of encouraging citizen participation on the part of migrants, as this constitutes the defense institutionalization of their rights within the framework of a representative democracy.

Within local spaces, borders constitute a special case and in these localities. Due to the particular problems that arise, the possible activities of civil society become necessary. In these spaces, civil society organizations have different areas of action, from which we can highlight the following:

- Cooperating in the intra-institutional and inter-institutional articulation and coordination between local, provincial, departmental, national and bi-national authorities on the part of agencies competent in the subject of labor migration
- Promoting the implementation of integrated migration control, such as was resolved within the scope of MERCOSUR, accompanied by other methods for better, more efficient management of migration
- Promoting bi-national agreements for the recognition of residence, access to work and education and health services to nationals of both countries that share the border and, in the case of such an agreement already having been signed, supporting its implementation
- Promotion and cooperation for the correct implementation, on the part of the migration authorities, of the mechanisms necessary for the application of a MERCOSUR Residence Agreement for nationals of the member states
- Promoting local, bi-national and informative campaigns directed at the border migrant population to disseminate information on the importance of the regularization of the situation for migrants and on the procedure to carry it out, focusing fundamentally on the topic of employment
- Promoting activities that foster an administrative transparency in the management of migration, particularly in order to avoid migrants being left out of the procedures and having to suffer the consequences of these omissions
- Actively participating in all existing expedited and effective mechanisms on a bi-national level to specifically attend to the problems related to the border, such as the border committees or other organizations that are dedicated to the issue of labor migration, for the presentation of concrete proposals for the improvement of shared management
- Actively participating in the fight against the human trafficking and the smuggling of migrants (Although international organizations, such as IOM and ILO, have developed projects on the human trafficking in the border region and have made great advances at the level of government and civil society, the border has a very high incidence of this type of crime and needs more specific programs and activities)

2. Proposals for Citizen Participation to Strengthen the Dissemination of Objective, Timely, Reliable and Relevant Information Relating to the Causes, Characteristics and Effects of Migration

Preparing information that is objective, reliable, timely and relevant is essential for the development of a definition and the management of public policies on migration. One of the main problems relating to the causes, characteristics and effects of migration is the lack of objectivity with which these subjects are often dealt. This lack of objectivity in many cases leads to the formulation of xenophobic

prejudices in civil society as well as in government. An objective understanding of the causes, characteristics and effects of migration, as well as the real impact on migration policies, allows for a greater legitimacy and efficacy of these policies. Moreover, the country can hardly rely on the available information relating to migration, such as the ongoing statistics on flows that, in many cases, determine erroneous observations with regard to their scale and dynamics.

In relation to the above, the information that is available in many cases does not reflect the current situation of migration. This is what happens in the case of census information, which is collected every ten years. It may have changed significantly because of the dynamic of migratory movements. In this, it is important to highlight the recommendations of the Center for Global Development in relation to the need for an increase in the number of questions on migration that are included in censuses, for the collection and publication of administrative data, for providing access to micro data and for the inclusion of migration modules in household surveys (Clemens 2009).

Another issue of importance is that political decision-making can count on relevant information because in many instances the information used relates to problems that differ from those in need of a definition and the development of policies. In many cases, problems have arisen because of divergences between those who have produced the information and those who make use of the data for the formulation of policies. This lack of interconnection is often due to the fact that different actors have different objectives or practices. Producers of basic information, which tends to be produced by official, national or international institutions, do not publish the information widely enough for the general population to have access to it. At the same time, those who explain the phenomenon of migration by means of research and analysis, mostly those in academia, do not always take into account how the information they generate will be applied in the realm of politics.

Finally, whether through ignorance or disposition, policy makers often ignore the available information and tend to rely on common perceptions on migration for the development of their activities.

In view of the issues raised up to this point, the proposals for greater citizen participation in order to strengthen information on migration are as follows:

- Identify the information required for the definition, development and evaluation of migration policies and programs. For this it is important to carry out regular consultations with governments in order to identify their concrete needs with regard to information on migration
- Process the necessary information to meet the requirements established for the definition, development and evaluation of migration policies in those cases in which the necessary resources are available
- Cooperate with the organizations that collect data on migration for the harmonization of the existing sources of migration data in the country

- Guide research institutions in the selection of topics relevant to migration policies in the region. To accomplish this, it is important to carry out workshops in research institutes that allow for the thematic orientation of their research programs on the subject
- Establish spaces to discuss the information on migration between those responsible for the policies, the research institutes and the organizations responsible for the collection of data

3. Proposals for Spaces of Citizen Participation for a Greater Sensitization within Society on the Positive Impact of Migration and the Human Rights of Migrants

The movement of people has always been related to the world of prejudice, segregation and discrimination, in terms of causal factors as well as in terms of settling in to a new environment (Mármora 2000). The difficulty to coexist experienced by different groups of people has been marked, in different places and times in history, by patterns of rejection or acceptance in the interaction between humans. Rejection has given way to prejudice as an opinion or general attitude and to discrimination and segregation as social actions often directed at foreigners. Anti-migration prejudice has resurfaced in the last few decades within the context of important economic and social changes that resulted in feelings of insecurity in many sectors of the host society.

In the same vein, the anti-migration perception in Argentina has been fed by racial and social prejudices against migrants, originating from neighboring countries' statements about the increase in unemployment, the taking up of hospital beds, or the foreignization of crime. In turn, from civil society as well as from governments, the human rights of migrants have been reclaimed, resulting in a situation that Calvo Buezas (1998) likens to cases in Spain, where "more prejudice equals more solidarity."

In response to the resurgence of prejudice against migrants, which constitutes an unquestionable source of pressure on governments to adopt restrictive policies, the opposing position has developed over the last decade, which manifests in civil society and in politics as "pro-migration" both in thought and in practice. In fact, this activity feeds into the long-standing tradition of intellectual responses to prejudice and racism based on the principle of the autonomy of cultural phenomena, the dominant cultural determinism of mental structures, and the notion that all cultures have equivalent values (Taguieff 1992).

During the 1990s, many movements and organizations of civil society assumed the responsibility for the defense of the human rights of migrants. This is something that has traditionally been taken up by churches or international organizations and then gradually came to make up a larger part of the objectives of the different sectors of society. Citizen participation in the sensitization of society to the subject of the

human rights of migrants constitutes one of the principal activities that civil society has developed and has the opportunity to carry out.

This sensitization can be directed at different areas: public opinion in general, the authorities involved in the design of public policies and programs for migrants and the people that are directly involved in the social assistance or security of migrants. In the area of general public opinion, sensitization is carried out mainly through the mass media and by means of dissemination activities, such as discussions, conferences, or seminars that are open to different actors. It is vital that the public debate relating to the respect for cultural diversity be represented in the mass media (in this case in relation to migrants) to reaffirm the importance of an intercultural dialogue. In this context, it is important to differentiate concepts such as multiculturalism and interculturalism because both have political connotations and effects that can be read differently (Mármora 2000). According to Colom (1998),

Both the use and application of the concepts of multiculturalism and tolerance have been the object of analysis and critique from a number of different authors. And so, according to Colom, multiculturalism, rather than simply a politically articulated ideology would constitute a discursive repertoire which is employed by different political movements who share common characteristics of social disadvantage.

On the other hand, analysts such as Todd (1994) see multiculturalism as a “differentialist blossoming” that comes along with a revitalization of the idea of ethnicity, and which since the 1960s has been exported from the United States to the rest of the world with a naïve and sometimes devastating enthusiasm. On this basis, tolerance toward cultures that differ from the dominant one and “affirmative action” were developed as basic mechanisms to stimulate multiculturalism over the last thirty years. But these advances, which were considered important and necessary in certain social contexts (Cohn, Bendit and Schmidt 1995), do not seem sufficient for either the continuation of the process or for confronting discrimination in other cultural contexts. If multiculturalism promoted a tolerance for minority groups, this did not resolve the problem of integration and full participation within the context of global society.

Things that are disliked are “tolerated” and should be accepted in order to be “politically correct.” This can result in a society with fewer conflicts or institutionalized discrimination (Mármora 2002), but also a society that is fragmented into different collectives for which cultural exchange does not go beyond the acceptance of difference as a quaint and even exotic manifestation (Todd 1994).

The development of “interculturalism” has been conceived as a relationship that is different from multiculturalism on the grounds that the contexts in which multiculturalism has been applied have had a different historical process and consequently the relationship between global culture and minority cultures has different characteristics. According to the intercultural perspective, the ruling concept is that of “respect” rather than tolerance among cultures. The goal is mutual integration and the assimilation of each culture’s different features in the creation of a shared global culture. The incorporation of traditions and customs from new

cultures on the part of the dominant culture, the permeability of the environment in which the members of the new culture settle down, and the growing trend of mixed marriages are some of the indicators of this kind of integration. Maintaining traditional cultural diversity, alongside participation in the construction of one general, new-and-enriched cultural matrix is the dynamic of this concept. Everyone is different, according to Touraine (1998), but all come together freely in the experiences of life in common technical and economic activities while at the same time enjoying different collective and personal identities.

Another aspect of the debate on migration is the cost or benefit of migration for the country of reception. In this case, public communication must present the arguments that, through empirical verification, demonstrate the positive impact of migration on the economy, labor markets, the balance of pension funds and the culture of the host nation.

On the other hand, it is also important to debate with and raise awareness among those responsible for social communication. The organization of workshops with journalists in Argentina in the 1990s, for example, had direct effects on journalists' positions and discourses relating to the subject of migration.

Another area in which sensitization in relation to migration is essential concerns the authorities involved in the management of policies and public programs on migration, including those that can be linked to control (police, armed officials, prefecture), as well as those responsible for documentation procedures (visas, identity documents). The main causes of violations of the human rights of migrants are the prejudices and ignorance of the established laws on the parts public officials and employees of government agencies that are linked to migrants. Actions in this area, such as those carried out by the FCCAM, the CEMLA, the Pastoral Care of Migrants of the Archdiocese of Buenos Aires, the CELS, and the congregation of the Scalabrini has been an important contribution.

Finally, it is worth mentioning the importance of working toward the sensitization of people employed in schools, hospitals, health centers and other institutions that have a direct relation to migrants and special sensitization in the specific case of people engaged with women and children. It is in these areas that different kinds of prejudice and discrimination against migrants affect the migrant's personal development and their real prospects for civic integration. For example, information workshops on the role of migration and on the way that discriminatory attitudes are manifested have yielded positive results in raising awareness about this problem among educators and healthcare personnel.

Annexes

Annex 1

The Background of Law 25,871

1. Historical Evolution of Immigration Regulations in Argentina

In 1875, Congress initiated efforts to create an appropriate legal framework for attracting and channeling the migratory flows that the country needed. The executive branch and a parliamentary committee drew up draft laws that led to the first Immigration Law of 1876 (Law 817).¹⁹ Law 817, called the *Avellaneda* Law, focused on the immigrant selection process and on the care given to people during their trip, their arrival in the country and their placement under conditions as advantageous as possible.

This law served as the general framework for the massive immigration process that took place between 1890 and 1914. It was issued with the main objective of encouraging immigration. The law made no reference to control, prevention or repression measures in its legal text or in the regulation of 4 March 1880: “It was conceived in a liberal era. Its liberalism is expressed in terms of generosity and protection to migrants.”²⁰ The law was structured in two parts: the first part is dedicated to immigration; the second part refers to colonization. Article 12 defines an immigrant as “any foreign day laborer, artisan, industrialist, farmer, or professor who is under 60 years of age and can demonstrate moral values and skills, and who arrives in the Republic to settle therein.”

This law created a general department of immigration which reported to the Ministry of the Interior in order to “promote, advance and distribute immigration, as well as coordinate and maintain active and direct communication with the entities involved in the matter” (immigration agents abroad, immigration commissions and labor offices). The functions of this department included monitoring the enforcement of laws on accommodation, food, amenities, hygiene, and immigrant safety, as well as the processing of judicial actions for breaches of the transport contract, abuse of persons and damages to their luggage:

The spirit of the Avellaneda law was a genuine promotion of immigration [...] its objective was that immigrants come and stay [...]. This law was intended as an instrument for the protection of immigrants, and the power of the State Police was aimed at those who transported them and hired them; the fines that the Immigration Office was empowered to impose and collect were intended for carriers or employers acting to the

¹⁹ Romagnoli, Gino (1991), *Aspectos Jurídicos e Institucionales de la Migración en la República Argentina*. IOM, Buenos Aires.

²⁰ Ibid.

*detriment of immigrants. This law does not speak of illegal entry or stay: immigrants can remain for as long as they wish and enter or leave the country freely.*²¹

In October 1869, the Law 346 of Citizenship and Naturalization was passed with the same objective of facilitating the integration of immigrants into Argentinean society. Still in force, this law allowed the naturalization of foreigners who are 18 years old, have resided in the republic for two continuous years and express their desire to be naturalized before a federal judge.

In the beginning of the twentieth century, the deterioration of labor relations and the worsening of social conflicts resulted in strikes and the strengthening of workers' unions. On the other hand, communist and anarchist ideas imported with the first immigration wave contributed to consolidating the efforts of the Argentinean working class to become organized, which resulted in a movement eager to intervene increasingly in the working-class struggles.²² In response to this situation, the migration legislation hardened considerably and in this context the Law of Residence for Foreigners 4,144/1902, the Law of Social Defense 7,209/1910 and the regulation of the Avellaneda Law (Decree of 31 December 1923) were passed, each of them constituting a major shift in the "pro-immigrant" policy that the Argentinean state had been espousing until then.²³

The Law of Residence for Foreigners 4,144 was an instrument that allowed the executive branch to expel foreigners who were seen as detrimental to the interests of the country. Its four articles legitimized the discretionary power of the actions of the executive branch in immigration matters because they attributed to it broad powers of detention and expulsion and exempted the application of these powers from any review and/or judicial decision. The Law of Social Defense 7,029 partially modified and expanded every aspect relating to the admission and entry of foreigners. It was preceded by the declaration of a state of siege throughout the republic and it marked the start of a selective migration policy. This law was repressive toward migrants in general and misrepresented the constitutional principles enshrined in the preamble and in Articles 20 and 25. With regard to the regulatory decree of Law 817, it systematized a large number of criteria and selective standards with regard to the entry of immigrants, and created a board of immigration visits with the power to inspect any vessel arriving in the national territory from abroad. This decree enabled the state to exercise tight control over the entry of foreign nationals.

Beginning in 1930, mass migration from Europe began to decrease as a consequence of the world economic crisis. The 1950s marked the end of large European migrant movements, which were gradually and increasingly replaced by migrations from neighboring countries. This new perspective changes the government's policies to tackle and orient the migration process.

²¹ Pacceca, María Inés (1998), *Legislación, migración limítrofe, y vulnerabilidad social*, presentation at the Sixth Conference on Communities, Buenos Aires.

²² Iaacor, Ovea (1976), "El Trasfondo histórico de la Ley de Residencia," *Revista de Ciencias Sociales*, Vol. 16, no. 61, pp. 123-150.

²³ Romagnoli, Gino, Op. Cit.

In 1963, Decree–Law 4,805 was sanctioned. Its recitals made it clear that “the existing immigration law is an unsystematic and in some cases contradictory set of regulations that have distorted the essential guidelines of the Immigration Law of 1876, which must be made suitable for the real needs of the immigration problems in our country.” On the other hand, it recognized for the first time that the rights granted by the Constitution to foreign persons did not protect those immigrants who entered the country in breach of legal requirements. In this way, the decree-law differentiated those who entered the country irregularly from those who having done so legally found themselves in situations of irregularity because their term of stay had expired. Another aspect to note in this regulation is that it assigned functions of auxiliary immigration police to the national prefecture, the national gendarmerie and the federal police; these functions have been in effect until the present day.

In 1965, the migration regulations were approved by Decree 4,416 in order to condense the regimes for the admission, entry, stay and departure of foreigners into one regulatory body. Its narration stated that the diversity of existing regulatory decrees and their administrative regulations caused confusion and interpretation difficulties because they constituted a set of rules that did not correlate in the majority of cases and were even contradictory in some of them. This decree devoted several articles to listing the functions and powers granted to the National Migration Directorate (DNM in Spanish), constituted as the authority in charge of enforcing immigration policies, with broad discretionary powers to apply the immigration legislation. It established two categories of admission: (1) those with permanent residency [immigrants, refugees, former residents and relatives of Argentines], and (2) those with non-permanent residence (temporary workers, tourists, seasonal workers, passengers in transit, political exiles and cross-border transit from neighboring countries). On the other hand, it identified different types of disabilities to enter and remain in the country and detailed the requirements for definite residence applicable to foreign persons with non-permanent residence and those who were in the country in an irregular situation.²⁴

As of 1966, immigration regulations and control hardened in a sensitive way. Up to this date, there was great tolerance toward immigrants whose situation was irregular. Control measures for the entry of foreign persons and the expulsion of undocumented people intensified started that year. In May 1967, Decree-Law 17,294, titled “Repression of Clandestine Immigration,” was sanctioned. It established the prohibition to hire and to give employment to irregular residents and temporary workers unauthorized for paid work. It also established the obligation for providers of accommodations to demand proof of legal residency from foreigners and granted the National Directorate of Migration (DNM in Spanish) the power to act as immigration police throughout the territory with the participation of the provincial administrations in their respective jurisdictions. On the other hand, Decree-Law 17,498, also issued in 1967, dedicated its articles to increases in the value of the fines imposed on carriers in an attempt to exercise greater control over

²⁴ Romagnoli, Gino, *Op. Cit.*

the entry of immigrants coming from neighboring and bordering countries and lacking the documents required by the National Migration Directorate. Decree-Law 18,235 issued in the midst of serious social upheaval in 1969 expressly authorized the executive branch to expel any foreigner who “poses a threat to social peace, national security or public order,” whether he/she is a permanent or transient resident.

Between 1970 and 1971, a series of decrees contributed to increase the fragmentary and circumstantial nature of immigration regulations. Decree 46/70 set national policies, among which were some related to immigration: “to encourage immigration of a selective nature, trying to keep the current ethnic composition of the population and taking into account development and security requirements.”²⁵

In 1971, three decrees were issued to facilitate the regularization of immigrants from bordering countries. The first of these was Decree 682, allowing irregular migrants with less than three years of residence in the country to initiate the process to regularize their immigration status and, at the same time, to obtain permission to work and stay. Decree 3,206 stated that undocumented foreign persons with less than three years of residence could apply for a one-year temporary stay. Finally, Decree 4,419 exempted or reduced the payment of the residence fee for irregular migrants, as long as they could prove that the payment exceeded their financial means.

From the 1976 coup d'état to 1983, the military government issued a large number of decrees on specific matters, thus increasing the complexity of the immigration legislation. Examples of this are Decree 464/77, which offered special conditions of residency to migrants with assets; Decree 1,835/77, which simplified permanent residency requirements for residents who had entered the country before 1910 and/or aged 66 and over; Decrees 1,483/76 and 1,966/77, which summoned foreign persons residing irregularly in the country to appear before the immigration authorities in order to regularize their situation, clarifying that it was only for those who could not return to their countries of origin “for political, social, racial or religious reasons.” During this period, a new and highly restrictive law was passed: the Law of Nationality and Citizenship 2,1795/78; this law was repealed in its entirety by Law 23,059 in 1984, returning to the regulations set by Law 346, which has remained in force until today.

On 23 March 1981, the military dictatorship passed Law 22,439, the “General Law of Migrations and Promotion of Immigration” (known as the *Videla Law*), replacing all legislation existing so far on immigration matters. This law was presented as a response to the lack of a comprehensive policy and as an attempt to update and specify migration policies; it fostered the immigration of “foreigners whose cultural characteristics would allow their adequate integration into Argentinean society,” highlighting the preference indicated in the Constitution which favored European immigration. This law, which remained in force for more than 20 years, was characterized not only by its infringement on fundamental rights but also

²⁵ Pacceca, María Inés (1998), Op. Cit.

by placing a large part of the migrant population in a situation of special vulnerability.²⁶ The recitals argued the need to attract foreigners to consolidate and increase the population's patrimony and stated that one of the objectives of the national reorganization process was to increase the population, immigration being one of the means to achieve this purpose. In its articles this law stated that—in response to a proposal by the Ministry of the Interior—the executive branch was in charge of establishing requirements and general guidelines for the immigration policy, as well as of determining the inland areas of the country regarded as a priority for settlement purposes and adopting measures to promote it.²⁷

The Videla Law made a distinction between illegality of entry and illegality of permanence, and defined three migration categories: permanent, temporary and transient residents, stating that only the first category was entitled to constitutionally established rights. One of the most critical points of this law was the restriction on the fundamental rights (civil, economic and social) of those with an irregular immigration status, through the creation of a legal obligation to report to the immigration authorities any foreigner without a residence permit. This obligation affected teachers, doctors, notaries, public employees, traders and businessmen, among others. On the other hand, the provision in question prevented foreigners, who did not credit their status as permanent or temporary residents each school year, from obtaining access to middle or higher education. In addition, with regard to the authorization to exercise remunerated tasks, it forbade any person “to provide work or paid occupation, with or without dependency relationships, to foreigners residing illegally, or to those who residing legally did not have a work permit, or to hire them, and agree to or obtain their services.” With respect to expulsions, the Ministry of the Interior could expel any foreign person, “regardless of their status of residence,” if he/she were convicted for a premeditated offence and sentenced to more than 5 years of imprisonment, or if said person carried out—in the country or overseas—activities that affect social peace, national security or public order.

After the advent of democracy in 1983, the amendments to this law introduced by Congress contained merely secondary changes. In this way, the following laws were passed: Law 23,564 (1988), Law 23,860 (1990), Law 24,008 (1991); and Law 24,393 (1994). They amended the original text only in relation to the need to update the value of fines, warranties, services retribution rates and certain competences. In turn, in areas of the executive branch, both democratic governments, the Alfonsín and the Menem administrations, issued immigration amnesties (1984 and 1992) and regulated the Videla Law in 1987 and 1994 respectively.²⁸

²⁶ Pacceca, María Inés; Courtis, Corina (2008), *Inmigración contemporánea en Argentina: dinámicas y políticas*, Serie Población y Desarrollo N° 84, CEPAL, Santiago de Chile, p. 42.

²⁷ Novick, Susana (1993), “*Políticas de población en la Argentina actual. Análisis comparativo entre la dictadura militar y la democracia*”, presentation at the Second Conference on Population Studies, Buenos Aires, August 1993.

²⁸ Centro de Estudios Legales y Sociales (CELS), (1998) “Inmigrantes”, en *Derechos Humanos en Argentina*, Informe 1997, Capítulo 6, Buenos Aires.

With Decree 1,434/87, the Videla Law was regulated for the first time. The regulation specified a set of criteria for granting permanent residence (relatives of Argentinean citizens or of permanent residents) or temporary residence (professionals, entrepreneurs, scientists, migrants bringing their own capital, members of the clergy, foreigners of particular relevance to the country, parents, children and spouses of Argentineans, or of permanent or temporary residents); migrant workers arriving in the country in search for work, with no capital of their own, were excluded. This decree was repealed by Decree 1,023/94, which introduced the category of contract worker, with the requirement that hiring be done in writing and in the presence of a notary public, and it restricted requests for changing categories from transitional resident to permanent resident, thus hindering access to permanent residence for those who had entered the country as tourists. In addition, this decree also included an extensive list of absolute and relative disqualifications to be admitted or to stay in the country. Finally, Decree 1,117/98 directly prohibited category changes once the person was in the country and forced hired workers to start the immigration process in their country of origin at the request of a company or institution based in Argentina.²⁹

Migration regulations based on Law 22,439 established a policy that favored European immigration while trying to limit legal migration from Latin American countries. The persistence of this law marked a breach of democracy, which only began to be corrected in 2003 with the adoption of a new migration law, Law 25,871, which implied a discursive shift that incorporated two innovations: a human rights perspective and a regional approach.³⁰ Indeed, from 1983 to 2003, the legislative power sidestepped the need to adapt the immigration legislation to the principles of recognition of the rights of migrants contained in the Constitution as well as in human rights as international instruments. For its part, the executive branch expanded the discriminatory features of the Videla Law at its discretion and promoted the autonomy of the immigration authority to establish criteria for admission and expulsion without any legal control over this activity. As for the judiciary, it failed to assume its democratic function of protecting the rights of migrants. On several occasions, the court validated the powers of detention and expulsion of the National Migration Directorate; free legal representation services did not guarantee migrants access to justice, and current regulations demanded excessive fees for filing administrative appeals before the immigration authorities.³¹ While the enactment of Law 25,871 constituted a sign of political will on the part of the brand-new government of President Néstor Kirchner, what paved the way and set the direction of change was the sustained struggle carried out for decades by religious institutions, non-governmental human rights organizations, researchers, and

²⁹ Pacecca, María Inés y Courtis, Corina, Op. Cit., p. 42.

³⁰ Giustiani, Rubén (2004) *Migración: un derecho humano*, Ed. Prometeo, Buenos Aires.

³¹ CELS-FIDH (2011) *Argentina. Avances y asignaturas pendientes en la consolidación de una política migratoria basada en los derechos humanos*. CELS-FIDH, Buenos Aires.

some associations of migrants, especially the Committee of Organizations for the Defense of the Rights of Migrants.³²

2. Parliamentary activity (1990-2003)

In 1990 and 1991, Congress created the following two commissions with competence to formulate immigration policy:

- Commission of Population and Development (in the Senate)
- Commission of Population and Human Resources in the (Chamber of Deputies)

Until 1994, the amendments made by Congress to Law 22,439 had introduced minor changes related to updating of the value of fines, warrantees, services retribution rates and some competences. In this, the following laws were sanctioned: Law 23,564 in 1988; Law 23,860 in 1990; Law 24,008 in 1991; and Law 24,393 in 1994 (Novick 2004, Courtis 2006).

Since 1994, the year in which the Constitution was reformed and several human rights treaties were incorporated into it, the Argentinean parliament displayed greater activity in terms of its elaboration of draft laws on migration (CELS 1997, Courtis 2006). In this regard, between 1994 and 2003 numerous initiatives proposing amendments of the law that was passed under the military regime emerged among which the draft laws presented by the following deputies stand out: Cafiero (1996 and 1998); Carrió (1996); Mondelo and Dellepiane (1997); and Pichetto (1998). There were also bills proposing to repeal the law and replace it with a new one, presented by Deputies Muñoz et al. (1994), Tutto et al. (1995), Mondelo et al. (1999), and that of the Population Commission of the Chamber of Deputies (1999). Also, two draft laws regarding the regularization of migration status were submitted: one for the approval of the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, and one on internal migration. All of these were attempts that demonstrate the intense parliamentary activity that resulted from the perception that civil society was questioning, under the new democratic administrations, the legitimacy of the legislation issued during the dictatorship (Novick 2004, Courtis 2006).

Draft law by Deputy Muñoz et al. (File 5,611-D-94) (1994)

In December 1994, a draft law titled the “Migration and Aliens Act” was drawn up with the intention to replace the Videla Law. It was presented by Deputy Muñoz and other members of the Commission on Population and Human Resources of the Chamber of Deputies.³³

³² Giustiniani, Op. Cit.

³³ Parliamentary process 166. Muñoz, deputy of the Unión Cívica Radical. Among others, Barbera, Bruzzo, Golpe N., Golpe C., Molardo, Parada, Rodrigo, Toto and Zuccardi signed the draft law. Several of them were also authors and/or signatories of other legislative projects.

The project consisted of 108 articles divided into the following sections: I – Law-Enforcement Authorities; II – National Migration Council; III – Entry, Stay and Departure; IV – Impediments To Admission and Permanence; V – Of Foreigners; VI – Of International Means of Transport; VII – Of Those Providing Work or Accommodation; VIII – Fines; IX – Of the Resource System; X – Services Retribution Rates; XI – Documents for Foreigners; XII – Argentines Abroad; XIII – Supplementary Provisions.

In the foundations of this draft law, five regional meetings organized in different parts of the country were cited as antecedents: “[...] to which the Executive Governments and the provincial legislatures were invited in order to achieve a clear unification of criteria with regard to the content of an immigration legislative policy.” The starting point was the notion that the existing legislation is outdated, and that the provinces must have a leading role in the design of the new national immigration policy. In addition, the draft law acknowledged the need to repeal the Videla Law, given that its underlying ideology is the “national security doctrine.” This draft law was admitted at the same time that the executive branch sanctioned Decree 1,023 / 1994, establishing the regulatory part of the Videla Law.

Draft law by Deputies Toto et al. (File 3300-D desk-9,954), Macedo Draft Law (File 3,341-D-95) (1995)

Deputy Toto’s draft law,³⁴ titled “Regime of Population and Migrations,” consisted of 150 articles divided into the following sections: I – Immigration authorities; II – Federal Population Council; III – National Migration Directorate; IV – Entry, Stay and Departure of Foreigners; V – Impediments to Admission and Permanence; VI – Foreigners; VII –International Means of Transport; VIII – Providers of Work or Accommodation; IX – Fines; X – Resources System; XI – Services Retribution Rates; XII – Supplementary Provisions; XIII – Resources; XIV – Shelter; XV – Territorial or Diplomatic Asylum.

As for Macedo’s draft law,³⁵ signed only by him, it was thematically divided into the following sections: I – Migration Policy; II – Emigration of Nationals; III – Admission of Foreigners; IV – Entry and Departure of Individuals; V – Permanence of Foreigners; VI – Legality and Illegality of the Stay; VII – System of Administrative Resources; VIII – Fines and Services Retribution Rates; IX – Administrative and Technical Organization; X – Supplementary Provisions.

³⁴ Parliamentary process 111. Toto, Deputy of the Izquierda Unida. Among others Arias, Golpe C., Parada, Perrini and Roy signed the draft law.

³⁵ Parliamentary process 112. Macedo, deputy of the Partido Justicialista.

Draft Law by Deputy Cafiero et al. (File 2,311-D-96), Carrió and Fayad's Draft law (File 6,629-D-96) (1996)

In May 1996, deputy members of the opposition³⁶ to the national executive signed a draft law proposing the approval of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sanctioned by the United Nations in 1990. In its foundations, it made reference to the constitutional reform of 1994, in particular to the international treaties that had constitutional hierarchy. The protection of human rights was cited as the basic principle supporting the draft law, which was intended to “set limitations for the state itself, not to deny its right to set immigration policies, but to guard and protect the rights of migrants”. [...] “Access to health, education, justice, labor and housing services under equal conditions and against discrimination, is an objective that all modern states must ensure. This draft was again introduced in 1998 (File 0079-D-98).

Also in 1996, Carrió and Fayad,³⁷ deputy members of the opposition, presented a draft law that modified four articles, repealed five, and replaced section X of Law 22,439, titled “Review of Decisions and Rulings.” This draft law was based on the need to repeal and modify, without delay, the provisions of the Videla Law, which “violated fundamental human rights,” recognizing at the same time the need for a comprehensive review of the legislation in force. Thus, it proposed amending of Article 39, which allowed the acting migration authority to decide on the expulsion of any alien, based only on confirmation that the person had entered the country through a place not set for that purpose, or eluding immigration control. The draft law called for the intervention of a competent judge to be in charge of ordering the expulsion. Article 40 was also modified in relation to the need that, once an expulsion had been ordered, the judge be the one ordering arrest until the expulsion took place.

When section X, “Review of Decisions and Rulings,” was replaced, a new appeal against decisions of the Ministry of the Interior and the National Migration Directorate was introduced before the appeals chamber in the Contentious Administrative Court. It was argued that there was an obligation to “guarantee to every person the right to defense, to a hearing with due guarantees and within a reasonable period of time by competent, independent and impartial a judge or court, previously established by the law.” The authors also proposed repealing the articles included in section XIII, “Of Accessory Penalties,” which provided for the possibility of the Ministry of the Interior to decree the expulsion of any foreigner who attempted against social peace, national security or internal order. In addition, two articles prohibiting undocumented foreigners to have access to schools and to public and private hospitals were to be repealed too, since they “were violations of the full enjoyment and exercise of the rights to education and health.” Finally, the powers of the National Migration Directorate were to be repealed in order to “protect the inviolability of homes, private correspondence and the right to defense.”

³⁶ Parliamentary process 55. Cafiero, Rodil, Bordenave, Estevez, Boero, Sánchez, Vensentini, Bravo, Alessandro, Garre, Parentella y Alvarez, Deputy of the FREPASO (Frente País Solidario); Carrió, Deputy of the Unión Cívica Radical.

³⁷ Parliamentary process 180. Carrió and Fayad, Deputy of the Unión Cívica Radical.

Draft Law by Deputy Dellepiane et al. (File 6,490-D-96) (1997)

As a counterpart to the amendments proposed, a group of pro-government legislators presented a draft law moving to modify fifteen articles of the existing law. Presented by Deputy Dellepiane and others,³⁸ with the support of the executive power, it was subsequently withdrawn in response to the adverse reaction of numerous institutions and relevant groups. This draft law generated a strong debate in Argentinean society, since it modified several articles of the Videla Law, introducing, in general, greater restrictions for immigrants. Thus, the categories of admission were reformed and it was explicitly stated that the persons entering the country for employment reasons could petition only by means of a public deed.

On the other hand, the adjustment of admission requirements, deadlines, etc. for permanent, temporary and transient residents was delegated to the executive branch. In addition, two new categories of permanent resident were created: foreigners who had acquired immovable property or capital assets in the country and those who had made non-transferable cash deposits. The draft also stipulated the competence of the federal justice over crimes relating to irregular immigration.

As a novelty, the draft law introduced extremely high fines for people who hired or lodged undocumented migrants. Out of the proceeds, 15 percent would be for the officials that intervened in the inspections “aimed at detecting infringements.” In addition, it stated that in the event that an infringement was detected through a complaint, the identity of the complainant would be “confidential” and 15 percent of the amount of the fine would be for the physical or presumed person who made such a complaint. Regarding penalties, they increased from two to six years for those crimes relating to irregular immigration. The draft law also proposed establishing a compulsory registration for agents processing paperwork for migrants and submitting documents to the National Migration Directorate on behalf of said migrants, extending the powers of the Ministry of the Interior to expel foreigners regardless of their status of residence and incorporating precarious residents as potential students at secondary or higher education institutes, whether public or private, national, provincial, or municipal.

Draft Law of the Executive Branch (File 0087-PE-98) (1998)

In 1998, the executive branch referred to Congress, for its consideration, a draft amendment of the National Migration Law. This draft law was sent in the middle of a campaign that directly associated immigration with lack of safety and that qualified some immigrants as “illegal,” referring to those foreigners who did not have a

³⁸ Parliamentary process 177. The draft law was presented with the support of the executive branch in 1996 and discussed in the Population Commission of the Chamber of Deputies in June 1997. It was signed by Dellepiane, Acevedo, Rampi, Robles, Herrera and Mondelo, deputies for the Justicialista party.

residence permit.³⁹ Paradoxically, however, the executive branch claimed that this proposal was meant to protect the personal dignity of migrants.

The draft law extended even further the powers of the National Migration Directorate, attributing it not only the competence to intervene in admitting to the national territory and granting entry or residence permits, but also with regard to those granted abroad, thus withdrawing powers from the Ministry of Foreign Affairs and adding them to the functions of the Ministry of the Interior. The draft law was centered on the increases in the values of fines, the prohibition to change a person's immigration status and the creation of new grounds for expulsion. In addition, it envisaged the creation of new criminal types.

Draft law by Deputy Marelli et al (File 8,089-D-98), Draft Law by Pichetto et al (File 7,952-D-98), Draft Law by Mondelo (File 1,410-D-99) (1999)

The draft law presented by Marelli, Galland, Cafiero and Saggese refers to "immigration regularization"⁴⁰ and emerges as a counterpart to the attempt to modify the migration law promoted by the executive power toward the end of 1998. In its foundation, it acknowledged, "the Executive Branch incurred a too dangerous generalization, rather close to the violation of the fundamental rights of immigrants, when pretending to arrogate to itself discriminatory powers in the area of migration policy and without even considering the process of regional integration." It also highlighted "the existence of an official discourse aimed at associating migrants with lack of employment, lack of safety and marginalization, whenever conflicts such as increasing urban violence, unemployment, or crimes occur." The draft law placed emphasis on "building a proper and effective legal framework for migrant workers and their families." To that end, it presented a proposal for simplified migration regularization and includes a special chapter establishing penalties for those who rely on foreigners in order to "commit serious offenses such as terrorism, drug trafficking, money laundering or attacks against democracy."

As for Deputies Pichetto and Rampi's draft law,⁴¹ it sought to modify 16 articles of Law 22,439 and accomplished nothing other than significantly worsening the situation of the migrant population because it sharpened the repressive nature of the current legislation. It was intended to incorporate, on a legal basis, a prohibition for those who entered with a temporary residence status to request a change in category. Through this prohibition, a significant part of borderline population would be subject to conditions of illegality and, consequently, to plausible summations and expulsions.

³⁹ Parliamentary process 212. The draft was prepared by the National Migration Directorate and signed by Carlos Menem (president), Jorge Rodríguez (chief of the ministerial Cabinet) and Carlos Corach (minister of internal affairs). The draft related lack of a residence permit to the commission of crimes and claimed that foreign people aggravated the unemployment rate in the country.

⁴⁰ Parliamentary process 225, signed by Deputies Cafiero y Galland of the Frente País Solidario (FREPASO); Marelli and Saggese of the Unión Cívica Radical.

⁴¹ Parliamentary process 211 signed by Deputies Pichetto and Pampi of the Partido Justicialista.

This draft also featured evidentiary measures for preventing the use of forged documents and the resort to false working contracts or services locations. It also modified the existing regime for migration infringements, typifying human trafficking as a crime. Finally, it extended the grounds for expulsion of foreigners.

Congresswoman Mondelo's draft,⁴² titled "Migration Regime. Repeal of Law 22,439" consisted of 42 articles in which she proposed a comprehensive reform. The subjects addressed in the draft law were the following: I Migration Authorities; II Entry, Permanence, Departure and Exceptions; III Argentineans Abroad.

Unified Draft for Law of Migration

The unified draft was the result of integrating Message 54 on 27 January 1999 (File 87-PE-98)⁴³ issued by the executive power, the partial reform draft law presented by Deputies Rampi and Pichetto (File 7,952-D-98), and the draft on migration regularization signed by Deputy Cafiero et al. (File 8,089-D-98). This integrated draft law was the product of the opinion issued by the Commissions of Population and Human Resources, Criminal Legislation and Labor Legislation. It consisted of 115 articles and even though it had no date, it was the result of the work done in December 1999. Several of the proposals included in this draft law would reappear in the one presented by Deputy Giustiniani in 2001. It was signed by the following deputies: Enrique Gardesa, Enzo Herrera Paez, Juan Pablo Cafiero, Alberto Herrera, Norman Alvarez Garcia, Nestor Saggese, Gloria del S. Aban S., Mabel G. de Martelli, Pascual. Partially dissenting was A. Rampi and totally dissenting was Elsa Melogno.

The draft consisted of fourteen sections. In the section corresponding to general principles, it stated that the law would apply to all migrants, regardless of sex, race, color, and language; religion or convictions; opinions —political or of another kind; national, ethnic or social origin; nationality and age; economic and patrimonial situation; marital status, birth, or any other condition. A definition of "immigrant" was provided. It established, "the right to migration is a natural, essential and inalienable right of every person. This right corresponds not only to individuals, but to all migrant families." The rights and duties enshrined in the Constitution, international treaties, and derived legislation were applicable to the migrant individuals and their families. Moreover, the breach of one or several immigration requirements would not be cause for restricting access to the benefits and rights specified in this law. The right to maintain a person's cultural identity was included among the guarantees of this law. When in doubt about interpretation, regulations or scope, it was understood that the principle of most favorable treatment prevails for the immigrant.

⁴² Parliamentary process 28 signed by Deputy Mondelo of the Partido Justicialista.

⁴³ Parliamentary process 213.

Draft Law by Giustiniani et al (File 7,344-D-01) (2001)

The draft law presented by Deputies Giustiniani et al.⁴⁴ was structured around the human rights of migrants, and it emphasized equality between nationals and foreigners by explicitly adopting the principle of non-discrimination. This draft had ten sections: Preliminary: Argentinean Migration Policy; I – Of the Rights and Freedoms of Foreigners; II – Of the Admission of Foreigners into the Republic of Argentina and Exceptions; III – Of the Entry and Exit of Persons; IV – Of the Permanence of Foreigners; V – Of the Regularity and Irregularity of Permanence; VI – Of the System of Resources; VII – Of Migratory Crimes; VIII – Of Rates; IX – Of Argentineans Abroad; X – Of the Enforcement Authority. This draft was submitted for public hearing in 2003 and re-entered with modifications under File 769-D-03.

Although it was the basis of the draft law finally approved at the end of 2003, it should be noted that the current immigration Law 25,871 shows differences regarding the original draft law, and these were the result of negotiations with the executive branch through the National Migration Directorate.

With the exception of Giustiniani's draft law, which was entered twice, the other drafts gradually lost parliamentary status, in many occasions without having been studied by the competent committee. In the case of the Mondelo and the unified drafts, the change in government, the renovation of legislators and the change of the commission members, contributed to their losing parliamentary status without having been studied.

⁴⁴ Parliamentary process 188 signed by Deputies Giustiniani and Barbagelata, of the Partido Socialista Popular, and González of the ARI (Coalición Cívica Afirmación para una Republica Igualitaria).

Annex 2

Argentina

Status of Ratification of Treaties and Conventions which constitute International Migration Law

(Updated to July 2011)⁴⁵

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
International Bill of Human Rights	Universal Declaration of Human Rights (1948)			Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	International Covenant on Economic, Social and Cultural Rights (1966)		08/08/1986 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	International Covenant on Civil and Political Rights (1966)		08/08/1986 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Optional Protocol to the International Covenant on Civil and Political Rights (1966)		08/08/1986 (A)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (1989)	24/09/2009		
Prevention of racial discrimination	Convention against Discrimination in Education (1960)		30/10/1963 (R)	
	International Convention on the Elimination of All Forms of Racial Discrimination (1965)		02/10/1968 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
Prevention of racial discrimination (...cont.)	ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation (1958)		18/06/1968 (R)	
Prohibition of Torture	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)		24/09/1986 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002)		15/09/2004 (R)	

⁴⁵ Source: Gianelli Dublanc, María Laura, *Estado de Ratificación de los Tratados y Convenciones que conforman el Derecho Migratorio Internacional en los países sudamericanos*, several editions. Last edition: 2011.

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
Women's Rights	Convention on the Nationality of Married Women (1957)		10/10/1963 (A)	
	Convention on the Elimination of all Forms of Discrimination against Women (1979)		15/07/1985 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)		20/03/2007 (R)	
Rights of the Child	International Convention on the Rights of the Child (1989)		04/12/1990 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)		10/09/2002 (R)	
	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)		25/09/2003 (R)	
	ILO Convention No. 138 concerning Minimum Age for Admission to Employment (1973)		11/11/1996 (R)	
	ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)		05/02/2001 (R)	
Migrants Rights	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)		23/02/2007 (R)	
	Protocol against the smuggling of migrants by land, sea, and air, supplementing the United Nations Convention against Transnational Organized Crime (2000)		19/11/2002 (R)	

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
	ILO Convention No. 19 of the International Labour Organization, related to the Equal Treatment of the Foreign and Domestic Workers Regarding the Compensation of the Incidents at Work (1925)		14/03/1950 (R)	
	ILO Migration for Employment Convention No. 97 (Revised) (1949)			
	ILO Equality of Treatment (Social Security) Convention No. 118 (1962)			
	ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975)			
Rights of Refugees and Stateless Persons	Convention relating to the Status of Refugees (1951)		15/11/1961 (A)	
	Protocol relating to the Status of Refugees (1967)		06/12/1967 (A)	
	Convention relating to the Status of Stateless Persons (1954)		01/06/1972 (A)	
	Convention on the Reduction of Statelessness (1961)			
Rights Of Disabled Persons	Convention on the Rights of Persons with Disabilities (2006)		02/09/2008 (R)	
	Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)		02/09/2008 (R)	
Slavery, servitude, human trafficking, forced labor, and similar institutions and practices	Slavery Convention (1926)			
	Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956)		13/08/1964 (A)	
	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Other (1949)		15/11/1957 (A)	

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)		19/11/2002 (R)	
	ILO Convention No. 29 concerning Forced or Compulsory Labor (1930)		14/03/1950 (R)	
	ILO Convention No. 105 on the Abolition of Forced Labour (1957)		18/01/1960 (R)	
Forced Disappearances	International Convention for the Protection of All Persons from Enforced Disappearance (2006)		14/12/2007 (R)	
War crimes and crimes against humanity	Convention on the Prevention and Punishment of the Crime of Genocide (1948)		05/06/1956 (A)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968)		26/08/2003 (A)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
War crimes and crimes against humanity (cont.)	Rome Statute of the International Criminal Court (1998)		08/02/2001 (R)	
Humanitarian Law	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention) (1949)		18/09/1956 (R)	
	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention) (1949)		18/09/1956 (R)	
	Geneva Convention relative to the Treatment of Prisoners of War (Third Convention). (1949)		18/09/1956 (R)	
	Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention) (1949)		18/09/1956 (R)	

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977)		26/11/1986 (A)	
	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)		26/11/1986 (A)	
Transnational Organized Crime	United Nations Convention against Transnational Organized Crime (2000)		19/11/2002 (R)	
Diplomatic Relations	Vienna Convention on Consular Relations (1963)		07/03/1967 (R)	
Human Rights	American Declaration of the Human Rights and Duties (Bogotá, Colombia, 1948)			Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
Human Rights (cont.)	American Convention on Human Rights (San José, Costa Rica, 1969)		05/09/1984 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador, El Salvador, 1988)		23/10/2003 (A)	
	Protocol to the American Convention on Human Rights to Abolish the Death Penalty (Asunción, Paraguay, 1990)		05/09/2008 (R)	
Prohibition of Torture	Inter-American Convention to Prevent and Punish Torture (Cartagena de Indias, Colombia, 1985)		31/03/1989 (R)	
Forced Disappearances	Inter-American Convention on Forced Disappearance of Persons (Belem do Pará, Brazil, 1994)		28/02/1996 (R)	Since the 1994 constitutional reform this instruments have gained constitutional status (Art. 75, paragraph 22)
Women's Rights	Convention on the Nationality of Women (Montevideo, Uruguay, 1933)		02/10/1957 (R)	
	Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, Colombia, 1948)		02/10/1957 (R)	

Issue	INTERNATIONAL INSTRUMENTS United Nations System (including ILO)	Signature Dates	Date of Ratification (R) or Accession (A)	Observations
	Inter-American Convention on the Granting of Political Rights to Women (Bogotá, Colombia, 1948)		02/10/1957 (R)	
	Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Pará, Brazil, 1994)		05/07/1996 (R)	
Rights of the Child	Inter-American Convention on the International Return of Children (Montevideo, Uruguay, 1989)		15/02/2001 (R)	
	Inter-American Convention on International Traffic in Minors (México, 1994)		28/02/2000 (A)	
Non-nationals, Foreigners, Nationality	Convention Relative to the Rights of Aliens (México, 1902)	29/01/1902		
	Convention Establishing the Status of Naturalized Citizens Who again Take up Their Residence in the Country of Their Origin (Rio de Janeiro, Brazil, 1906)		28/06/1911 (R)	
	Convention on Conditions for Foreigners (La Habana, Cuba, 1928)		07/01/1957 (R)	
	Convention on Nationality (Montevideo, Uruguay, 1933)			
Asylum and Refugees	Treaty on International Penal Law (Montevideo, Uruguay, 1889)		11/12/1894 (R)	
	Convention on Asylum (La Habana, Cuba, 1928)	20/02/1928		
	Convention on Political Asylum (Montevideo, Uruguay, 1933)	26/12/1933		
	Treaty on Asylum and Political Refuge (Montevideo, Uruguay, 1939)	04/08/1939		
	Treaty on International Penal Law (Montevideo, Uruguay, 1940)	19/03/1940		
	Convention on Diplomatic Asylum (Caracas, Venezuela, 1954)		29/03/1993 (R)	
	Convention on Territorial Asylum (Caracas, Venezuela, 1954)		29/03/1993 (R)	
	Cartagena Declaration on Refugees (Cartagena de Indias, Colombia, 1984)			Incorporated into Law No. 26,165 (2006), General Law of Recognition and Protection for Refugees

Annex 3

Functions of Governmental Institutions with regard to Migration

Formulation and Definition of Migration Policy		
Institution	Function	Applicable Regulations⁴⁶
Ministry of the Interior (MI)	Take part in the development and enforcement of the rules that govern internal and external migrations	Law 22,520, Art. 17, No. 17
	Establish guidelines and general standards for population and migration policy, with the capacity to determine the areas of the country that are considered a priority for migration development and to adopt the necessary measures for its promotion and advancement.	Decree 616/2010, Art. 3
Office of the Secretary of the Interior (MI)	Propose and design policies, plans, and projects in the field of population and migration	Decree 357/2000, Art. XII, No. 1
	Establish strategic guidelines for projects and assess compliance with targets in population and immigration matters	Decree 357/2000, Art. XII, No. 4
	Provide, at the request of provincial governments, assistance in the diagnosis of population and migration problems	Decree 357/2000, Art. XII, No. 9
	Keep institutional ties in matters of population and migration with the honorable national Congress	Decree 357/2000 Article XII, No. 10
	Take part in the design of policies and oversee the management of the National Migration Directorate	Decree 357/2000 Article XII, No. 13

⁴⁶ Legal references and corresponding updates:

- Law on Ministries 22,520 (1992) (ordered text). Last update: Decree 192/2011 (February)
- Law 24,515 (1995), creating the National Institute against Discrimination, Xenophobia and Racism (INADI) (updated text)
- Law 25,871 (2004), Law on Migration (updated text)
- Law 26,206 (2006), Law of National Education
- Decree 357/2000 - National Public Administration. Organizational implementation chart of the National Administration centralized up to the Undersecretary level of application. Last update: Decree 924/2011 (July)
- Decree 163/2005 - approving the organizational structure of the first operational level of the Ministry of Justice and Human Rights
- Decree 878/2008 – organization chart and objectives of the Ministry of Foreign Relations. Last update: Decree 924/2011 (July)
- Decree 616/2010 - regulation of the Law of Migration no. 25,871 and its modifications
- Administrative Decision 10/2002. First level operational organization of the Ministry of Foreign Affairs.

Formulation and Definition of Migration Policy		
Institution	Function	Applicable Regulations
Under-Secretary of the Ministry of the Interior (MI)	Propose population and migration policies, plans, and projects to the Secretary of the Interior	Decree 357/2000 Article XII, No. 1
	Formulate the programs deriving from the population and immigration policy	Decree 357/2000 Article XII, No. 2
	Maintain ties with national and international agencies that produce information about the behavior of migratory and demographic variables	Decree 357/2000 Article XII, No. 4
	Propose projects of regulations essential to internal and international migrations	Decree 357/2000 Article XII, No. 5
Ministry of Foreign Affairs, International Trade and Worship (MRECIC)	Intervene, from the point of view of foreign policy at the international level, in the elaboration and implementation of migration and immigration policies	Law 22,520 Article 18, No. 28
Ministry of Foreign Affairs, International Trade and Worship (MRECIC)	Formulate policies and courses of action to be followed in matters [...] of migration policy and development of border areas [...]	Decree No. 924/2011 No.2
	Formulate and lead policies and courses of action to be followed in the field of Consular Affairs [...]	Decree No. 924/2011 No.4
	Formulate and implement policies and courses of action to be followed in matters relating to migration policy issues, in coordination with the national immigration authority	Decree No. 924/2011 No.5
	Take part in the granting of the right of asylum and refugee status	Decree No. 924/2011 No.7
Bureau of Consular Affairs (MRECIC)	Intervene in the international aspects of migration and immigration policy	Administrative Decision 10/2002, No.25
Ministry of Labor, Employment, and Social Security (MTESS)	Take part in the development of internal and external labor migration policies	Law 22,520, Art. 23, no. 22
Ministry of Health (MS)	Take part in the implementation medical surveillance of migration and health protection at borders, ports, airports and international means of transport	Law 22,520, Art. 23 ter, no. 10

Enforcement of Migration Legislation		
Agency/Institution	Function	Applicable Regulations
National Migration Directorate (DNM)	Immigration Law Enforcement Authority	Law 25,871, Articles 105/107
	Take part in the processes of admission, and granting of residence, as well as extension thereof, in the national territory and abroad, with the capacity, for that purpose, to establish new delegations in order to grant entry permits, extensions of stay permits, and changes of category for foreigners (Also, this office is in charge of controlling the entry/exit of persons into/and out of the country, exercising control of permanence, and police functions over foreigner in the entire territory of the republic)	Law 25,871, Art. No. 107
	Delegate the exercise of its functions and powers to the institutions constituting the Auxiliary Migration Police, or other national, provincial, or municipal authorities, which will act in accordance with the regulations and directives of the directorate	Law 25,871, Article No. 108
Provincial Governors, and the Head of Government of the Autonomous City of Buenos Aires	In the role of natural agents of the federal government, provide everything necessary to ensure compliance with migration law	Law 25,871, Art. No. 109
Secretariat of Foreign Affairs (MRECIC)	Elaborate instructions for consular representations concerning the application of administrative regulations	Decree 924/2011 No. 4
Bureau of Consular Affairs (MRECIC)	Take part in the operation of consular representations abroad, in order to [...] enforce the national legislation regarding the entry of people and goods [...]	Administrative Decision 10/2002, primary responsibility
	Take part in the preparation of instructions for the consular representations concerning the application of the regulations that govern administrative activities, including the consular representation of police, migration, and customs authorities, civil registers, and legal capacity/identity or conferral of legal personality	Administrative Decision 10/2002, No. 3
	Supervise the consular corps on the provisions relating to the entry of people into the country	Administrative Decision 10/2002, No 7
	Take part in matters relating to identification and legalizations, and others concerning the consular function [...]	Administrative Decision 10/2002, No 8

Enforcement of Migration Legislation		
Agency/Institution	Function	Applicable Regulations
	Handle issues of provenance and regulatory formalities of the repatriation of Argentinean citizens	Administrative Decision 10/2002, No 9
	Take part in the control of consular representations renditions relating to the records and collection of the services retribution rates of the National Migration Directorate	Administrative Decision 10/2002, No 15
	Participate in the granting of consular visas for passports and travel documents, in accordance with the current regulations, giving the National Migration Directorate the opportunity to intervene when appropriate	Administrative Decision 10/2002, No 21
Bureau of Consular Affairs (MRECIC) (<i>cont.</i>)	Intervene in matters that may involve a change or modification of the migratory rules of the republic	Administrative Decision 10/2002, No. 22
	Intervene in matters concerning migrations that may involve violations of the current regulations	Administrative Decision 10/2002, No 23

Protection of the Rights of Migrants (Policy and Enforcement)		
Agency/Institution	Function	Applicable Regulations
Ministry of the Interior (MI)	Take part in processes regarding nationality, rights and obligations of foreigners and their assimilation and integration into the national community	Law 22,520, Art. 17, No. 12
	Participate in the process of granting the right of asylum	Law 22,520, Art. 17, No. 11
	Intervene in the granting of refugee status	Law 22,520, Art. 17, No. 17
Ministry of Foreign Affairs, International Trade and Worship (MRECIC)	Intervene in the protection, assistance, and interests of Argentine citizens abroad, as well as strengthen their links with the republic	Law 22,520, Art. 18, No. 7
	Take part in the granting of the right of asylum and refugee status	Law 22,520, Art. 18, No. 15
	Take part, from the point of view of foreign policy, in matters related to nationality, rights, and obligations of foreigners, and their assimilation and integration into the national community	Law 22,520 Art. 18, No. 28
Secretariat of Foreign Affairs (MRECIC)	Take part in the granting of the right of asylum and refugee status	Decree 878/2008, No. 5

Protection of the Rights of Migrants (Policy and Enforcement)		
Agency/Institution	Function	Applicable Regulations
Bureau of Consular Affairs (MRECIC)	Intervene in the operation of consular representations, in order to assist the Argentineans abroad [...]	Administrative Decision 10/2002, primary responsibility
Bureau of Consular Affairs (MRECIC) (cont.)	Intervene in matters relating to [...] and others concerning the consular function and relating to the protection of the interests of Argentinean citizens abroad	Administrative Decision 10/2002, No. 8
Directorate for Human Rights (MRECIC)	Take part in the formulation and design of plans, programs, projects and objectives of foreign policy in the field of human rights, as well as participate in the conduction of the foreign policy relating to these issues before international agencies, entities or special commissions	Decree 924 2011, primary responsibility
	Coordinate and carry out the necessary consultations with the United Nations High Commissioner for Refugees (UNHCR) on issues concerning the decisions to grant asylum or refuge in the republic to foreigners who request it	Decree 924 2011, No. 7
	Intervene, in coordination with other relevant areas, in matters relating to national, ethnic, religious, and linguistic minorities in the field of international organizations	Decree 924 2011, No. 8
Ministry of Justice and Human Rights (MJDH)	Take part in the formulation and enforcement of policies and programs for the promotion and strengthening of human rights	Law 22,520, Art. 22, No. 3
	Take part in the determination of policies, the preparation of plans and programs and the representation of the state before international organizations in matters of human rights and discrimination of groups or individuals	Law 22,520, Art. 22, No. 19
National Directorate for the Direct Assistance to Individuals and Vulnerable Groups / Under-Secretariat of Promotion and Protection of Human Rights/ Secretariat of Human Rights (MJDH)	Ensure the effective implementation of national and international regulations that guarantee human rights and fundamental freedoms, taking into account the situation of vulnerable groups, including the homeless, migrants, children, applicants for asylum, persons with disabilities, older persons, indigenous peoples and sexual minorities, among others	Decree 163/2005, No. 1
National Institute against Discrimination, Racism and Xenophobia INADI (MJDH)	Draw up concrete measures and national policies to combat discrimination, xenophobia and racism, promoting and carrying out actions to this end	Law 24,515, Art. 2

Protection of the Rights of Migrants (Policy and Enforcement)		
Agency/Institution	Function	Applicable Regulations
The state, the provinces and the autonomous city of Buenos Aires	Ensure migrants without a national identification document (DNI), access to, and the conditions for staying in and graduating from all the levels offered by the educational system, through submission of the relevant documents issued in their country of origin, in accordance with Article 7 of Law 25871	Law 26,206, Art. 143

Participation of Civil Society		
Agency	Function	Applicable Regulations
Ministry of the Interior through the National Migration Directorate and the National Population Directorate	CS may convene organizations operating in the field of migrations to propose plans and initiatives for the achievement of the objectives set out in Law 25871, the Ministry of the Interior being authorized to sign cooperation agreements with such organizations	Decree 616/2010, Art. 3

Annex 4

Addressing Migration in MERCOSUR⁴⁷

a) *Approaches to the Subject at the Different Levels of MERCOSUR*

Migration issues have been addressed in MERCOSUR since the early years of the Treaty of Asunción in 1991, although not specifically discussed or explicitly included. In this regard, Vichich points out that

[I]n the origins of MERCOSUR, social and labor issues and the freedom of movement of persons, primarily of workers, were not explicitly stated in those terms nor established as a programmatic institutional objective of the bloc, which was then in the early stages of its formation. In the Treaty of Asunción those issues were subsumed in the expression mobility of production factors.⁴⁸

Until the mid-1990s, migration was addressed in two work subgroups (SGT, for its acronym in Spanish): No. 2 regarding customs and No. 11 regarding labor relations, employment and social security. In Work Subgroup 2 (SGT N° 2), which brought together migration specialists, significant progress was made in expediting border operations regarding the establishment of an integrated control system. Advances were also made in relation to the movement of people and the facilities for passage at land and river border crossing points, with the use of a single border control form, arrival and departure record cards (TES) and travel documents, among other instruments, within the framework of the so-called Recife Agreement (Decision CMC 5/93) and its Additional Protocol (Decision CMC 12/93). For its part, the Work Subgroup SGT No. 11, which sets as one of its objectives the free movement of workers, made no progress in that respect. In 1995, as a result of changes in the organizational structure and the introduction of new objectives, it was replaced by SGT N° 10 to address the social and labor integration issue. Thus, the notion of mobility of the labor force changed and the concept of freedom of movement was replaced for that of labor migrations.⁴⁹

Not many multilateral responses that could be considered substantive progress in the matter emerged from the organizational framework of Work Subgroup No. 10.

⁴⁷ The elaboration of the present topic was based on: Gianelli Dublanc, María Laura, “Tratamiento de la temática migratoria en la Reunión de Ministros del Interior del MERCOSUR y Estados Asociados”, document prepared for the Foro Especializado Migratorio, which was presented at the Global Forum on International Migration and Development, Bruselas, Bélgica, julio 2007; Gianelli Dublanc, M. Laura, *El tratamiento de la cuestión migratoria en los consensos intergubernamentales*, UNLa, October, 2007.

⁴⁸ Vichich, Nora, “El MERCOSUR y la migración internacional”, in *Expert Group Meeting on International Migration and Development in Latin America and the Caribbean*, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, Mexico City, 30 November - 2 December 2005.

⁴⁹ Gurrieri, Jorge, “El proceso consultivo en América del Sur. La Conferencia Sudamericana sobre Migraciones”, in *Expert Group Meeting on International Migration and Development in Latin America and the Caribbean*, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, Mexico City, 30 November - 2 December 2005.

The exception has been the Multilateral Agreement on Social Security, the only significant instrument sustaining the mobility of workers. Signed on 14 December 1997, it was ratified by all countries by 2005. In its main provision, this agreement granted

[E]qual rights with regard to those specifically mentioned in this agreement [i.e., social security rights] to workers who provide or have provided services in any of the States Parties, as well as to their families and assimilated members, since they are also subject to the obligations as the nationals of said States Parties.

The agreement also established that it will be applied to workers of any other nationality that reside in the territory of any of the member countries, provided that they have worked in said territory.⁵⁰

In 1998, the summit of heads of state of MERCOSUR adopted the MERCOSUR “Declaration on Social and Labor Issues,” which explicitly considered in Article 4 the equality of rights of migrant and frontier workers with regard to nationals, and the states committed to the development of common regulations and procedures relating to the movement of these workers in the territories of the member states.

Other bodies of MERCOSUR, apart from the social and labor agencies and using different approaches, worked on mobility. One of them was the Group for the Liberalization of Trade in Services in the Region, in which the initiative of a MERCOSUR visa was developed within the so-called Mode 4; this mode corresponded to the temporary movement of natural persons supplying services within a scope of application limited to those who provide services in a member country not their own, with set deadlines, and including business managers, supervisory personnel, highly qualified technicians and specialists, executives, managers, representatives, scientists, journalists and professors. In this regard, Vichich points out that

[T]he MERCOSUR visa sought to overcome some legal barriers, and promote a more agile processing, generating a higher level of legality for labor migration and the registration of those who are its beneficiaries, since it establishes the obligation to report to the Government authority of the country of entry and provides professional registration and compliance with the laws and regulations that control the exercise of regulated professions or trades. This proposal was approved by the Common Market Council (CMC) and has recently come into force.⁵¹

Another body that negotiated issues related to mobility was the Ad hoc Group of Border Integration, the efforts of which aimed at facilitating the coexistence of the border communities in the region, in compliance with the mandate to promote border integration and improve the quality of life of the populations of continuous areas in terms of their economy, traffic and transport, education, access to public services and labor regulations.

⁵⁰ Vichich, Op. Cit.

⁵¹ Ibid.

But the first great qualitative leap on the immigration issue in the Region occurs in the framework of the Meeting of Ministers of the Interior of MERCOSUR held between 9 and 11 November 2002, in Salvador de Bahia, where Brazil approved the Draft Agreement on Residency for Nationals of the States Parties of MERCOSUR. This Agreement on Residency for Nationals of the States Parties of MERCOSUR, Bolivia, and Chile (CMC Minute 02/02), signed at the Presidents' Summit in December 2002, is considered a landmark in the history of regional integration because it supported the governance of migration flows, understanding that legality is the foundation of any democratic society and it is what allows the inclusion of migrants in the host society. This instrument established that nationals from a MERCOSUR country could regularize their immigration status in another MERCOSUR country by the mere fact of their nationality, thus establishing the nationality criterion and granting temporary residence for two years. Regrettably, the agreement has not been ratified by the countries of MERCOSUR. Nevertheless, Argentina has incorporated it in its new migration law and recently signed several bilateral instruments based on the spirit of the agreement because of the benefit it will report to its citizens (Alfonso 2005).⁵²

Finally, it is worth mentioning the creation, in the first half of 2004, of an area exclusively devoted to migration problems, that is, the Specialized Migration Forum, answerable to the ministerial meeting. One of the first documents emanating from this forum was the Santiago Declaration on Migration Principles, signed on 17 May 2004, which constituted a valuable document expressing the spirit with which governments face immigration policy.

b) Specialized Migration Forum

This forum was created during the Meeting of Ministers of the Interior, held in Montevideo, Uruguay, on 21 November 2003,⁵³ with the objective of

- i) Studying the impact of regional and extra-regional migration on the development of the states parties and associated states
- ii) Analyzing and presenting proposals or recommendations on the harmonization of legislations and policies on migration issues
- iii) Developing regional actions for the improvement of migration governance;
- iv) Drafting agreements or recommendations which, emerging from the work agenda, might be presented for the consideration and approval of the Meeting of Ministers of the Interior
- v) Following up and evaluating the results of the migration agreements approved within the scope of the MERCOSUR

⁵² Gurrieri, Op. Cit.

⁵³ MERCOSUR/XIVRMI/ACTA 02/03 - Annex VII, XIV Meeting of Ministers of the Interior.

The Specialized Migration Forum consisted of “national sections,” each of which represent a states’ party or associated state. These sections are staffed by senior officials from the respective Ministries of the Interior, officials from relevant migration agencies and of other ministries or bodies that each state might consider appropriate. In addition, the makeup of these sections seeks the longest possible permanence of the officials designated to represent them in the delegation for purposes of continuity and accumulated know-how of the actions and projects being developed.

The forum meetings are held three times per semester, under the coordination of the state party exercising the MERCOSUR pro tempore presidency. The work agenda and the schedule of meetings are set at the last meeting of the semester, based on pending issues and proposals submitted by the various delegations. The conclusions, recommendations, initiatives, or draft agreements reached by the forum are accepted by consensus and forwarded to the Meeting of Ministers of the Interior for their consideration, evaluation and subsequent approval at its ordinary session.

c) Analysis of MERCOSUR Regulations

In recent years, several instruments aimed at outlining the foundations for immigration policy in South America have been negotiated in various areas of MERCOSUR. Most of these instruments were produced in the framework of the meetings of ministers of the interior. This modus operandi has permitted significant advancements, among which the declarations and multilateral agreements directed at facilitating freedom of movement and the protection of the human rights of the nationals of the states parties and associated states deserve a special mention, as well as those directed to strengthening regional cooperation in the field of protection of minors traveling between countries in the region and to combating the smuggling of migrants and human trafficking.

On the other hand, the existence of community rules applicable to migrants, which were the result of the work carried out by other work groups and agencies of the regional bloc, should be noted; among them, those regarding social security and cooperation on assistance and consular protection for nationals of the states parties must be highlighted.

Initiatives Regarding Migration Principles and Policies

Santiago Declaration on Migration Principles

On 17 May 2004, an extraordinary meeting of the Ministers of the Interior of MERCOSUR and associated states was held in Santiago de Chile, in which common problems on migration issues in the region were addressed. At the end of the meeting, officials from seven countries⁵⁴ signed the Declaration of Santiago on

⁵⁴ The Santiago Declaration was signed by Minister of the Interior of the Republic of Argentina Dr. Aníbal Fernández, Ambassador of the Federative Republic of Brazil Mr. Gelson Fonseca, Minister of

Migration Principles, under the premises of recognizing “the important contribution of migrants to the formation of our states” and reaffirming their commitment to respecting the human rights of migrants.

In the recitals, the signatories emphasized the need to address the immigration issue in the region “through mechanisms of open multilateral dialogue as a way to strengthen the process of integration;” for MERCOSUR to “reaffirm to the rest of the world its commitment to work toward a new immigration policy, based on the ethical dimension of the respect for human rights and their inclusion in international relations between the countries;” acknowledge that the “efficiency of immigration policy will depend on its adaptation to regional and international reality and the acceptance that migration regularization is an indispensable condition for the full inclusion of migrants in the host society;” acknowledge that the “treatment given to nationals of States Parties and associated States of MERCOSUR in third countries should be equal to that received by nationals of those countries in our territories;” recognize that it is “the responsibility of the States Parties and of MERCOSUR Associated States to work in coordination to combat and prevent human trafficking and the abuses inherent to illegal immigration in the region.”

They also recognized “that the cultural dimension of migration is a valuable contribution to the transculturation of peoples;” that the “important role of migrant workers constitutes a valuable social capital that stimulates and strengthens the various economic and social sectors of migrant receiving countries;” and that “our states must commit to put forward a common system of health and social security for our nationals in the region.” The declaration emphasized “the important contribution of migrants to the formation of our states” (paragraph I), guaranteeing them “respect for the human rights and all those recognized by international conventions in force in the matter” (paragraph III); stressed the “importance of family reunification, as a necessary element for the full stability of immigrants, recognizing the family as the cornerstone of society” (paragraph VI); and reaffirmed “the commitment of the states to provide and promote international protection to refugees, as foreseen in the Geneva Convention of 1951 and its complementary protocol of 1967, and in any other international instrument on the subject that they might adhere to in the future” (paragraph IV).

On the other hand, “practices of xenophobia, mass or group deportations and detention without legal support” (paragraph X) are condemned. In this regard, while recognizing “the right of states to exercise proper control at their borders, without addressing migratory irregularities as acts punishable by criminal law” (paragraph VII), the countries that do belong to MERCOSUR are required to grant “fair and humanitarian treatment to immigrants from our region, in correspondence with the treatment given to their nationals in our territories” (paragraph V), further highlighting

the Interior of the Republic of Paraguay Dr. Orlando Fiorotto, Deputy Minister of the Interior of the Eastern Republic of Uruguay Dr. Alejo Fernández Chaves, Minister of Government of the Republic of Bolivia Licenciado Alfonso Ferrufino, Minister of the Interior of the Republic of Chile Dr. José Miguel Insulza and Ambassador of the Republic of Peru Mr. José Antonio Meier.

“the importance of complying with the provisions of the Vienna Convention on Consular Relations and the Charter of the United Nations” (paragraph XI).

The declaration also expresses “the commitment to combat the smuggling of migrants, human trafficking, trafficking in children and other forms of transnational crimes.” To this end, the states commit to “the development of instruments for exchange and effective cooperation” in police and judicial matters (paragraphs VIII and IX).

Additionally, the declaration reaffirms the strengthening of initiatives “to facilitate and regulate migratory flows among the countries of the region” (paragraph II), with the understanding that “immigration regularization is essential to achieve full inclusion of migrants into the host society”; highlights “the importance of using mechanisms of inter-agency coordination and cooperation with emphasis on the exchange of information” (paragraph XII); and, finally, recognizes that “migrations require a multidisciplinary and multilateral treatment” (paragraph XIII), and that it is necessary to adopt “policies that involve our nationals abroad” (paragraph XIV).

Agreements on Internal Migration Regularization

In 2002, the Meeting of Ministers of the Interior submitted for the consideration of the Common Market Council (CMC) Draft Agreements 11/02 on “Internal Migration Regularization of Nationals of the States Parties of MERCOSUR” and 12/02 on “Internal Migration Regularization of Nationals of the States Parties of MERCOSUR, Bolivia, and Chile.” These were approved during the XXIII Meeting of the CMC in Brasilia, Brazil, on 6 December 2002.⁵⁵

The adoption of these agreements was decided on the grounds that it was important for citizens of states parties and associated states to be provided, through legal instruments of cooperation, with expedite processing of their migration status regularization without having to return to their countries of origin. In this regard, both instruments stipulate, “nationals of a State Party who are in the territory of another State Party may pay for the immigration processing of their residence application in the latter, without having to leave.” This procedure will apply “irrespective of the category under which the petitioners entered the country and of the criterion chosen to determine their immigration status”, as the states Parties are entitled to “grant temporary or permanent residence in accordance with the immigration categories provided for in their domestic laws”.

Agreements on Residency for Nationals

In 2002, the Meeting of Ministers of the Interior submitted for the consideration of the Common Market Council (CMC) Draft Agreements 13/02 on “Residency for Nationals of the States Parties of MERCOSUR” and 14/02 on “Residency for

⁵⁵ Decision CMC No. 28/02, which approves the signing of the agreements drawn at the XXII Meeting of Ministers of the Interior of MERCOSUR, the Republic of Bolivia and the Republic of Chile.

Nationals of the States Parties of MERCOSUR, Bolivia, and Chile.” These proposals were approved during the XXIII Meeting of the CMC in Brasilia, Brazil, on 6 December 2002.⁵⁶

The adoption of these agreements was founded on the need to make progress in strengthening and deepening the integration process, through the implementation of a policy of expedite mechanisms to access regularization of migration status which would also contribute to a future freedom of movement of people in the region. To achieve these objectives, it was agreed that “the nationals of a State Party or Associated Party who wish to reside in the territory of another State Party or Associate may obtain legal resident status in the latter, through the accreditation of their nationality.” In addition, it was stipulated that people who obtain legal resident status in accordance with the provisions of the present agreements have the “right to enter, leave, circulate and remain freely in the territory of the receiving country,” and have “access to any kind of activity, whether self-employed or employed by others, under the same conditions as nationals of the receiving countries, in accordance with the laws of each country.”

Both instruments guarantee migrants and members of their families a number of rights, including the following:

- *Equal rights:* Nationals of the states parties and members of their families who have obtained legal resident status will enjoy the same rights and civil, social, cultural and economic freedoms as the nationals of the host country, in particular the right to work and to exercise any lawful activity under the conditions stipulated by the law; the right to petition authorities; the right to enter, stay, travel and leave the territories of the states parties; and the right of association for lawful purposes and to freely profess their faith
- *Family reunification:* The members of the family who do not have the nationality of one of the states parties will be issued a residence permit of identical duration to that of the person on whom they depend
- *Equal treatment:* In the territories of the states parties, immigrants will enjoy a treatment no less favorable than that accorded to the nationals of the host country with regard to the enforcement of labor legislation, especially in matters of wages, working conditions and social security
- *Pension commitment:* The parties will discuss the feasibility of signing reciprocity agreements in matters of social security
- *Right to transfer remittances:* Immigrants from the states parties will be entitled to freely transfer their *income* and personal savings to their country of origin, in particular the funds necessary for the livelihood of their families, in accordance with the internal regulations and laws of each of the states parties

⁵⁶ Ibid.

- *Rights of the children of immigrants:* The children who are born in the territory of a state party have the right to a name, birth registration, and nationality, in accordance with the respective domestic laws. Likewise, they have the fundamental right of access to education in the territory of the states parties, under conditions equal to those of the nationals of the host country. Access to preschool education institutions or public schools cannot be refused or limited on the grounds of the irregular migration status of the family

Additionally, these instruments establish various cooperation mechanisms aimed at preventing, detecting, and punishing natural or legal persons employing nationals of states parties under illegal conditions. In this regard, it is noted that such measures “will not affect the rights that may correspond to immigrant workers as a result of the work carried out under these conditions.” Finally, it has also been set forth that the agreements shall be enforced “without prejudice to the internal regulations or provisions of each State Party which may be more favorable to immigrants.”

The agreements on residence and regularization outlined above were endorsed by the presidents of MERCOSUR and the associated states in several joint communiqués. In this regard, on 6 December 2002, reaffirming “the political will to strengthen the fraternal links between our countries and to broaden and deepen the existing cooperation,” the presidents expressed “great satisfaction with the historical process which led to the adoption of the ‘Agreement on Residency for Nationals of MERCOSUR, Bolivia and Chile,’ whose entry into force will constitute a significant step towards the common goal of establishing the free movement of persons in the bloc,” as well as the Agreement on Internal Migration Regularization, an instrument that will greatly facilitate immigration procedures for nationals of MERCOSUR, Bolivia and Chile.⁵⁷

Likewise, in Ouro Preto, on 17 December 2004, the presidents reiterated that

*[T]he coming into force of the ‘Agreement on Residence for Nationals of the states Parties of MERCOSUR,’ a legal instrument which establishes rules to facilitate the obtaining of permanent residency for nationals of MERCOSUR in the territory of other States parties, will constitute an effective and important contribution on the road to freedom of movement as well as to providing the possibility of settling down in another country for the citizens of MERCOSUR.*⁵⁸

⁵⁷ Paragraph 14 of the *Comunicado Conjunto de los Presidentes de los Estados Partes del MERCOSUR, Bolivia y Chile*, XXIII Meeting of the Council of the Common Market, Brasilia, Federative Republic of Brazil, 6 December 2002.

⁵⁸ Paragraph 29 of the *Comunicado Conjunto de los Presidentes de los Estados Partes del Mercosur*, Ouro Preto, Brazil, 7 December 2004.

Initiatives Relating to Social, Labor, and Consular Policies

MERCOSUR Multilateral Agreement on Social Security

This agreement was approved by the Common Market Council in 1997,⁵⁹ by Recommendation 2/97 of Work Subgroup No. 10 “Labor, Employment and Social Security”. It aimed at establishing rules to regulate social security relations among the states parties of the region. In this regard, it recognized

[E]qual rights with regards to those specifically mentioned in this agreement [i.e., social security rights] to workers who provide or have provided services in any of the States Parties, as well as to their families and assimilated members, since they are also subject to the obligations as the nationals of said States Parties.

It also established that this agreement applied to workers of any other nationality residing in the territory of either of the states parties, provided that they have worked in any of said states parties (Article 2).

For the purposes of this instrument, the following definitions were used: a) *States Parties*—Brazil, Argentina, Paraguay, Uruguay and any other state that adheres to this agreement; (b) *Worker*—any person who, by carrying out or having carried out an activity, is or was subject to the legislation of one or more of the states parties; (c) *Period of insurance or contribution*—any period defined as such by the legislation under which the worker is admitted, as well as any period regarded by this legislation as equivalent to a period of insurance or contribution; (d) *Cash benefits*—any benefit paid in cash, income, subsidy or compensation provided for by the laws and benefits mentioned in the agreement, including any complement, supplement, or revaluation; (e) *Health benefits*—those intended to prevent disease, preserve and restore health, or professionally rehabilitate the worker under the terms provided for by the respective national legislations; (f) *Family members and assimilated persons*—persons defined or admitted as such by the laws mentioned in the Agreement (Article 1).

Mechanism of Consular Cooperation between MERCOSUR countries, Bolivia, and Chile

This instrument was approved by the Common Market Council in 2000⁶⁰ as a result of the interest of MERCOSUR countries, Bolivia and Chile in deepening cooperation and mutual support in the consular field; its objective was that every national of their countries could gain access to the protection and assistance of any diplomatic or consular representation of another state party to MERCOSUR in the territory of a third country, in the cases where there is no representation of their country of origin.

⁵⁹ Approved by Decision CMC No. 19/97, at the XIII Meeting in Montevideo, Uruguay, 15 December 1997, ratified by Argentina, Brazil, Paraguay and Uruguay, and entering into force in June 2005.

⁶⁰ Approved by Decision CMC No. 35/00 (XVII Meeting), Buenos Aires, Argentina, on 29 June 2000).

This mechanism, which was established in 1 August 2000, defined consular cooperation in terms of the following actions: a) authorize the use of the postal address of the consular office for the reception of private correspondence; (b) provide guidance for medical and legal assistance in the jurisdiction; (c) provide humanitarian assistance to people injured or in emergency situations and report these events to the country of origin of the appellant through the Bureau of Consular Affairs of the Ministry of Foreign Affairs which shall act as the competent diplomatic channel; (d) inform relatives or closely related persons about accidents, deaths and disasters through the same diplomatic channels; (e) take an interest in the nationals of the countries of MERCOSUR, Bolivia and Chile detained or in prison, communicating the situation to their country of origin through diplomatic channels; and (f) locate persons in the jurisdiction and transmit the information to their country of origin through diplomatic channels (Article 3). Likewise, the mechanism stipulates that member countries shall inform third states on whose territories this consular cooperation is exercised of the scope of the same, in the manner provided for by the Vienna Convention on consular relations (Article 4).

It should be noted that on 15 December 2000, in the context of the XIX Meeting of the Common Market Council, the leaders expressed “their satisfaction with the coming into force, as of August 1st, 2000, of the Mechanism of Consular Cooperation between MERCOSUR countries, Bolivia, and Chile within the territory of a third State.”⁶¹ Along the same lines, in the Joint Communiqué of Asunción in 2001, the presidents were pleased “by the results achieved in the implementation of this mechanism in third countries,”⁶² reaffirming the “relevance of consular action in the field of protection and assistance to nationals” and highlighting the functioning of the Consular Cooperation Mechanism” in the 2005 and 2006 Summits.⁶³

Initiatives Relating to Migrant Smuggling and Human Trafficking

Declaration of Asunción on Trafficking in Persons and Smuggling of Migrants

This declaration was adopted on 8 June 2001 in Asunción, Republic of Paraguay, in the framework of the IX Meeting of Ministers of the Interior. On that occasion the ministers, deeply concerned by the situations faced by victims of criminal organizations that profit from human trafficking and the smuggling of migrants, and aware of the fact that these practices, in all their forms, required the adoption of measures concerted at the regional level as well as the strengthening of

⁶¹ Paragraph 19 of the *Comunicado Conjunto de los Presidentes de los Países Miembros del MERCOSUR, Bolivia y Chile*, XIX Meeting of the Common Market Council, Florianópolis, Federative Republic of Brazil, on 15 December 2000.

⁶² Paragraph 15 of the *Comunicado Conjunto de los Presidentes de los Países Miembros del MERCOSUR, Bolivia y Chile*, XX Meeting of the Common Market Council, Asunción, Republic of Paraguay, 22 June 2001.

⁶³ Paragraphs 22 and 20 of the *Comunicados Conjuntos de los Presidentes de los Estados Partes del MERCOSUR y Estados Asociados* (Asunción, 20 June 2005 and Córdoba, 21 June 2006, respectively).

cooperation between countries to combat this typically transnational criminal activity more effectively and decided to sign the Asunción Declaration.⁶⁴

In this document, the signatories expressed the following: their condemnation of the aberrant practice of human trafficking and the smuggling of migrants; their willingness to ensure full respect for the human rights of migrants and their families; their commitment to adopt the necessary legislative measures to criminalize human trafficking and the smuggling of migrants, as well as the illegal activities incurred in order to enable or facilitate it; their determination to establish mechanisms for regional cooperation in the field of technical assistance and training for the investigation and detection of organizations dedicated to human trafficking and the smuggling of migrants; their decision to coordinate mechanisms for the detection of forged documents; their commitment to promoting the exchange of information and cooperation to provide technical assistance and training of human resources for helping the victims of human trafficking and smuggling of migrants, especially women and children; and their willingness to adopt effective measures to prevent their countries from being used as routes for human trafficking and for smuggling migrants into other states, especially those of MERCOSUR, Bolivia and Chile.

Agreements against the Smuggling of Migrants

In 2004, the Meeting of Ministers of the Interior submitted to the consideration of the Common Market Council (CMC) the Drafts Agreements entitled Agreement against the Illicit Traffic of Migrants among the States Parties of MERCOSUR and the Agreement against the Smuggling of Migrants among the States Parties of MERCOSUR, the Republic of Bolivia, and the Republic of Chile, which were approved at the nineteenth meeting of the CMC in Belo Horizonte, Brazil on 16 December 2004.⁶⁵

On that occasion, the CMC considered the following: actions to prevent and combat the smuggling of migrants effectively require cooperation, exchange of information and joint actions of the states of the region; the need to adopt measures to prevent, detect and punish this criminal behavior, and the need for a common procedure to act on this matter through the coordinated participation of the security forces and/or the police and other supervisory bodies. These considerations were expressed unanimously in the Declaration of Asunción. With respect to purposes, both agreements were designed to prevent and combat the smuggling of migrants, as well as to promote cooperation and exchange of information among the states parties. These instruments included definitions and various provisions of the Protocol against the Smuggling of Migrants by Land, Sea, and Air that supplements the United Nations Convention against Transnational Organized Crime.

⁶⁴ It was signed by the minister of the interior of Argentina, the minister of justice of the Federal Republic of Brazil, the minister of the interior of the Republic of Paraguay, the minister of the interior of the Eastern Republic of Uruguay, the states' parties of MERCOSUR, the minister of government of the Republic of Bolivia and the minister of the interior of the Republic of Chile.

⁶⁵ Decision CMC 37/04 approving the Agreements against Illicit Traffic in Migrants, 16 December 2004.

Montevideo Declaration against Trafficking in Persons in MERCOSUR and Associated States

The Montevideo Declaration against trafficking in persons in MERCOSUR and associated states was approved on 18 November 2005 in the framework of the XVIII Meeting of Ministers of the Interior in Montevideo, Uruguay.⁶⁶ The participating authorities, concerned about the increase at the international level of this complex crime that affects people in a situation of vulnerability (especially women and children), aware of the importance of joining efforts through effective cooperation among the countries of the region, and committed to seeking joint mechanisms to prevent and combat successfully organized networks that profit from the exploitation of people, decided to sign the declaration of Montevideo, in which the following purposes were expressed: a) condemnation of the crime of human trafficking; (b) the adoption of vigorous measures to prevent and combat human trafficking in the region; (c) a commitment to promote the criminalization of human trafficking in the legislations of the states signing the present declaration; (d) the development of programs of institutional strengthening in order to improve the efficiency and effectiveness of the organizational structures dedicated to migration control, prevention, assistance to victims and the fight against networks that profit from the exploitation of persons; (e) the adoption of measures to protect and provide assistance to victims of human trafficking; (f) the commitment to promote legislative measures to confiscate the means used for and the profits obtained from this crime; g) the generation of mass media campaigns to raise social awareness and warn potential victims; (h) actions aimed at forming and training public officials and servants; (i) the promotion of regional cooperation to eradicate the crime of trafficking, strengthen inter-agency collaboration and information sharing and optimize existing IT resources as well as develop joint proposals.

This declaration, which was received by the presidents of the member states of MERCOSUR and associated states⁶⁷ with great satisfaction, was made known at the First Meeting of National Authorities on Trafficking in Persons of the Organization of American States (OAS), held in Venezuela in March 2006.

MERCOSUR Plan of Action to Combat Trafficking in Persons

This plan of action was defined within the framework of the XIX Meeting of Ministers of the Interior held in Buenos Aires on 8 June 2006. It aimed at the

⁶⁶ It was signed by the minister of the interior of the Republic of Argentina, the vice minister of justice of the Federative Republic of Brazil, the vice minister of political affairs of the Ministry of the Interior of the Republic of Paraguay, the minister of the interior of the Eastern Republic of Uruguay, the minister of government of the Republic of Bolivia, the undersecretary of the interior of the Republic of Chile, the representative of the minister of the interior of the Republic of Peru, the minister of the interior of the Republic of Ecuador, the vice minister of the interior of the Republic of Colombia and the minister of the interior and justice of the Bolivarian Republic of Venezuela.

⁶⁷ Paragraph 23 of the *Comunicado Conjunto de los Presidentes del MERCOSUR y Estados Asociados*, XXIX Meeting of the Common Market Council, Montevideo, Uruguay, 9 December 2005.

creation of an operational and efficient mechanism of cooperation, coordination and monitoring to combat trafficking in person and to the attempt to find a comprehensive solution to the problem within the territory of MERCOSUR and associated countries. The regional approach to combat human trafficking had its main focus on the urgent need for the reduction of this crime and for the adoption of effective prevention measures in the shortest time possible. The plan included biannual meetings to present advancements, initiatives and proposals, as well as the development of sensitization campaigns to warn the public of the danger of human trafficking, all launched simultaneously in every country in the region aimed at informing about this crime, raising public awareness and encouraging civil society to denounce it. In addition, the plan urged states to implement mechanisms to normalize the migration status of the victims.

Special Protective Measures for Minors Traveling between Countries in the Region

In 2006, the Meeting of Ministers of the Interior submitted to the consideration of the Common Market Council (CMC) a draft for an Agreement on the Procedure for the Verification of Arrival and Departure Documentation for Minors among Member and Associated States of MERCOSUR.⁶⁸ The purpose of this instrument was to carry out actions aimed at preventing the traffic of minors. It proposed the adoption of effective and coordination measures at the regional level to increase protection for minors traveling between countries, stressing the harmonization of current legislations and the strengthening of mechanisms for cooperation between migration control agencies with regard to document verification required for the departure and arrival of minors, whether national or residential.

Information and Prevention Campaign regarding Human Trafficking

This campaign was approved by the Common Market Council in 2006⁶⁹ as a result of the concern expressed by the presidents of MERCOSUR and associated states in their joint communiqués on 18 June 2003 and 20 June 2005, which highlighted the growing problem of human trafficking, especially of women and children, and the need for coordinated actions in this matter with a view to strengthening policies to combat this scourge. In the recitals, it was stated that in order to contribute to the prevention of human trafficking, it “is convenient to send a message to the public opinion of the States Parties and associated parties to sensitize and alert all sectors of the population and to promote a greater understanding of this issue.”

This decision, which does not need to be incorporated into the domestic legal order since it regulates aspects of the organization or operation of MERCOSUR, urges

⁶⁸ Meeting of Ministers of the Interior of MERCOSUR and associated states, held in Buenos Aires, Argentina, on 8 June 2006.

⁶⁹ Approved by CMC Decision 12/00 (XXX Meeting, Cordoba, Argentina, 20 July 2006).

states parties and associated parties to coordinate initiatives and national information and prevention campaigns to fight the crime of human trafficking, especially of women and children, with a view to the realization of a regional campaign through graphic and audiovisual media in the regional context of MERCOSUR and the associated states (Article 1). The monitoring and coordination of this campaign would be carried out by the Specialized Meeting on Women of MERCOSUR with the participation of all the bodies of the regional bloc that included the crime of human trafficking in their agendas (Article 3). This decision also provided for the establishment, at a regional block level, of a “Day against Human Trafficking” that could coincide with the launch of the above-mentioned campaign (Article 2).

Annex 5

Civil Society Organizations Participating in the “PROGRAMA PATRIA GRANDE”

List of Non-Governmental Organizations that participated in the processing of applications to the Programa Patria Grande. City of Buenos Aires and parties of Gran Buenos Aires. Years 2006-2007.
Asociación Civil de Derechos Humanos, Mujeres Unidas, Migrantes y Refugiadas
Asociación Civil La Casita de María Milagrosa
Asociación Civil Luchadores
Asociación Civil Luz de Sol
Asociación Civil Sin Fines de Lucro “Inténtalo Que Puedes”
Asociación de Uruguayos Residentes en Argentina
Asociación de Vendedores Independientes de la Vía Pública de la República de Argentina
Asociación Mutual Buenos Aires
Asociación Mutual de Mujeres Paraguayas Organizadas
Asociación Peruanos Sin Fronteras
Asociación Vecinal y Biblioteca Escalada
Biblioteca popular General Juan Martín de Pueyrredón
Casa Cultural Uruguaya del Sur
Central de los Trabajadores Argentinos
Centro de Residentes Hogar Paraguayo 7 de Agosto
Círculo Argentino-Paraguayo de Ituzaingo
Colectividad Boliviana Unida 6 de Agosto
Colectividad Paraguaya de Florencio Varela
Cooperativa de Vivienda, Crédito y Consumo Barrio Urquiza Ltda.
Cooperativa de Trabajo 20 de Diciembre Ltda.
Cooperativa de Trabajo Madres del Sur Ltda.
Cooperativa de Trabajo Tinkunaku
Cooperativa Vivienda, Crédito y Consumo “Las Antenas” Ltda.
Cooperativa Nande Roga Ltda.
Coordinadora de la Colectividad Boliviana
Federación Paraguaya (Fepara)
Fundación Comisión Católica Argentina de Migraciones
Fundación Ecológica “Por una vida mejor”
Iglesia Evangélica Pentecostal la Esperanza de Laferrere
Instituto Abierto para el Desarrollo y Estudio de Políticas Públicas
Madres de Constitución
Mujeres Peruanas Unidas, Migrantes y Refugiadas
Nuestro Refugio de Satélite li Moreno
Sociedad de Fomento Parque San Justo
Un Mundo Nuevo
Viudas y Familiares de Policías Federales Caídos en Cumplimiento del Deber

Source: Website: www.patriagrando.gov.ar (Years 2006–2007).

Annex 6

Actions taken by Civil Society

CIVIL SOCIETY TYPOLOGY	NAME OF THE CENTER OF STUDIES/ YEAR OF CREATION								
	CENTERS FOR STUDIES IN MIGRATION	CEMLA Center for Latin American Migration Studies, Buenos Aires (1985)	IEHS-UNICEN Institute of Historical/ Social Studies, National University of the Province of Buenos Aires, Tandil (1986)	IDES Institute of Economic and Social Development, Buenos Aires (1960)	MDS-UNLU Master's Degree in Social Demography, National University of Luján (1986)	IIGG-UBA Study Group on Population, Migration and Development, Gino Germani Research Institute, University of Buenos Aires (1994)	CeDH-UNLa Human Rights Center, National University of Lanús (2001)	GIIPSI-UBA Group for Socio-Cultural Research and Intervention on Migrant Populations, University of Buenos Aires (2007)	GESP-UBA Group for Social Studies on Paraguay, University of Buenos Aires (2008)
ACTIONS ON MIGRATION	Definition of migration policies and programs	X					X		X
	Research and analysis of migration matters	X	X	X	X	X	X	X	X
	Defense of the rights of Migrants	X		X			X	X	X
	Assistance in legal, health, labor, and education matters							X	X
	Organization of migrant workers								
	Migration management (guidance/ processing)							X	X
	Organization of cultural, social, and sports activities	X		X			X	X	
	Awareness Raising on migration /information dissemination	X					X	X	X

CIVIL SOCIETY TYPOLOGY	NAME OF MIGRANT ASSOCIATION						
	MIGRANT ASSOCIATIONS (year of creation)	Casa Paraguaya (1953)	Centro de Residentes Iteños en Buenos Aires (1967)	MPUMR Mujeres Peruanas Unidas, Migrantes y Refugiadas	Agrupación Manos Chilenas en Argentina (2006)	Casa del Perú en Argentina (2009)	Abogados Bolivarianos en Argentina (2010)
ACTIONS ON MIGRATION	Definition of migration policies and programs	X	X	X			X
	Research and analysis of migration matters			X			
	Defense of the rights of Migrants			X			X
	Assistance in legal, health, labor, and education matters	X	X	X	X	X	X
	Organization of migrant workers						
	Migration management (guidance and processing)	X	X	X			
	Organization of cultural, social, and sports activities	X	X	X	X	X	
	Awareness Raising on migration /information dissemination	X			X		X

CIVIL SOCIETY TYPOLOGY	NAME OF THE TRADE UNION		
SOCIAL INTERMEDIATION ORGANIZATION	TRADE UNIONS (year of creation)	FUNDACIÓN UOCRA Construction Workers Union 1993	DEPARTAMENTO DE IDENTIDAD CTA CAPITAL Central Federation of Argentinean Workers (2006)
ACTIONS ON MIGRATION	Definition of migration policies and programs	X	X
	Research and analysis of migration matters	X	
	Defense of the rights of Migrants	X	X
	Assistance in legal, health, labor, and education matters	X	X
	Organization of migrant workers	X	X
	Migration management (guidance and processing)	X	X
	Organization of cultural, social, and sports activities	X	X
	Awareness Raising on migration /information dissemination	X	X

CIVIL SOCIETY TYPOLOGY	NAMES OF THE FEDERATIONS			
INTERMEDIATION ORGANIZATIONS FOR MIGRANT GROUPS	FEDERATIONS OF GRASSROOTS ORGANIZATIONS (year of creation)	CES-DAIA Center of Social Studies Delegation of Argentinean Israelite Associations (1967)	FEPARA Paraguayan Federation of the Republic of Argentina (2003)	ACIFEBOL Bolivarian Federative Civil Association (2008)
ACTIONS ON MIGRATION	Definition of migration policies and programs		X	X
	Research and analysis of migration matters	X		
	Defense of the rights of Migrants	X	X	X
	Assistance in legal, health, labor, and education matters		X	
	Organization of migrant workers			
	Migration management (guidance and processing)		X	X
	Organization of cultural, social, and sports activities		X	X
	Awareness Raising on migration /information dissemination	X	X	X

CIVIL SOCIETY TYPOLOGY	NAMES OF THE ORGANIZATIONS REPRESENTING CHURCHES						
ECCLESIAL AND ECUMENICAL INTERMEDIATION ORGANIZATIONS	ASSOCIATIONS REPRESENTING CHURCHES (year of creation)	Missionaries of Saint Charles – Scalabrinians (1939)	FCCAM Catholic Commission for Migration – Fundación Comisión Católica para las Migraciones (1951)	CAREF Ecumenical Support and Orientation Service for Migrants and Refugees (1973)	Pastoral Migratoria Pastoral Care of Migrants of the Archdiocese of Buenos Aires (1993)	Jesuit Migrant Service (2003)	Migrant Assistance Center – Scalabrinian Sisters (2005)
ACTIONS ON MIGRATION	Definition of migration policies and programs	X	X	X	X		
	Research and analysis of migration matters	X	X	X	X	X	X
	Defense of the rights of Migrants	X	X	X	X	X	X
	Assistance in legal, health, labor, and education matters	X	X		X		
	Organization of migrant workers						
	Migration management (guidance and processing)	X	X	X	X	X	X
	Organization of cultural, social, and sports activities	X	X			X	X
	Awareness Raising on migration /information dissemination	X	X	X	X	X	X

CIVIL SOCIETY TYPOLOGY	NAMES OF NON-GOVERNMENTAL ORGANIZATIONS						
	NON- GOVERNMENTAL ORGANIZATIONS	CELS Center of Legal and Social Studies 1979	MYRAR Association of Migrants and Refugees in Argentina (2002)	AMURA Association of United, Migrant and Refugee Women of Argentina (2005)	Save the Children (2006)	EEM Space for Migration Studies (2008)	CRYMAF Center for African Refugees and Migrants (2010)
ACTIONS ON MIGRATION	Definition of migration policies and programs	X	X	X	X	X	
	Research and analysis of migration matters	X	X		X	X	
	Defense of the rights of Migrants	X	X	X	X	X	X
	Assistance in legal, health, labor, and education matters	X	X	X			X
	Organization of migrant workers						
	Migration management (guidance and processing)	X		X		X	X
	Organization of cultural, social, and sports activities		X	X			X
	Raising of migration awareness/information dissemination	X	X	X	X	X	

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CHAPTER II

PUBLIC POLICIES AND INTERNATIONAL MIGRATION IN BRAZIL

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LIST OF ACRONYMS

ABEP (BASP)	Brazilian Association of School of Psychology
ABEP (BAPS)	Brazilian Association of Populace Studies
ACFBB (ACFBB)	Association of Cultural Folklore Bolivia-Brazil
ACNUR (UNHCR)	United Nations High Commissioner for Refugees
ADRB (BRA)	Bolivian Residents Association
AILAC	Association for the Integration of Latin Americans of Curitiba
ALAP (LAPA)	Latin American Populace Association
APEBRA (PBP)	Peru-Brazil Partnership
ARPA (RAPA)	Recreational Association of Paraguaia de Aquidauana
ASBRAD (BAWPIY)	Brazilian Association of Women Protection, from Infancy to Youth
BID (IBD)	Inter-American Bank of Development
BOLBRA	Bolivia-Brazil Association
CAMI (MSC)	Migratory Support Center
CCB-PR (BCC-PR)	Bolivian Cultural Center of Paraná
CDHIC (CHRIC)	Center for Human Rights and Immigrant Citizenship
CEAMIG (MCC)	Migratory Care Center
CEDEPLAR (CRPD)	Center for Regional Planning and Development
CELADE (LACPA)	Latin-American Center for Population Analysis
CEM (CMS)	Center for Migration Studies
CESPROM (SCMP)	Scalabrini Centre for Migratory Promotion
CGI (GICD)	General Immigration Coordination Department
CIATE (CISWA)	Center for Information and Support for the Worker Abroad
CIBAI (IBMCAE)	Italian-Brazilian Migratory Center for Assistance and Education
CIE (FIC)	Foreigner Identification Card
CNBB (NCBB)	National Conference of Brazilian Bishops
CNIG (NIC)	National Immigration Council

CNPD (NCPD)	National Commission of Population and Development
CONARE (NCR)	National Council of Refugees
CONSU (UC)	University Council
CPI (PIC)	Parliamentary Inquiry Committee
CPM (PCM)	Pastoral Center for Migrants
CS (SC)	Scalabrini Congregation
CSEM (SCMS)	Scalabrini Center for Migration Studies
DHS	Department of Homeland Security
DOU (OUG)	Official Union Gazette
ECA (CYA)	Children and Youth Act
EUA (USA)	United States of America
FFLCH (SLPHS)	School of Literature, Philosophy and Human Sciences/USP
FMI (IMF)	International Monetary Fund
FNUAP (UNPF)	United Nations Population Fund
GEMA (AMSRG)	Amazon Migration Studies and Research Group
GPTEC (RGCS)	Research Group for Contemporary Slavery
IBGE (BIGS)	Brazilian Institute of Geography and Statistics
IDDAB (IADD)	Institute of African Diaspora Development
IMDH (MHRI)	Migration and Human Rights Institute
IMILA (RSIMLA)	Research Studies for International Migration in Latin America
IN (CI)	Customary Instruction
INE (NSIS)	National Statistics Institute of Spain
IPEA (RIAE)	Research Institute for Applied Economics
IPPUR (RIURP)	Research Institute for Urban and Regional Planning
ISEC (ECSI)	Educational and Cultural Solidarity Institute
JRS	Jesuit Refugees Service
LABUR (LUG)	Laboratory of Urban Geography/USP
LEI (LSI)	Laboratory Studies on Intolerance
MDIC (ADIT)	Agency of Development, Industry and Trade
MERCOSUL	Southern Common Market
MRE (AIA)	Agency of International Affairs
MSCS (MSSCBS)	Missionary Sisters of St. Charles Borromeo Scalabrini

MTE (DLE)	Department of Labor and Employment
NEPO (CPS)	Center for Population Studies
NESUR (CSURE)	Center for Social, Urban and Regional Economy
NIATRE (ISCBWRA)	Information and Service Center for Brazilian Workers Returning from Abroad
NIEM (ICMS)	Interdisciplinary Center for Migration Studies
OEA (OAS)	Organization of American States
OIM (IOM)	International Organization for Migration
OIR (IOR)	International Organization for Refugees
OIT (ILO)	International Labor Organization
ONU (UN)	United Nations
PEC-G (APHE-U)	Academic Policy for Higher Education (Undergraduate)
PEC-PG (APHE-G)	Academic Policy for Higher Education (Graduate)
PL (BM)	Bill Motion
PUR (RUP)	Regional and Urban Planning
REMHU (IJHM)	Interdisciplinary Journal of Human Mobility
RG (IC)	Identification Card
RMs (MA)	Metropolitan Areas
RNE (NFR)	National Foreign Registry
SESC (SSC)	Social Service of Commerce
SIMN	Scalabrini International Migration Network
SOCAM	Service Organization for Compliance Audit Management
SRT (BLR)	Bureau of Labor Relations
SRTE/SP (RDL-SP)	Regional Director of Labor of the State of São Paulo
UFAM (FUA)	Federal University of Amazon
UFMG (FUMG)	Federal University of Minas Gerais
UFRJ (FURJ)	Federal University of Rio de Janeiro
UNASUL (SANA)	South American Nations Alliance
UNECHILE (NACI)	National Association of Chilean Immigrants
UNICAMP (SUC)	State University of Campinas
USP	University of São Paulo

Introduction

Neide Patarra

The Dimensions of International Migration Policies in Today's World

This text incorporates the understanding of recent contextualized international migration from macro structural processes and production restructuring in the international context of the current stage of globalization in its multiple dimensions and ramifications. The growing importance of international migration in the context of globalization has been the subject of many noteworthy contributions, both theoretical and empirical, that vouch for its diversity and implications. A significant part of this supply of contributions reflects greatly on the economic, social, political, demographic and cultural progress in the international arena, particularly since the 1980s.

The debate highlights ideological positions and worldviews that oppose each other in an attempt to cope with the crisis and contradictions of the capitalist authority in the current stage of development that, after the end of the Cold War and the expansion of the ease of capital accumulation, align both developed and developing countries. Some such positions may hold in check the possibilities of those who do not belong to the plethora of the rich, industrialized and developed, keeping them poor and underdeveloped. These dynamics generated the new contours of poverty and exclusion, new small internal “oases” of economic aggressiveness and new limits on the actions of welfare state policies and social protection.

Studying the subject, it becomes imperative to consider the context of struggle and international commitments toward the expansion and realization of migrant human rights, but it is also necessary to discuss which social groups are considered in the official policies supporting human rights. It is essential to recognize in this context that the international migration movements represent the contradiction between the interests of dominant groups in globalization and the national states, with the traditional viewpoint of their jurisdiction. One must take into account the tensions between international, national and local actions. Finally, it must be considered that the international migration movements constitute the counterpart of the absolute territorial restructuring, essentially related to the economic-productive restoration on a global scale.

Human rights, in this context, became the accepted and legitimate instrument of domestic and international alliance. Migration policies are thus celebrated and formulated from this accreditation. This outcome is still far from completion; there is much to be done by investigating the loopholes that the international proposals for migratory administration tend to design. The proposals from international organizations—even regarding manifesting institutional legal measures for the realization of migrant human rights through partnerships, bilateral or trilateral and multilateral agreements on one hand and the structure of regional economic

integration agreements on the other—form an important gap in the monitoring of migratory policies; hence, the crucial role of social movements and other civic society organizations.

MERCOSUR's recent agreements on free circulation of people, celebrated by members and associates of the country, may bring profound changes in the context of international, intraregional migration that deserve further study regarding questions such as what portion of the social pyramid will move between countries with different economic dynamics, reproducing within an intraregional context the situations of brain-gain and brain-drain observed in South-North migratory relationships (Diniz-Fernandes, 2009).

Human Rights Perspective: Contradictions and Tensions

The Universal Declaration of Human Rights guarantees rights to migrants. In Article 15, it guarantees individuals the right to have rights (i.e., the right to a nationality, to not lose it and to change nationalities); in Article 14, the right to seek asylum in cases of persecution; and in Article 13, paragraph 2, the right to leave (the right to leave one's original nation and to return at one's will).

The Declaration, however, has no binding legal force. That is, there is no structure to compel the states to follow its provisions. Nonetheless, it is important, considering it encouraged and still encourages the emergence of assemblies, agreements and both nongovernmental and governmental organizations concerned with the issue of Human Rights.

In addition, this document states that the decision-making autonomy of the state as to who can enter or reside in its territory remains assured. The same Article 13, in paragraph 1, clearly establishes that freedom of mobility and residence is limited to "within the borders of each state." There is nothing like a "right of entry" that can be equated with the right to leave. Article 14 guarantees every individual "subjected to persecution... the right to seek and to enjoy asylum in other countries," but no country is obliged to accept the asylees.

The Declaration of Human Rights, in its most conventional interpretation, would serve only to regulate the relationship between states and their citizens. With the growing recognition of the individual in the international platform and with the increasing number of immigrants in the world, however, it has become increasingly common to regulate the relationships between the recipient governments and their immigrants.

The first international body to produce a specific legislation on migration was the International Labor Organization (ILO). In 1949, the ILO produced the Convention on Migration Workers (n. 97), and then, in 1975, the Convention on Migration Workers (Supplementary Provisions) (n. 143). The two assemblies advocated an effort by states to disclose information that could facilitate the immigration process and sought to ensure that immigrants receive the same treatment and have the same rights as national workers, regardless of their nationality, race,

religion or gender. The big difference seen in the second Assembly in relation to the former is the inclusion of articles related to irregular immigration and trafficking of persons and of paragraphs relating to cultural rights.

Cultural rights are one of the most controversial arguments of the new assemblies on immigrants and minorities rights, in terms of both international and domestic law. The basic definition of cultural rights is to facilitate “the integration of migrant workers and their families in the social environment of the hosting States without losing their cultural identity” (UN, 1990, 6). These rights usually involve policies aimed at language preservation, religion and other elements of the culture of immigrant groups. Since the sixties, with the strengthening of the ideology of cultural diversity, the concern with cultural rights has extended to indigenous minorities. The discussion of cultural rights is an ever-growing topic in both national and international debates, for it deals with controversial issues such as national culture and the right to change, among others.

The two ILO Conventions have a low approval rate, especially the second (47 countries on the first and 23 countries on the second). In both cases, large immigrant hosting countries are absent, such as Australia, the United States and France.

In 1985, the Economic and Social Council of the United Nations adopted a declaration in which it recognized the need for greater international regulation on the subject. In 1990, after a long period of negotiations, it adopted the International Assembly on the Protection of Rights of All Migrant Workers and Members of their Families (December 18, 1990), at the General Assembly of the organization. In 1993, the Assembly reached the required minimum number of approvals to enter into force. However, major countries involved in contemporary migration flows are not signatories of the Assembly.

The Convention requires that legal immigrants be treated the same way as citizens at the workplace; it also requires that they be informed of their rights in a language they understand and that they have recourse to the judiciary in case of deportation; it also establishes rules for recruiting foreigners. One of the most controversial points is the requirement that immigrant workers have their rights respected, regardless of their standing. Important topics such as family migration have been set aside by the assembly for lack of a consensus.

The growing importance of international migration on the international platform can also be measured by the proliferation of meetings and organizations that have migration as their primary theme (Global Commission on International Migration, established by the UN Secretary General in 2003, High-Level Dialogue on International Migration and Development UN, 2006; Ibero-American Summit, 2006; Global Forum on Migration and Development, which takes place annually since 2007, among others) as well as for its leading role in larger conferences such as those relating to population, employment and combating racism (World Conference on Human Rights, part 2, paragraphs 33–35; International Conference on Population and Development, Chapter 10; World Summit for Social Development, ch. 3 and 4 and Fourth International Conference on Women, ch. IV. D).

It is important to note that the relationship between human rights and migration also involves the assertion of a *right not to migrate*, the concept that the individual should be offered conditions to obtain his livelihoods and build his life in his home country. Thus, we reaffirm the inevitable connection between migration and decisions involving other aspects of economic and political life in societies. The prospect of Human Rights, although fundamental because it helps us build guidelines, does not annihilate the need to define the objectives of migration policy. This definition, in turn, cannot be done without considering migration within a broader context.

The Context of Latin American Countries and Brazil

From a historical perspective, Latin American countries have gone through three stages with regard to international migration, namely the following:

1. Until approximately 1950, these countries (mainly Argentina, Brazil, Uruguay and Chile) were the destination for migration from overseas (mainly Italian, Portuguese and Spanish, and in Brazil's case, the Japanese)
2. In the 1960s, an emigration destination began for developed countries, mainly the United States, Canada, Spain and some other European countries
3. Over time and with varying capacities, these countries showed significant intraregional migration movements, with Argentina, Costa Rica, Venezuela and later Chile being the main hosting countries

Since the 2008 economic crisis, a decrease in flow to foreign countries can be observed. Although a trend, this trend persists (mainly in Mexico and other Central American countries and the Caribbean), and the number of Latin Americans returning to their home countries has also been reduced, even where governments, through specific policies, encourage such return movement.

Brazil, in this context, generally follows the trends and regional stages, with some special features: its territorial extension; being a slave nation until 1888; strong Japanese immigration since the late nineteenth century; and the prominence of inequalities between regions in the country.

The first part of this study covers a historical review of international migratory movements, a quick consideration of population development and the onset and dynamics of Brazilians abroad and the current context, with diversified emerging emigration movements but mainly of immigration to the country. This context is supported by the national objective of strengthening the democracy, political stability, substantial economic development, poverty reduction, middle class increase, high rates of investment and so forth. All this has projected the country in international forums and favors the immigration attraction, which has increased especially with the Latin American countries and some African countries.

The second part describes the institutional legal apparatus that defines programs and actions in the face of international migration and supports the official proposals of migration policies.

Finally, the third part reconstructs the predominant vision of civil society in general and particularly of the major players involved. It seeks to actualize the position of the immigrant, mostly undocumented, with regard to the rawness of precarious situations, the deficiencies accumulated, their search for access to livelihood, their experiences of discrimination and xenophobic reactions, their struggle to gain documentation and access to jobs—among other dimensions—and their daily life. The actions, programs, support and commitment of civil society advocates are the basis of this overview, which supports the proposals submitted.

At the end this introduction, with intense emotion, we turn to the words of Father Alfredo:

No need to add an end. But this may be due to the strength and stubbornness, of hope and dream that put immigrants in constant motion. Many are orphans from wars, conflicts and all kinds of violence; others orphans of poverty, misery and hunger, and others are workers in transition on land, air or water. Migrants, refugees, deported, exiled, seamen, travelers, gypsies, fugitives of “natural disasters,” temporary workers... They are above all strong, to paraphrase Euclides da Cunha. Strong because they transform the escape into a pursuit (Father Alfredo J. Gonçalves, *Migrations in Line*, 2010).

DE TE FABULA NARRATUR*This story is about you*

(Horace. Roman poet and philosopher, 65 BC–8 BC)

PART I**MIGRATION AND DEVELOPMENT***Neide Patarra and Duval Magalhães***1. Historical Retrospective****1.1. The Brazilian Migration at the End of the Nineteenth Century and Early Twentieth Century**

The history of immigration in Brazil begins with Portuguese colonization, aiming at the military and economic ownership of the land, the implementation of agriculture that initiated the traffic of African slaves and a forced migration that lasted for three decades (until 1850), which added to the colony an estimated four million slaves.

In the first decades of the twentieth century, the movement started to diversify with the experiments of free immigration, directed at non-Portuguese as well. A project of agricultural colonization, with goals of protection and settlement of the land and its base on the small polyculture properties, attracted Germans, Italians and other foreigners to the south of the country. By mid-century, immigrants were guided on the production of coffee in the western part of São Paulo; others were directed to work on urban infrastructures and in the construction of roads and highways.

The abolition of slavery by the end of the nineteenth century provided a new scenario and brought new challenges along with it; the great expansion of the coffee production, associated with the lack of a satisfactory transiency of workers in the national territory, allowed for Brazilian immigration. During this break, Europe was dealing with the growth of an emergent industrialization—one that attracted a great number of the population to cities—and with the effects of the demographic transition⁷⁰ (Levy, 1974). The fusion of these factors led to a considerable number of individuals being excluded from the European working market. Such factors contributed to a substantial wave of immigrants from Europe to Brazil as early as the 1870s (Brito, 2004).

⁷⁰ For the first time in history, mortality rates were kept stable for decades while the birth rate stayed elevated, which prompted a considerable population growth (Fausto, 2000).

Due to the growing need for skilled labor, a migration policy began; Brazil lagged behind other countries in the Americas with regard to the length of the slave regime in the country. Thus, a period of large-scale immigration from Europe to America, especially to Brazil, occurred between 1870 and 1930. During this interval, estimates indicate that 40 million people have migrated from the Old to the New World (Oliveira, 2001).

Because coffee was the main product capable of integrating Brazil with the international trade, it then became of great government interest to solve the inconvenient problem with the production: the lack of skilled labor. Moreover, there was still the need to increase food production to meet the growing consumer market of Rio de Janeiro and São Paulo. Thus, based on a view that European immigrants were the only ones able to build a civilized and modern Brazilian nation, the government encouraged European immigration (Furtado, 1998). These immigrants had two distinct ways to reach the country: through private agency or through government initiatives.

Migration by private agency proved to be a failure because private agencies were unable to ensure an effective transition to free labor. Thus, government initiatives directly assumed responsibility for advertising, recruitment, transportation, admission and distribution of immigrants among the various Brazilian farms.

The culmination of European migration to Brazil occurred in the last two decades of the nineteenth century, between 1877 and 1903, when the country received about 2 million immigrants, with Italians accounting for approximately half of this number (Pacheco and Patarra, 1997). The immigrants brought to Brazil included impoverished people coming from the north and northeast of Portugal as well as from rural areas of Spain and Italy. They were absorbed into the coffee industry and the developing Brazilian industry and settled mostly in the states of São Paulo and Rio de Janeiro. Concurrently, the country also saw itself in trouble with the migration of groups from the northeast, due to the drought, bound to the South-center of Brazil (Oliveira, 2001).

For better understanding of migration dynamics in Brazil in the late nineteenth and early twentieth century, Levy (1974) divides the entry of immigrants into periods. According to the author, 350,117 immigrants entered the country before 1876, among whom 45.73 percent were Portuguese, 35.74 percent were of “other nationalities,” 12.97 percent were Germans and less than 6 percent were Italians and Spaniards.

In the second period (1877–1903), there is a variation of the trends observed in the previous period: it is characterized by an intense Italian immigration (58.49 percent) and a relative decrease in the participation of the Portuguese (20 percent). In this timeframe, 1,927,992 persons entered Brazil, or an annual average of 71,000. Until 1876, the Portuguese were the largest contingency of foreigners, while in 1877 the number of Italians doubled compared to the previous year (Levy, 1974).

In the first decades of the twentieth century, a project of rural colonization, deployed with the objective of promoting the settlement of the land, attracted anew a sizeable contingency of Europeans to the south and southeast of Brazil (Bassanezi,

1999). In the third period (1904 to 1930), 2,142,781 immigrants entered Brazil, with an annual average of 79,000 people. From 1915 to 1918, there was a reduction in the number of foreign entries in Brazil, when the annual average increased to 27,000 people. Since then, the Portuguese have become, once again the largest number of foreigners; there has also been increased immigration of “other nationalities” (Levy, 1974).

In late December 1930, the first restriction measures on the entry of international immigrants in the country were published. Such measures were a reflection of the economic crisis experienced by the world in 1929, with the consequent coffee crisis (Baeninger and Soares, 2009). The restrictions progressed until settlement of quotas was introduced into the Constitution in 1934 and then in 1937 as well. This scenario begins the last period of the great migration to Brazil, which lasted approximately 33 years (1931 to 1963) and is parallel to the passage of the Brazilian economy to a new chapter.

1.2. The Brazilian Population during 1930 to 1980

In the first half of the 1930s, the Japanese began to enter the country in large numbers, becoming about 44 percent of foreign immigrants. However, in 1934, with the adoption of a restrictive policy by the Brazilian government, the Japanese immigration was reduced until it ceased completely in 1940 (Suzuki, 1995). Thus, the years corresponding to World War II, particularly from 1942 to 1945, show a rather small number of entries of immigrants in Brazil, around 2,000 people per year (Levy, 1974).

The 1930s represent the drastic change that occurred in Brazil’s international migratory pattern. International migration, which until then was a major factor in shaping the Brazilian population, gave way to internal migration. Once more, the economic dynamics played a decisive role in shaping this new reality.

Shortly after World War I, the price of coffee underwent a sharp increase; therefore, its marketing eventually produced a considerable amount of capital. This surplus provided funds that allowed Brazil to promote industrial investment. Subsequently, the crisis of 1929 and the 1930 revolution ultimately derailed the coffee monoculture and it was no longer the main economic activity of the country. As a result, the production was to be directed to the domestic market and industrialization began to gain ground through the process of import alternatives (Baeninger and Soares, 2009).

The combination of these phenomena ultimately led to changes in the distribution profile of the Brazilian population (Baeninger and Soares, 2009). This period was marked by interstate and intrastate migrations called a “metropolizing population” in which individuals sought to target the big cities, believing they would present better conditions of life and work. Eventually, the growth rates of metropolitan areas were higher than those observed in the respective states and the average annual population growth of large urban centers became significantly higher than the rates of growth in peripheral cities as well (Rodarte, Fernandes and Ojima, 2000).

A series of improvements promoted in urban areas contributed to the enormous attraction that these spaces have come to play in the Brazilian population, among which stand out the improvements in the areas of public health, social welfare, health care, basic education and labor regulation. With the formation and consolidation of the industrial center formed by the states of Rio de Janeiro and São Paulo, the national market has strengthened. Therefore, the creation of a network of transportation and communication was decisive—although new—it favored the displacement of people (Baeninger and Soares, 2009).

Brito (2002) notes that the internal migratory trajectories in Brazil stem from the intense regional and social imbalances created by the development of capitalism in the country. Thus, regions that are unable to provide livelihoods for their populations ultimately create a “surplus population” to areas where urban and industrial growth, and the agricultural expansion frontier, are forthcoming.

According to Brito (1997), cited by Baeninger and Soares (2009), throughout the 1940s, the northeast region of the country and the State of Minas Gerais accounted for almost 65 percent of total cumulative increase in emigration in the country. In the 1950s, this share reached 70 percent. This population increase shifted due to the effects of the attractive power of the industrial growth regions in the southeast and the expansion of the agricultural frontier in the states of Paraná and of the Midwest. These areas totaled almost 83 percent of the cumulative immigration in the 1950s and 1960s.

Between 1940 and 1970, the State of Paraná’s population grew alarmingly high as its population jumped from 1.2 million to 6.9 million. This fact is linked to the availability of fertile land in the region and government incentives for its occupation. Regarding the Midwest, especially the states of Mato Grosso and Goiás; the attraction was due to the construction of the new capital in Brasília, in addition to the increased investment in road construction, which led to the growing of extensive crops (Martine, 1982).

Since the 1970s, when the population displacement border was analyzed, there has been a strong deceleration of population growth on the borders of Paraná and the Midwest. As a result, the trend of growth in these areas reversed. The Paraná that a decade earlier had a strong attraction began, in 1970, to expel the population. Meanwhile, rural areas that were previously the subject of large flows of entry now became those that fueled the outflows. Data shows that these areas lost about 2.5 million people during 1970 and 1980 (Martine and Camargo, 1984).

Analyzing the factors responsible for the population decline in the State of Paraná and in the Midwest, Martine (1982) states that the fall in coffee production, related to new crops associated with large land concentration and modernization of agriculture caused the need for labor to decline. Padis (1981) points out that by turning to the domestic market, agriculture lost the attractiveness it possessed when production was export-oriented. The author also states that the domestic market was able, at best, to retain only the workforce that “usually” thrives in this sector.

Based on the above considerations, it is observed that the main feature of the spatial organization of the Brazilian population between 1940 and 1980 was the sharp quest for ever larger and territorially concentrated cities. Thus, rural areas and small towns lost the alluring power they once wielded—in stark contrast to urban centers with more than 100,000 inhabitants, especially those with more than 500,000 people, that exerted enormous capacity of population concentration. As a reflection of this phenomenon, the Metropolitan Regions (MR), in the 1970s, had a bulky growth of 41.3 percent (Martine, 1994).

In this context, the cities that stood out were São Paulo and Rio de Janeiro because they had a strong concentration of the population and accounted for almost a quarter of the Brazilian population growth of the 1970s (Martine, 1987). Regarding the estimated net migration for the MR in the same period, 50 percent corresponded to the migration process from the metropolitan region of São Paulo. When we added this figure to the migration processes from other MR of the Southeast and South, this figure rose to almost 80 percent.

At the end of that period, with the growth of urban-industrial population came the introduction of two types of internal migration in Brazil: internalization and urbanization. At first glance, these two phenomena seem to be opposites; however, they are part of the same process. Internalization constitutes the displacement of a substantial portion of the population to less populated cities, especially those located in the suburbs of metropolitan areas. This event becomes a recurring role in the development of transportation routes by land, which are increasingly associated with the urbanization process prevalent in major centers.

1.3. The Brazilian Migratory Trends in the 1980s

To better understand the processes that were related to migratory movements in Brazil in the 1980s, it is imperative to understand the economic conditions of the time. This decade began with one of the most significant crises in the country's history: after the "economic miracle" (golden period of the Brazilian economy, which lasted until 1974), recession and unemployment reached unprecedented levels. Thus, there was a reduction in the capacity for labor, especially in metropolitan areas (Patarra and Pacheco, 1997). Evidently, the economic scenario of the decade was a strong influence in the migration trends that had been dominant until then.

In the 1980s, the model of industrialization, which until then was responsible for the high economic growth in Brazil, went through the shift of imports replacement, reached its limit and started to stagnate. The rupture observed in the dynamics of job growth in large centers (result of the economic crisis) then exacerbated a problem that had previously been regarded as insignificant, namely, the increase of unemployment in major cities. As a result, these areas lost some of their appeal. Although this was noteworthy in the 1980s, there was an economic decentralization in some states, reflected in migration movements, since the late 1970s (Martine and Diniz, 1991).

Throughout the 1980s, the process of spatial distribution of the Brazilian population, which in previous decades was marked by migration from rural to urban areas, particularly to the cities and migration that went to rural borders, underwent significant transformations (Baeninger and Soares, 2009). A wider urban system eventually contributed to the formation of more complex migratory networks. However, as authors Pacheco and Patarra assert (1997), the nature of recent migration movements in Brazil is not entirely clear; nonetheless, the features presented by them show that the country has become the stage for new advances.

The 1980s is associated with the end of the appeal cycle exerted by population expansion of the rural border and the sharp reduction of the growth rate of the Brazilian population. As early as the 1960s, the country began to show a decline in its fertility rate: from 3.05 percent in 1950 to 1.93 percent between 1980/1991, a decrease of almost 37 percent (Martine, 1994). During this time, a new trend started in Brazil: the “outskirts.” This was in contrast to the “metropolitan area,” pertinent until the 1980s and was characterized by intense growth of peripheral boroughs in metropolitan areas, compared to the growth registered by their respective primary municipalities (Cunha and Baeninger, 2000; Cunha, 2003; Baeninger and Soares, 2009).

Patarra and Pacheco (1997) indicate that the causes primarily responsible for this were fertility reduction (it had been reduced since the 1960s), the highest frequency of short-distance and intraregional migration, and the increased level of return migration. According to the authors, these aspects eventually promoted a more balanced population distribution.

There was also notable growth during this period in the northern region of the country. For the first time, the absolute increase in population in this region (3.6 million persons) was higher than in the South (3.1 million) and the Midwest (2.6 million). The absolute increase shown by the people of the North in 1980 was considerably higher—3.3 million—compared with the increase of the previous decade—2.3 million. Another trend that reversed was the inferior growth in the Southeast compared with that of the Northeast, which was having considerable increases in its population since the 1940s. This provision was the result of significant reduction in migration from the Northeast to the Southeast in the 1980s (Martine, 1994).

The highlight of migration characteristics of the Brazilian population in the 1980s was the strong growth of return migration, which manifested itself in virtually all states. Data presented by Baeninger and Cunha (2000) show that about 1.2 million people returned to their home state in the 1970s, while in 1980 this amount was nearly 2.7 million. In the South, the states that strongly demonstrated this phenomenon were Paraná and Rio Grande do Sul and the southeast of São Paulo and Minas Gerais. However, it is noteworthy that this trend manifested with greater intensity in the Northeast—the northeastern migrants’ return totaled 279,000 in the 1970s and reached 949,000 in the 1980s (Carvalho et al., 1998).

Thus, it is observed that the scenario of the 1980s initiated a series of changes within the framework of migration in Brazil. Among them was a change in the trend of population concentration in major capital cities and metropolitan areas; the rural-urban migration becoming weakened in comparison to the urban-urban migration and a reduction in the ability of Minas Gerais and the Northeast States to generate demographic surpluses. Other changes were that the rural borders began to lose their ability to incorporate labor; short distance and intraregional migration became more frequent and a considerable portion of the people who migrated returned to their home states (Baeninger and Soares, 2009).

Doing an analysis of this migration period experienced in Brazil in comparison to that of previous times, Braga highlights the following:

In previous decades, industrial investment, urbanization and high birth rates generated surpluses that cultivated strong population migration toward big cities and areas of resource borders. Economic and demographic changes brought deficiency of old patterns that accompanied the population dynamics of the time. As a result, the population movement in the area developed other tendencies, also due to the new status derived from the expansion of urban-industrial Brazil (Braga, 2006, 3).

To complete the picture of the Brazilian migratory population in the 1980s it is of great importance to emphasize that once, between the years 1950 and 1980, Brazil recorded primarily domestic movements; now it is replaced by a dominant emigration. This process of relocation of Brazilians abroad was a reflection of the growing economic, social, political, demographic and cultural changes occurring globally, mostly since the 1980s. In this context we find the changes from the restructuring process with the inclusion of new forms of mobility of capital and population in different parts of the world. (Patarra, 2005)

2. International Migration in Brazil

2.1. Emigration and Immigration in Brazil from 1980 to the Present Day

In the 1980s Brazil inaugurated a new phase with respect to the relocation of its population; it became clear that a growing number of Brazilians were living abroad, a recursive issue that had to be addressed both by media and by researchers. From a country historically known to host immigrants, Brazil began to aggressively evict populations (Carvalho and Campos, 2006). The main destinations for Brazilian emigrants were Japan, United States and some European countries. In the same period we observe new forms of international immigration in the country, which now hosts Koreans, Chinese, Bolivians, Paraguayans, Chileans, Peruvians and Africans deriving from different countries.

Hence, in the last three decades, a new international migration category has emerged that includes not only the emigration of Brazilians, but also immigration consisting predominantly of foreigners from other developing countries and refugees

from different parts of world (Aydos, 2010). According to the Agency of International Affairs (AIA), in 2009, some 3,040,993 Brazilians were living abroad. That same year, estimates indicated the presence of 750,000 foreigners living in Brazil (Fazito, 2008), and 4,183 foreigners with refugee status, mostly coming from African countries (UNHCR, 2009).

More important than accounting for these shifts is knowing their attributes. As stated by Patarra and Baeninger, “The importance of the international migration phenomenon today lies more in its specifics, in its different intensities and territories and their different impacts (particularly at the local level) than the volume of immigrants involved in the population relocation” (Patarra and Baeninger, 2004, 3). However, to anticipate the intensity and prevalence of certain movements before other topics, we must provide a preliminary explanation of the implications that this phenomenon may present.

2.1.1 Immigration to Brazil

For a long time, the admission of foreigners in Brazil was somewhat neglected by the Brazilian authorities with regard to the number of these immigrants admitted. Currently, due to the importance that these flows have, especially with regard to the economy, processes to promote a more accurate evaluation of these movements are being created.

Regarding sources of information aimed at the study of international migration, there are two main types of data: those from household surveys, especially the census and the data collected in databases from administrative records. Administrative records correspond to the collection of information about the entry and exit of foreigners and national residents as well as data on visa applications or asylum requested by foreigners. Census data is more reliable; however, when working with international migration, the difficulties are always greater: the number of irregular migrants is still considerably high, which makes it difficult to produce accurate statistics (Baeninger, 2001).

As Baeninger stated (2001), censuses are not able to capture migrants who are illegally in the country (undocumented in regard to crossing the border). Moreover, the information obtained in this type of research refers to the number of foreigners (i.e., the accumulated volume of international immigrants) who are residing in a country other than their place of birth.

The population census from the Brazilian Institute of Geography and Statistics (BIGS) is considered by many researchers as one of the most important data sources for the study of migration (Braga, 2000; Baeninger, 2001; Villa and Martinez, 2000; Pellegrino, 1989). It is important to keep in mind that the specifics of the information involving population movements require the collection of data from various areas at different points in time and thus few are able to present a sample that enables great precision in the study of this subject (Braga, 2000). The concern of the Brazilian

agencies with international migration has increased in recent years, reflecting an even more precise data collection regarding this subject in the 2010 Census.

Another important source of data for the study of international migration, particularly in Latin America, is the Research Studies for International Migration in Latin America (RSIMLA), which had its origin in the Latin-American Center for Population Analysis (LACPA) in the early 1970. The project was created with the purpose of providing information and analysis on international migration between countries of Latin America. Data provided by RSIMLA is based on censuses in many countries. As stated by Baeninger “the main purpose of Project RSIMLA is to standardize data on census population in the different countries other than the birth countries” (Baeninger, 2001, 285).

Despite the valuable contribution made by Project RSIMLA, one should not lose sight of the fact that the quality of census information from one country to another varies considerably because factors such as the frequency of surveys, the questions raised and the lack of a single definition for the term migrant can hinder the use of such comparative information (Villa and Martinez, 2000).

Due to the flexibility of migration movements, the current task of counting and characterizing the Brazilian migrants demand considerable effort. As stated by Martes and Fazito (2009), this task becomes possible only through the compilation of data from various sources. Another factor that complicates the work of researchers whose focus is on this theme is the inadequacy of the collection of data to register the movements of residents outside their birth country.

To better understand the dynamics present in these forms of international migration involving Brazil, we must discuss each of them on their own terms.

2.1.2 Brazilian Emigration

According to data from the Department of Consular Services of the Agency of International Affairs, in 2002, some 1,964,498 Brazilians were living abroad. An analysis of the data for the year 2007 reveals that 3,044,762 Brazilians were in this situation, which corresponds to a growth of 55 percent. Regarding the fate of these emigrants, the data show that North America was the preferred destination by Brazilians, housing a total of 1,278,650; followed by Europe, with 766,629; South America, with 611,708 and Asia with 318,285 (Baeninger and Soares, 2009).

When determining the losses of Brazil’s population to these developed countries, it is notable that the United States is the preferred destination, corresponding to approximately 40 percent in 2007 (1,240,000) of all emigrants, including both legal and illegal (AIA, 2008). With regard to Europe, among the countries with the most appeal to the population are Italy, which in 1996 had 17,000 Brazilians and in 2003, 35,000; Portugal, which in 1996 and 2003 included 22,000 and 70,000, respectively; and Spain, which received 12,000 in 1996 and 32,000 in 2003 (Patarra, 2005).

Despite these impressive numbers, considering the data from the Agency of International Affairs (AIF, 2008), in the context of the European countries, the position occupied by the United Kingdom is noteworthy due to 2007, when it accounted for 19.6 percent of the total number of Brazilian immigrants (767,000). In that same analysis, Portugal is second, with 147,000; Italy with 132,000 and Spain, with 110,000 (Baeninger and Soares, 2009). When attempting to characterize the profile of migrants who sustain these movements, the initial prevalence of genders, expressed in the growing female migrant population, stands out. To illustrate this, in the 1980s, most international migrants were men—approximately 1.05 million men and 750,000 women, whereas in the 1990s we observe a clear balance—294,000 men and 256,000 women (Martes and Fazito, 2009).

Concerning the regions of origin of international migrants, it appears that over time some changes were also occurring. In the 1980s most emigrants were from the Southeast and South regions of the country which accounted for approximately 91 percent of the exodus flow. In the 1990s that figure dropped to about 79 percent, following the relative increase in population mobility originated in northeastern Brazil to Europe and the United States and greater expansion, in general, from the points of origin and of migration destination.

More recently, there has been an increase in the population exchange of the Northern Frontier; the contact between Brazil, French Guyana, Venezuela, Peru and Bolivia; and a strengthening of the migratory exchange between Brazil and Japan, especially in the second half of 1990 (Fazito, 2008).

2.1.3 Emigration of Brazilians Bound for the United States

The restructuring of global capitalism promoted significant changes in international migration movements. The pivotal one is perhaps the attraction that countries occupying a central position in the capitalist system began to exert on the population of the less developed countries. By moving to these countries, people aimed at achieving a certain social rise that can be achieved only through capital accumulation. This accumulation is facilitated by higher wages in these countries, even when executing jobs that do not require qualification. Therefore, “the most significant movements of international migration in contemporary Brazil are, in fact, those destined to North America, especially the United States” (Fazito and Rios-Neto, 2008, 311).

Since its development as a migratory trend, the Brazilian flux to the “First World” has primarily had the United States as its main host country, which has admitted in increasing scale in 1996, 2000, 2001 and 2003, approximately 580,000, 800,000, 894,000 and 713,000 emigrants, respectively. These migrants are mostly young middle-class and usually enter the country irregularly and are engaged in jobs that do not require qualification but nevertheless provide a larger budget and allow them to create some financial reserve (Patarra, 2005).

It is important to emphasize that the estimates of Brazilians living in the United States are quite inaccurate. According to the Agency of International Affairs, approximately 1.2 million Brazilians currently live in the United States. However, according to estimates by the US Census, no more than 400,000 Brazilians should reside in the country (and Martes Fazito, 2009).

Historically, the flow of Brazilians into the United States was formed in southeastern Brazil (from whence originated the largest number of emigrants) and had as destination the Northeast (Massachusetts and New Jersey), South (Florida) and West (Texas, Arizona and California) of the United States (Martes and Fazito, 2009).

One aspect that draws attention to who analyzes the current mainstream of Brazilian migration to the United States is the strong presence of immigrants from Governador Valadares, Minas Gerais, to Boston, Massachusetts. There is also the presence of a large volume of immigrants from Espírito Santo, São Paulo, Paraná and Bahia, but there is a considerably greater number of immigrants from Valadares. The connection of Valadares with the United States began during the Second World War, when American planes regularly went to that city with the intention of carrying mica (mineral essential in the production of radio) to the United States (Sales, 1991).

Regarding the profile of the Brazilian population residing in the United States, it appears to be very heterogeneous, representing movements from different parts of its origin. The census data on immigrants who returned from the United States shows that they have medium- to high-level instruction, with 11 to 16 years of study; and with regard to gender, this population consists mostly of men. However, one should not lose sight of the female population growth among migrants in recent years. Another trend is the family reorganization in US territory, where a family member usually goes first and migrates to form a network of relationships from which the rest of the family follows into the country and in most cases this entry occurs irregularly (Martes and Fazito, 2009).

One of the major problems that Brazilian emigration has had over the last decades is in the irregular means by which these people have had access to the United States. Throughout the 1980s, Brazilians entered the United States carrying tourist visas and after they expired, they remained illegally in US territory. With the increased stiffness of the US government regarding immigration laws and border control between the United States and Mexico, the emigration flow declined, primarily after the first half of the 1990s.

With the consolidation of social networks of migration, flows of illegal entry in the United States intensified once more and reached their peak in 2000, when the Department of Homeland Security (DHS) of the United States registered the retention of approximately 54,000 Brazilians crossing the border illegally. According to information from the DHS, since 2005, the number of Brazilians arrested was abruptly reduced. This was a consequence of the reform of immigration policy applied to the US border. In 2005, 31,000 Brazilians had been apprehended while attempting to cross, while in 2008 there were only 977 (DHS, 2009).

2.1.4 The Profile of Migratory Exchanges between Brazil and Japan

Japanese immigration to Brazil began in 1908 and since then about 240,000 Japanese entered the country. Saito (1980) divided Japanese migration to Brazil into three periods. The first (1908–1924) corresponds to the Japanese entry on the basis of subsidies provided by the São Paulo government, when it is estimated that 31,000 Japanese entered the country. The second period (1924–41) is marked by the incentives provided by the Japanese government for transportation, which boosted Japanese admission in the country. However, with the restriction of immigration by the Brazilian government, the inflow of Japanese to Brazil was reduced until it ceased altogether in 1941. The last phase (from 1952) is characterized by the resumption of Japanese migration to Brazil, reaching its peak in the 1960s and declining once again over the next decade (Suzuki, 1995).

In regard to the characteristics of these immigrants, they varied according to the phases described by Saito (1980). Migrants who arrived in the first phase were mostly from rural areas, consisting of small landowners or tenants in Japan. These individuals were incorporated mainly in coffee plantations and had intended to return to their home country after reaching a certain level of improvement. Immigrants from the second phase, many from the former Japanese colonies and occupation—such as Taiwan, Korea and Manchuria—came with the intention of settling permanently and were dispersed in colonial settlements located in the Amazon, Northeast, South, São Paulo and Paraná. In the third phase, Brazil attracted migrants in the technological and business sector, being in number far less significant than in the previous phases. The arrival of these individuals was related to increased industrialization in Japan and the “Brazilian miracle.”

Thus, international migration to Japan is closely related to Japanese immigration to Brazil in the early twentieth century, gaining new structures in the mid-1980s. This change is mainly linked to the beginning of the return of the Japanese descendent communities to Japan, which intensified in the 1990s.

This emigration flow is quite unique because all emigrants have legal migratory status and are, as a rule, migrant workers employed by Japanese companies (Martes and Fazito, 2009). This migration, characterized by institutional support from the Japanese government, is in third place with regard to Brazilian population losses abroad. In 1996, about 263,000 Brazilians lived in Japan, which then in 2003 became 269,000 (Patarra, 2005) and in 2009 reached 280,000 (AIA, 2009).

The return of the Japanese descendants born on Brazilian soil to Japan was a result of the change in the rules of Japanese immigration policy from June 1990, with the reform of the Immigration Control Act. These individuals now hold the right to work legally in Japan; depending on each generation of descendants, a specific time is allowed: three years for the Nisei⁷¹ and one year for Sansei.⁷² If there is interest on the part of the migrant to stay in Japan, visas can be extended. Other generations did

⁷¹ Term used to designate second-generation Japanese descendants born outside Japan.

⁷² Term used to designate third-generation Japanese descendants born outside Japan.

not participate in this process of reform of the law and, consequently, a portion of Brazilian emigrants in Japan work illegally (Oliveira, 1998).

As a result of this reform on Japanese immigration policy, a growing number of Brazilians of Japanese descent, hybrids and even spouses without Japanese ancestry (called non-Nikkei spouses), emigrated from Brazil to work in Japan (Ninomiya, 1992, 143).

According to Cornelius (1995), the highly liberal policies of immigration opportunity to Japanese descendants living in Latin America is taken by the Japanese authorities as a means, at low cost politically, to minimize problems arising from lack of labor, especially in sectors that require few skill sets. This process would also have an additional advantage in that immigrants with Japanese ancestry would not disrupt the mythical identity of the country (Sasaki, 1998).

The Brazilian emigrants of Japanese descent who leave for Japan are essentially from the same region where Japanese immigrants who came to Brazil settled about a century ago, mostly from the states of Paraná and São Paulo. These emigrants were known in Japan as *dekasseguis* (Martes and Fazito, 2009). As Sasaki states:

The Japanese word *dekassegui* means working outside the home. In Japan, referring to the workers who temporarily left their regions and went toward others more developed, especially those coming from the north and northeast of Japan, during the harsh winter that interrupted their agricultural production in the field. This same term is then used here to Japanese descendants or Nikkei—referred to all Japanese descendants born outside of Japan, not restricted to Brazilians—who are going to work in Japan, at first temporarily, in search of better wage gains, performing low-skilled jobs, characterized by the Japanese as “3K”—Kitanai (dirty), Kiken (dangerous) and Kitsui (painful)—which were rejected by them. (Sasaki, 1998, 4)

The data presented by Carvalho (2006) shows that *dekasseguis* migrants have a high educational level, higher than the average schooling of Brazilian emigrants; there is a balance with respect to gender of Brazilians living in Japan—171,499 men and 141,480 women.

According to Sasaki (2008), in the last ten years there seems to be a change in the tendencies present in the population of Brazilians residing in Japan. In 1996, the population consisted mainly of young men, married and head of the family, who left their families in Brazil and went to Japan for a temporary stay. However, in 2006 it is noted that these emigrants were mostly young men and women, many of them children of Brazilian immigrants (second generation) who intended to stay permanently in Japan.

Since its inception to the present day, the phenomenon *dekassegui* underwent major transformations and several changes occurred in its structure. Such changes are related to job market, age structure, sex ratio, wages, hours worked and social interaction (Hirano, 2008).

2.1.5 Brazilian Emigration to Europe

The emigration of Brazilians to Europe began to intensify in the last decade of the twentieth century. As described earlier, in the 1980s most of the emigration movements were directed to the United States, but from the 1990s, the destinations broadened to Europe (Martes and Fazito, 2009). The first major flow, for historical and cultural reasons, concerned the entry of Brazilians in Portugal. This migration was established early in the 1990s and remained relatively stable until the end of 2000 (Fernandes and Rigotti, 2008).

In a study that included the analysis of 400 questionnaires given to Brazilians living in Portugal, Rossi (2004) found interesting results. The data from this study showed that the sampled population was characterized by a strong disparity between genders: men accounted for 64.3 percent of respondents while 35.7 percent were women. In addition, the marital status of respondents was predominantly single or divorced/separated; it concerned a relatively young population, of which 57 percent of participants were 30 years old or younger. Regarding their level of education, 60.7 percent concluded high school or an associated degree and 15.2 percent were of higher levels of education. The study further revealed that the region of Brazil that provided the most immigrants to Portugal was Minas Gerais, with 30.8 percent of respondents, followed by São Paulo, with 14.6 percent and Espírito Santo with 9.7 percent.

Today not only Portugal but also Spain presents itself as an important country in Europe, with Brazilian immigrants reaching approximately 125,000 individuals (AIA 2009). Despite being relatively recent, this flow has intensified in the past 10 years, during which time a re-emigration of Brazilians who arrived in Portugal and Italy began (Martes and Fazito, 2009).

Martes and Fazito (2009), analyzed data from the National Institute of Spanish Statistic (NISS) and managed to draw a profile of the Brazilian immigrant residing in Spain. Regarding the age variable, Brazilian immigrants in Spain are a group primarily young and of active age, where young adults—25 to 34—are the majority, representing 39 percent of Brazilians registered in the country; after that comes the age group of 35–44, at 20 percent, and then the youth portion (between 15 and 24 years old), at 19 percent.

The Brazilian migratory flow destined to Spain contains a strong gender imbalance in favor of Brazilian women, constituting one of the most female-immigrant collectives in Spain. This characteristic is related to the demand presented by the Spanish job market and to the socio-demographic and economic changes that have taken place in Spain in recent decades. As a result of its high feminization, the Brazilian share has a high concentration in the service sector, characterized by the elevated precariousness of working conditions (Ripoll, 2008).

Another European country that stands out with regard to the number of Brazilian immigrants is Italy. This country received Brazilians later than other nations of the same continent. That was due to its proximity to Eastern European countries that made the market opportunities for Brazilians more restricted. The main factor that has attracted Brazilians to this country is the ease that Italian descendants, born in Brazil, have of gaining European citizenship. The Italian embassy estimates that the group of people who decide to settle in the country corresponds to 10 percent of those who obtain Italian nationality and that this percentage corresponds to approximately 30,000 Brazilians (Fernandes and Rigotti 2008).

The current presence of Brazilian migration to Europe extends to the recent number of Brazilians living in the United Kingdom and Ireland. The estimate of Brazilians living in both countries is approximately 195,000 (AIA 2009). According to Fernandes and Rigotti (2008), this estimate validates the results obtained by other research sources and shows a recent increase in the number of Brazilians living in this region.

In general, except for the oldest movements to Portugal, the Brazilian immigrant population in Western Europe is currently composed primarily of young adults (between 20 and 40 years old) of both genders, with higher education (on average over 50 percent in all countries have at least 13 years of schooling) who participate in the regional workforce. With the exception of Portugal, most of this migration is not of family units and represents a higher rate of illegal migrants as well (Martes and Fazito, 2009).

2.1.6 Migration Exchanges between Brazil and MERCOSUR Countries

As stated by Martes and Fazito (2009), Brazilian international migration in MERCOSUR has mostly trended toward emigration to Paraguay, which has about 56 percent of total emigrants, followed by Argentina, Bolivia, Uruguay and Chile. According to the estimates presented by the Agency of International Affairs (2009), the South American countries with the largest number of Brazilian immigrants are Paraguay (300,000), Argentina (49,500), Venezuela (48,000) Bolivia (23,800) and Suriname (20,000).

By demonstrating the evolution of Brazilian migration to the countries that comprise MERCOSUR, Baeninger (2008), based on data from RSIMLA-LACPA and AIA, points to the existence of different relocation paths. The first one is the emigration of Brazilians to Argentina until the 1970s, with the permanence of approximately 33,000 Brazilians on Argentine soil and the subsequent resurgence of movements while maintaining the earlier migrants until the year 2000. More recent data show that currently transit across the Brazilian border to Argentina has intensified—35,000 Brazilians according to estimates of RSIMLA, and 38,000 estimated by the AIA (2009).

This is followed by the emigration of Brazilians to Paraguay, starting in 1980 and with rapid growth between 1986 and 1996. Currently, RSIMLA shows the presence of about 107,000 Brazilians living in Paraguay, while the AIA (2009) estimates their number at 487,000. Subsequently, there has been a reduced and constant emigration directed to Uruguay in the past 30 years and an increase in movement of Brazilians to Bolivia over the past 15 years. Another migratory influx of considerable proportions is the Brazilians bound for Chile: despite always having been slightly residual, it has increased in the last decade. Currently, according to AIA estimates, there are about 9,200 Brazilians living in Chile (Martes and Fazito, 2009).

According to the considerations of Martes and Fazito (2009), there is a clear difference with respect to the composition of the emigrant groups according to destination country in the MERCOSUR region. The Brazilian emigration to Paraguay and Bolivia is characterized mostly as family unit migration, formed by young men and head of families, women of childbearing age and school-aged children. As a general trend, these populations have low education (most individuals have less than 6 years of schooling) and low family income. These emigrant families remain closely linked to relatives who continue to reside in their home communities, cultivating a constant flow of people in the border areas.

In contrary to the characteristics displayed by Brazilian emigrants in Paraguay and Bolivia, those residing in Argentina and Uruguay are characterized as an aging population. Moreover, young people are, in general, more qualified for the job market. Thus, they have occupied not only the rural sector but also the industry and service sector (Martes and Fazito, 2009).

In the recent order of international migration, Brazil has generally followed migration trends pertaining to South American countries. In relation to migratory movements of the MERCOSUR countries to Brazil, there has been a growing importance of intra-block movements, not so much by volume but by diversity and implications corresponding to a positive restructuring. Also noted is that the international context provided a shift of population, both to metropolitan areas and to other cities, in which the geographic position and market ambitions have attracted new and international industries in this current stage of global economics (Baeninger and Soares, 2009).

Among the immigrant movements entering Brazil, Bolivians stand out. Several factors contribute to the surge of emigration from Bolivia to Brazil, particularly the social and economic structure deficit in Bolivia and the political instability and poverty that affect many parts of the country. In South America, Brazil and Argentina form the pole receiver of most low-income migrants, mainly due to the low cost of relocation and the sharing of an extensive border. However, recent and successive economic crises experienced by Argentina have caused most of these migrants to move to Brazil. This phenomenon has attracted the attention of humanitarian agencies in response to the exploitation these workers who end up suffering in Brazilian territory (Cacciamali and Azevedo, 2005).

A considerable number of Bolivians who entered the Brazilian territory were not legalized until the recent past; this is because the Foreigner Statute allowed entry of only skilled labor and entrepreneurs. Those who did not meet these requirements were left with the option of marrying a Brazilian spouse or having a child born in Brazil in order to regulate documentation (Silva, 2008). However, Brazil sought to create mechanisms to aid the settlement of these and other immigrants. In 2009, through the Decree No. 6,893/2009, a law was enacted that granted amnesty to aliens who entered the country prior to February 1, 2009 and resided there illegally. In the same year came into force the agreement of free transit to members of the MERCOSUR, Chile and Bolivia (Decrees No. 6,964/2009 and 6,975/2009). A preliminary assessment of amnesty for illegal immigrants shows that by the end of 2009, approximately 42,000 requests were held and from these, 17,000 were Bolivian applicants (IOM, 2010).

According to the results presented by Silva (2008), the 2000 census recorded 20,388 Bolivian immigrants living in Brazil, not evenly distributed. Generally, they are concentrated in metropolitan areas (such as São Paulo) and specific borders, such as Corumbá (Mato Grosso do Sul) and Porto Velho (Rondônia).

The Bolivian immigration to Brazil, mostly to São Paulo, began in the 1950s with the entry of Bolivian students through cultural exchange programs between Brazil and Bolivia. However, this migration has increased significantly since the 1980s. Most of these immigrants are young, male and female, single and showing a mid-level of schooling. They come from various regions of Bolivia, but there is a predominance of individuals from La Paz and Cochabamba (Silva, 2008).

In recent decades, the number of Bolivian immigrants in Brazil has experienced a considerable increase. Data from the last BIGS Census shows that this increase occurred in both genders, an increase of approximately 30 percent.

Table 1: Bolivian immigrants living in Brazil—1991 and 2000

Census	Male	Female	Total
1991	8,616	7,078	15,694
2000	11,242	9,146	20,388

Source: IBGE – Demographic Census 1991 and 2000

2.1.7 Migration Exchanges between Brazil and Countries in the Northern Border

a) Emigration to French Guiana

As stated by Fazito (2005), affiliations between Brazil and French Guiana are not new and they date back to the early nineteenth century. However, only in 1964 was there a large influx migration of Brazilians bound to French Guiana. This first wave of migrants was encouraged by the start of the development of the Guyana Space Centre at Kourou, which required a large amount of unskilled labor. What

attracted Brazilian workers was the high wages paid at that time, especially due to the exchange rate difference between the cruzeiro and the French franc (five to one). Thus, the financial benefit associated with lack of labor drove the first migration of Brazilians to French Guiana.

The entry of Brazilians in the Guyana territory occurred mostly through wood ships over the ocean from Belém and Macapá to Cayenne. Another path ran from the Oiapoque for a shorter trip. In an attempt to escape the control of migration, arrival at Cayenne took place at night.

The first Brazilians to move to French Guiana had a very low cultural and socioeconomic standard profile. Thus, many did not speak the local language well and were easily deceived by their contractors; they were also housed in abandoned buildings in the center of Cayenne, where the conditions for survival were minimal.

The fact that most of these immigrants entered French Guiana irregularly makes it difficult to collect accurate data on their numbers. The Brazilian press estimates that this number is around 25,000, a significant number compared to the total population of French Guiana, which according to the latest census data has 140,000 inhabitants. Data from the Brazilian consulate in Cayenne point to the record of only 10,000 documented Brazilians (Fazito, 2005). However, the publication *Brazilians in the World* (AIA 2009) gives an estimate of approximately 19,000 Brazilians living in French Guiana. Since its emergence as a migratory trend, this movement has undergone some changes, among them the very profile of migrants. Since 1990, it has been observed that migrants were no longer just from the lower classes but also consisted of individuals belonging to the middle class (with a higher educational level). Arouck (2000) notes a considerable difference in the style of articulation and coexistence among Brazilians of the lower classes, who were the first to migrate and those of the middle class, who are now living in French Guiana.

The Brazilians who live there are not distributed homogeneously in the territory and the two urban centers where most of these immigrants are concentrated are located on the coast: Cayenne, the capital city, and Kourou. It is known that although the flow of emigration to the French Guiana is significant, it does not compare to the displacement of Brazilians to first world countries. However, the regional framework of this phenomenon demonstrates that the impact of these shifts is crucial to the socioeconomic development of the two regions, although there is no precise data regarding its traffic (Arouck, 2000).

Some Brazilians, especially those who lived there as migrants for over 10 years, managed to achieve a considerable economic rise; however, many Brazilians still live illegally in French Guiana and engage in irregular activities, such as irregular mining, prostitution and trafficking drugs. This situation of socioeconomic fragility experienced by Brazilian immigrants has been worsened due to the restrictive actions by the French government since French Guiana has become a strategic area in the South American continent (Fazito, 2005).

In a study by Pinto (2008), the author states that the Brazilian way of integrating into the local job market is almost always informal and irregular. Brazilians, attracted by the appeal of employment, do not understand the fragile labor relations to which they will be subjected and are often intensely exploited. Also according to the author, the large supply of labor that attracted the first Brazilians who migrated to French Guiana might not be the only explanation today for the large presence of foreigners in the city of Cayenne.

Other factors contribute directly to this remote territory from Europe becoming the last hope for the ones who were denied work in the North / Northeast Brazil. The strong currency, the pension system, social benefits, the actual opportunity to work and the gold rush are largely responsible for dramatic adventures and situations of despair experienced by men and women who have lost their territorial references (Pinto, 2008, 4).

b) Peruvian Immigration

Another group of immigrants that has been gaining importance in the country, with entry from the northern border, is the Peruvians. As highlighted by Oliveira (2006), to better understand the factors that motivate the relocation of people from different regions of Peru to Brazil, it is worth noting the migration steps these individuals go through within their own territory before deciding to cross the border.

First, historical factors are deeply linked to the decision to migrate because the Andean peoples, due to their origins, are predominantly nomadic. Then there are the geographical factors, represented by the proximity of the border between the two countries. Economic factors play a role in the decision to migrate, particularly in more recent days, according to the period of crisis and recession that Peru has been going through. The period of military dictatorship also stands as one of the most important factors in the context of Peruvian emigration (Oliveira, 2006).

Moreira and Vaca (2010) also point out that among the factors that contributed to the migration of Peruvians to the Brazilian Amazon, the most significant ones are the agrarian conflicts, the advancement of latifundia and the processes of capitalist industrialization. This migration is more intense in the area of the Peruvian Jungle, bordering the state of Amazonas. The Peruvian immigrants initially moved within their own regional boundaries of their country and according to Oliveira (2006), this process initially took place from small towns and villages to larger cities, among them: Arequipa, Iquitos, Yurimaguas and Pucallpa. In recent decades, these cities have undergone an intense process of urbanization. It was only then that Peruvians started moving abroad and these migration movements were strongly directed to Chile and the Brazilian Amazon.

The first flow of Peruvian immigrants bound to the Amazon was formed mostly by male individuals. However, since the 1990s, a considerable number of women became part of the flow of migrants. Most women who migrated were married to men who had previously emigrated alone to gain stability and to then bring their spouses. Women who decide to migrate face some specific problems with regard to

gender, especially family violence and external sexual abuse. Such problems are more likely when migrants are undocumented (Oliveira, 2008a).

In the analysis of the profile of Peruvian migrants in Brazil, few possess any professional qualification, despite the presence of some doctors, nurses, dentists, biochemists, engineers, accountants, architects, general technicians and individuals of other professions. Thus, the majority of Peruvian migrants has low level of education; they are peasants or belong to indigenous groups in Peru (Oliveira, 2008b).

2.1.8 Migration Exchanges between Brazil and Angola

The migratory exchanges between Brazil and African countries are marked by multilateral agreements in the field of education and also by forced migrations due to conflicts that have plagued the African continent for decades. We emphasize that the immigration of Africans to the country gained importance mainly since the 1990s (Kaly, 2007; Petrus, 2001; Aydos, 2009). Noteworthy here is the movement of Angolan immigrants, primarily in the city of Rio de Janeiro.

Alliances between Angola and Brazil date back to the colonial period, when the two countries with significant differences in the model of colonization by Portugal, maintained a relationship of dependency, marked especially by the supply of slaves from Angola to Brazil. In the twentieth century, the relationship narrowed both culturally and diplomatically, with Brazil being the first country to recognize the independence of Angola in 1975. Starting in 1980, a series of technical and cultural cooperation treaties began between the two countries.⁷³ In the private sector, Petrobrás investments in Angolan oil extraction and Odebrecht in extracting diamonds rebuilt the 1980s, resulting in the creation of an air bridge between Rio de Janeiro and Luanda, which became the main form of entrance by the majority of Angolan immigrants in the country in the 1990s (Aydos, 2010). The encouragement of trade relations between the two countries increased after the civil war ended in 2002, with continuing increases in the presence of Brazilian companies in Angola, mainly in construction, trade, industry, telecommunications and services.

With regard to the movements of Angolans to Brazil, it appears that these movements most often reflect the search for a better life away from a confrontational context. The ties between Brazil and Angola refer to the time when the two nations were still colonies of Portugal. Despite the cultural proximity that Angolans have with Brazil, in Brazilian territory immigrants end up facing the barrier of racism and difficulty in entering the job market and in many cases they are excluded from society (Baptista, 2007).

⁷³ In 1980, the Agreement on Economic, Scientific and Technical Cooperation between the Federal Republic of Brazil and the Republic of Angola was signed. In 1990 the Agreement on Cultural and Scientific Cooperation between the Government of the Federal Republic of Brazil and the Government of the Republic of Angola was signed. In 1996, Brazil joined the community of Portuguese-speaking countries, when agreements of technical and social science cooperation expanded, also encompassing sports and culture.

The Angolan immigration to Brazil was only residual until the 1970s, when with the independence and the subsequent outbreak of civil war in Angola (1975), there was a significant increase of this movement to Brazil. Ribeiro (1996) proposed an analysis on immigration from Angola in three different periods, the first included the arrival of slaves from the region that was later defined as Angola; the second marked the independence of Angola, and the third, from the 1980s, was a result of internal conflicts in the country. Aydos (2010) proposes that Angolan immigration from the 1970s features three distinct periods. In the 1970s, the movement was marked by the Angolan independence that forced the departure of families formed by Portuguese settlers, many already of Angolan nationality. From the 1980s, the immigration of Angolans fell sharply and became more diverse, with a decrease in entrance by white Angolans, dominant in the previous period. According to Ribeiro (1996), the 1980s was marked by Angolans coming on a student visa into the country. In the 1990s this migration characteristic changed, and immigrants were predominantly young black males, concentrated in the metropolitan region of Rio de Janeiro. The movements were driven by the intensification of the conflict in Angola between 1992 and 1993, the period in which Brazil started broadly granting refugee status to Angolans. Even with the signing of a protocol of Peace in Angola (1994) and the consequent decrease in the recognition of Angolan refugees in Brazil as the entry of Angolan immigrants in the country continued in the following years:

The motivations for migration, although in some contexts could have been strictly the war, began, especially in the 1990s, to include economic disruption caused by the war in the country, transforming emigration into a possibility, sometimes unique, of social climbing and improvement (Aydos, 2010, 145).

Most Angolans immigrants during the 1990s consisted of youth fleeing the mandatory enlisting for participation in armed conflict (Petrus, 2001).

It is also important to highlight agreements on Academic Policy for Higher Education Undergraduate and Graduate (APHE-U and APHE-G), which between 2000 and 2005 brought the country 118 Angolan students through the APHE-U program (DESIDERIO, 2005). The young Angolans who are currently studying in Brazil, mainly in the states of São Paulo and Paraná, have a personal and institutional commitment to return to their country of origin so that, with the knowledge they acquire through education, they can contribute to their country's reconstruction. However, many of these students are reluctant to return and therefore seek to settle permanently in Brazil or stay in the country longer for a chance to enroll in graduate studies (Fonseca, 2009).

There is evidence of a migration network between Brazil and Angola through institutional (agreements between the two countries), trade (through mukunza) and personal social networks (Aydos, 2010).

Between 1975 and 2002, Angola was involved in a civil war that killed more than 500,000 people. During this period, investments in the country's infrastructure and development were virtually nonexistent. Thus, after the conflict ended, a thorough reconstruction of the country began. However, to promote development

after years of stagnation, the Angolans were faced with a major problem: the lack of skilled labor. This scenario favored the relocation of a considerable movement of migrants, who saw Angola as a place with the opportunity for higher salaries (Veiga, 2008).

Despite having become a continual problem after independence, the lack of skilled labor was always present in all sectors of the Angolan economy. Its roots go back to the time when the country was still a colony, when most of the black population was denied access to basic education and 85 percent of the population was illiterate. The independence failed to change this scenario because the virtually uninterrupted civil war prevented people from attending schools. According to data released by the newspaper *O Estado de São Paulo* (2008), currently about one-third of school-aged children (one million young people) are out of school; 58 percent of Angolans officially cannot read and almost 90 percent are functionally illiterate.

According to Borges (2006), in addition to the difficulties arising from armed conflict, another historical factor contributed to the shortage of qualified labor. In 1975, after independence, the country expelled from its territory almost all white descendants of the Portuguese and led to a massive flight of Angolans connected to the old regime. After the departure of the Portuguese, the population was finally free from its colonizers, but there was no qualified staff capable of leading the country toward democracy. The situation was so critical that at the time of independence the whole country did not even have 50 individuals with higher education; there were only about 500 middle level technicians and 2000 with primary school education (Borges, 2006).

Over the last few years, even with its many structural problems, Angola has managed to achieve considerable economic development. In 2000 the country registered an inflation rate of 268 percent per year, but in 2008 inflation fell to 13 percent; in the same year, the country was fourth among the fastest growing in the world, increasing by approximately 13.2 percent its gross domestic product. This new reality has shown that Angola has attracted immigration from Brazil. These individuals work in activities ranging from small businesses (hairdressers, manicurists and owners of clothing stores) to large companies, such as Petrobrás (Estadao, 2008).

The resumption of growth in Angola has remarkably increased the demand for qualified professionals. This race for infusion in a dynamic market that offers many opportunities has heavily drawn Brazilians, mainly due to high wages. Brazilians end up being more sought out than other foreigners due to language and the cultural proximity they share with the country (Borges, 2006).

Unlike those who migrate to the United States or even to European countries, many of the Brazilians moving to Angola occupy senior positions in multinational companies. Companies offer many benefits to conquer the Brazilian professionals: salaries equivalent to nearly triple those received in Brazil; housing, car and driver, and airfare tickets to see family are some of the perks that a Brazilian professional with good qualification receives. It is important to note that technicians and workers

who serve the Brazilian companies operating in that country, for obvious reasons, have a clear preference for hiring domestic workers.

Estimates from the Brazilian Embassy in Luanda show that the number of Brazilians who currently reside in Angola is expected to reach 40,000, a number significantly higher than the estimate made by the Agency of International Affairs (2009), which indicates the existence of 30,000. However, it is a floating population because employment contracts often include airfares back to Brazil on a regular basis.

2.2. Return Migration

From the 1980s until very recently, Brazil developed a distinguished emigration profile when a considerable number of Brazilians migrated abroad, mainly to developed countries in search for better living conditions. From the year 2000 and more precisely in its later years, this trend began to undergo significant changes. Due to the economic crises experienced by countries that occupy a central position in the capitalist system and due to the economic growth that Brazil has experienced in recent years, most Brazilian emigrants have returned to their home country.

Although there is yet insufficient data to quantify this process, the evidence of this phenomenon are clear and are founded not only on the international financial crisis but on the restrictive policies of recipient countries regarding the entry of immigrants as well. Data from the Migratory International Organization—MIO (2009) indicate that approximately 20 percent of Brazilians who migrated to Japan (approximately 50,000 people) have already returned or are preparing to return to Brazil.

The increase in return migration tends to cause a series of impacts, with direct economic and social effects of considerable proportion in some parts of the country. In a study based on data from the 2000 Census, Garcia and Soares (2006) showed that the proportion of returned international migrants in comparison to the international front, in the period between the 1991 and 2000 censuses, was higher than in the previous period (1980–1991).

The 1991 Census showed that returned migrants accounted for 60 percent of total international immigrants, while in 2000 the percentage of returnees was 73 percent (203,000 people). In that same study, Garcia and Soares (2006) call attention to the losses of Brazilians abroad, which occurred with greater intensity since the 1980s (when almost two million people left the country) reflected in census data from 1991. In the 2000 Census, an emergence of a reverse flow is observed—the international return migration.

Although return migration has become somewhat common only in recent years, the possibility of return is always present in the minds of the migrant / immigrant. The migrants, in most cases, think this is a temporary condition that will be reversed when their goals are reached (Sayad, 1998). Siqueira (2007) considers that international migration is based on four main points: go, make money, return, and

invest. However, along the way, several factors interfere in the process so the migratory project goes through various transformations including a change in the desire to return.

Among the returning migrants, there is an important factor that can help them easily find a place in the job market, more so than before having emigrated: the experience gained from living in another country. Nunan and Fernandes (2006) indicate that there is a strong relationship between international experience and entry into the formal Brazilian market. However, for this to occur, it is necessary that the experience add value (technical and behavioral) in an activity in which the individual exercised before or even in a new occupation.

Despite the present desire to return to their homeland among those who migrate, some are disappointed when they return because they cannot readapt; they end up returning to the migration country. A study by Siqueira (2007) showed that those who manage to be legal in the United States are living in two places:

Work in the US and spend one or two months in Brazil. A house and car is kept in Brazil, so to enjoy their stay. They become residents of both places. They divide their lives, work and investments in these two spaces. As a theoretical perspective based on trans-nationalization, advocates are living in two different worlds, establishing connections between the two societies, from local to global. (Siqueira, 2007, 07)

Due to the difficulties of adaptation that some migrants face upon returning, the decision to return is often as difficult, if not more so, to make than the initial decision to migrate. That is because the reunion with the family and a culture that is no longer current produces in the individual a sense of estrangement and a feeling of not belonging to that group anymore. Likewise, the geographical and social, as well as the people they once related to, are no longer the way they left them (Siqueira, 2007).

2.3. Qualified Migration

In general, migration of skilled labor is the relocation of people with a higher educational level, both complete and incomplete. Recently, this type of migration has been recurring due to the needs imposed by an increasingly globalized job market. According to Baeninger's work (2010), there is empirical evidence that indicates Brazilian introduction to the world through its economic and technological development points to the importance of developing public policies to meet the country's demand for skilled labor.

Currently, skilled workers are of considerable importance when it comes to business competitiveness in the global economy; thus, creating mechanisms to facilitate the mobility of these professionals is imperative to the so-called emerging countries.

With the growing insertion of Brazil in the global economy, it is observed that the country has shown great demand for qualified professionals whom, in most cases, the national education market is not able to supply. Thus, in recent years there have been a large and growing number of immigrants into the country, which grew from 29,448 in 2007 to 56,066 in 2010, representing an increase of approximately 90 percent in this period. As shown in Table 2, in the last four years the number of immigrants with higher education strongly increased and remained at approximately 60 percent of all requests for permission to work in Brazil.

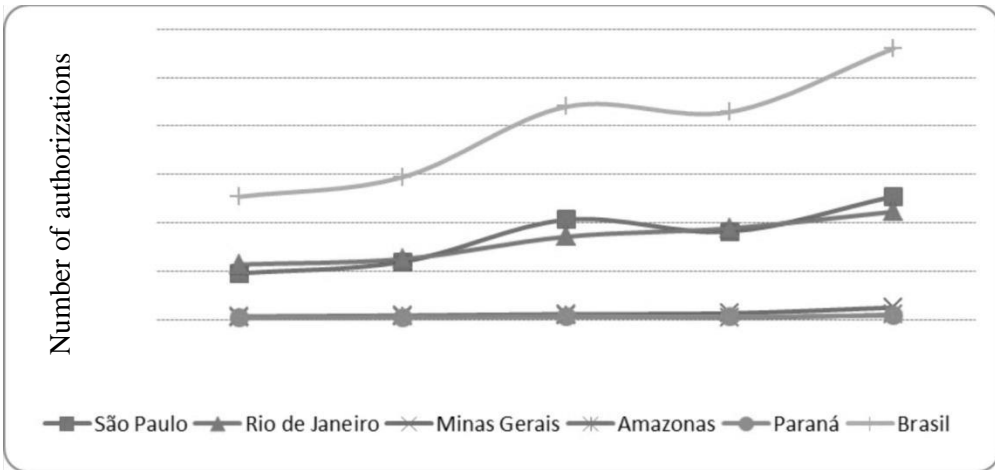
Table 2: Authorization Granted to Foreigners Based on Level of Education

Level	2007	2008	2009	2010
Bachelor Degree. or Equiv.	17,126	25,694	24,856	31,662
High School or Technical	9,487	16,422	16,538	21,639
Master's Degree	150	234	213	476
Post Master's Degree	77	165	191	202
Bachelor Degree Incompl.	87	114	117	125
Elementary School Compl.	51	109	80	120
Doctorate	44	79	73	112
High School Incompl.	654	265	126	88
Elementary School Incompl.	26	26	68	54
Other	5	5	10	998
No Data Available	1,781	880	642	530
Total	29,488	43,993	42,914	56,066

Source: Department of Labour and Employment – 2010.

More recent data from the Agency of Labor and Employment show that, in the first half of 2011 alone, 26,500 permits were granted to foreigners to work in Brazil. Of these, more than 24,000 are based on temporary terms. In regard to the education level of those immigrants, 14,047 (53 percent) have completed college or the equivalent qualification certificate, 8,439 (31.8 percent) have a high school diploma or a professional technical degree, and those with a postgraduate degree and PhD totaled 997 (3.7 percent) (ALE, 2011).

The distribution of these immigrants in Brazil occurs in a significantly heterogeneous way because the characteristics of this phenomenon are closely tied to economic development that the receiving region represents and the country has strong regional disparities. Thus, states that attract the skilled labor are located in the Southeast (São Paulo, Rio de Janeiro and Minas Gerais—see chart 1), where the largest companies are allocated.

Chart 1: Top Five States Hosting Qualified Foreigners: 2006 to 2010

Source: Department of Labour and Employment – 2010.

Based on current migration of skilled labor, the Report of the World Commission on International Migration (2005) points out that states, as well as the organs and institutions interested in the theme of migration, should adopt better suited approaches to the reality of international migration so that they are able to recognize the potential and importance of migrant workers who tend to fill gaps in the global job market.

2.4. Refugees

According to the United Nations High Commissioner for Refugees (UNHCR, 2010), in October 2010, 4,306 refugees from 75 different nationalities lived in Brazil, largely coming from Africa (65 percent) and the Americas (22 percent). The National Council for Refugees (NCR) offers slightly different data for December 31, 2010: a total of 4,359, of which 3,952 are recognized by traditional means of eligibility (i.e., refugees called “spontaneous,” who sought refuge in the Brazilian government) and 407 admitted by the Solidarity Resettlement Program.⁷⁴ According to the UNHCR data, Angola is the main country of origin, representing 39 percent of the total, followed by Colombia (14 percent), Democratic Republic of Congo (10 percent), Liberia (6 percent) and Iraq (5 percent).

⁷⁴ Data from the Migration and Human Rights Institute of Brasília website (<http://www.migrante.org.br/IMDH/>).

Table 3: Refugees in Brazil by Continent of Origin

Continent	No. of Refugees	%
Africa	2,813	64.53
America	978	22.44
Asia	465	10.67
Europe	98	2.25
Stateless	5	0.11
Total	4,359	100

Source: IMDH, 2011.

It is important to clarify that these figures refer to cases of refuge granted by the Brazilian government since the late 1990s and not to the refugee population actually present in the national territory. While many of these individuals remained in the country, obtaining work visas and residency as legal immigrants, an unknown number of them returned to their birth countries or moved to third destinations. This is evident particularly with the Angolans, who after political improvement of the country in the 2000s, with the suspension of the civil war, have returned to Angola but are still part of the refugee statistics recognized by the Brazilian government.

Many of the refugees arrived in Brazil during the 1990s, due to the intensification of the civil wars in Angola, Liberia and Sierra Leone in the early nineties and in the 2000s, due to the escalation of conflicts in the Democratic Republic of Congo and Iraq (Aydos and Baeninger, 2009). In turn, the Colombian refugees arrived in Brazil through the border, but it is important to note that among the 589 recognized Colombians, 395 remain in the country through the Solidarity Resettlement Program. A survey conducted in 2007 (Baeninger and Aydos, 2008) showed that most of these refugees arrived in Brazil aged 20 to 29, with a slight predominance of men between the ages 20 and 24.

Another consideration is the increasing number of asylum application rejections compared to the number of applications accepted. While at the end of the 1990s, the admittance outweighed the rejections of refuge, a gradual reversal is noticeable in this relationship in the following decade. The refusals became more numerous at the beginning of the decade and this is also true in most years since that time.

This arrangement suits the case with the Angolans, the largest group. Immigration continues to occur from this country toward Brazil, partly due to the consolidation of a migration network originated with the refugees from the 1990s, but it has spread beyond the same, especially in the cities of Rio de Janeiro and São Paulo. However, the new political conditions in Angola had tried to justify the denial of most asylum claims throughout the 2000s even while Angolans continued to arrive. Below is a table of annual statistics by NCR decisions regarding admittance and rejections.

Table 4: NCR Decisions (1998–2010)

Year	Deffered Requests	Rejected Requests	Loss	Family Reunion
1998	20	01	-	-
1999	168	32	03	16
2000	469	313	13	10
2001	115	186	09	13
2002	112	490	21	30
2003	77	222	24	08
2004	157	197	07	10
2005	226	234	16	08
2006	233	419	17	10
2007	355	322	04	16
2008	106	226	24	13
2009	275	166	11	21
2010	126	169	24	04
Total	2,439	2,977	173	159

Source: IMDH – 2011.

2.5. The Current Case of Haitian Immigration

It was from 2004, when Brazil offered to assist Haiti in its stabilization process, that the presence of Haitians was felt in our country. During this time, the Haitian state was virtually nonexistent and its institutions were dysfunctional. The country was struggling with a social and economic crisis unprecedented in its recent history (Valler Filho, 2007).

In addition to this situation, the 2010 earthquake, cholera epidemic and violence made Haitians see Brazil as a great opportunity to try to rebuild their lives. Therefore, since 2010, there has been a sharp increase in the flow of Haitian immigrants in Brazil.

At its early stages, only a few came, but over time this number increased and in July 2011, it exceeded 2,000 people. The influx of immigrants is almost constant with new entries that account for approximately 200 people per month.

The entry process of these immigrants in Brazil is similar in almost all cases. The journey begins in Port au Prince or the Dominican Republic by air, arriving in Lima, Peru, and Quito, Ecuador. From these two cities, they depart by road on a journey that can span more than a month. This route is traveled both by buses and boats.

The main points of entry into Brazil are the borders of Peru with the states of Acre and Amazonas. Upon reaching the border, these immigrants request asylum, claiming the appalling living conditions in Haiti and the inability to continue living in that country after the earthquake. Because Brazil is a signatory of the National Council for Refugees, the authorities at the border record these requests and forward them to the appropriate agency: the National Council for Refugees—NCR—of the Ministry of Justice for review. While the request is pending, immigrants receive provisional documentation that allows them to search for work.

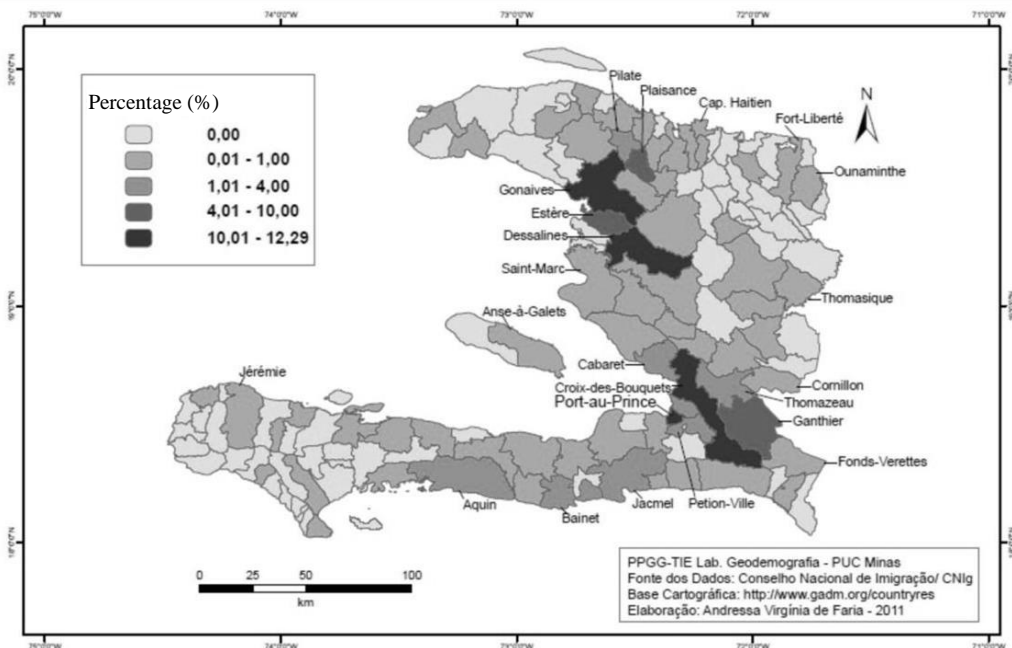
For not being in compliance with the standards specified in the international agreements for the provision of asylum, the request is then denied and the documentation is sent to the National Immigration Council (NIC), of the Agency of Labor. This organization has the legal competence to assess whether the request for stay in the country meets the current legislation.

Until July 2011, 736 asylum applications denied by NCR were referred to NIC. After the documentation was reviewed by the Council, in most cases, temporary permission of residence in Brazil was given to these immigrants based on the relevant legislation, considering humanitarian reasons for granting the visa.

Examining the information contained in the 434 requests sent to NIC before May 2011, it is noteworthy that the first group of these immigrants was native to the region affected by the earthquake (Port au Prince) and that over time people from other regions have been incorporated into this stream. Most who came were male (90 percent) and are in the age group 20–34 years old (70 percent). The most frequent entry points are in Acre (36.6 percent) and the State of Amazonas (57.8 percent).

When considering some of this group's characteristics, it is observed that 66 percent of them have at least completed primary school, 22.8 percent completed the secondary level and only 4.4 percent have completed college. Regarding the activity developed in Haiti, 34.1 percent of immigrants reported working in construction, 26.5 percent had worked in common services within the society (including teachers) and 11.8 percent had some experience in commerce.

Municipality of Origin of Haitian Immigrants with Visa Solicitation submitted to CNIG (total – arrival in Brazil until 07/27/2011)



The map showing the origin of Haitian migrants whose visa application was processed by NIC indicates that two regions stand out. One of them, located in the central portion of the country, is the capital Port au Prince and the province of Croix-des-Bouquets, the area most affected by the earthquake that struck the country in January 2010. The second region is inserted in the north portion, where most of the migrants come from the provinces of Gonaives and Dessalines.

Based on the data presented, a new migration taking Brazil as a destination is appearing and that brings great challenges for the Brazilian government. Since the mid-twentieth century, there has not been in Brazil a strong, constant flow of immigrants from a country in the northern hemisphere and especially setting a trajectory that, in many respects, resembles the “monumental” number of Brazilians who sought to enter illegally into the United States by the Mexican border.

2.6. Remittances Sent by Brazilian Emigrants

With the increasing migration of Brazilians abroad, a new phenomenon began to emerge and draw the attention of international organizations. The Inter-American Development Bank (IDB) and the International Monetary Fund (IMF) began to notice the growing number and value of monetary transfers that went into the country. Although it is possible to realize the magnitude of remittances, until 2000, it was difficult to determine the correct amount of funds entering Brazil through this route.

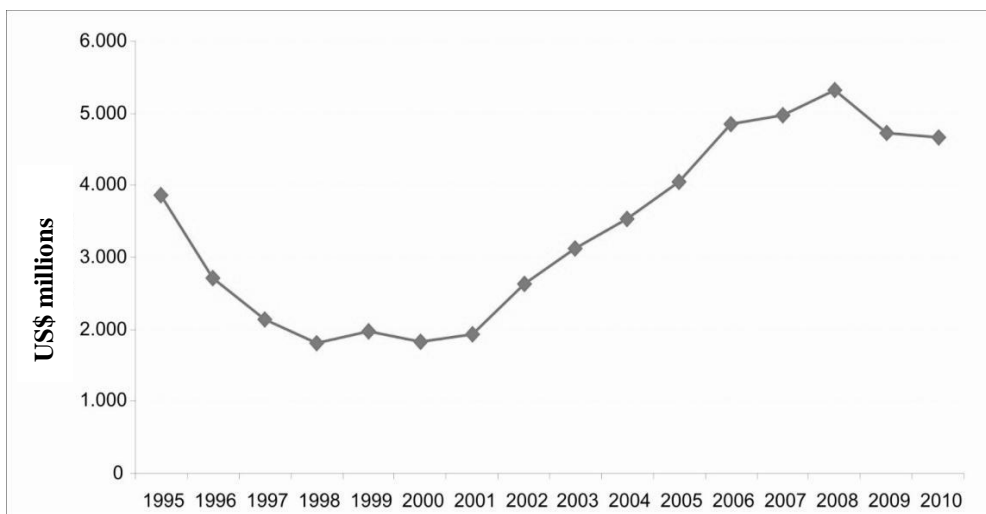
This was due to the fact that a portion of remittances was done illegally (i.e., without the knowledge of the Central Bank and, in some cases, shipments were accounted for in other items out of the balance of fees, which prevented their verification). The irregular shipments were mainly due to the hefty fees charged for affecting this type of banking transaction. With the expansion of the migration process, the banking industry realized the benefits of customer loyalty via remittances and with government intervention to stimulate a reduction in shipping fees, the remittances went through a banking process that placed Brazil as one of the fastest money-transferring countries via the banking network in the world.

From this moment, the positive effects that remittances can bring to the countries that receive them became the focus of a study because, in general, migrants send money to the family that stays in their home country, with the purpose of starting a savings account or even to maintain their families (Martes and Fazito, 2009).

Currently the Central Bank has a large and reliable database and through the Central Bank Bulletins-Annual Reports, it is possible to discern the value of Unilateral Current Transfers. Because most of the transfers, under foreign exchange contracts stipulated by shipping companies, are from the United States and Japan, there is a way to know the share of remittances coming from these countries.

The money sent by the country of origin reflects the conditions of the global economy, so the existence of economic crises directly affects the amount of remittances.

Chart 2: Amount of Remittances Received by Brazil between 1995 and 2010



Source: Brazil Central Bank - PCB

As shown in Figure 2, the value of remittances from 1995 to 2001 suffered a sharp fall due to the scenario experienced by the global economy during this time. Between 2001 and 2008, its value grew back significantly, showing that the economy in the places where Brazilians were working was growing. With the crisis of 2008, the money transfers started to decline due to unfavorable times for many Brazilians, who began to have difficulty maintaining a position in the market because the tasks they performed were the first to be affected and in many cases this initiated a process of immigrant return.

PART II

MIGRATION POLICY FRAMEWORK

Neide Patarra and Duval Magalhães

1. Recent International Migration Policies

Because of its territorial extension, the size and composition of its population and the current stage of its economic growth among other characteristics, one can say that the relatively recent movement of Brazilians abroad as well as the entry of new immigrants, especially South Americans and Africans, does not cause a significant impact on national development. That does not mean there is no conflict between citizens and recent immigrants, especially in the borders, or reactions of xenophobia and discrimination in the urban-metropolitan areas of highest concentration of these new immigrants. Nor does it mean that these impoverished immigrants are not living in extremely precarious and difficult conditions—known as the case of most Bolivians, among other groups.

However, a growing shift in the framework of social policies has been observed. First, in 2005, the federal government put up a draft of a new law on foreigners for public consideration. At the moment, this proposal, subjected to heated debates, is still pending in the labyrinths of the Civil Office of the Cabinet of the President of the Republic and no one knows for sure when it will be submitted for discussion and approval by the National Congress.

On the other hand, we must also account for the creation and functioning of the National Immigration Council. It is a tripartite collegiate organization, attached to the Agency of Labor and Employment and composed of government representatives, workers and employers, with seats for representatives of civil society. The presence of the Council has been expanding in recent years and also showing concern not only with immigrants in the country but also with the Brazilians abroad. Among various measures, it is worth noting the proposed creation of “Home of the Brazilian Worker” in countries where there is substantial Brazilian immigrant presence and in the Brazilian borders, where the migration problems are more evident. One of these houses already functions in Foz do Iguaçu and another is planned for the city of Oiapoque. Overseas, two other houses are under deployment, one in Japan and another in the United States.

With regard to the output of Brazilians, we highlight the great efforts made by the Agency of International Affairs (AIA) to enable the consular service structure to serve and identify Brazilians living abroad. Several of the current estimates of Brazilians living abroad are due to the efforts of the AIA. Moreover, the concern by the Brazilian government to more adequately deal with the issue of international

migration through innovation designed for the 2010 Census is noticeable; for the first time in the history of the Brazilian census, there will be a set of specific questions to identify Brazilians living abroad.

In addition, the AIA has, in recent years, substantially altered its activities abroad with regard to Brazilian immigrants. The growing demand for consular services, arising in the second half of the 1990s, forced the government to take measures that led to changes in the supply of these services, with more areas dedicated to consular service, the creation of itinerant consulates and training of personnel. Added to these measures was the establishment of the Sub-Secretary General for Brazilian Communities Abroad, an act indicating the importance of this topic on the Brazilian diplomatic agenda.

On the other hand, the AIA sought to create channels to listen to the Brazilian communities abroad and this aspect has been of particular importance to the achievement in the city of Rio de Janeiro of three conferences titled “Brazilians in the World” and to the support of the initiatives of local debates on the status of Brazilians in many countries worldwide. Another important step was the creation of the Council of Representatives of Brazilian Communities Abroad, which will be formed by advisors residing abroad, elected by their peers. The Council is an advisory organization of the Foreign Ministry on issues of interest to Brazilians abroad.

However, the miscommunication between Brazil and hosting countries has been constant and difficult, particularly the successive cases of persecution and expulsion as well as the barriers that central countries are developing with their national policies and even as joint policies within the European Union.

Alternatively, the efforts and support to Brazilians upon their return are still very weak, with the exception once again of those returning from Japan. There is still a need for regulation and propagation of these possible measures to Brazilians abroad and their families, reinforcing what began with the Brazilians Abroad Booklet of the Ministry of Labor. The variations of the movements of departure and return need to be recognized more clearly; they are subject to recent and current financial crises and to the problems of integration prevention, such as restrictive policies for immigrants from the receiving countries. Thus, while it supports the activity of the Brazilian communities abroad it must, in many aspects, encourage and support the decisions of return.

At the national level, the National Immigration Council (NIC) of the Ministry of Labor conducted extensive discussions with various society branches that have resulted in the proposed “National Policy on Immigration and Immigrant Worker Protection” that has been discussed at public hearings. Within MERCOSUR, the performance of NIC was of fundamental importance in the negotiations leading to the signing of several agreements within the common market, including the MERCOSUR residence agreement.

The official (government) policies, actions and programs on the issue of recent immigration movements of Latin American and African countries (South-South connection) are transforming the old impression of immigrants as a threat to national security and the national worker, to a greater acceptance of Human Rights policy development that are internationally acclaimed, as can be seen by the measures taken by the Ministry of Labor. The scattered resistance from government representatives will gradually dry up, with possible progression among nationals of the growing perception that Brazil is a country of emigration and immigration.

This stance is clearly reinforced by the MERCOSUR negotiations and, more recently, from the perspective of UNASUR, which gains strength in the current policy as a function of the Brazilian foreign policy, of the goals of South American integration and of the growing leadership of the current government regarding transformations and new alignments within South America.

There is much more room for progress, however, beyond the amnesty and flexibility with the entry of migrants among the MERCOSUR countries. It is necessary to immediately strengthen the measures allowing access for migrants and members of their families especially in public schools and health care, which is decided at the level of the Federal States and often restricted under the reasoning of a lack of human resources and facilities for such an extension of public services. Moreover, the migration public management in Brazil still comes from a national and local set of policies on how to direct these resources in order to encourage regional development.

In general, neither the exit of Brazilians nor the entry of foreigners in Brazil has ratios that may cause government authorities to adopt restrictive policies. In addition, the issues and challenges surrounding the movements of emigration and immigration in the country today are different, as shown below.

2. Retrospective

From the Brazilian Empire, migration is a recurring theme on the agenda of political decisions. In the period between 1840 and 1964, the pros and cons of allowing the country to be colonized by foreigners to the detriment of the national population were exhaustively discussed. This series of discussions eventually contributed to the creation of restrictive policies of control.

The 1891 Constitution was the first step toward the formulation of a law focused on the interests of migrants. In it, the policies of the Brazilian Empire of the time were exposed, in which there was a large opening for immigration. However, in 1893, by decree 1,566, this policy became restrictive and the entry of immigrants into the country was prohibited for the following: bums and vagabonds; those stricken by illness; or those suspected of committing acts against life, health, property or public faith outside national territory (Teixeira, 2008).

The legislation produced by the Brazilian Empire reflected the contradictions in Brazilian society regarding their immigration policy: on one side, the interest in bringing more people to be settlers and on the other, the growing need for replacement of labor by slave work with a salaried worker, of which immigrants were the main workforce (Iotti, 2010).

The growing concern over the entry of immigrants in Brazil was again manifested in the Constitution of 1934 during the Vargas government, when the Quota Law began to limit the entry of immigrants. This period also saw the founding of the National Bureau of Immigration (1938); the Police Station for Foreigners (1941); and the Division of Marine, Air and Border Police (1944).

Despite Brazil's long history developing policies for migration, there was a large delay in following the dynamics of migration. This is reflected in the now obsolete Foreigners Act, established in 1980, which is still in place. The main criticism that can be made to the text of this law is the disregard of the international treaties and of fundamental human rights as well as the allowance that the immigration policy be depicted by the Executive without the consent of the Parliament.

Due to pressures for the creation of a law more consistent with the realities of migration in Brazil, the Brazilian Congress enacted Law No. 6,964 in December 1981. Despite bringing some innovations, such as the inclusion of religious people among the beneficiaries of permanent visas and the impossibility of expulsion in case of a foreigner married for five years or more to a Brazilian native or having children with the same, this law alleviates only the authoritarian character of the 1980 Law.

With the emergence of globalization and the increasing mobility of people, the new global and regional migration reality led the government in 2006 to start developing and discussing a new immigration law with society through public hearings. Thus, in July 2009, a new bill on migration was sent to Congress, identified as PL 5,655/2009. Through the application of this law, the government's actions in the field of migration should be guided by ensuring human rights; national, socioeconomic and cultural interests; the preservation of democratic institutions and the strengthening of international relations.

Concurrently with the creation of new immigration legislation, there has been a series of discussions in the country aimed at creating public policy with a focus on migrants because Brazil has entered in a definitive route of international migration, which has requested deeper debates about this subject. As a result, in 2008, the NIC of the Agency of Labor and Employment and the ILO facilitated the seminar Tripartite Dialogue on Public Policies for Labor Migration.

This was an important milestone in the discussion of migration policies, which was attended by government agencies, unions and workers, representatives of associations of support to migrants and academics. This event raised a number of recommendations to guide public policies for migration in the country (Sprandel and Patarra, 2009).

Despite efforts by the government, Sprandel and Patarra (2009) highlight that there is still a consistent and integrated policy with respect to international migration in Brazil. The recent creation of agencies and authorities addressing this issue has its endeavors compromised, for it acts under tension and competition. But the debate continues and should be able to promote the creation and implementation of effective laws enabling a decent life for immigrants who choose to live in the country as well as provide assistance to those who leave their country in search of work and better quality of life (Milesi, 2007).

3. National Legal Framework

3.1. Constitution of 1988

The 1988 Constitution, in Article 4, requires that the country seek the economic, political, social and cultural development of the peoples of Latin America, aiming toward the formation of a community of Latin American nations. The Constitution also issues, in Article 5, that all are equal before the law, without distinction whatsoever, guaranteeing Brazilians and foreigners residing in the country the inviolable right to life, liberty, equality, safety and property.

With regard to political rights, the Constitution has the following applicable effects: foreigners cannot register as voters or compete privately with Union laws on immigration and emigration; offices, job positions and public employment are accessible to foreigners who fulfill the requirements established by law; federal judges can prosecute and try foreigners responsible for crimes of illegal entry or stay; universities can admit teachers, technicians and foreign scientists, within the structure of the law.

3.2. Law No. 6,815 from 1980

The Foreigners Act in force is 6,815 of August 19, 1980, which defines the legal status of foreigners in Brazil and is marked by the concern for national defense. The law created the National Immigration Council, which works in conjunction with the Agency of Labor and Employment.

3.3. Bill 5,655/2009

PL 5.655/2009 regulates the entry, stay and exit of foreigners in the country, the Institute of naturalization, the mandatory legislation, transforms the National Immigration Council into the National Migration Council, specifies misdemeanors and other matters.

Among its innovations are the restriction on the activities of foreigners in strategic regions; the expansion from four- to ten-year minimum terms for ordinary naturalization; and the transformation of the National Immigration Council into the National Migration Council on the basic structure of the Agency of Labor and Employment.

3.4. Decree Law 2,448 of 1940—Criminal Code

Article 206—Addresses the appeal for the purpose of emigration.

Article 231—Addresses the international trafficking of persons.

Article 231-A—Addresses the national trafficking of persons.

3.5. Law No. 8,069 of July 13, 1990—Children and Youth Act

Article 239 determines that it is a crime to promote or assist in the act intended to send children or adolescents abroad without observing legal formalities or with the intention of making a profit.

3.6. Law No. 9,474 of 1997—Implementation of the Status of Refugees of 1951

Brazil is a signatory of the 1951 Geneva Convention on the Status of Refugees and has an international commitment to protect victims of persecution. Law 9,474/1997 includes in its definition of refugees all persons persecuted for reasons of race, nationality, religion, social group or political opinion. The Brazilian law also considers the individual a refugee who, due to serious and widespread violations of human rights, is compelled to leave his country of nationality and seek refuge in another.

4. International Legal Framework

Currently, migration is a recurring phenomenon in a globalized world; however, as claimed by Jubilut and Apolinario (2010) there is no broad international means able to regulate the conduct of the States in relation to the variables present in the migration process. Consequently, there are international standards that regulate issues such as security, citizenship, freedom of movement of persons, among others (Maia, 2009).

Among the major international treaties to which Brazil is a signatory, we can highlight the following:

4.1. United Nations

- Convention relating to the Status of Refugees (1951). Geneva Convention, ratified November 1960
- Convention relating to the Status of Stateless Persons (1954). Decree No. 4,246 dated May 22, 2002
- Convention to reduce cases of Statelessness (1961)
- International Convention against all forms of racial discrimination (1966), ratified March 1968

- International Convention on Economic, Social and Cultural Rights (1966), signed January 1992
- International Convention on Civil and Political Rights (1966), signed January 1992
- Protocol relating to the Status of Refugees (1967)
- Convention on the Elimination of All Forms of Discrimination against Women (1979). Decree No. 4,377 dated September 13, 2002
- Convention against Torture and other cruel treatment or punishment, inhuman or degrading (1984), ratified in September 1989. Decree No. 40, dated February 15, 1991
- Convention on Children's Rights (1990). Decree 99,710 dated November 21, 1990
- Additional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999), ratified in 2002. Decree No. 4,316 dated July 30, 2002
- Additional Protocol to the Convention against Torture and other cruel treatment or punishment, inhuman or degrading (2002), ratified in January 2007. Decree No. 6,085 dated April 19, 2007
- Optional Protocol to the Convention on Children's Rights on the sale of children, child prostitution and child pornography (2002). Decree No. 5,007 dated May 8, 2004
- United Nations Convention against Transnational Organized Crime (2002). Decree No. 5,015 dated March 12, 2004
- Additional Protocol to the UN Convention against Transnational Organized Crime against the Smuggling of Migrants by Land, Sea and Air (2002). Decree No. 5,016 dated March 12, 2004
- Additional Protocol to the UN Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children (2002). Decree No. 5,017 dated March 12, 2004

4.2. Organization of American States—OAS

- Convention on Territorial Asylum. Decree No. 55,929 dated April 14, 1965
- Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (1994). Decree No. 1,973 dated August 1, 1996
- Inter-American Convention on International Traffic of Minors (1994). Decree No. 2,740 dated August 20, 1998.

4.3. 4.3 International Labor Organization—ILO

- Convention on Migrant Workers (revised) and Recommendation 86 on migrant workers (1949), ratified in 1965
- Convention No. 105 concerning the Eradication of Forced Labor. Decree No. 58,822 dated July 14, 1966
- Convention No. 111 of the ILO on discrimination in respect of employment and occupation. Decree No. 62,150 dated January 19, 1968
- C118 Convention on Equality of Treatment (Social Security), 1962, ratified in 1969
- Convention No. 182 on the worst forms of child labor. Decree No. 3,597 dated September 12, 2000
- Convention No. 169 of the International Labor Organization—ILO on Indigenous and Tribal Peoples. Decree No. 5,051 dated April 19, 2004

4.4. MERCOSUR

- Agreement on Exemption of Translation of Administrative Documents for Immigration Effects between MERCOSUR Member States, of December 15, 2000. Decree No. 5,851 dated July 18, 2006
- Agreement on the Benefit of Free Justice and Legal Aid between MERCOSUR Member States. Decree No. 6,086 dated April 19, 2007
- Constitutive Protocol of the MERCOSUR Parliament, signed by the Governments of the Federative Republic of Brazil, the Republic of Argentina, the Republic of Paraguay and the Eastern Republic of Uruguay. Decree No. 6,105/2007
- Agreement on the Promotion of Business Activities in the MERCOSUR. Decree No. 6,418/2008
- MERCOSUR Social and Participatory Program. Decree No. 6,594/2008
- Agreement on the Benefit of Free Justice and Legal Aid between MERCOSUR Member States, the Republic of Bolivia and the Republic of Chile. Decree No. 6,679 of December 8, 2008
- Protocol of Consolidated Education and Recognition of Certificates and Elementary and Middle Level Nontechnical Studies between the Member States of MERCOSUR, Bolivia and Chile. Decree No. 6,729/2009
- Agreement on Cooperation and Jurisdictional Assistance in Civil, Commercial, Labor and Managerial between MERCOSUR Member States, the Republic of Bolivia and the Republic of Chile. Decree No. 6,891/2009
- Multilateral Agreement of Social Security of the Southern Common Market and its Administrative Regulation. Legislative Decree No. 451/2001

- Agreement on Residence for Nationals of the MERCOSUR Member States. Legislative Decree No. 210/2004
- Agreement on Residence for Nationals of Member States of the Southern Common Market—MERCOSUR, Bolivia and Chile. Legislative Decree No. 925 of 2005
- Agreement on Regularization of Internal Migration of MERCOSUR Citizens. Legislative Decree No. 928/2005
- Agreement on the Creation of the MERCOSUR Visa. Legislative Decree No. 346/2008

5. Other Bilateral Agreements

- Decree No. 5,105 of June 14, 2004. The Agreement between the Government of the Federative Republic of Brazil and the Government of the Republic of Uruguay issuing permits for Residence, Work and Education to Brazilians and Uruguayans of the National Borders is enacted; dated August 21, 2002
- Migration Regularization Agreement Brazil/Bolivia (2005)
- Interministerial Ordinance of August 28, 2006. The agreement is put into action by exchange of Mentions between the Federative Republic of Brazil and the Republic of Argentina, for the Implementation, in unison, of the Agreement on Residence for Nationals of MERCOSUR Member States
- Interministerial Ordinance of October 27, 2006. The agreement is put into action by exchange of Mentions between the Federative Republic of Brazil and the Republic of Uruguay, for the Implementation, in unison, of the Agreement on Residence for Nationals of MERCOSUR Member States
- Decree No. 6,737 of January 12, 2009. The Agreement between the Government of the Federative Republic of Brazil and the Government of the Republic of Bolivia for permission of Residence, Education and Work to National Borders both Brazilians and Bolivians is enacted, honored in Santa Cruz de la Sierra, on July 8, 2004
- Agreement on the Assistance of Movement of Persons between Brazil and Portugal. Decree No. 6,427 dated April 7, 2008
- Agreement on the Allowance of Temporary Visa for Medical Treatment of Citizens of the Countries of Community of Portuguese Language. Decree No. 6,471 dated 06/04/2008
- Agreement between the Government of the Federative Republic of Brazil and the Government of the French Republic Concerning the Readmission of Persons in Irregular Situations. Decree No. 3,929 of September 19, 2001

6. Institutional Framework

In Brazil, execution and control of migration policy are exercised by the Agencies of Justice, Foreign Affairs and Labor and Employment. The following are, briefly, their main responsibilities.

6.1. Ministry of Justice

The Ministry of Justice operates through the National Secretariat of Justice, which contains the National Council for Refugees (NCR), the Department of Foreign Affairs, the Federal Police Department and the Coordination of the National Plan to Combat People Trafficking and the Managing Group.

The NCR aims at stimulating national policy on refugees and is chaired by the National Secretariat of Justice of the Ministry of Justice and it is composed of one representative from each of the following bureaus: Agency of International Affairs; Ministry of Health; Agency of Labor and Employment (ALE); Ministry of Education; Department of Federal Police; Archdiocese Caritas of Rio de Janeiro and São Paulo; and the United Nations High Commissioner for Refugees (UNHCR).

The Department of Foreigners is in charge of processing, commenting on and referring matters relating to nationality, naturalization, mandatory legislation of removal, extradition and deportation. It also instructs the processes relating to the transfer of prisoners serving a sentence in their home country in agreements Brazil is part of and provides administrative support to the National Council for Refugees (NCR).

The Federal Police Department registers arrivals and departures of the country and includes Information from the Alien Registration Service, Division of Marine Police, Airport Police and Borders Police Department of the Federal Ministry of Justice.

The Coordination of the National Plan to Combat People Trafficking and the Managing Group aims to prevent and suppress the trafficking of persons, to hold the perpetrators accountable and to ensure care and support to victims.

6.2. Ministry of Labor

The Federal Constitution of 1988 claims to compete privately with Union laws on emigration, immigration, entry, extradition and expulsion of foreigners (art. 22, XV). Law No. 9,649 of May 27, 1998, refers the immigration policy to the Ministry of Labor (art. 14, XVIII).

The Bureau of Labor Relations (BLR) has, among its main functions, the task to oversee and monitor activities related to work permits for foreigners in the country and to support the National Immigration Council.

The Agency of Labor and Employment (ALE) exercises its expertise in the area of immigration into two spheres, namely, the National Immigration Council (NIC) and the General Immigration Coordination Department (GICD).

6.3. Ministry of Foreign Affairs

It is the responsibility of the *Ministério das Relações Exteriores* (MRE—Ministry of Foreign Affairs) to grant authorization to foreigners to enter and remain in the country. Among the types of visas that can be granted to foreigners are transit visas, tourist, temporary, permanent, courtesy, official and diplomatic. The consular service corresponds to notary services of civil registration and delivery of travel documents plus other activities relating to the exercise of remote citizenship issuance.

In the structure of Chancery there is a Division of Brazilian Communities—DBR, linked to the Consular Department and to the Brazilians Abroad, part of the Sub-secretary General for Brazilian Communities Abroad—SBCA. The DBR is primarily responsible for the deployment of the Conference “Brazilians in the World.”

The Sub-secretary General for Brazilian Communities Abroad has a network of 167 stations, comprising 105 consular sectors of Embassies, 43 General Consulates, 5 Consulates and 14 Vice-Consulates developing permanent attention to communities through tools that include specific sectors for their support.

7. Plans and State Programs

The Agency of Labor and Employment, through the National Immigration Council, formulates public policies related to migration. A landmark of these policies was the promotion of the Seminar *Tripartite Dialogue on Public Policy of Migration for Employment* (2008), which included the participation of government agencies, unions, workers, representatives of support organizations to migrants and academics.

This event resulted in the production of a document containing general recommendations that should guide the creation of public policies for migration in the country, namely the following:

1. The adoption of a new law that governs the issue of migration consistent with the current Federal Constitution is urgently needed
2. The Brazilian legislation needs to be modified for international agencies for the protection of the migrant workers and their families
3. Migration policies should adopt a standard of protection to meet the needs of migrant workers and their families
4. It is necessary to consider the centrality of the theme of work regarding the migration phenomenon

5. It is necessary to simplify the bureaucratic procedures relating to migrants and the qualification of civil servants for more appropriate assistance to migrants
6. It is necessary to produce statistical information and qualified studies that seize the specifics of the daily migrant laborers and networks involved
7. The MERCOSUR agreements in the areas of migration and labor should be widely publicized and known
8. Public policies aimed at migrants must take into account the need for programs that address the multiplicity and diversity of migration movements
9. Public policies on labor, employment and income should provide specific strategies for the returned Brazilian families
10. It is necessary to expand access to public policies on labor, employment and income in areas where there is greater Brazilian emigration
11. It is necessary to conduct campaigns to inform and clarify the rights and duties of immigrants
12. It is necessary to have adequate assessment, clarification and application of appropriate language in discussions about migration

Among other actions taken by NIC, these stand out: the creation of the booklet “Brazilians Abroad—Useful Information”; the creation of the “Home of the Brazilian Workers” abroad, along with ALE; the creation of the “Monitoring Group of International Scope and the Need for New Migratory Policies” and approval of amnesty in July 2009, potentially benefiting every foreigner who entered the country before February 2009.

8. Major National and International Actors

8.1. Nongovernmental organizations

The First International Symposium on Brazilian Emigration, promoted by Casa do Brasil de Lisboa (1997), was the first event to internationally discuss the situation of Brazilians abroad. Among the major participants present were the Attitude Group of Switzerland, the newspaper *Brazilnews* of Canada and representatives of Brazilian groups in Europe, the United States and Japan.

Continuing the discussion on Brazilian migration, the First Iberian Meeting of the Community of Brazilians Abroad occurred (2002), sponsored by the Attorney Regional for Citizens’ Rights in Brasilia, with the support of the Casa do Brazil in Lisbon, Caritas, Pastoral Care of Migrants of CNBB and the Migration and Human Rights Institute. In 2005, in the city of Boston (United States), the first Brazilian Summit took place. In 2007 there was the organization of the Second Meeting of Brazilians Abroad (Brussels). On that occasion the Network of Organizations that

work with Brazilian citizens in Europe was formed (Brazilians Network in Europe, 2011).

The mobilization of Brazilian Emigrants Organizations was an important implement to pressure public authority toward the promotion of policies directed at them. One example was the movement called “*Brasileirinhos Apátridas*” (Stateless Brazilians), which managed to create a constitutional amendment 54/07, enacted September 2007—an amendment that restores Brazilian nationality to the children of foreign-born Brazilians.

The debate on Brazilian migration culminated in the first edition of the Brazilians in the World Convention (2008), in Rio de Janeiro. This event aimed to promote open and inclusive debate on matters of public policy and Brazilian emigration to Brazilians abroad.

Concurrent with these efforts was the role of the Catholic Church, especially through the Scalabrini Congregations whose mission is to assist migrants. Another important organization was the Pastoral Care for Migrants, which had in its structure the Migrant Support Center (MSC). In Brasília, MSC is operated by the Migration and Human Rights Institute and the Scalabrini Center for Migration Studies.

Concerning associations and organizations of Brazilians abroad, the Foreign Ministry counts 356 Brazilian associations and organizations in 45 countries and 216 media outlets directed to them.

9. Amnesties

“We believe that the issue of irregular migration has humanitarian aspects and must not be confused with crime.” With statements such as this, President Luiz Inacio Lula da Silva signed Law 1,664/2009, the Law of Amnesty Migration, in July 2009. This law authorized the regularization of the foreigners who were undocumented and had entered the country by February 1, 2009.

Migrants went to the federal police to obtain a provisional visa for two years; disclosures by the Ministry of Justice in January 2010 indicate that 42,000 foreigners were benefited, although the expectation was higher—at least 50,000. Some sources estimated that there were up to 200,000 foreigners with irregular status in the country.

Previously, other measures had already been implemented—in 1981, 1988 and 1998. The Brazil-Bolivia bilateral agreement, signed in 2005, also furthered the settlement of immigrants in that neighboring country.

Social movements have been stimulated to trade the temporary visa in for a permanent one; for this to happen, it is necessary to schedule the transition 90 to 150 days prior to the expiration of the provisional FIC (Foreigner Identification Card).

10. The Treatment of Refugees

Brazil became involved with the issue of refugees in the 1940s. Due to large forced population displacements at the end of World War II, especially in Europe, the phenomenon began to receive an institutionally defined status of international scope (Jubilut, 2007). Even during the war, in 1943, the United Nations Relief and Resettlement Administration (UNRRA), responsible for providing assistance to people who had to move because of the war was established (Jubilut, 2007; Moreira, 2006). In 1947, the UNRRA lost financial support from the United States and the International Refugee Organization (IRO) was created, which ran until 1949. In this period, Brazil formed a joint committee with the IRO, which anticipated receiving 700,000 displaced people from World War II. However, just over 19,000 refugees arrived in the country before 1949. The Brazilian government signed this agreement with a specific interest in receiving refugees from the war with qualified skills in order to boost industrialization in the country (Paiva, 2000). Even without meeting the demands of the initial agreement, Brazil was the Latin American country that received the greatest number of forced migrants arising from conflicts of the World War II in Europe (Milesi and Moroni, 1998).

In 1949, the same year of the termination of the IRO, the United Nations decided to establish the United Nations High Commissioner for Refugees (UNHCR), which shaped international milestones for the legal definition of refugee in the “1951 Convention relating to the Status of Refugees,”⁷⁵ held in Geneva, which defined a refugee as a person

[T]hat, as a result of events occurring before January 1, 1951 and fearing being persecuted for reasons of race, religion, nationality, social group or political opinion, is outside the country of his nationality and is unable or, because of such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and is outside the country of his habitual residence as a result of such events, is unable or, due to such fear, is unwilling to return to it (Chapter 1, Article 1, Paragraph 1).

Later, in the 1967 Protocol Relating to the Status of Refugees⁷⁶ of the United Nations, the temporal aspect was erased from the definition of refugee as it related to “events occurring before the date of January 1” because new situations and refugee categories emerged. Brazil became a signatory to the Geneva Convention in 1960 and of the 1967 Protocol in 1972.

Conflicts in Latin America between 1970 and 1980 led to more than 2 million refugees and spurred the development of another regional agency of refugee protection (Moreira, 2005). In 1984, the countries of Latin and Central America developed the Cartagena Declaration, which broadened the scope of protection, allowing refugee status to be obtained from a more subjective criterion (personal reasons) rather than an objective need of protection (Zeledon, 2000). The conclusions and recommendations of the Colloquium are the following:

⁷⁵ Adopted in July 28, 1951, by the United Nations Convention of Plenipotentiaries on the Status of Refugees and Stateless Persons; it was implemented in April 22, 1954 (UNHCR—Brazil, 2004).

⁷⁶ Summoned in November 18, 1966 and signed in January 31, 1967 (UNHCR, 2004).

[T]he definition or concept of a refugee to be recommended for use in the region is that in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees people who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (Cartagena Declaration, Chapter III).⁷⁷

Although Brazil signed the Declaration, it kept the geographical reservation (which gave refuge only to people from Europe, as granted by the Convention of 1951) until 1989. Since 1992, according to Milesi and Moroni (1998, 99), applying the broad definition of refugee provided in the Declaration of Cartagena, based the applications analyzed and submitted by UNHCR to the Brazilian government. This position led to a considerable change in the refugee population in Brazil: approximately 70 percent were recognized for humanitarian reasons in a broader sense rather than because they were refugees in the strict limits of the 1951 Convention.

In 1997, Brazil passed a National Refuge Law, a pioneer in Latin America. The National Council for Refugees (NCR) was established in 1998, an agency of collective deliberation under the Ministry of Justice, which was intended to lead the national policy for refugees (Barreto, 2001). The Law n. 9,474 from July 22, 1997, defines mechanisms for implementing the Status of Refugees of 1951, advancing in its definition of refugees in item III:

Any individual will be recognized as a refugee who:

I—due to well-founded fear of persecution for reasons of race, religion, nationality, social group or political opinions, lies outside of his country of nationality and is unable or unwilling to avail himself to the protection of that country;

II—not having a nationality and being outside the country where he once had his habitual residence, is unable or does not want to return to it, in light of the circumstances described in the preceding item;

III—due to serious and widespread human rights violations, is forced to leave his/her country of nationality to seek refuge in another country (Law No. 9,474/97 Title I, Chapter I, Section I, Article 1).

In addition to this law, Brazil has recently become the resettlement country of refugees (Baeninger et al, 2007) and has allowed the re-opening of a UNHCR office on its territory. As a result, Brazil is now seen as a model of protection for refugees in South America (Jubilut, 2006).

In 2004, at the twentieth anniversary of the Cartagena Declaration, a “Declaration and Plan of Action of Mexico to Strengthen the International Protection of Refugees in Latin America”⁷⁸ with the following solutions was proposed:⁷⁹ (1) Self-Reliance and Solidarity Cities Integration Program: more effective integration of refugees in urban centers (pilot study in Latin America); (2) Integral Borders

⁷⁷ www.onu-brasil.org.br/doc/Declaracao_de_cartagena.doc

⁷⁸ See www.acnur.org/. Also Milesi, 2005.

⁷⁹ Mexican Plan of Action “To Strengthen the International Protection of Refugees in Latin America” (www.acnur.org).

Solidarity Program: promotion of social and economic development, benefiting people who need international protection and the admitted local populations (in particular to Ecuador, Panama and Venezuela, considering the increase of Colombian refugees); (3) the Regional Solidarity Resettlement Program: proposed in 2004 by the Brazilian government for Latin American refugees.

PART III

CIVIL SOCIETY PARTICIPATION IN PUBLIC POLICIES AND MIGRATORY PROGRAMS

1. The Current Context of Migration Policies and Official Discourse

Neide Patarra and Duval Magalhães

As we saw earlier, there is a growing shift in the parameters of social policies relating to migration in Brazil; this is due to the referring of the draft (though convoluted and slow) of a new immigrant law. At the moment, this proposal is the subject of heated debates, still pending in the intricacies of the Staff of the Presidency of the Republic and its dispatch for discussion and approval by the National Congress has its date yet to be determined.

Nevertheless, the creation of the National Immigration Council (NIC) in 1980 and the settlement of its operation in 1993 should also be mentioned. It is a tripartite collegial structure, attached to the Agency of Labor and Employment and composed of government representatives, workers and employers with seats for civil society representatives. The action of the Board has been expanding in recent years as well as showing concern not only with foreign immigrants in the country but also with the situation of Brazilians who live and work abroad.

It has also been noted that the NIC of the Agency of Labor and Employment has conducted extensive discussions with various sectors of society that have resulted in the proposed National Policy on Immigration and Immigrant Worker Protection, which has been discussed in public hearings. Within MERCOSUR, the performance of NIC was of substantial importance in the negotiations leading to the signing of several agreements within the common market, among them, the MERCOSUR and associated countries agreement to residence.

The official (government) policies, actions and programs on the issue of recent immigration movements of Latin American and African countries (South-South connection) are transforming the old impression of immigrants as a threat to national security and the national worker, to a greater acceptance of Human Rights policy development that is internationally acclaimed and are indicated by the measures taken by the Agency of Labor and Employment. These measures are consistent with the characterization of Brazil as a country of both emigration and immigration, although recent trends denote an intensification of the movement of foreigners entering the country and a reduced number of Brazilians leaving. In addition, Brazilians have returned to their home country, especially after September 11, 2001, and following both the financial crisis of 2008 and the current financial crisis.

This attitude is clearly reinforced by the MERCOSUR negotiations and, more recently, by UNASUR gaining strength in the current policy as a function of Brazilian foreign policy, by the goals of South American integration and by the growing leadership of the current government in the context of reconstruction and order within South America.

The official stance of Brazil relating to migration movements and migration policies can be clearly observed in the speech of the then President Luis Inácio Lula da Silva at the occasion of the law enforcement granting amnesty to illegal aliens in Brazil, called the *Amnesty Law*. Starting with irregular migration, the then President stated that “We advocate that the issue of irregular migration has humanitarian aspects and cannot be confused with crime.”⁸⁰

Right now, a vision of the current immigration issues has a definite structure, emphasizing arguments that reinforce what the civil society activists have been advocating in recent times, such as setting up a new national situation characterized as both immigration and emigration.

- **Open, Welcoming and Friendly Image of the Country**

First, I would like to thank, on behalf of the Brazilian people, *all immigrants who have helped and continue to help build our country. This land is generous and has always received with open arms all of those who come to work, raise their children and build a new life.*

- **Immigrant’s Rights**

That’s why the steps we take today will give immigrants the same rights and duties established in the Federal Constitution for our countrymen, except for those unique to native Brazilians. Among these rights, there is freedom of movement within the country and full access to paid work, education, health and justice.

- **Migration; Economic and Social Development; and Human Rights**

These new laws mean that Brazil is increasingly putting itself at the height of the migratory contemporary reality, of the global conditions of economic and social development and of the fundamental respect for human rights.

We cannot forget that the Brazilian Constitution itself, when dealing with fundamental rights and guarantees, states that everyone is equal before the law, whether Brazilian or *foreign residents*. The Brazilian government, through the commitments made at various international agreements, *recognizes that migrants are holders of rights and obligations that must be respected.*

⁸⁰ Speech by the President of the Republic, Luiz Inácio Lula da Silva, during the ceremony of law enforcement that gives amnesty to illegal aliens living in Brazil—Ministry of Justice-Brasília-FD, 07/02/2009. For the full speech, see Document I. Moving forward, part of this same speech will be mentioned throughout this piece. The partitions and italics are ours.

- **Society and Immigration Participation**

These are also the result of a broad national debate, with the contribution of different sectors of society and the *immigrants themselves who thus had the opportunity to clarify the issues they face and propose solutions.*

- **Integration of South America**

It is worth noting that this amnesty is a very special moment in which the integration process in South America is deepened and widened. Over many decades, Brazil has always welcomed Europeans, Asians, Arabs, Jews and Africans; more recently we have received strong migratory currents of our brothers in South America and Latin America.

At this moment, as South America is discussing its integration problem, still in the initial stages and as it has a debt to Africa which will never be monetarily met; payment through gestures or solidarity and recognition are an opportunity for us to raise the consciousness and the hearts of world leaders.

- **Irregular Migration**

We argue that irregular migration is a humanitarian issue and should not be confused with criminality. We take this issue in a comprehensive and balanced approach, taking into account the principles of universality, interdependence and indivisibility of human rights.

- **Rights to Social Policies**

For thousands of Brazilians, to live in countries such as the United States, Japan, Italy, Spain or Portugal, for example, means a dream of progress. But for many of our neighbors, Brazil is seen as a real chance to improve one's life. Here, these foreigners are entitled to public health and free education for their children, which, unfortunately, does not occur in many of the countries that receive immigrants from Brazil.

- **Counterpoint with Restrictive Policies of the Central Countries**

[E]xhibiting Brazilian setbacks regarding the policy to be adopted by rich countries. I am aware of the number of Brazilians living in Paraguay, where there are more than 400,000 Brazilians. I am aware of the number of Brazilians who live in Bolivia and the hundreds or tens of thousands of Brazilians around the world. And it is good that it is this way; it is good that we create a world without borders, of easier access, *allowing entrance of not only machinery, agricultural products and commodities across borders, but the entry for man seen by his good attributes and not be mistaken to be an atrocious thing when crossing a border.*

- **Fight against Smuggling and International Crime**

It is true that we will still be tough when fighting drug trafficking. It is true that we will continue to be tough on smuggling. It is true we will still be hard on international crimes.

- **Purpose and Reciprocity**

It is true that we have to be generous with humans from anywhere in the world who want to come here and prepare to settle their future.

Brazil is what it is because of the mixture that we have seen since 1500 with Portuguese, Germans, Italians, Arabs, Japanese, Spanish, Chinese and Latin Americans. That is, everyone who came here was served with great decency. I have told presidents of other countries: Brazil does not want more or less. We do not want any privileges to any Brazilian, anywhere in the world. We just want you to treat Brazilians abroad how we treat foreigners here in Brazil: as brothers, as partners and as Brazilians.

2. Discourse and Practice—Distancing of the Society, Contradictions and Conflicts

Neide Patarra and Duval Magalhães

Due to the vast Brazilian territory and its unchanged great intraregional diversity, immigrants do not cause the same reactionary acts of xenophobia or homogeneous discrimination throughout the country. However, although sparse and not representing a reaction of “friendly society,” reactions of xenophobia and discriminatory immigration policies have marked the history of the country; extensive and in-depth studies show moments of restraint following the subsidized Italian, Japanese and German immigrations, each with its specific immigration policies.

The present moment is marked by a certain amount of extreme nationalism and hovers around an atmosphere of optimism; economic outcomes and economic developments have been positive in recent years, though there is too much emphasis on the development prospective based on the export of commodities, fearing the short term effects on the national industry; the Brazilian became an international tourist; the widespread emergence of a new “middle class” who rose from poor groups of the population; the raging, spreading consumerism; and the proximity of the World Cup (2014) and Olympics (2016) validates this environment of optimism and pride. Conversely, the increase in violence linked to drug trafficking and sexual offenses and a certain political crisis in disputes between the executive, judiciary and legislature, also circumvent this scenario. It should be noted that demonstrations, protests and civil movement fights may occur—fighting homophobia, racial discrimination, abortion and so forth; the issue of new impoverished immigrants is often far removed from the social life of much of the population.

In this context, while not seen with sympathy, immigrants were a concern to their neighbors; recent immigrations are predominantly aimed towards São Paulo and Rio de Janeiro, with little representation in other states; beside these primary destinations to large urban centers, immigration concerns border authorities especially at the Triple Border (MERCOSUR) and the Northern Frontier (Amazonas and Acre) raising at both locations specific policy decisions.

In large urban centers, recent immigrants are already part of the space and the social and cultural life, as is mostly the case of Bolivians in São Paulo, who—after nearly 40 years of immigration—already constitute a respected community with unique associations, festivals, culture, food and so on.

It is in the work situation that the lives of immigrants become complicated, starting with the bureaucracy, where they attempt to obtain documents for legal stay. Despite the words of then President Lula, their problems and needs have not been solved, not the least of which include discrimination, exploitation and lack of rights—which have remained untouched by the Amnesty Law.

In the context of amnesty, immigrants went to the Federal Police to obtain a provisional visa of two years; the information released by the Ministry of Justice in January 2010 indicates that 42,000 foreigners benefited. This figure falls short of the estimated number of undocumented immigrants; some estimates indicate that at least 200,000 foreigners in irregular condition in the country could benefit from the amnesty.

Previously, other amnesties had been implemented—in 1981, 1988 and 1998. The Brazil-Bolivia bilateral agreement signed in 2005 also facilitated the settlement of immigrants of that neighboring country. The increase in the number of bilateral agreements among MERCOSUR and associated countries contributed to materialize the latest action in this field. The Agreement on Residence for Nationals of Member States of MERCOSUR, Bolivia and Chile, promulgated October 2009, made it possible for nationals of signatory countries to work and reside without the need for prior approval. On June 28, 2011, Peru and Ecuador also became signatories of this agreement.

Regarding the bilateral Brazil-Bolivia agreement, Brazil offers resistance to its renewal, based on the reciprocity policy adopted by the Ministry of Foreign Affairs, claiming that the number of Brazilians who regularize Bolivia is negligible compared to the number of Bolivians settled in the country.

With so many initiatives to remove foreigners from underground, why are undocumented immigrants still a reality in Brazil? When it comes to new migratory waves, the lack of disclosure with regards to amnesty agreements and the burdensome bureaucracy to access such benefits help explain this phenomenon

There are however deeper reasons. One must take into account that these regulations provide a finite legalization—these are temporary visas. Obtaining permanent documents requires proof of lawful profession or employment, something far removed from a great mass of immigrants in poor condition who earn their living performing informal market activities—such as street vendors and small garment businesses.

“Irregular and informal are two categories that go together,” explains Father Mario Geremia of the Pastoral Migrants Center (PMC) in São Paulo (SP). Informality pushes foreigners back to the situation of being undocumented, which in turn, prevents access to the formal market. “The truth is that agreements and amnesties are palliative,” says the priest. The informality and illegality remain in the shadow of human rights violations, as many migrants fear being deported if they denounce degrading jobs and slave labor or human trafficking.

This situation reinforces the urgency for comprehensive actions to integrate immigrants beyond the settlement in legal terms. This is a complex task that is complicated by difficulties imposed by the current law and negligence in connection with rights also guaranteed by law. In practice, situations multiply, demonstrating that despite the laudatory speeches to immigration policy, there is much to be done to ensure a truly worthy treatment to those who migrate to Brazil (Campos, 2010).

*Informal Labor and Slave Labor*⁸¹

The garment sector is the “bread and butter” of most immigrants who are illegally in the country; mainly in the city of São Paulo, many small shops operate by employing Bolivians, Paraguayans, Peruvians and Asians, among others. Sites are often improvised, where residence, cafeteria and sewing environments are combined in one room, usually with an expatriate in charge who has experience in the Brazilian territory.

These workshops usually outsource suppliers—if not sub-sub-contract—with owners of clothing brands. Besides being informal, they present problems of safety, health and excess work, an arrangement in which the “stitchers” are paid per item produced. In more severe cases, there are even restrictions on the freedom of workers. A typical example is the coercion of immigrant employees to work to pay alleged debts of the trip to Brazil, funded by a “clerk”—as the owner of these small businesses is usually named.

In July 2009, the Regional Superintendent of Labor of the State of São Paulo (SRTE / SP) launched, along with other entities, the Tripartite Municipal Pact against Fraud and Precariousness and for the Decent Labor and Employment in São Paulo. Through negotiations with other links in the chain, the alliance wants to create an enabling environment for small shops to regularize, thus giving workers lawful employment that opens the door to a permanent visa.

The Brazilian Association of Koreans, one of the signatory organizations of the pact—the Koreans are the owners of many of the garment stitching workshops that refer services—has pledged to direct that orders be dispatched only to workshops that operate legally. The Commerce Federation of the State of São Paulo (Fecomércio) will seek to certify companies with the Fecomércio Seal of Quality—

⁸¹ The following paragraphs belong to (almost entirely) articles published on the site ONG Repórter Brazil (Campos, 2010; Bly and Hashizume, 2010).

which aims to promote social inclusion and sustainability in supply chains. Other joint actions provide for the training of “clerks” to regularize their businesses. Due to tax and labor costs, a major obstacle to the formalization is the small profit margin of these enterprises.

It should be noted that these advance measures often collide with the constitutional status of the alien expressed in the foreigner status, which prohibits the participation of non-nationals in unions or professional associations. In addition, this law also prohibits the temporary immigrant visa holder from being able to “set up as an individual firm, or hold a position or role of administrator, manager or director of commercial or civil society.” Hence the pressure and movement in the sense of the current status of the foreigner is replaced by a new law on migration; as we have seen, it is still pending in bureaucratic means.

Published in the *Diário Oficial da União* (DOU) on February 5, 2010, the Normative Instruction (NI) No. 111 of the Agency of Development, Industry and Trade (ADIT) determined that the trade boards should accept requests to start a business from nationals of MERCOSUR, Chile or Bolivia, even if only granted temporary residence.

Beyond the labor aspect, other bureaucratic elements of the lives of immigrants generate dissatisfaction; obtaining a duplicate national foreign registry (NFR)—the equivalent document to the national’s identification card (IC)—may take up to eight months. Similar delay is experienced by those who enter the country with an application for permanent residence after having married a person of Brazilian nationality or having had a child native of the country—cases issued by law. During the wait, people are left with only a receipt—which is not accepted by most public and private institutions—not allowing for a bank account or a driver’s license and sometimes even making it difficult to get a social security card.

Immigrants also face obstacles if they attempt to occupy positions of employment in state agencies—the right already provided for in the Constitution, which certifies that offices and public functions must be accessible to both Brazilians and immigrants. Nevertheless, notices of competitions remain, demanding Brazilian nationality, a situation that, according to Paulo Sérgio de Almeida, President of NIC, still occurs due to the lack of a law to regulate this constitutional provision. “Currently, only universities and public research centers can hire foreigners, provided they are teachers, scientists or exercise related occupation,” he advises.

Access to education is another critical point. Invoking the Children and Youth Act (CYA), the São Paulo State Secretary of Education adopted a resolution in 1995 that directs schools to accept the enrollment of children of immigrants—a measure followed by the municipal network.

Despite the advances, there are still reports of difficulties at the time of enrollment—a confirmed fact in 2006 by the municipal Parliamentary Inquiry Commission (PIC) installed to investigate violations of human rights of immigrants. The problems tend to be worse in other parts of the country. “Around here, often the

registration only occurs when there is intervention from our part with the authorities,” said Rosa Maria Zanchin, religious Scalabrini and coordinator of Solidarity Network for Migrants and Refugees in Manaus (AM).

Aiming to claim rights and political force for foreigners, access to voting is one of the winning efforts of immigrants. Authored by Senator Alvaro Dias (PSDB-PR), a proposed constitutional amendment is currently being processed in Congress that provides for the participation of those with residence in Brazil during municipal elections, both in voting and as candidates for alderman. Similar implements are already in force in countries such as Sweden, Ireland and the Netherlands.

The measure is controversial and not unanimous even among politicians linked to immigrants. “Those who want to choose rulers must adopt the homeland,” said William Woo, defending the vote only to the naturalized Brazilian.

However, while there are immigrants fighting for integration, many are in Brazil with a distinct mind-set: to save money to go back to their land of origin as soon as possible. According to Father Sidnei Dornelas, advisor of the Human Mobility Sector of the National Conference of Brazilian Bishops (NCBB), this helps explain the seasonal migrations such as the garment workers—a sector that usually operates at full throttle near the holiday season. “There are other times of the year when many people go away,” he explains.

Among those who are thinking of going back, there are those who remain undocumented to avoid spending on documents and to avoid work charges. “They do not see the broader issue. The informality impedes social rising and maintains the ghettos,” says Father Mário Geremia. The consequence of this is the growing clandestine group based on unfair competition, which supports the poor working conditions for immigrants and Brazilians.

With regard to slave labor exercised by immigrants, it is worth noting that in 2010, for the first time, the Brazilian government concluded a labor inspection that resulted in the effective rescue of immigrants subjected to slavery in the urban environment. In none of the known operations to disguise slave labor in foreign cities was there the withdrawal of workers from places where they were found. This time, the decision of state officials was to protect the rights of the victims and rescue them.

Lured by the exciting promise of good wages, two Bolivian female workers crossed the border and were eventually forced to face daily violations of human dignity, which included overexploitation, degrading conditions, threats and harassment.

A coordinated monitoring by the Regional Director of Labor of the State of São Paulo (RDL/SP) thus defined what was occurring: reduced freedom to come and go (through threats of deportation, clearly in order to inhibit any denunciations of what was happening), moral coercion and violence (to push for increased workload) and demeaning wages and poor conditions, in addition to the exhaustive journey.

The workshop in which the Bolivian women were criminally exploited assembled clothes for the young fashion brand Sete Sete Cinco (775). “Social security cards were issued, terminations were fully paid and the unemployment insurance [compensated worker] was released and withdrawn. The workers were taken to the State’s shelter and for retraining for future reintegration into the labor market,” explains Renato Bignami, of the RDL/SP. “This way, we seek to restore some of the dignity that was stolen from these workers when trafficked and enslaved in the sewing workshop that worked for 775.”

The release occurred on August 11, 2010, and the investigation lasted until the 27th of the same month. The supervision of RDL/SP was part of a broader operation. On the same day, a complex of workshops that sewed for various brands and department stores was inspected.

These fragments authenticate the perception that, while immigration policy in the country has made progress and constitutional frameworks have loosened up, what happens in practice does not always match the measures adopted or the official discourse. There is a long road ahead to make the country a leader in welcoming immigrants with regard to human rights and legal opportunities to live with their families in the receiving country, as advocated in the presidential address.

3. Civil Society

Paolo Parise and Dirceu Cutti

At the same time as we note ambiguities in the public (between discourse and its application), there are ambiguities in civil society.

Immigrants—and here we refer to the impoverished—are viewed with suspicion, prejudice and even discrimination and rejection. However, immigrants—and now taken as a whole, including the refugees—are the subject of special attention from various sectors of society. Its number compared to the total population (which exceeds 195 million), is far from presenting significant figures, representing less than 0.5 percent of the population. However, this does not diminish the importance of this topic in the current moment.

3.1. Perceptions

The presence of immigrants throughout our history has been perceived in various ways.⁸² In a period marked by slavery (1530–1888), although the arrival of slaves was far from being an immigration process, this “other” (the black slave) was nothing more than a commodity, albeit necessary for the colonial economy.

⁸² The focus of this study is recent migration. However, in this piece, to better understand the prejudice against new immigrants, we briefly recount some important traits of our history.

A different view emerged later with the abolitionists. After the captivity crisis and the forced need to incorporate free workers, the views of which immigrants would be brought were many and produced heated debates. Initially, many Europeans were brought for colonization projects; however, the large contingent—through a state migration policy founded in allowance of a complex infrastructure network that stretched from inside the farms in Brazil to the poor villages of the countryside from specific regions of Europe—was transported to provincial plantations.

The perception of the elites was that the immigrant farmers, especially Europeans, had an indisputable “superiority” over the natives of the land—mostly mongrels, descendants of Portuguese, ex-slaves and Indians. We see that, in fact, the immigrants had little to no experience working under the conditions of the tropics; however, they were preferred. This indicates that the immigration policy in Brazil has historically been guided by a “civilizing” concept unique to the societies that were formed through colonies: we would have to “Europeanize” our people and our country if we wanted to ensure a future as a developed nation.

The agricultural prominence also helped to define a separation between immigrants more and less “desirable.” Workers who came on their own with more urban experience than rural and with knowledge of political organization in the workers’ associations were regarded with concern. The immigrant considered ideal, until World War II, was a farmer, European and Christian, who came with his family. Hence, for example, the restrictions suffered by Jews and Arabs, who have never been the object of policy to support immigration. The eugenic approach of “racial betterment” further explains the law passed by the National Congress in the early Republic, vetoing the immigration of Africans and Asians.⁸³

Agriculture, both as export and production of sorts to the national market, was the initial goal of immigration policy until the first decades of the twentieth century. Progressively, however, immigrants tended to go to urban areas and to the industrial marketplace, commerce and services. At the same time, after the first decades of the twentieth century, internal migration to large urban centers in the Southeast, especially in the Northeast and the state of Minas Gerais, started to meet the needs of workers in the sectors of the economy that required lower qualification. The foreign immigration was subject to a quota policy, limiting it in the 1930s; World War II eventually almost completely ended the flux, which would have a resurgence after the War until the 1960s without ever reaching the quota.

Even in the context of an immigration that tended to interrupt itself, it can be said that the “pro-European” focus of the elites and state regarding immigration remained somewhat even throughout the twentieth century. This was reflected in the attitude toward internal migrants. In large cities, especially in the Northeast, they were perceived as necessary but were relegated to the outskirts and slums of the big cities and seen largely from the perspective of prejudice. When the crisis struck in

⁸³ This law was never implemented and, in reality, became obsolete during the beginning of the official immigration and its Japanese subsidy in the early twentieth century. However, it clearly reflects the country’s priorities as well as which immigrant is the most “desirable.”

the 1980s, the manifestations of society were soon to begin, reinforced by the media who ascribed to them much of the urban problems. During the dictatorship, the Church turned to these migrants sympathetically in the context of the “preferential option among the poor.”

From the last decades on, Brazil again joined the list of countries receiving immigrants as described in Part I. And the profile of those who are already here and those still arriving can once more be generally categorized as the “desirable” and “undesirable” ones. The difference is that both categories are now present.

Due to the great demand for skilled labor that the country has at this time, the 26,500 work permits that the Agency of Labor and Employment granted in the first half of 2011 are seen as a solution. As for the image of the group of greater availability—the Bolivians, with a strong concentration in the metropolitan region of São Paulo—dominates the stereotype: Bolivian = stitcher = slave laborer. The Africans, yet insignificant in number, are perceived as a rule with double bias: the vast majority are seen as refugees, while for others, the perception that they are involved in illicit activities prevails. In the area of education, they constitute the new object of study (and often, in fact, do not cease to be mere *objects*). Inside the church, the views are different and abundant: some see them as a mine from which to obtain more followers, others simply as folk, while still others take ownership of their struggles, to which are added academics, activists of human rights organizations and of social movements and many other societal actors.

But there are gaps in our perceptions because Brazil has also the presence of Koreans and Chinese and there is a space, almost a certain detachment from the general idea of them.

It is not possible to understand these new dilemmas without resorting to the past. Historically, Brazil was a country that granted the privilege of arrival to white Europeans, first as colonists and later as encouraged immigrants. Those who did not fit that ethnic and “civilization” profile were, if not rejected as “undesirable,” at least accepted with reservations and only to the extent that their workforce was necessary in the absence of more desirable workers.

Today, in addition to receiving more skilled workers, the country receives a large contingency of immigrants whose profile are somewhat associated with a colonial past and a history of underdevelopment that Brazilian society may prefer to forget or pretend does not exist. Thus ethnically diverse immigrants—Indians, Africans, Asians—suffer the serious risk of being the object of discrimination and racism that, in Brazilian history, those who were not the standard white and European suffered.

Unlike European immigrants of the past—who conveyed the image of the country that our elites wanted to target and a national project that the State sought to promote--the Latin American immigrants, Asians and Africans today offer us another image: the image of a Brazilian past of colonization and exploitation, slavery and discrimination. We do not like to look into this mirror, but it is in front of us, and

the civil society organizations that support this view are those that recognize some debts of Brazilian society and the place that the country should occupy in the new international context of migration.

The same hard look is experienced with the way that thousands of Brazilian emigrants are sometimes treated abroad: returned from airports, humiliated, exploited and discriminated against. We do not like the immigration image of our country, though our land has large areas called “empty” that would be able to accommodate so many. We particularly dislike when they confuse us with “cucaracha,” “sudacas,” or other Latin Americans or Africans; we deserve the same treatment from developed countries that we extend to them.

Today, as always, the images associated with migrants in the world somehow correspond to the images associated with their countries of origin. The hierarchies between nations, which many assume have disappeared in the globalized world, remain rigid and hierarchical and differential treatment between different migrants appears to be a demonstration of that.

3.2. Cautions and Actions

From the current situation of migration in Brazil, the location of immigrants in two poles of the economy attracts society’s attention: the insertion of immigrant labor in the informal sector, particularly in the garment industry, in São Paulo, and with the production sectors that require skilled labor.

The substantial consideration, however, focuses on the niche market in where the immigrant is inserted as a handyman worker—the prolific clothing workshops in which slave labor conditions persist and impose certain ongoing actions.

Progress was made in Brazil in 2005 at the launching of the National Pact for the Eradication of Slave Labor, involving the government, businessmen and civil society participants. This pact has a monitoring committee, formed by the ILO, ONG Repórter Brazil, Ethos Institute and Social Observatory.

This initiative, first covering the countryside, extended to the urban sector; in 2009, the Regional Director of Labor of the State of São Paulo (RDL/SP) launched the Tripartite Municipal Pact against Fraud and Precariousness and for Decent Labor and Employment in São Paulo and other entities.

In this context, it is worth mentioning the stance of the Agency of Labor and Employment; it understands that it is unfair to penalize the immigrant workers, who are most vulnerable, in the garments production chains and thus has reversed the earlier practice of simply assessing and closing workshops.

The signing of the National Pact and the creation of internal mechanisms of surveillance as Service Organization for Compliance Audit Management (SOCAM) ensures that no vendor may resell products made by undocumented workers without guarantees of the earned labor rights. But progress is slow and painful, given the

recurring complaints. In the latest case, on August 16, 2011, after several months of investigation, the Regional Director of Labor of the State of São Paulo (RDL/SP) found immigrants in the city of São Paulo working in situations of forced labor in garment workshops linked to the production of clothing for big brand companies. Among the immigrants released, some were known to have been directly recruited in Bolivia and Peru. These facts show that, despite advances toward creating decent working conditions for immigrants in Brazil, such as free transit agreements, there is still a long way to go to ensure compliance with the constitutional precepts, nontransferable rights of all Brazilian citizens and foreigners residing in the country. It also shows that there is need for public policies for immigrants in conditions of greater social fragility.

In the union sector, from discussions within MERCOSUR, it appears that immigrant workers have begun to integrate into the space of the union agenda. Among the many events and discussions in which unions take part, one must remember the international seminar *Migraciones y Libre Circulación*, held in São Paulo on September 14–15, 2010, attended by representatives of unions in South America. It aimed at discussing the need for the integration process among countries requiring the unions to act with workers/immigrant.

But there is a range of other actions involving other participants, from the pastoral worker, who in a small room cares for the health of the immigrant, to the rep who sits next to NIC. These participants also include sectors of the Catholic Church, organizations supporting immigrants and refugees, education and research institutions, support networks, alternative communication spaces and associations and newspapers of their own immigrant communities, as we will highlight below.

3.3. Religious Organizations

Among the civil society organizations, we highlight those worthy of particular religious character—first, for their historical presence with immigrants; second, for the variety and scope of their operations; and third, for the direct contact that many of their agents maintain in the daily life of immigrants, particularly among the disadvantaged.

The best expressions come from the very immigrant who tells the significant role the church played when she arrived on a foreign land:

From Lima to São Paulo [...] from Acre to São Paulo. I lost six kilos. We were the last passengers to leave the bus. Incredible! No address, no one waiting for us, hungry... And the city? Panic! The buildings... everyone looking at you! What do we do? We were starving. It took me a while to understand the system of the buffet restaurant, how it worked!... It was very difficult! My brother shouted that he was hungry. They brought a dish ready... My concern was where we were going to sleep that night... We were told that there was a church that had a system of sheltering immigrants. We looked for a church, like in the United States, it is all in communities. I wanted to find the church. We went to many churches to get the address to search this kind of church. We had to find it. In the end, I managed to talk to the wife of a pastor and they sent us to the Welcoming

Center for Migrants. It was on Jan. 25 [2003], the anniversary of the city of São Paulo (Report of a young Peruvian woman, collected in 2008 at COM in São Paulo)

The religion-based organizations geared to immigrants, regardless of the creed they profess, are numerous. For the purposes of this paper, we focus on organizations of the Catholic Church from profiles based on these characteristics:

- a) Mission specifically geared to migrants
- b) All-inclusive posture and interreligious dialogue
- c) Attention given to public sectors
- d) Visibility in society
- e) Expertise within the network
- f) Reference to new immigrants

The work of the pastoral missionaries, Scalabrini missionaries (religious and secular men and women) and Pastoral Service for Migrants (SPM) is noteworthy. These and others are associations that stand side by side with and serve immigrants in their various demands and to act on their integration.

The Scalabrinians (priests and nuns), present in Brazil since the late nineteenth century, took in the so-called new immigrants upon the arrival of the first groups coming from the Southern Cone at the time when dictatorships dominated the region. Both in Porto Alegre and in São Paulo, the religious institutions helping the old Italian immigrants, respectfully in 1968 and 1977, also opened their doors to Hispanic Americans. In Porto Alegre, the Italian-Brazilian Migratory Center for Assistance and Education (CIBAI) and in São Paulo, through the creation of the Pastoral Center for the Migrant (CPM) and the Home for Migrants (then AVIM), also collaboratively provided services to Hispanic Americans. The Secular Scalabrinian Missionaries, who came to Brazil in 1978, collaborated with these efforts in both cities. During the late 1980s, the Pastoral Service for Migrants (SPM) joined in providing services.

As the Chilean, Paraguayan, Uruguayan and Argentine immigrants were integrating and as the Bolivians, Peruvians, Colombians and, recently, Haitians were creating new routes and occupying new areas of the country, the performance of this specific pastoral care was expanding (here, we omit the places of occupation only in regard to internal migrants) and, today, it is distributed as follows:

- Brasília/DF:
 - SCMS (1988)
 - The MHRI (1999)
- Corumbá/MS: Diocesan Pastoral of Human Mobility (1997)
- Cuiabá/MT: PCM—Pastoral Center for the Migrant (1980)
- Curitiba/PR: MCC—Migrant Care Center (1997)
- Florianópolis/SC: Diocesan Pastoral Care of Migrants (1995)
- Foz do Iguaçu/PR: Pastoral of Human Mobility (1990)
- Goiânia/GO: Diocesan Pastoral Care of Migrants (2000)

- Guajará-Mirim/RO: Pastoral Care of Migrants (1999)
- Manaus/AM: Care Center, Shelter Spaces of Pastoral for Migrants (1992, reinforced in 2008)
- Porto Alegre/RS: IBMCAE (1968)
- Porto Velho/RO: Archdiocesan Pastoral Care of Migrants (2009)
- São Paulo (capital):
 - Migrant Pastoral Center (1977)
 - Home for Migrants (1978)
 - CEM—Center for Migration Studies (1979)
 - National Headquarters of the SPM-Pastoral Service for Migrants (1985)
 - Secular Scalabrini Missionaries (1988)
 - SCMP /Cambuci—Scalabrini Center for Migratory Promotion (1996)
 - MSC—Migrant Support Center (2005)
 - SCMP /Pari (2006)

It is also necessary to highlight the Network of Rádio Migrantes, tailored to Brazilians abroad (2009) and the Solidarity Network for Migrants and Refugees created by the Migration and Human Rights Institute (MHRI).

Despite the presence of various forms of institutional variation of representation (priests, sisters, the SPM, the IMDH or several together) and geographical distances, this range of agents and services has represented great capacity for strong elements in common. The services offered cut across the following dimensions:

- Attendance to the immediate demands: listening, welcoming, providing shelter and information, visits
- Inclusion in society: Portuguese language instruction, job training, assistance in job searches; documentation guidance, activities aimed at income generation
- Legal advice
- Psychological support
- Creation of spaces and opportunities for celebrations for each community with its traditions in which saints, music and cooking show all their symbolic force
- Coordination and partnerships with other organizations, governmental and of civil society
- Protection of the rights of immigrants in all realm and form
- Advocacy for an immigration law modeled on human rights
- Fighting against degrading forms of work
- Fighting against prejudice and discrimination
- Support for immigrant groups and their organizations
- Fighting for non-criminalization of immigrants and the universal right to citizenship

- Lobbying, advocacy and a seat next to the National Immigration Council (NIC)
- Promotion and participation in forums, seminars, debates
- Publications, specialized libraries, databases⁸⁴
- Periodic and regular meetings of study and coordination of joint activities
- Assistance to students, researchers and journalists
- Nationwide celebrations of the Week of the Migrant
- Radio programs and presence in Social Media, especially alternative media

3.3.1. Impact on Society

The involvement of the Scalabrini with social issues dates back to its founder, D. John Baptist Scalabrini, an Italian bishop. At the time when Italy was struggling to be a nation-state, he sensed that for the migrant, the country was the land that gave him bread. To the missionaries journeying to America, he recommended that they care for both the bread of the soul and the bread of the body. The legacy left by Scalabrini is thus translated as follows:

- In the field of social struggles, the agents of the Pastoral of Migrants took active part in the process of realization of the Social Weeks promoted by Pastoral Social of NCBB; participation and organization of the Cry of the Excluded; Referendums against the ALCA and the Foreign Debt in many Migration Forums. These actions include the coordination of the SPM, which has its backbone founded in the action of priests, sisters, non-clerical Scalabrini, among others. More recently the SPM increased the power of their actions with immigrants through the MSC
- In the field of solidarity and defense of the rights of refugees and immigrants, there is a Solidarity Network for Migrants and Refugees, which we shall discuss later
- In the field of advocacy, again highlighting the important and strategic presence of MHRI and Sister Rosita Milesi, who has a seat as representative of civil society in the NIC and NCR and is appointed as permanent consultant by the President of that Body
- In the field of counseling, the network is present in the Pastoral Sector of Human Mobility of the NCBB, with the presence of Father Sidnei Marco Dornelas and Sister Rosita Milesi, who, in partnership with other pastoral social activities, develop strong initiatives of impact on society articulating with the various pastoral actions of people involved in mobility in addition to fighting human trafficking

⁸⁴ See annex 6 and 7.

- In the field of the fight against slavery, we must recall the proceeding at different levels of the Pastoral Sector of Human Mobility of the NCBB, of the PCM Cuiabá, of the Missão N. S. da Paz of São Paulo and MSC
- In the field of study, the existence of two study centers, one belongs to the priests, in São Paulo, and one to the sisters, in Brasília, which are described below.

3.3.2. Impact on the Lives of Immigrants

For the newcomer immigrant who lacks a support network or the one who is already here but who severed the network that facilitated his arrival (in addition to cases in which the law does not provide necessary support), little is left for them but to seek shelter in those who see the migrant as a human being with rights. We have already stated that churches (and we emphasize the plural) are an important reference to those who are most vulnerable while journeying; as well as those who as immigrants search for recognition.

The most recent case of Haitians coming to Brazil proves once again—through the involvement of the Church in Tabatinga, on the border with Peru and in Manaus—what was described above, to the point of a local newspaper assigning Pastoral agents the role of *coyotes*.

This ministry deals with specific demands of every kind, acting where the state is absent. This ministry also serves on the threshold of tolerance, demonstrated by the gesture of admittance, and works to alleviate the intolerance, prejudice and discrimination against the impoverished immigrant that also penetrate our society. We witnessed solidarity actions with immigrants and refugees but often observed, in all strata and sectors of society, that they are considered undesirable by many. And this is manifested greatly behind the counters. Even when the legislation (Conventions, Treaties, Amnesties) seeks to promote immigrants, its regulations or lack thereof leads the state representatives who deal directly with immigrants, often on a larger scale, to recant or hinder what the law specifically advocates. Nothing like answering the counter reserved for immigrants to testify against the “myth of warmth.”

Another aspect of fundamental importance arises from the fact that the immigrant experiences everyday life in an unfamiliar context and thus is forced to adapt to it. Therefore, beyond the extent of the services mentioned above, we highlight the face-to-face presence that the pastoral agent has with the immigrant, acting thus as a mediator between different universes, mediation *sine qua non* so integration can happen.

Finally, we reaffirm that other institutions, churches, religions, congregations and parishes, are working in the field of migration. Obeying the above criteria, we also highlight the Pastoral Care of Brazilians Abroad (PCBA) and the National Conference of Brazilian Bishops (NCBB); Brazilian Caritas, especially the Regional of São Paulo, Rio de Janeiro and Manaus, focused particularly on refugees; the role of the Jesuits, for example, through the agency of JRS NGO (Jesuit Refugee

Service); and the services of Safe Haven House for Women of the Pallottine sisters in the city of São Paulo. All of these support refugees and immigrant women discharged from prison; the shelter Hope Arsenal, also in São Paulo, always has immigrants or refugees among its audience.

3.4. Civil Society Organizations *of* and *for* Immigrants

Among the various actors within civil society, what stand out are NGOs, associations and other entities that advocate for immigrants. Without being able to distinctly consider each one of these, we will refer to them as “organizations.” The typology varies greatly, depending on identity, the profile of the constituents, the field of action and the type of incident, among other factors. The majority of these organizations arose in the last decade. Let us clarify that this review does not consider an exhaustive survey of the current organizations, as we have not mentioned the innumerable organizations tied to national groups that have been in existence for longer.

The identity of these organizations is tied to the motivations that provoked their emergence, to the judicial statute that they have assumed and to other variables.

The constituents’ profile allows the following distinction: organizations *of* immigrants—of a single or various ethnicities; organizations *for* immigrants or both possibilities.

3.4.1. Organizations *of* Immigrants

The majority of organizations *of* immigrants are formed by certain ethnic or national groups. Included here are a smaller number of organizations that present similar characteristics, such as those from the African continent or the Andean peoples.

Among the many immigrant organizations spread out across Brazil, we will highlight a few. Among the Bolivian organizations, we point out ACFBB (the Bolivia-Brazil Cultural Folkloric Association), which is located in São Paulo and convenes around 15 groups; CCB-PR (Bolivian Cultural Center of Paraná); the Latin Culture Association. Among the Paraguayan groups, we cite the Paraguay-Brazil Integration Association, *Japayke* (which in Guaraní means, “to wake up”); the Paraguay Cultural Center *Teete*; the Paraguayan Colony Association in Campo Grande; ARPA (the Paraguayan Recreational Association of Aquidauana); and Paraguayan House in Curitiba. Among the Chileans, we recall UNECHILE, which congregates 15 groups and associations and Chilean Social Assistance. Among the Peruvian associations, we reference *Inti Wasi* (House of the Sun, in Quechua); Peruvian Cultural House of Campinas; and APEBRA (the Peru-Brazil Association).

In terms of organizations that unite groups of various ethnicities or nationalities, we point out a few examples from the African continent, one from the Latin American continent and another general one: Welcoming Center for Migrants of the

Africas; IDDAB (the Institute for Development of the African Diaspora); AILAC (the Association for the Integration of the Latin Americans in Curitiba); ANEIB (the National Association of Foreigners of Brazil).

With respect to the field of action, we underscore that the function of the organizations may be municipal, statewide or national. Currently, there is a noticeable trend of favoring the municipal area and, at times, the state area. In terms of the incidence of these organizations, we observe that the majority implement cultural and recreational actions, sometimes including actions of assistance. Rare are cases in which the organizations act in the implementations of policies or programs that favor the immigrants themselves.

3.4.2. Organizations for Immigrants and Refugees

Organizations *for* immigrants present are fewer in number. We indicate some with an outstanding presence: Refugees United, JRS (Jesuit Refugees Service); ISEC (the Institute of Educational and Cultural Solidarity) and NIATRE (the Center of Information and Service to Brazilian Workers returned from Abroad), which collaborate closely with CIATE (the Center for Information and Support for Work Abroad—Brazilians in Japan); ASBRAD (the Brazilian Association for Women's Defense, of Infancy and Youth); Adus—the Institute for Refugee Reintegration—Brazil; CDHIC (Center for Human Rights and Immigrant Citizenship); Solidarity International; Post for Humanized Service for Migrants (Guarulhos International Airport); SESC-Carmo/SP; Space Without Borders; Justice and Human Rights Social Network.

These organizations, among so many others not cited, engage in various roles such as the defense of individual rights, the reinsertion of returned citizens, responses to immediate demands, support toward victims of human trafficking and political connections at the national and international levels.

3.5. Teaching and Research Institutions

The diffusion and improvement of academic production focused on diagnosis and analysis of the migration problem is notorious; the Bolivians, in particular, have become the theme of a number of studies: dissertations, doctoral theses, course finals and texts for presentation at conferences, among others. These attest to the introduction within academia of this social issue, especially from 1980 onward.

The theme at hand has also become either a required or optional discipline in Master's and Doctoral courses in a variety of related subject areas—International Relations, Demography, Political Science, Planning and so forth.

In Brazil, a variety of study centers and research groups have a trajectory constructed of activities, of which these topics make up an integral and continuous part. Through the studies that they develop, these institutions facilitate the formation of

a more critical vision toward the migration phenomenon. Among them, the following organizations stand out: NEPO, CEDEPLAR, IPPUR, GEMA, LEI, CEM and CSEM.

However, before we discuss institutions of teaching and research, we note the existence of a large number of researchers who maintain a strong link with the organizations and agents that deal directly with immigrants, always collaborating in a valuable way.

NEPO

The Center of Population Studies (*NEPO*, in Portuguese) is an interdisciplinary and multidisciplinary research unit in the area of demography and population studies at the University of Campinas (UNICAMP). Created by the decree GR 28 of May 25, 1982, it was consolidated with the Deliberation of the University Council (CONSU) of November 27, 1991. Professionals of distinct specialties with backgrounds in demography and emphasis in social sciences were convened for the constitution of NEPO (NEPO, 2011).

Outstanding among the activities developed by NEPO are the production and publicizing of knowledge relevant to the area of population and demography studies; the development of research in thematic areas relevant to population and the establishment of exchange between the scientific community and society. In addition, NEPO educates and prepares professionals to work in research through the post-graduate (Master's and Doctorate) program in demography.

CEDEPLAR

The Center for Development and Regional Planning (CEDEPLAR), which belongs to the Faculty of Economic Sciences at the University of Minas Gerais (UFMG), was created in 1967 as a supplementary organ of the university. The entity began to function in 1968 with the goal of housing a post-graduate research and teaching program in economics (CEDEPLAR, 2011).

Initially, the Center kept its activities oriented toward studies of regional economies; however, over time it diversified its areas of focus, with the inclusion of new thematic areas in the postgraduate teaching of economics and the creation of a postgraduate (Master's and Doctorate) program in Demography. Among the tracks of research adopted by the program are Formal Demography, Economic Demography, Mortality and Health, Fertility and Reproductive Health, Migration, Family and Population (CEDEPLAR, 2011).

IPPUR

The Institute of Research and Urban and Regional Planning (IPPUR, in Portuguese), a specialized institute that incorporates the Center of Judicial and Economic Sciences, was created in 1987 out of the postgraduate Program in Urban and Regional Planning (PUR, in Portuguese) of the Federal University of Rio de

Janeiro (UFRJ). It is one of the first to offer postgraduate courses in this area in the country.

The activities developed by IPPUR have a strong interdisciplinary base, anchored in the social sciences—economics, sociology and political science. The faculty includes professors trained in architecture and urbanism, sociology, economics, engineering, geography, history and public administration. The program is constituted by a single area of concentration: Urban and Regional Planning, which holds a focus more oriented toward intervention (IPPUR, 2011). It also involves researchers dedicated to studying population mobility and migration. Within IPPUR exists NIEM, the Interdisciplinary Center of Migratory Studies, with its library and archives.

GEMA

The Group of Migratory Studies of the Amazon (GEMA) is linked to the Postgraduate Program in Anthropology of the Department of Anthropology of the Federal University of Amazonia. GEMA is a group of interdisciplinary studies focused on issues related to the migratory phenomenon in Amazonia, be they at internal or international levels (UFAM, 2011).

LEI

The Laboratory of Studies about Intolerance (LEI), of the Faculty of Philosophy, Letters and Human Sciences, of the University of São Paulo (USP, in Portuguese) emerged in 2002. It is made up of researchers who study different spatial-temporal realities and multiple theoretical-methodological approaches, with views toward a thematic plurality that adds dynamism to the debates about intolerance. The objectives of these studies should allow another form of relationship between men guided by tolerance.

LEI has a vast document collection, comprising material collected in Brazil, Latin America and Europe, and it continues to collect more. All of this material is in the process of being digitized to allow greater user access. Currently, LEI is developing a project that views the constitution of new joint documents, in partnership with the Center of Migratory Studies (CEM) of the Scalabrini Mission Our Lady of Peace, relative to the memory of immigrants, immigrants and social movements, through the Oral History methodology (LEI, 2011).

CEM

The Center of Migratory Studies (CEM) emerged in 1969, integrating the João Batista Scalabrini Federation of Centers of Migratory Studies, of the São Carlos/Scabrinianos Congregation of Missionaries. CEM has a library specialized in migrations; it has edited *TRAVESSIA*—the Migrant’s magazine—since 1988. It also maintains an open group of studies in partnership with the Laboratory of Urban

Geography (LABUR) of the Department of Geography of FFLCH/USP; a partnership with the Laboratory of Studies about Intolerance (LEI) of FFLCH/USP for the construction of a collection relating to the memory of new immigrants; a collection of photos and videos regarding Latin American communities and an integrated databank regarding the services at the Welcoming Center for Migrants and at the Scalabrini Center of the Migrant (CEM, 2011).

CEM puts forth an originality that distinguishes it from other centers of study that have a strictly academic character. Since its emergence, it has maintained very close links with the agents who act alongside the migrants and with the migrants themselves. CEM's involvement in social movements has changed its profile. It was from within CEM's functions that the Pastoral Service of the Migrant (SPM) emerged, in 1985. Even the magazine *TRAVESSIA* presents a profile that distinguishes it from other publications in terms of the theme of migrants. The publication defines itself as a bridge between academic production and social movements with religious life.

Located in the city of São Paulo, CEM integrates the Scalabrini Our Lady of Peace Mission (*Missão Scalabriniana Nossa Senhora da Paz*), of which the Welcoming Center for Migrants makes up one part, the Pastoral Center of the Migrant and the three parishes erected alongside the Our Lady of Peace church: the territorial neighborhood parish; the parish of the Italians and the personal parish of the Hispanic-American (Chilean, Bolivian, Paraguayan and Peruvian) communities. The reflections that are developed at CEM, in partnership with academia, are permanently confronted with the challenges and contradictions that come from practice. In this sense, CEM is based on a service of permanent assistance.

The combination of the Scalabrini Mission of Peace is a reference for the more diverse segments of society that have interest in the area of migration. Within it are united migrants, immigrants, refugees, agents who act alongside them and the library collection.

In quantitative terms, at least during the period from 2009 to 2010, CEM served 11,695 immigrants and refugees, representing 74 nationalities and 22 religious denominations.

CSEM

The Scalabrini Center of Migratory Studies (CSEM) is a part of the Congregation of the Missionary Sisters of São Carlos Borromeo (Scalabrini) and it began its activities in 1988. With its headquarters in Brasília, it is an institution dedicated to research, study and the publication of information about human mobility.

Among the many activities in which CSEM engages, we highlight those that focus on the following sectors: library, publications, actions and connections.

The library makes available a specialized collection in the area of migration.

The publications comprise the Interdisciplinary Library of Human Mobility (REMHU), *Modern Migrations Review*, *Human Mobility Bulletin* and various books. In each of its volumes, the bi-annual magazine *REMHU* focuses on a specific theme linked to human mobility through an interdisciplinary perspective. The quarterly electronic publication *Modern Migrations Review* offers a varied-theme collection of analyses and reflections published in the media about human mobility and related themes. A monthly publication called *Human Mobility Bulletin* consists of a selection of major news pieces related to themes of migration, which are organized in four main pillars: international issues (politics, economics, culture and so on); migration of women; migration and religion; human trafficking. The books are divided into the following categories: the Migration Series, the Path Series and the Memory Series (CSEM, 2011).

The actions of CSEM aim to transform society's attitude with respect to immigrants; defend and promote their rights; and develop social, cultural and pastoral programs that promote the protagonist role of immigrants and refugees. In this perspective, CSEM develops activities of support to migrants and refugees, particularly in areas relating to self-organization, self-development and education.

CSEM maintains partnerships and associations with universities, government institutions, NGOs and other groups with the objective of constructing strong networks in the world of mobility.

3.6. Networks of Support

In Brazil, there are three networks oriented toward migrants and refugees that provide a relevant service: the United Network for Migrants and Refugees, the NIEM virtual network and the Scalabrini International Migration Network (SIMN). The first consists of those who work in the everyday lives of migrants and refugees and the second, of those who go beyond academia. The latter seek to make available a channel of information not only for those who are interested in immigrants and refugees as a focus of study and research but also as a fundamental service to those who fight for their cause.

3.6.1. The Unified Network for Migrants and Refugees

This is a network put together by IDMH, belonging to the Scalabrini sisters, which bonds around 50 organizations from civil society, religious or otherwise. The grand majority consists of jurisdictions of the Catholic Church and involves a number of agents who work in the ample Pastoral of Human Mobility—be they working in service to refugees or migrants, aiding returned persons, or confronting human trafficking. This network has a presence in practically all of the units of the Federation. Its beginning dates back to 1989, when, in Brasilia, Sister Rosita Milesi began the formation of the Centers for Service in different locations across the country to provide judicial assistance to immigrants. By 1995 she had carried out her first national meeting. As the services went on expanding, so did the organization of

the centers and, in 2004, the Migration and Human Rights Institute (IMDH), supported by the High Commissioner for Refugees (UNHCR), created the United Network for Migrants and Refugees. The network counts on the important support it receives from the UNHCR and other supporters; from there, it promotes national and regional meetings, known as the Meetings of the Protection Networks. This stimulates the creation of local networks by the member entities.

Its first objective is to link the rich diversity of provided services with migrants and refugees, whose actors share in the idea of being helpful whenever possible in assisting one another and providing reciprocal support between the entities, with the intention of improving their action and making their operations more efficient. The identity of the network is founded in the solidarity of everyday actions, but it relies on a central coordination. This makes it possible for even those who are geographically distant to take advantage of the strength of a link between organizations spread out across the country and even beyond borders.

Beyond the direct, unified work in favor of immigrants and refugees that occurs on the day-to-day level, the network works in the area of judicial assistance, in the political field and in the proposal of public policies. In addition to working directly in favor of migrants and refugees, the Scalabrini missionary Sister Rosita Milesi is a spokeswoman in public jurisdictions of those who work on bases in the most diverse points of the country.

3.6.2. NIEM

The Interdisciplinary Center for Migratory Studies (NIEM) has existed since 2000 and since 2006 has been headquartered in the Institute of Research and Urban and Regional Planning of the Federal University of Rio de Janeiro (IPPUR-UFRJ), where its library (specifically about migrants and refugees) and its archives are found.

NIEM was created with the objective of uniting researchers, professors and students from diverse areas of the field of human and social sciences who are interested in migratory themes at the national and international levels. These actors meet regularly for seminars, work presentations and the reading of specific thematic texts and they work in contact with researchers from other national and international institutions that collaborate in seminars and in the sending of publications and discussion texts.

The center also seeks to work in the defense of migrants and refugees and it maintains relationships marked by solidarity and support to groups and organizations that perform in this field. Since 2000, it has maintained a network on the Internet of academic exchange about migrations in Brazil and in the world, publishing news about current affairs, events and publications, in the process incentivizing contact and the exchange of information between its members. NIEM today establishes a tool useful for pastoral agents who perform on behalf of or in favor of immigrants, as well as for representatives of social movements, which use it on a large scale.

Currently, there are close to 1,200 constituents in the network, mostly in Brazil but also across Latin America, North America, Africa and Asia. On a daily basis, the constituents receive messages from a list about themes directly or indirectly related to migrations. Its archives are open to public consultation at the following address: http://br.groups.yahoo.com/group/niem_rj/.

3.6.3. SIMN

The Scalabrini International Migratory Network (SIMN), an entity of the Congregation of Missionaries of São Carlos, Scalabrinian, brings together more than 200 organizations that work with migrants in 32 countries in Latin America and North America, Europe, Africa and Asia. It operates in Brazil, supporting the programs and activities of the local Scalabrinian entities in three specific areas: (1) investigation about the phenomenon of migrations (e.g., the current investigation about migration-related public policies in Brazil, Argentina, Colombia and Mexico); (2) projects that promote the dignity of migrants; (3) improving public opinion of political and social actors, including the ecclesiastical entities, by means of social communication as well as seminars, conferences and forums.

3.7. Publications

Another means through which civil society, like government, approaches the issue—whether it be the themes or the subjects in question—is through a series of publications, some official and some alternative. These are composed of books, primers, magazines and journals, some of which are translated by the very immigrants themselves. In addition, bulletins circulate in a much larger number. In the field of non-written communications, we cannot forget the existence of immigrant radio stations or the programming oriented toward these topics on national radio stations, especially the ones that are minor but carry out an important role within various collectivities.

Among the books published in the last five years, the following stand out:

Work Authorization for Professional Foreigners in Brazil. Ministry of Work and Employment, 2010.

Trafficking of People. Pastoral Sectors of Human mobility, CNBB and the National Secretary of Justice, 2010.

Work Authorization for Professional Foreigners in Brazil—Legislation. Ministry of Work and Employment, 2010.

Migratory Profile of Brazil, 2009. National Commission for Population and Development, OIM and MTE, 2010.

Interrupted Trajectories: Deported and Non-Admitted Brazilian Citizens. PBE, IMDH, CSEM, 2009.

Parliamentary Diplomacy—A Contribution to the Debate. Universitas Institute and the Alexandra Gusmão Foundation, 2008.

Mercosul and the Migrations. Ministry of Work and Employment, 2008.

Public Policies for International Migrations, Migrants, and Refugees. Second Edition, Reviewed and Updated. ACNUR/IMDH/Commission for Human Rights, 2007.

Recognition of Refugees in Brazil. Commented Decisions of CONARE. CONARE/ACNUR Brasil, 2007.

Among the Specialized Magazines about Migration, the Following Stand Out:

TRAVESSA—Migrant Magazine

A publication of the Center of Migratory Studies/CEM (Scalabrini International Federation of the Centers of Migratory Studies), bearing an interdisciplinary nature, which aims to contribute to exchange between the ample and diversified production of knowledge and those that act in pastoral and social movements alongside migrants. It emerged in 1988.

REMHU—Interdisciplinary Magazine about Human Mobility

A biannual publication of the Scalabrini Center for Migratory Studies/CSEM. Its objective is to offer wide-reaching, deep and interdisciplinary analyses of themes linked to contemporary human mobility to the academic world and also to the thinkers and implementers of the religious community. The current version emerged in 2006, succeeding the others that date back to 1992.

Among the primers prepared by government entities, the following are noteworthy:

Brazilians Abroad—Useful information. MTE, 2007.

Foreign Exchange Primer—Sending and receiving of small amounts. Central Bank, 2009.

How to Work in MERCOSUL Countries—Guide Directed Toward Nationals of Member-States of MERCOSUL. MTE, 2010.

Guide to the Returned Brazilian [Citizen]. MRE, 2010.

Among the various periodicals about migration, the following are noteworthy:

Alianza Bolivia News (since 2005)

Chile in Evidence (Since 2007)

Migrant Connection (Since 2010)

US Immigrants (since 2011)

El Chasqui (Since 2011)

The Awakening of Latin America (since 2011)

PART IV

PROPOSALS FOR SPACES AND INSTRUMENTS OF CITIZEN PARTICIPATION IN THE DEFINITION AND IMPLEMENTATION OF PUBLIC POLICIES ABOUT MIGRATION

From the analysis of the migratory reality in our country, from the recuperation of the institutional mark of the existing policies and from the contributions obtained together with the major actors of civil society that work together and in favor of migrants, we propose:

- 1) The definition of a migration policy that considers immigrants a constituent part of national life, overcoming the mismatch between the discourse and the fragmentation of actions
- 2) The overcoming of the vision founded on national security, which considers immigrants as foreigners, to a viewpoint founded on human rights
- 3) The immediate ratification of the International Convention of the United Nations of December 18, 1990, regarding the Protection of Rights of All Migrant Workers and Members of their Families
- 4) The formation of cultural mediators to work in the locations of greatest concentration of immigrants and emigrants
- 5) An introduction, during primary and middle school, of the theme of immigration, granting favor not to the historical aspect but to the formation of the new Brazilian people resulting from miscegenation
- 6) The expansion of bilateral agreements with countries that present substantial flows of emigration to Brazil
- 7) International cooperation to create bases of development in the countries that present large flows of emigration
- 8) Implementation of public policies that aim toward supplying the necessities of lodging and work, needs that migrants also have
- 9) Concession of Community Radios for Immigrants
- 10) Simplification of the tax bureaucracy and a lowering of taxes in the processes of regularization and the attainment of permanence in the country
- 11) The definition of a law that guarantees immigrants the right to vote

LIST OF INTERVIEWEES

- Alexandra Aparicio—Refugees United
- Alfredo José Gonçalves (Scalabrini priest)—Superior Provincial
- Carla Aparecida Silva Aguilar— Welcoming Center for Migrants (*Casa do Migrante*)
- Dirceu Bortolotti Danetti (Scalabrini priest)—Migrant Pastoral of the Diocese of Florianópolis
- Eliana Vitaliano—CPM Cuiabá
- Elizete Sant’Anna de Oliveira—CEAMIG
- Gelmino Costa (Scalabrini priest)—Scalabrini Missiõ of Manaus
- Gregoria Roman Oliva (Scalabrini nun)—CESPROM
- Helena Keiko Sanada—CIATE
- João Marcos Cimadon (Scalabrini priest)—Human Mobility Pastoral of the Diocese of Corumbá
- José Ribamar Dantas—Center for Workers of Brazil/CGTB
- Lauro Bocchi (Scalabrini priest)—CIBAI
- Marcelo Haydu—Adus
- Maria Ozania da Silva (Scalabrini nun)—Pastoral of the Migrant of Diocese of Porto Velho
- Mário Geremia (Scalabrini priest)—CPM São Paulo
- Marisa Andrade—Welcome house for refugee women and recent graduates of the prison system
- Merced de Lemos—Chile Chico Folkloric Set
- Patrício Francisco Villalobos Tapia—Pablo Neruda Association of Chileans
- Paulo Illes—CDHIC
- Paulo Sérgio de Almeida—Presidente do CNIg
- Roque Patussi—CAMI
- Rosa Zanchin (Scalabrini nun)—SPM Manaus
- Rosita Milesi (Scalabrini nun)—IMDH Brasília
- Ruth Camacho Kadluba—CPM São Paulo
- Sidnei Marco Donelas (Scalabrini priest)—Human Mobility Sector/CNBB
- Simone Bernardi—Dom Luciano Mendes Arsenal of Hope
- Sônia Maria Nunes—CPM São Paulo
- Taeco Toma Carignato—ISEC/NIATRE

APPENDICES

Appendix 1—Foreigners Who Live in Brazil by Birthplace and Gender—2000

Country of Birth	Male	Female	Total
Portugal	110,994	102,209	213,203
Japan	36,492	34,440	70,932
Italy	30,254	24,778	55,032
Spain	23,535	20,068	43,603
Paraguay	13,520	15,302	28,822
Argentina	15,568	11,964	27,532
Uruguay	12,949	11,790	24,739
Bolivia	11,242	9,146	20,388
Germany	10,159	9,397	19,556
Chile	10,242	6,889	17,131
Lebanon	9,884	6,206	16,090
United States	8,174	5,774	13,948
Peru	6,674	4,139	10,813
China	5,652	4,649	10,301
North & South Korea	4,472	4,173	8,645
France	4,904	3,478	8,382
Poland	3,221	4,238	7,459
Angola	3,542	2,798	6,340
Taiwan	2,355	2,181	4,536
Colombia	2,290	1,870	4,160
Other Countries	39,636	32,579	72,215

Source: Census 2000.

Appendix 2—Profile of International Migrants in Brazil

Index	1990	1995	2000	2005	2010
Estimated number of international migrants by mid-year	798,517	730,517	684,596	686,309	688,026
Estimated number of refugees by mid-year	5,333	2,137	2,550	3,402	20,638
Population at mid-year (thousands)	149,571	161,692	174,174	186,075	195,423
Estimated number of female migrants by mid-year	372,370	340,604	318,440	318,484	318,528
Estimated number of male migrants by mid-year	426,147	389,913	366,156	367,825	369,498
International migrant as a percentage of population	0.5	0.5	0.4	0.4	0.4
Female migrants as a percentage of total international migrants	46.6	46.6	46.5	46.4	46.3
Percentage of international migrants representing refugees	0.7	0.3	0.4	0.5	3
	1990-1995	1995-2000	2000-2005	2005-2010	
Total annual change in migrant stock (%)	-1.8	-1.3	0	0	

Source: UNDESA/PNUD, Trends in International Migrant Stock: The 2008 Revision, 2009.

Appendix 3—Latin Americans and Caribbeans in Brazil, 1970, 1980, 1991 and 2000

Countries	Latin America and Caribbean Foreigners				% on the Total of Latino Americans				% on the Total of Foreigners			
	1970	1980	1991	2000	1970	1980	1991	2000	1970	1980	1991	2000
Argentina	17,213	26,633	25,468	27,531	23.95	24.1	21.49	19.09	1.4	2.4	3.32	4.03
Bolivia	10,712	12,980	15,694	20,388	14.91	11.75	13.24	14.13	0.87	1.17	2.04	2.98
Chile	1,900	17,830	20,437	17,131	2.65	16.14	17.24	11.88	0.15	1.6	2.66	2.51
Colombia	870	1,490	2,076	4,159	1.21	1.35	1.75	2.88	0.07	0.13	0.27	0.61
Costa Rica	152	327	357	238	0.21	0.3	0.3	0.17	0.01	0.03	0.05	0.03
Cuba	470	574	492	1,343	0.65	0.52	0.42	0.93	0.04	0.05	0.06	0.2
Dominican Rep.	221	169	178	102	0.31	0.15	0.15	0.07	0.02	0.02	0.02	0.01
Ecuador	357	758	605	1,188	0.5	0.69	0.51	0.82	0.03	0.07	0.08	0.17
El Salvador	352	495	364	480	0.49	0.45	0.31	0.33	0.03	0.04	0.05	0.07
Guatemala	145	176	121	158	0.2	0.16	0.1	0.11	0.01	0.02	0.02	0.02
Haiti	90	127	141	15	0.13	0.11	0.12	0.01	0.01	0.01	0.02	0
Honduras	83	207	300	136	0.12	0.19	0.25	0.09	0.01	0.02	0.04	0.02
Mexico	519	853	660	1,258	0.72	0.77	0.56	0.87	0.04	0.08	0.09	0.18
Nicaragua	593	608	329	500	0.83	0.55	0.28	0.35	0.05	0.05	0.04	0.07
Panama	371	641	981	558	0.52	0.58	0.83	0.39	0.03	0.06	0.13	0.08
Paraguay	20,025	17,560	19,018	28,822	27.87	15.89	16.05	19.99	1.63	1.58	2.48	4.21
Peru	2,410	3,789	5,833	10,814	3.36	3.43	4.92	7.5	0.2	0.34	0.76	1.58
Uruguay	13,582	21,238	22,141	24,740	18.91	19.21	18.68	17.15	1.11	1.91	2.88	3.62
Venezuela	989	1,262	1,226	2,162	1.38	1.14	1.03	1.5	0.08	0.11	0.16	0.32
Barbados	-	-	-	-	-	-	-	-	-	-	-	-
Belize	81	40	120	-	0.11	0.04	0.1	-	0.01	0	0.02	-
Guyana	364	696	1,131	1,603	0.51	0.63	0.95	1.11	0.03	0.06	0.15	0.23
French Guiana	116	1,759	651	623	0.16	1.59	0.55	0.43	0.01	0.16	0.08	0.09
Jamaica	58	89	11	57	0.08	0.08	0.01	0.04	0	0.01	0	0.01
Suriname	160	196	191	232	0.22	0.18	0.16	0.16	0.01	0.02	0.02	0.03
Trinity & Tobago	-	-	-	-	-	-	-	-	-	-	-	-
Total	71,833	110,497	118,525	144,238	100	100	100	100	5.85	9.94	15.44	21.07

Source: IMILA/CELADE, 2000.

Appendix 4—Brazilians in Latin America and the Caribbean in the '90s

Countries	Total of foreigners	Latin American foreigners	Foreigners born in Brazil	Brazilians in total of foreigners (%)	Brazilians in total of Latin American (%)
Argentina	1,605,871	807,331	35,543	2.21	4.4
Bolivia	59,807	46,000	8,506	14.3	18.42
Brazil	767,780	118,525	-	-	-
Chile	114,597	66,259	4,610	4.02	6.96
Colombia	106,162	66,505	1,383	1.3	0.26
Costa Rica*	88,954	74,488	191	0.21	0.26
Cuba*	128,392	-	-	-	-
Dominican Rep.**	32,419	21,487	-	-	-
Ecuador	73,719	53,014	903	1.23	1.3
El Salvador	26,279	19,321	181	0.69	0.94
Haiti**	6,000	3,046	-	-	-
Honduras	34,387	-	-	-	-
Mexico	340,824	85,994	1,293	0.38	1.5
Nicaragua	26,043	20,234	618	1.01	1.6
Panama	61,394	38,742	618	1.01	1.6
Paraguay	187,372	166,399	107,452	57.35	64.57
Peru	52,725	23,089	2,523	4.79	10.93
Uruguay	92,378	52,867	13,521	14.64	25.58
Venezuela	1,024,121	670,067	4,223	0.41	0.63

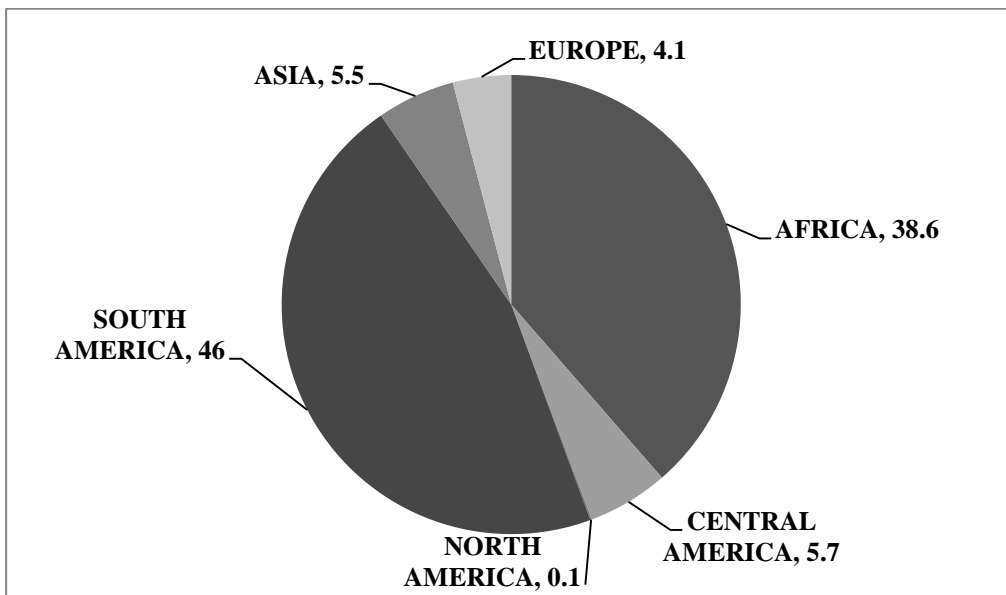
Source: IMILA/CELADE, 2000. Note: (*) in the 80s (**) in the 70s.

Appendix 5—Refugees, Requesters of Asylum, Internally Displaced Persons, and Others under the Protection of ACNUR—Americas, 2009

Country of Asylum	Refugees	People in Refugee-like situation	Asylum seekers (pending cases)	Returned Refugees	IDPs protected by UNHCR	Stateless	Total
Argentina	3,230	-	750	-	-		3,980
Belize	230	-	21	-	-		251
Bolivia	679	-	34	-	-		713
Brazil	4,232	-	176	-	-	106	4,514
Canada	169,434	-	61,170	-	-		230,604
Chile	1,539	-	498	-	-		2,037
Colombia	196	-	116	60	3,303,979	11	3,304,362
Costa Rica	12,298	6,818	587	-	-		19,703
Cuba	454	-	5	1	-		460
Ecuador	45,192	71,365	50,632	-	-		167,189
El Salvador	30	-	58	-	-		88
Guatemala	131	-	4	-	-		135
Haiti	3	-	12	8	-		23
Honduras	19	-	1	-	-		20
Mexico	1,235	-	96	-	-		1,331
Nicaragua	120	-	1	-	-		121
Panama	1,923	15,000	790	-	-	1	17,714
Paraguay	89	-	4	-	-		93
Peru	1,108	-	376	1	-		1,485
St. Lucia	-	-	4	-	-		4
Suriname	1	-	-	-	-		1
Trinity & Tobago	37	-	196	-	-		233
United States	275,461	-	63,803	-	-		339,264
Uruguay	168	-	41	-	-		209
Venezuela	1,313	200,000	14,372	-	-		215,685
Total	519,122	293,183	193,747	70	3,303,979	118	4,310,219

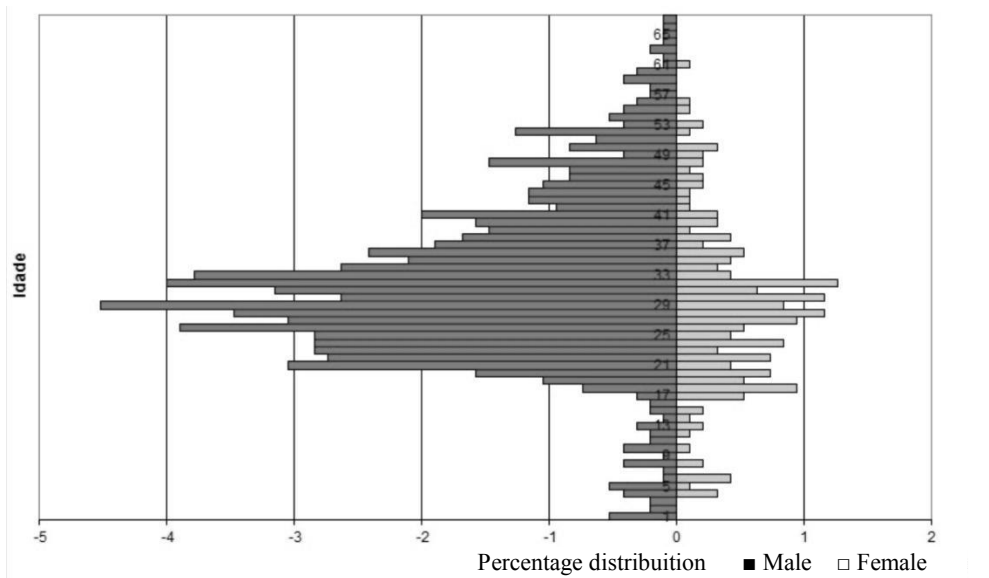
Source: Tendencias Globales 2009 - Refugiados, solicitantes de asilo, retornados, desplazados internos y apátridas ACNUR, junio de 2010.

Appendix 6—Percentage of those Served by the Welcoming Center for Migrants (Our Lady of the Peace Mission—São Paulo) by Continent of Origin—2008/2010



Source: Migration Study Center, São Paulo, 2011.

Appendix 7—Age Distribution of those Served by the Welcoming Center for Migrants (Our Lady of the Peace Mission—São Paulo) 2008/2010



Source: Migration Study Center, São Paulo, 2011.

DOCUMENTS

Document 1

Discourse from the President of the Republic, Luiz Inácio Lula da Silva, During the Ceremony of Sanctioning for the Amnesty of Foreigners in Irregular Situations in Brazil

Ministry of Justice

Brazil, Federal District, 02/07/2009

My dear friend Tarso Genro, Minister of Justice,
My dear friend Romeu Tuma Júnior, National Secretary of Justice,
Senator Romeu Tuma,
Federal Deputies Carlos Zarattini, Nelson Markezelli and William Woo,
Immigrant ladies and gentlemen who have benefitted through the Law of Amnesty,
My friends
My dear Luiz Paulo Fernando, our friend, the Director of the Federal Police,
Our President of FUNAI [the National Indian Foundation],
Our Director of the Federal Highway Police,
The rest of our friends present,

First, in the name of the Brazilian People, I would like to thank all of the immigrants who have helped and continue to help to build up our country. This land is generous and it has always received with open arms all of those who come to work, raise their children and create new lives.

It is for this reason that the measures we've adopted today will give immigrants the same rights and duties seen in the Federal Constitution to our compatriots, with the exception of those that are exclusive to Brazilian natives. Among these rights, those that stand out are liberty of movement in the national territory and total access to compensated work, to education, to public health and to justice.

These new laws mean that Brazil is aligning itself ever more to the height of the contemporary migratory reality, to global conditions of social and economic development and to the fundamental respect of human rights. They are also the result of a wide national debate, with the participation of different sectors of society and the very immigrants that had, hence, the opportunity to clarify the problems that they confront and to propose solutions.

It is necessary to highlight that this amnesty arrives at a very special moment, in which the process of integration within South America is deepening and widening. Over the course of many decades, Brazil has welcomed Europeans, Asians, Arabs, Jews and Africans and, more recently, we have received strong migratory waves from our brothers in South America and Latin America.

We are, in reality, a nation made of immigrants. A nation that proves in practice how cultural differences can contribute to the construction of a society that always pursues harmony and that rigorously combats discrimination and prejudice. Not only are we a mixed people but we enjoy being a mixed people. From this [composition] stems our identity, our strength, our happiness, our creativity and our talent.

We cannot forget that the very Brazilian Constitution, when addressing fundamental rights and guarantees, establishes that all are equal before the law, be they Brazilians or resident foreigners. The Brazilian state, by means of commitments agreed upon in various international accords, recognizes that migrants are holders of rights and duties that should be respected.

We contend that irregular migration is a humanitarian issue and it should not be confused with criminality. Toward this issue we adopt an approach that is wide-reaching and balanced, bringing into consideration the principles of universality, interdependence and the indivisibility of human rights.

For millions of Brazilians, to live in countries such as the United States, Japan, Italy, Spain, or Portugal, for example, would mean a dream of progress. But for many of our neighbors, Brazil is viewed as a real chance to better one's life. Here, these foreigners have the right to public health and, their children, to free education, which, unfortunately, is not the case in many of the countries that receive Brazilian immigrants.

We consider unjust the migration policies recently adopted in some rich countries, which as one of their points favor the repatriation of immigrants. For us, repression, discrimination and intolerance don't deal properly with the root of the problem. I have already said this numerous times and I repeat: no one leaves one's native land because one wants to, but because one needs to or because one thinks that one can construct a dignified life, a life that is better for oneself and for one's children, in another place. I speak about this from my own experience. It was this that happened with my family when we left the hinterland of the Northeast, in Pernambuco [state], to head for the state of São Paulo. We went to search for opportunities, work, study, better living conditions. For this very reason, I judge that those wealthy countries should have a unified focus on the issue of migration. They should establish partnerships that promote the development of the regions of the country from which migration originates, creating opportunities and better living conditions.

Brazilian society, confronting various manifestations of intolerance that occur at the international level, makes a point of celebrating its very own hospitality. This was seen in the last year, for example, in the commemorations of the centennial of the Japanese migration. I've always believed in solidarity as a fundamental value for social development. Brazil, with responsibility and balance, was and will continue to be a country open to migrants from all parts of the world.

My friends, as you may notice, I've arrived wearing the dress of an immigrant today. I arrived with a bit of Bolivia and a bit of Paraguay. A bit of Peruvian, of Chinese, of Japanese, of Colombian could not come because then this would not be

proper clothing for this moment. Then it would just become a fantasy with so many colors and so much cloth together.

But I wanted to conclude saying to you that this is just one more example of what Brazil would like to give to the world. When Prime Minister Gordon Brown was at Alvorada Palace, completing a bilateral meeting, insinuations began to emerge in various Brazilian and foreign newspapers that the persecution of immigrants was about to begin, especially of the poor who travel about the world looking for an opportunity, at times even because of political problems in their own countries and at times also because human beings are nomadic—they like to look for a place where they feel good.

And on that occasion, I said that we should not point blame for the crisis provoked by Black and Indigenous men with blue eyes or the poor of the world. Because at the end of the day, the crisis, by harming everyone, certainly will harm the very poorest. And we are seeing in many cases what happens to Brazilians in European countries.

I think that at this moment, in which South America is discussing its integration problem, which is incipient insofar as we are still talking about integration in Latin America, insofar as we have a historical debt with the African people that can never be paid off in money but will be paid in gestures of solidarity and recognition. I think that this opportunity is one in which we can change the consciousness and the hearts of the leaders of the entire world.

Next Wednesday, I will be in Italy, participating in the G-8 [Summit]. I would like it if Tarso would prepare a review; that is, he does not need more than a sheet of paper, a summary of what we're doing here, so that I can say to the presidents of the most important countries of the world why it is that Brazil is taking on a position contrary to the policies to be adopted by the rich countries. I am aware of the number of Brazilians who live in Paraguay—more than 400,000. I am aware of the number of Brazilians who live in Bolivia—of the dozens if not hundreds of thousands of Brazilians spread out across the world. And it's good that things are like this, it's good that we create a world without borders, or at least with borders that are more malleable, that allow not only machines, agricultural products and commodities to cross borders but also allow human beings to be viewed for their good sides and not confused with something bad in the crossing of a border.

It's true that we will continue to be tough in combating narcotics trafficking. It's true that we will continue to be tough with contraband. It's true that we will continue to be tough with international crimes. But it's true that we have to be generous with human beings from whichever part of the world they want to come, land and prepare their futures here. That's how Brazil sends off this legal project to the National Congress.

At the beginning of my speech I said: Brazil consists of the mixture of people who have arrived since 1500: Portuguese, Germans, Italians, Arabs, Japanese, Spanish, Chinese, Latin Americans. That is, all of those who came here have been

treated with great decency. I have said to the presidents of other countries: Brazil wants neither more nor less. We don't want any privilege to any Brazilian in any part of the world. We want only that you treat Brazilians abroad how we treat foreigners here in Brazil: like brothers, like partners and like Brazilians.

Farewell. Congratulations Tarso Genro. Congratulations, Tuma. I hope that the National Congress, in its generosity, votes soon on this draft of law. Good luck.

Document 2

National Council of Immigration

“National Policy of Immigration and Protection for the Migrant Worker”

GENERAL DISPOSITIONS

The “National Policy of Immigration and Protection for the Migrant Worker” has as its intention to establish principles, directives, strategies and actions in relation to international migrant flows, with an eye toward orienting the entities and Brazilian organizations in the work linked to the migratory phenomenon to contribute to the promotion and protection of Human Rights of migrants and to increase the links between migrations and development.

To the end of this policy, Human Rights⁸⁵ is defined as follows: the combination of civil, political⁸⁶ economic, social and cultural rights, among others, and fundamental liberties that are universal, indivisible and inviolable, corresponding to the essential necessities of all people, which are equal for all and that should be served so that all people can live with dignity.

To the end of this policy, development is considered an encompassing economic, social, environmental, cultural and political process that aims toward the constant increase of the well-being of the entire population with a base on its active, free and significant participation in development and in the just distribution of the resulting benefits.⁸⁷ The right to development is an inalienable human right in the sense that all humans are able to participate in economic, social, environmental,

⁸⁵ The Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights (the Pact of San José) are international human rights treaties to which Brazil is bound, in addition to the Universal Declaration of Human Rights.

⁸⁶ Currently, Article 14, sections 2 and 3 of the Federal Constitution establish that “foreigners cannot register as voters...” and “in the form of law, condition of eligibility are: 1—Brazilian nationality.”

⁸⁷ Based on the Declaration on the Right to Development of 1986. This declaration launched the foundations for the universal recognition of a human's right to development, given that for that person to achieve that end, it is fundamental that the international community also combat structural inequality between the countries and regions. In this sense, the Declaration foresees that the states are responsible for creating, through cooperation, the necessary conditions for human development in national and international plans.

cultural and political development, to contribute toward and enjoy, in which all human rights and fundamental liberties can be completely achieved.

The preparation of the “National Policy of Immigration and Protection for the Migrant Worker” is carried out through the social dialogue, along with the participation of government, represented by the areas with intervention in the policy—representation of workers, representation of employers and representation of civil society—by means of the National Council of Immigration.

The “National Policy of Immigration and Protection of the Migrant Worker” is coherent, articulated and integrated with preexisting policies and national plans, such as the national policy of Confrontation of Human Trafficking (Decree number 5.948/2006), of the National Plan of Promotion of Racial Inequality (PLANAPIR) (Decree number 6.872/2009), of the National Program of Human Rights (PNDH-3) (Decree number 7.037/2009) and the National Plan of Policies for Women (Decree number 6.387/2008).

PRECEDENTS

- 1) Seminar: “Tripartite Dialogue about Public Policies of Migration for Work”
- 2) Measures proposed by the CNIg (*Conselho Nacional de Imigração*, or National Council of Immigration) and announced by the Ministry of Labor in relation to Brazilian workers who have emigrated abroad
- 3) Proposal of the New Law of Migrations pending in the National Congress
- 4) Resolutions and debates at CNIg
- 5) Brazilian pronouncements in international debates

CONCEPTUALIZATION

For the purpose of policy, the following concepts will be adopted⁸⁸:

- 1) To emigrate or migrate: to leave one state with the purpose of moving to another and establishing oneself there
- 2) Emigrant: a person who leaves one state with the purpose of moving to another and establishing him or herself there
- 3) Immigrate: to arrive in another state with the intention of residing there
- 4) Immigrant: a person who arrives in another state with the purpose of residing there
- 5) Migrant: a generic term that encompasses both the emigrant and the immigrant

⁸⁸ Items 1 to 11 had as their base the concepts found in the Advisory Opinion OC-18/03, on September 17, 2003, of the Inter-American Court of Human Rights.

- 6) Migratory condition: the judicial situation in which the migrant exists, in conformity with the internal rules of the state of residence
- 7) Migrant worker: a person who will realize, realizes or realized a remunerated activity in a state in which he or she is not a national
- 8) Documented Migrant Worker or in a regularized situation: a person authorized to enter, to remain and to exercise a remunerated activity in a state in which he or she is not a national, in conformity with the laws of that state and with international accords to which that state is party and who realizes this activity
- 9) Undocumented Migrant Worker or in a similar situation: a person who is not authorized to enter, to remain or to exercise a remunerated activity in a state in which he or she is not a national, in conformity with the laws of the state and with international accords to which this state is a part and who, nevertheless, practices this activity
- 10) State of origin: the state from which the migrant is a national
- 11) State of employment or receiving state: the state in which the migrant worker will realize, realizes, or realized a remunerated activity
- 12) Border displacement: displacement of a person who lives in one city and constantly travels to a neighboring city within another country, crossing the border for the purpose of work, study, access to services or other activities
- 13) International displacement of short duration: Population displacements of a short duration, commuting or not, across an international border, without the purpose to establish residency in the destination country. This includes the temporary movement of professional foreigners

PRINCIPLES AND DIRECTIVES

The National Police of Immigration and Protection for the Migrant Worker hold as their objective that migratory movements may occur in a regular or documented fashion.

The National Immigration Police will maintain coherence in relation to policies and directives established to defend the rights of Brazilian communities abroad.

The principles and directives of the National Police of Immigration and Protection for the Migrant Worker should contemplate the dimensions of gender and ethnicity/race.

The following constitute the principles and directives of the National Police of Immigration and Protection for the Migrant Worker:

- 1) Migration and development in the location of origin are inalienable rights of all people
- 2) The admission of migrants into the national territory is a sovereign act of the state. The procedures of admission, however, will not be arbitrary or discriminatory, as secured by the rights and guarantees established by the

Federal Constitution, by international treaties and accords and by the Brazilian laws, particularly the protection of human rights

- 3) Documented migrants in regularized situations within the Brazilian territory will encounter equal opportunities and treatment and will be subject to the same rights and obligations that Brazilian citizens are, regardless of race, color, gender or sexual orientation, language, religious conviction, political opinion, national, ethnic or social origin, nationality, age, economic position, patrimony and marital status, respecting the terms of the Constitution of the Republic and federal legislation
- 4) All migrants and their families, independent of their migratory status, have the right to access justice, including those judicial services that are free; to education, especially for children and adolescents; to health services and, under responsibility of the employer, to the benefits resulting from the fulfillment of legal and contractual obligations pertaining to work
- 5) The integration of migrants will be promoted for the better utilization of their personal and work-related capacities and for their well-being, with the goal of contributing to the development of the country
- 6) Undocumented or irregular migration is an administrative infraction and is not subject to penal sanction
- 7) Development policies, in national, regional and local scope, should consider migrations to the extent of maximizing their positive effects on the nation and on the migrants themselves
- 8) Migrant women should be granted specific attention, aiming toward their social insertion in equality of conditions, especially in labor markets, given their role and situation of greater vulnerability in the processes of international migration
- 9) The workers and migrant workers and their families should have their rights protected, with special attention to the situation of women, the guarantee of rights to children and adolescents and the situation of Brazilian emigrants who remain in Brazil
- 10) Migrants will be assured the right to meet with their families as permitted under the law
- 11) Dialogue with the states of origin, transit and destination of migratory movements should be strengthened, as should cooperation incentives, with a view toward greater protection of human rights of the migrants
- 12) The confrontation of discrimination, of xenophobia and of racism in relation to migrants should be fortified, with a view toward the total integration of the migrant into society
- 13) The formulation of policies, directives and programs related to international migrations by means of social dialogue should be fortified

- 14) The same rights that are guaranteed to national workers are guaranteed for migrant workers in a legalized status
- 15) The temporary movement of professional foreigners should be in harmony with the generation of employment and income for Brazilians and with industrial, scientific and technological development of the country, and
- 16) The preparation of norms and migratory recommendations will adopt special treatment to migrations in the scope of regional integration processes.

SPECIFIC DIRECTIVES

- 1) The emission of migrants' documents should be swift to guarantee the regular exercise of rights and duties
- 2) Public organizations charged with serving migrants should guarantee humane, just and equitable treatment, providing access to information having to do with services provided by the organization both to the migrants and to interested parties in relation to the request being processed
- 3) The role of private agencies in recruitment and sending of Brazilian workers abroad should be regulated to prevent the incidence of irregular or degrading work
- 4) Decent working conditions with the objective of restraining the exploitation of workers will be promoted toward migrants
- 5) The rights and duties of migrants will be promoted and disseminated, in agreement with what's established in the Constitution of the Republic, in international commitments and in laws currently in force
- 6) Remittances of resources arising from the work of migrants to their countries of origin should have simple procedures and an affordable cost, by means of the existing legal channels
- 7) The state will maintain service locations for migrants, especially in points at the border, offering them information and direction to access public services for the guarantee of their fundamental rights
- 8) Procedures for the attainment of visas and employment authorizations as well as for extensions of stay, of transformation of visas, of alterations of migratory condition and of residences should be patronized, with views toward simplification, de-bureaucratization and transparency
- 9) Procedures for the migrants' alteration of residency, of the conditions of stay, or of visa type should be simple and not cause the incurrence of obligation to leave the country
- 10) Costs, rates and taxes respective to services provided by Brazilian public bodies should be affordable and guided by the principle of reasonability

- 11) The databases of the federal government with information about international migration should be integrated between the involved bodies, such as the Ministry of Labor and Employment, the Ministry of Justice, the Ministry of External Relations and the Central Bank of Brazil
- 12) Information and data that enable the knowledge and accompaniment of international migrations should be made publicly available
- 13) Training of public servants that work in the service of migrants should be strengthened, reinforcing [the tenets of] humane and coherent treatment within its necessities
- 14) Public policies related to work, employment and income will be applied while aiming toward the integration of migrants and their families and of Brazilians who return from abroad, according to their specific necessities
- 15) The members of the family of migrants, residing in Brazil, will have access to the same rights guaranteed to the migrants themselves
- 16) The migrants identified to be in an illegal migrant situation will be informed by the Brazilian public authorities about the existence of norms or bilateral or multilateral accords in effect that [can] facilitate their legalization in Brazil
- 17) Persons living in [a situation of] border displacement should receive specific treatment, respecting the peculiarities of the border cities, and
- 18) Specific legislation and directives established by the National Council of Immigration will apply to persons living under international displacement in Brazil during a short period, for purposes of work

MIGRANT WOMEN

- 1) The participation of migrant women in the formation of policies and their implementation, monitoring and evaluation should be incentivized
- 2) Information and statistics made available by different bodies that work in migratory themes should contemplate the perspectives of gender
- 3) Considering the question of migrant women and their necessities, themes such as the trafficking of people, domestic violence and labor exploitation should be included in the capacities of public agents to identify situations that demand specific measures or direction to the existing social protection networks
- 4) The state should intensify measures to protect migrants in occupations in which women predominate, for instance, domestic work

ACTIONS

The following actions are foreseen in the scope of national policies of migration and protection to the migrant worker, which should compose a specific National Plan:

- 1) The preparation of a program for the qualification of public servants, strengthening the humanized treatments of migrants
- 2) The realization of actions that promote the legalization of migrants, protecting the sovereignty of the State in the control of the entry of immigrants. This control should be consistent with the rights of humans and with the treatment demanded for Brazilians abroad
- 3) The assurance for authorized migrants residing in Brazil who await the dispatch of identification that they will receive documents that guarantee their regular and immediate exercise of rights and duties in Brazil
- 4) The production of information, statistics and qualified studies that accurately capture the specifics of migrants' day-to-day experiences and of social networks in which migrants are involved
- 5) The realization of seminars for the publishing of the MERCOSUL agreements and related agreements in the migratory, worker and social security areas, aiming toward the strengthening of regional integration and the guarantee of the rights of nationals of the member states
- 6) The widening of migrants' and their families' access to public policies for work, employment and income in the regions of the Brazilian territories that are migrants' origins, destinations, or transit points
- 7) The directing of the United Nations Convention for the Protection of the Rights of All Migrant Workers and Members of their Families to ratification
- 8) The negotiation of bilateral accords for the waiver of consularization of public documents with the countries that receive relevant flows of Brazilians, or with the countries of origin of relevant immigration flows
- 9) The realization of informative campaigns, in various languages, for the publication of migrants' rights and duties and the Brazilian Migratory Police
- 10) The organization and consolidation of the base of knowledge, with the widening of access, contemplating the system of statistical information and the existing qualitative knowledge through research, documents, laws and national and international legal norms
- 11) In the structuring of the system of statistical information, the data should permit the verification of gender, nationality and other factors of influence in the vulnerability of migrants
- 12) The realization of knowledge-building campaigns involving communication sectors about the theme of migrations, considering the vulnerability of women to exploitation and discrimination
- 13) The development of plans for protection and integration of workers and migrant workers, especially in the border areas

- 14) The promotion of specific actions, directly or in partnership with civil society, to facilitate migrants' access to public policies oriented toward assistance, education, health and social-economic and cultural integration
- 15) The promotion of direct and permanent dialogue of the governmental bodies with the organizations that work directly with migrants, associations of migrants and specialists in the areas, covering even the awareness of the topic of human trafficking and migrants
- 16) The improvement of the mechanisms of transparency and social participation by means of widening the representation of associations and organizations that work with migrants and returned Brazilians at CNIg and by means of holding conferences
- 17) Recommendations to the National Councils to incorporate in their policies the theme of international migration
- 18) Dialogue and the provision of services to migrants will be fostered in the state and municipal fields
- 19) Holding responsible the companies that employ migrants in illegal migration situations

SOURCES

CURRENT LEGISLATION

- 1) The Brazilian Constitution
- 2) The Treaty of Asuncion (MERCOSUR Constitution)—Decree number 350, of November 21, 1991
- 3) The Multilateral Social Security Accord of MERCOSUR—Decree number 5,722 of March 13, 2006
- 4) Agreement of residence for Nationals in the member-states of MERCOSUR, Bolivia and Chile—Decree number 6,975 of October 7, 2009
- 5) Other MERCOSUR accords ratified by Brazil, currently in force, which are relevant to the topic of migration
- 6) Bilateral accords about migration signed by Brazil, for example the Migration Settlement Agreement signed between Brazil and Bolivia in La Paz on August 15, 2005 (DOU number 179, from 09/16/2005, section 1, page 67); and the Agreement between the Federative Republic of Brazil and the Portuguese Republic about reciprocal hiring of nationals, signed in Lisbon on July 11, 2003 (DOU number 141, from July 24, 2003)
- 7) Convention number 97 of the International Labor Organization—Migrant Workers—Decree number 58,819, of July 14, 1966

- 8) The Additional Protocol to the United Nations Convention against Organized Crime, relative to Prevent, Suppress and Punish Trafficking in Persons, Especially Mothers and Children—Decree number 5,017 of Mach 12, 2004
- 9) Additional Protocol to the United Nations Convention against Organized Transnational Crime, relative to the Combatting of Trafficking of Migrants over Land, Water and Sand, Palermo Protocols on the Human Trafficking of Migrants—Decree number 5,016, of March 12, 2004
- 10) Law number 11,961, of July 2, 2009 (amnesty to undocumented immigrants)
- 11) Other Brazilian legislation about migration
- 12) National Policy of Confrontation against Trafficking of Persons—Decree number 5,948/2006
- 13) Second National Plan of Policies for Women—II PNPM—Decree number 6,387/2008
- 14) National Plan of Promotion of Racial Equality (PLANAPIR)—Decree number 6,872/2009
- 15) National Program of Human Rights (PNDH—3)—Decree number 7,037/2009, and
- 16) Resolutions edited by CNIg

SOURCES OF RESEARCH:

- 1) The United Nations Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (not signed or ratified by Brazil—resolution number 10 of December 3, 2008, approved by consensus, by the National Council of Immigration, recommended the accession to the Ministry of External Relations)
- 2) Other International Treaties linked to human rights
- 3) Treaty of Constitution of UNASUL (not ratified by Brazil)
- 4) Law project 5,655/2009 pending in Parliament about the new legal framework on migration (New Migration Law)
- 5) MERCOSUR Social-Labor Declaration
- 6) Convention number 143 of the International Labor Organization (ILO)—Migrant Workers (complementary dispositions)—not ratified by Brazil (forwarding of the ratification approved by a tripartite consensus in the National Council of Immigration, CNIg)
- 7) The 1998 ILO Declaration on Fundamental Principles and Rights at Work
- 8) The ILO's non-binding, multilateral framework for migrations
- 9) The ILO's hemispheric agenda about decent work

- 10) National Decent Work Agenda
- 11) Durban Declaration and Action Plan adopted at the Third World Conference on Combatting Racism, Racial Discrimination, Xenophobia and Related Intolerance
- 12) Discussions realized at CNIg
- 13) Declarations of the South-American Conferences on Migration
- 14) “Contributions for the Construction of Public Policies oriented toward Migration for Work,” arising from the “Tripartite Dialogue about Public Policies on Migration for Work” (a document by Itapecerica da Serra)
- 15) Report of the Global Commission on International Migration
- 16) Documents from Brussels and Barcelona regarding lawsuits of the Brazilian Communities abroad together with the Brazilian government
- 17) Comparative study of migratory legislation from other countries: Argentina and Uruguay

Brasilia/DF - August 18, 2010

National Council of Immigration

Document 3

Migration on the Agenda, Publications/Articles

(<http://www.pastoraldomigrante.org.br>)

Father Alfredo J. Gonçalves

In Brazil and around the world, there is a growing number of courses, seminars, research and analysis that focus on the migration phenomenon. Similar interest in migration is simultaneously present in the activities of social ministries and social movements, college and university classrooms, laboratories and libraries of research institutes and debates at clerical conferences. It is present in hallways and backrooms of national and international politics and in the concerns of customs authorities and so forth. The theme of human mobility, in all its forms, causes, consequences and implications, is undeniably gaining visible relevance.

This is reflected in the increase of masters and doctoral theses, case studies and events designed to better understand this new avalanche of mass human dislocation. These dislocations usually work like the ebb and flow of storms that are not always visible. There exist apparent waves and superficial undercurrents in the fields of politics and economics, as well. Concepts such as flexibility, outsourcing, globalization, new world geopolitics and others reflect profound changes in structural

and macro-historical terms. They are seen in the restless crowds that, consciously or unconsciously, chase new opportunities for living and working.

From this perspective, migration acquires the image of a tsunami, the earthquake whose epicenter is unknown and distant; or the image of the tip of an iceberg whose strength and volume remains hidden. It is within the rearrangement of the economy and power relations in the international arena—bipolarity of power; multipolarity; strength in emerging countries; new polarity between the United States and China, North-South and East-West; the financial crisis—that the invisible causes of the movements in the water's surface exist.

In this global scenario, in which the nations shift like tectonic plates of political economy, emigrants and immigrants figure as both victims and protagonists; victims of asymmetries and social imbalances that are produced, reproduced or deepened by various migratory situations. Anonymous masses embark on journeys, especially from South to North and from East to West, seeking promising possibilities for the future. They are protagonists in that, as they march in large quantities and in all directions, they are altering the very history of peoples, nations and cultures. If, on the one hand, they are questioning unjust structures simply by migrating and denouncing their motherland that denies them minimum rights as citizens, they are, on the other hand, breaking with the concept of borders, announcing a sort of universal citizenship.

Currently it is almost impossible to find a country that is not involved in the phenomenon of dislocated and displaced people. Some countries are predominantly sources of output, others as points of arrival and still others as hubs for crossing traffic. Among the former, we can place Latin America, Africa, Asia and the former Soviet Union; the second comprises the United States, Europe, Japan and Australia; and for the latter, there are Mexico, Guatemala, Portugal and Turkey, among others. We should not forget, however, that more than a few countries that have historically been regions of immigration have recently become centers of emigration and vice versa. Just take into account the crossing of the Atlantic Ocean of Italians, Germans, Poles, Spaniards, Portuguese and so forth over a century ago. Today their grandchildren and great-grandchildren are retracing their steps and along with them many Brazilians, Peruvians, Ecuadorians, Paraguayans, Argentines and so on.

To that one can add the waves and waves of workers who, temporarily or permanently and repeatedly, cross the borders of neighboring countries. Migrations between neighboring territories that make borders into places of extreme movement and dynamism are the living portrait of the globalization of capital, technology, goods and services, yet with increasing restrictions on people. Hence, the pressure has also increased on the boundaries of nations. Prevented from reaching the front door, which usually provides access to the more "fit or educated" immigrants, the masses generally venture through deserts, seas and forests. Some examples are the border areas between Mexico and the United States, between South Africa and Zimbabwe, as well as Eastern and Western Europe. In these perilous crossings, the number of dead, missing and physically or emotionally maimed figures in the hundreds, if not thousands.

There should be no need to include a final point. But it may be that strength and stubbornness, hopes and dreams put immigrants in constant motion. Many are orphans from wars, conflicts and all kinds of violence; others orphans of poverty, misery and hunger; and others workers moving on land, through the air or across water. Migrants, refugees, deportees, exiled persons, seafarers, travelers, gypsies, fugitives of natural disasters, temporary workers... To paraphrase Euclides da Cunha: they are, above all, strong. They are strong because they transform their escape into a new quest. Furthermore, they reveal our condition as pilgrims on earth on the path to our definitive homeland, the Kingdom of God.

Document 4

Speaking at City Hall in São Paulo

Father Mario Geremia

CONTEXT OF MIGRATION TODAY

Today the vast phenomenon of migration is increasingly an important component of the growing interdependence between the states and nations that help to define globalization. This has opened up markets but not borders; it has broken through barriers to allow the free flow of information and capital, but not, to the same extent, the free movement of persons.

However, migration today constitutes the largest movement of people of all time, involving more than 250 million human beings.

In recent decades, this phenomenon has become structural reality of contemporary society and is an increasingly complex challenge in terms of social, cultural, political, religious, economic and pastoral areas.

Contradictions of Daily Life—Declarations on One Hand, Denials on the Other

- 1) While the United States claims to be a democracy and defend human rights, it invades populations and wages war against all enemies of US interests
- 2) While the European Union claims to be the cradle of civilization, it declares war against migrants and refugees arriving in their territory. (The policy of return or “shame,” as it was defined by the countries of Latin America)
- 3) While NATO (North Atlantic Treaty Organization) sends troops and bombards neighboring people, at the same time it does not permit the entry of millions of refugees that it causes
- 4) While the Brazilian Government promotes a positive image abroad affirming that it would welcome refugees, it accepts only a limited number

- 5) While [the Brazilian Government] practices broad and humane amnesty, it greatly complicates the renewal of the same
- 6) While large companies, NGOs and international organizations claim to defend the environment, to be socially responsible and to defend human rights, they are also entirely destroying the environment and exploiting their workers and violating all sorts of laws
- 7) While the capitalist system claims to support food production, it accelerates the production of weapons and imposes consumerism without limit
- 8) The markets claim the freedom to operate, but at the same time they assume no responsibility for the millions of victims they create through the exploitation of labor and the unjust profits of the financial system
- 9) While politicians say they represent the people, they legislate on behalf of themselves and continue to set a poor example for youth (projects to increase their own salaries instead of the salaries of the workers; millionaire pensions instead of food benefits for the elderly and for workers)
- 10) While most governments in the world talk about growth, they also deny sustainable and equitable development for all
- 11) While churches and religions preach the Kingdom of justice and peace, they construct personal kingdoms and feed on the blood and sweat of the faithful.
- 12) While it is argued that technology and genetics are supporting life, at the same time they are used to control, kill and destroy nature
- 13) While the mainstream media claims to be impartial, they exploit sensationalism and misery, the suffering and negative aspects of life and the cruel realities of nature
- 14) While authorities say they guarantee security and order, they abuse their power to bribe and exploit migrants and workers
- 15) While we affirm that we are welcoming and have no prejudices, we are still xenophobic and afraid to relate to those who are different and hardly feel any strong solidarity with the most recently arrived individuals (engaging in bullying, cyber-bullying, violence, inability to dialogue about differences, abuses of all kinds)
- 16) Before, migrants arrived as true heroes to build America and had a name and an address. Now migrants are called terrorists, invaders, illegal competitors, slaves, illegal immigrants; many are living on the street or permanently on the move and are viewed as the cause of crises and social problems. The proof is in how people speak and act

Faced with so much human madness, nature also goes mad in its self-expression and becomes violent against all types of life existing on it (climate change).

Xenophobic Expressions, a Result of Human Ignorance

Following are a few quotes recently circulated on the Internet that we have all heard:

- “Northeasterners are not us; do São Paulo a favor, drown the northeasterners”
- “Give the right to vote to northeasterners and the country of those who work will sink to sustain the bums who only have children to receive Bolsa Familia”
- “Go back to your country, Bolivians. Brazil is for Brazilians”
- “Death to doctors trained in Bolivia”
- “São Paulo for Paulistas”
- “They litter the cities, they take work from Brazilians, they bring disease, they are dirty, they are responsible for the crisis in which we live, they are drug dealers, terrorists and violent... And we, what are we and what do we do?”
- “They laugh at me because I’m different; I laugh at them because they are all the same.”

Causes of Forced Migration

- The Economic (concentration of capital and wealth created on the basis of exclusion of people, with the results being poverty, misery, disease, abandonment)
- The Political (wars, dictatorships, which cause millions of refugees)
- The Ecological and Climatic (violent reaction in response to violence against human life on the planet)
- The Dream and The Concept of Utopia (every human being is driven to overcome and strive for more).

Negative Consequences of Migration

- Xenophobia, racism, rejection, fear, abandonment
- Drugs, violence and many types of personal and family abuses
- Family disintegration and personal traumas
- Lack of communication, isolation due to language
- Exploitation of labor and of the body and poor conditions in the workplace
- Trafficking in humans and the lack of public policies and social inclusion
- Irregular legal statuses of immigrants and inhumane treatment by social service workers as well as by religious and public authorities
- Churches closed to immigrants; there are walls and physical, cultural and political boundaries

Positive Consequences of Migration

- Identity strengthened and enriched by the dynamics of integration in destination countries
- Growth and development of work and talent
- Remittances to and development in places of origin
- Cultural richness and beauty in its different expressions
- Solidarity and acceptance/welcoming of people, societies, institutions, churches
- Realization of the dreams of migrants
- Organization and participation of the migrants themselves

Responses of the Pastoral of Migrants of the Catholic Church

- Welcome and immediate assistance
- Culture (cultural empowerment and integration)
- Faith (welcoming, party and celebration)
- Justice (mediation, guidance and protection of human rights; formal charges against unjust causes of forced migration)
- Advocacy (humanization of laws and a fight for migration and integration policies for full and universal citizenship)

Questions

- 1) How can one overcome welfare actions, social attitudes and the mentality of national security through the construction of public and immigration policies?
- 2) How can one base immigration laws on universal human rights, overcoming the limitations imposed by sovereignty and nationalism?
- 3) How can one work cooperatively among various dimensions: legal, cultural and existential?
- 4) How can one care for and relate to human beings regardless of their legal status, their involvement in the informal market or their social status?
- 5) How can one develop a coordinated, specialized and integrate action plan among various levels: local, regional, national? In other words, how can one act locally, think globally?
- 6) How can one feed the dream and concept of utopia of migrants to encourage them to continue their journey?

- 7) How can one work toward common political, religious, cultural, social and ecological interests and exceed small, personal and petty objectives (war, corruption, arms trafficking, exploitation, consumerism)?

Whenever the migrant moves, he changes history.

São Paulo, June 13, 2011

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CHAPTER III

PUBLIC POLICIES ON MIGRATION IN COLOMBIA

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LIST OF ACRONYMS

APASCI (PASAIC)	Presidential Agency for Social Action and International Cooperation
AGCS (GATS)	General Agreement on Trade in Services
CAN (AC)	Andean Community
CNAIPD (NCCAPDV)	National Council for Comprehensive Assistance to the Populations Displaced by Violence
CODHES (OHRD)	Observatory on Human Rights and Displacement
CONPES (NCESP)	National Council on Economic and Social Policy
DAS (ADS)	Administrative Department of Security
DNP (NPD)	National Planning Department
DANE (NADS)	Departamento Nacional de Estadística (National Administrative Department of Statistics)
ICETEX (CCIETSA)	Colombian Credit Institute for Education and Technical Studies Abroad
IDMC	Internal Displacement Monitoring Centre
IOM	International Organization for Migration
JUNTOS (SPNOEP)	Social Protection Network for Overcoming Extreme Poverty
MERCOSUR	Southern Common Market - Brazil, Argentina, Paraguay and Uruguay
MRE (MFA)	Ministry of Foreign Affairs
ODPs	Organizations for Displaced Persons
PIU (SCP)	Single Comprehensive Plan
PND (NDP)	National Development Plan
RUPD (SRDP)	Single Registry of the Displaced Population
RUT (ISNSMS)	Information System of the National Social Ministry Secretariat
SENA (NLS)	National Learning Service
SISDHES (ISDACHR)	Information System on Displacement, Armed Conflict and Human Rights

SNAIPD (NCASDP)	National Comprehensive Assistance System for the Displaced Population
UNASUR (USAM)	Union of South American Nations
UNHCR	UN High Commissioner for Refugees

Introduction

Migrations are not a new phenomenon in Colombia. Like all other countries in the world, and especially those whose nation formation emerged from relatively recent processes of colonial domination, Colombia's present day population is the product of migration processes and is made up of the intermingling of people of many different origins. However, in the process of nation-state formation that took place between the nineteenth and twentieth centuries, migrations were not an especially meaningful demographic phenomenon, as they were in other countries in Latin America.

Although population flows are not a new phenomenon, migration as a subject of public debate or an object of legal or state regulation is a novelty. If the relationship between Colombian society and migration were to be defined, the word "defensive" comes to mind. The study we present here shows that migration in the public agenda has suffered for lack of visibility and has met mostly with denial of its existence. The figures we have collected indicate that Colombia is a country of emigrants, with many people leaving the country. Immigration, on the other hand, has been much less common.

The study of migrations in Colombia, which the Scalabrini International Migration Network (SIMN) proposed as part of a comparative study, has no precedent in the country's social research, due not only to a lack of such research in the national context but also to the fact that international economic migration has developed independently from forced migration, whether national or international.

The experience of migration, understood as a permanent change of place of residence, is quite varied. Modalities of migration range from conditions of the utmost privileged to those of extreme deprivation. Privileged migrants are investors or highly qualified persons, who are coveted by many countries and receive all kinds of stimuli if they want to settle somewhere else and bring along their economic or intellectual capital. Their rights are guaranteed; their property is protected; and they receive tax exemptions, automatic entry permits and even citizenship for themselves and members of their families, employment and business opportunities and the rights of social and political participation.

On the other end of the spectrum we find the most precarious migrations, such as those of persons internally displaced by conflict and violence, asylum seekers, irregular international migrants or victims of human trafficking. For them, migration supposes a completely different set of circumstances: they are rejected; their rights are not recognized; they are denied travel documents; they are exploited by the mafias that control the routes they cross; and they face walls, police persecution, expulsion, misery and abandonment.

Migration policies have the challenge of accounting for the diversity of migrants so that their circumstances can be addressed, especially in the case of refugees and internally displaced persons, providing the guarantees and respect that the most privileged set of migrants enjoys. The fact that such differences exist, and that the regulations that apply may be so diverse, clearly indicates that the way migrants are treated does not follow general rules or apply to fixed situations. The same alien and nationalization regulations and administrative structures treat the privileged migrant in a flexible and welcoming manner but are strict and unkind when dealing with the deprived asylum seeker.

The most obvious solution to this extreme differentiation in the way migrants are treated by institutions appears to have been formulated already in the international human rights system. Universal legal standards can guarantee the rights of migrant populations on the grounds of our shared humanity. International human rights law is the existing legislation that can serve as a basis to provide migrants with dignified conditions, and appeal to the obligations to which states have committed in international treaties.

However, this study has also revealed that migration, both internal and international, deprives citizens of their basic rights. Modern law is based on a deep and almost unconscious relationship between the rights an individual enjoys and a fixed and identifiable place of residence. Population flows threaten this notion of rights, which were designed two centuries ago for individuals who had family and property. From the point of view of public law, the modern conception of rights is directly associated with nationality as belonging to a particular nation and with acceptance of the mandates of the state. Domicile and nationality are the basic conditions for all rights under the ideology of modernity. The migrant condition and the condition of human mobility, on the other hand, challenge these assumptions, and the result is that migrants are deprived of the enjoyment of rights.

Hannah Arendt already warned about this situation when discussing the Jewish question: the rights of Jews, as they became stateless, could not be reconstructed on the basis of abstract humanity (Arendt, 2006). Having been deprived of nationhood, humanity was not going to make restitution for the rights they had lost, and they would be abandoned, as they indeed were, in concentration camps. Similarly, we find that on the basis of human rights alone, no restitution can be made for the rights that international migrants lose. In other words, migrants lose the condition of nationality in the place of origin but do not obtain citizenship in the new place, which leaves them in an in-between space without rights.

In the case of forced migration, the deprivation of rights is even more acute, violent and perceptible. It affects not only the migrant who is forced to move to another country or the asylum seeker. The effect is very similar on internally displaced persons, whose uprooting deprives them of rights within their own country. As many authorities within the United Nations have affirmed, migration, whether voluntary or forced, is a condition that makes people more prone to having their human rights violated.

Migrant movements soon became aware of this situation and have been developing sustained struggles demanding citizenship in the destination countries. In more recent times, as state policies have taken into account the impact of migrations and their remittances, migrants have created political platforms so they can have a stake in their countries of origin.

Political movements and the participation of expatriates in policy making in their countries of origin are a new phenomenon and Colombia is no exception in this regard. In the last decade alone, different expatriate movements have developed that are interested in collective action in Colombia, as the country of origin, seeking to create institutional relationships with the state and civil society. These movements are quite heterogeneous, and their strength depends to a great extent on the support they obtain from the states in the countries where they originated, as is the case with the subsidies provided by the Spanish government and some municipalities in Europe and North America. As for forced migrants, they tend to have a fraught relationship with the state, which often is for the migrants a source of threats.

The study we present here follows the guidelines of the overall research, as set forth by the coordinators of the project: present situation, institutional structure, participation of migrants and recommendations.

We are aware that this study has been formulated first and foremost as a comparative study of international economic migration. However, we have found it necessary, in the case of Colombia, to also take forced migrations, both international and internal displacement, into consideration. For this reason, we have organized this report by separating the analysis of “voluntary” international migration from that of internal displacement and asylum seeking.

The reader will notice that these social processes have several points in common, but that they also produce very different effects, partly due to the nature of the processes as such but also because they are treated very differently by national and international institutions. Though in some ways they appear to be entirely unrelated, we have found some connections that become evident when all the pieces of migration are put together to form the full picture, and its logic is understood as an autonomous social process.

First, both economic and forced migrations have a strong class component. Displacement and resettlement in a new location vary substantially depending on the economic, social and cultural resources of the migrants. Second, we found a correlation among push factors, such as economic crisis and violence, and among pull factors, such as prosperity and security. When internal economic circumstances worsen, a phenomenon frequently associated with an upsurge in violence, large waves of both forced and economic migration occur. Aside from the push and pull factors, immigrant networks, usually consisting of relatives or people from the same village or town, are determinant factors, as they build the migration routes and, most importantly, become the vehicle for economic, social and cultural insertion in the destination country. These networks are used as much by international economic migrants as by internally displaced persons and asylum seekers.

Another element in common has been the vulnerability of migrants, who lose many of their rights by the mere fact of migration. In this sense, for example, migration affects political participation, calling into question the national and even local belonging of individuals as it raises the issue of citizenship. Political participation, the formulation of social demands and collective action are affected by migration. It takes a long time to create the social links that enable collective action and that grant migrants recognition from their communities and the state, both in the country of destination and in the country of origin. In both places, migrants are marginal political subjects who must achieve very high levels of organization to assert their demands.

Finally, it is worth mentioning a contemporary phenomenon that has enormous influence in the political participation of and the institutional assistance offered to migrants: bilateral or multilateral agreements between neighboring countries, where economic and forced migrants have found opportunities to participate in politics and enjoy their rights. In the case of Colombia, the Andean Community of Nations, UNASUR and MERCOSUR, as well as the regional human rights system of OAS, have been the most concrete institutional arrangements protecting international migrants and refugees in the past decades.

Despite the unusual circumstances of a long-standing internal conflict and the already mentioned high rate of forced migration, in Colombia the proportion of migrants with respect to the total population is 10 to 15 percent, which is close to the Latin American average. Our case study confirms a global trend that is far from being a generalization of internal or international migrations. Nevertheless, these migrations undergo qualitative transformations insofar as they involve social sectors that did not formerly participate in the process.

Although a growing phenomenon, migration still affects only a minority of the population. Nonetheless, it poses a great challenge in terms of political participation and protection of rights. The limitations constantly face in these respects reinforce the need to work in concert with national and international communities to defend the rights of migrants. The other side of this process is the great challenge that migrant communities face to organize collective actions, formulate demands and gain spaces for political participation, as they start from the adverse conditions of vulnerability generated by migration itself. For this case study we have focused on the legal instruments that enable citizen participation, but no analysis of specific programs created by social actors, as can be seen in the other sections of this book, has been carried out.

The research on the situation in Colombia has been carried out by a team under the direction of Roberto Vidal. The section on international economic migration was developed by Marco Velásquez, and the participation of international migrants was written by Roberto Vidal, both professors at the Pontificia Universidad Javeriana. Professor Beatriz Eugenia Sánchez, from the Universidad de los Andes, wrote the section on internal displacement, and Rosa María Martín, director of the joint program of the UNHCR and Caritas Colombia that provides assistance to asylum seekers, wrote the section on refugees.

PART I

INTERNATIONAL MIGRATION: DYNAMICS, POLICIES, PARTICIPATION

1. General Analysis of the Dynamics of International Migration

In this chapter we wish to outline the general dynamics of internal migration in Colombia, including both the migration processes of foreigners flowing into the country and those of Colombians moving abroad. To provide a comprehensive view of the dynamics of human mobility, the analysis takes into account both quantitative and qualitative elements. The former are based on national censuses, surveys and demographic projections, while the latter establish historical patterns to explain current trends.

This study draws a sociodemographic profile of immigrants and emigrants, using as primary analysis parameters the origin, gender, age and educational level and taking into account the quality limitations of the databases and the difficulty of access to information.

Additionally, the impact of immigration and the main causes of emigration are discussed on the basis of push/pull factors along with considerations of the dynamics of migration.

1.1. General Considerations

From a demographic point of view, a lack of up-to-date and reliable data makes it difficult to determine the number of persons on the move and to draw a socio demographic profile of migration in Colombia (immigration and emigration) that identifies the sectors of the population that migrate and their motivations.⁸⁹ The few existing studies indicate that there is less available information on migration of people into the country, than there is information collected in the receiving countries in the northern hemisphere, especially in the fields of sociology, economics and political science.

In the light of the above, two kinds of data sources on migration can be identified: first, those derived from a numerical estimate of the migration phenomenon and those derived from the general profiles that have been drawn of the immigrant and the

⁸⁹ In this regard, Jorge Martínez Pizarro has noted that “the lack of adequate, timely and relevant information—which conspires against knowledge on international migration and the ability to intervene—begins with the limitations in the data sources, this being the reason why the study of this phenomenon is, in essence, ‘undocumented.’” See Jorge Martínez and Miguel Villa (2004), *Tendencias y patrones de la migración internacional en América latina y el Caribe*, Notas de Población 73, CEPAL, Santiago de Chile, p. 57.

emigrant. Thus, on the one hand we have data sources that have been created on the basis of direct methods of collecting information (censuses, surveys, records, etc.); on the other hand, we have data created on the basis of indirect methods of collecting information drawn from consolidating and evaluating primary information, such as the migration profile developed by the International Organization for Migration (IOM) in 2010, the United Nations Global Migration Database, the IMILA project conducted by Economic Commission for Latin America and the Caribbean (ECLAC), and other studies and databases that complement and/or consolidate direct sources.⁹⁰

1.2. Immigration to Colombia

Although public policies have occasionally been formulated to foster immigration, historically, Colombia has not been a destination of interest for foreigners.⁹¹ Accordingly, throughout its history as an independent nation, the number of immigrants has been low, both for sporadic movements and for large migration flows from Europe and other continents, in comparison with the number of people who have left and continue to leave the country.⁹²

These low immigration numbers have been explained on the grounds that the immigration process to Colombia has always faced significant obstacles, such as surplus manpower, civil wars, economic problems and poor internal communications.⁹³ Likewise, although attempts were made to formulate plans to attract immigration, Colombia has not undertaken any decisive steps to encourage immigration with a view to promoting economic and social development.⁹⁴

In this regard, it has been noted that the population groups that have arrived in the country in the recent past have been very small and tend to form relatively closed communities with little interaction with the host society. However, they have significant socio-cultural influence in mid-size cities and high-level impact in the business sector in some regions.⁹⁵ Historically, the following have been the main immigrant groups arriving in Colombia:

⁹⁰ In its 2008 post-census report, the Departamento Administrativa Nacional de Estadística (National Administrative Department of Statistics, DANE) notes that “population mobility, from the point of view of public administration and in its social dimensions, becomes relevant in terms of the definition of development policies in areas such as education, health, employment, housing, environment, transport, tourism, and social security in general.” See DANE (2008), *Estimación de la Migración 1973–2005*, Estudios Post-censales 6, Bogotá, p. 7.

⁹¹ *Ibid.*, p. 28.

⁹² See Lelio Mármora (1990), “Los movimientos migratorios internacionales en los países andinos,” in Gloria Ayala et al. (2001), “Un acercamiento al actual éxodo colombiano al exterior,” in *Colombia Internacional* 51, p. 90.

⁹³ See República de Colombia (1994) – CONPES 2706, *Acciones para el fomento de la migración en Colombia*, Bogotá, p. 3.

⁹⁴ See Mauricio Cárdenas and Liliana Mejía (2006) *Migraciones internacionales en Colombia: ¿Qué sabemos?* Documento de Trabajo 30, CEPAL, Santiago de Chile, p. 42.

⁹⁵ *Ibid.*, p. 27.

- Syrian/Lebanese/Palestine immigration since the 1880s. Settlements occurred mostly in the region of the Caribbean coast (especially Barranquilla) and along the Magdalena River
- Japanese immigration in the Western part of the country, especially in the departments of Cauca and Valle del Cauca, approximately since the 1930s
- Jewish immigrants, especially from Poland, in the 1920s
- Spaniards and Italians arriving in Bogotá as part of mass migration due to violence and armed conflicts in their countries of origin.⁹⁶

Colombia still has a low number of foreign residents, and they tend to be even lower in proportion to the total population of the country. As shown in table 1 and graph 1, while towards the end of the 1930s immigrants represented 0.63 percent of the population (54,418 persons) and in 1973 they accounted for 0.39 percent (82,848 persons) of the population, in 1985 they represented only 0.28 percent (78,396 persons).⁹⁷ The 2005 population census indicates that immigrants represented only 0.26 percent of the resident population in the country (109,971 persons), on the basis of the place of birth recorded in the census.⁹⁸

On the other hand, as a complementary source, the registry of net migratory flows⁹⁹ maintained by the Departamento Administrativo de Seguridad (DAS, Administrative Department of Security) has recorded a different figure for the migrant population from that found in the 2005 census. In the ten years between 1996–2006, the yearly net balance of foreigners entering the country was on average of 23,000 persons, for a total of 232,000 immigrants, 0.54 percent of the total population.¹⁰⁰

The divergence of figures with regard to the immigrant population can be explained on the grounds that foreigners leaving for bordering countries are not properly recorded, and this happens to be the kind of movement that occurs most frequently. Apparently, judging from the figures provided by DAS, the number of people who, having entered the country, decide to settle in it is being overestimated. Accordingly, the information drawn from the census is more accurate, since the sources of information were in the country when the surveys were carried out, which makes the data more certain.

⁹⁶ *Ibid.*, p. 3.

⁹⁷ See República de Colombia (1994), *Op. Cit.*, pp. 3–4.

⁹⁸ Question 28 of the census asks whether a person was born in another country; question 29 asks whether the mother of the person was in a foreign country when the person was born and when said person arrived in Colombia; and question 32 asks if the person changed his/her place of residence in the last five years, including the possibility that during that time the person lived in a foreign country, and if so requests the date of entry into the country. See DANE, Population Census 2005, processed with Redatam+SP, CEPAL/CELADE, 2007. Available at <http://190.25.231.242/cgi-bin/RpWebEngine.exe/PortalAction?&MODE=MAIN&BASE=CG2005BASICO&MAIN=WebServerMain.inl> (accessed on 2 May 2011).

⁹⁹ This variable is the result of subtracting the population that has entered the country, the people who have left the country during a certain time, based on the information collected at sea ports, airports and land border crossings.

¹⁰⁰ See Cárdenas and Mejía (2006), *Op. Cit.*, p. 28.

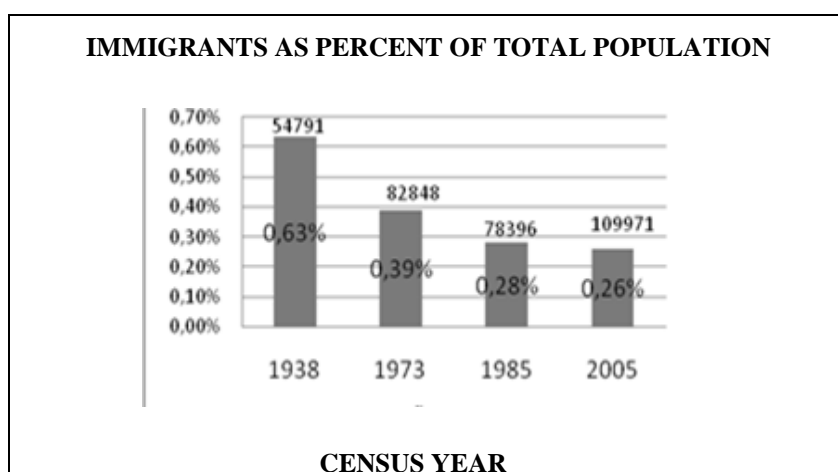
The above indicates that although the immigrant population has grown in comparison with the 1985 figure, the relative level—that is, the percentage of immigrants within the total population of a country—has remained stable in its tendency to be low and continue decreasing. Beyond the fact that the number of immigrants can possibly increase due to global demographic phenomena, this would not represent a relevant change if the public policies and the norms regarding immigration in Colombia remain the same. However, some changes can occur as an effect of regional agreements regarding joint development mechanisms.

Table 1. Immigrants as Percent of Total Population of Colombia in Historical Perspective

Census year	Total population in Colombia	Immigrant Stock	Immigrants as percent of the total population
1938	8,637,778	54,791	0.63%
1973	21,243,077	82,848	0.39%
1985	27,998,572	78,396	0.28%
2005	41,468,384	109,971	0.26%

Source: National Censuses of 1938, 1973, 1985 and 2005.

Graph 1. Immigrants as Percent of Total Population of Colombia in Historical Perspective



Source: National Censuses of 1938, 1973, 1985 and 2005.

As for the place of origin of the immigrants who have settled in Colombia, including those groups that arrived in the past, at present it is possible to identify three main places: Venezuela, the United States and Ecuador. These countries enjoy easy communications with Colombia, and Venezuela and Ecuador are bordering nations. Additionally, existing sociocultural links have provided these movements with well-defined networks.

In the 1985 census, 52 percent of immigrants were from Venezuela, 13.3 percent from the United States, 10.4 percent from Ecuador and 23.8 percent from other countries.¹⁰¹ The most recent census shows that this trend remains constant, but the intensity and volume have changed, as shown in table 2 and graph 2. In 2005, immigrants from Venezuela accounted for 34 percent, 13.4 percent had arrived from the United States, 10.3 percent from Ecuador, and 42.3 percent from other countries. These figures indicate a decrease in the number of immigrants from Venezuela compared to previous years¹⁰² and a greater diversity of immigrants' places of origin.

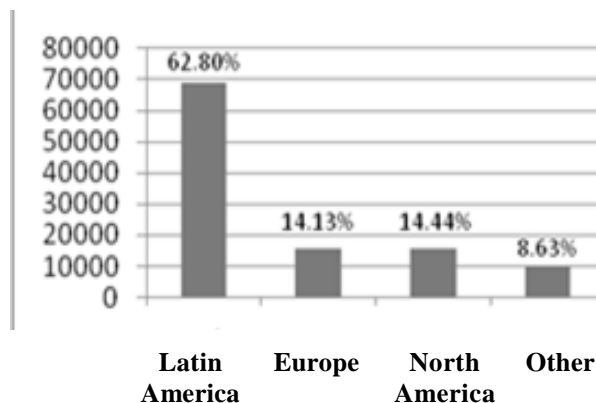
Table 2. Immigrant Stock in Colombia by Country of Origin, Year 2005

Country	Migrant Stock	Percentage of total migration	Country	Migrant Stock	Percentage of total immigration
Venezuela	37,350	33.96%	Germany	1,892	1.72%
United States	15,094	13.73%	Brazil	1,873	1.70%
Ecuador	11,404	10.37%	Panama	1,656	1.51%
Spain	5,312	4.83%	France	1,652	1.50%
Peru	4,042	3.68%	China	1,632	1.48%
Argentina	2,563	2.33%	Chile	1,622	1.47%
Mexico	2,286	2.08%	Cuba	1,459	1.33%
Italia	2,250	2.05%	Other	17,844	16.23%

Source: DANE, Population Census 2005.

¹⁰¹ See República de Colombia (1994), Op. Cit., p. 3.

¹⁰² Over time, Colombia lost its attractiveness as a destination for the inhabitants of the neighboring countries due to the recovery of the Venezuelan oil industry in the late 1980s and to fact that Ecuadorians chose to emigrate to Peru instead. See Cárdenas and Mejía (2006), Op. Cit., p. 29.

Graph 2. Immigrant Stock in Colombia by Region of Origin, Year 2005**MIGRANT STOCK IN COLOMBIA BY REGION OF ORIGIN**

Source: DANE, Population Census 2005.

It is worth noting the importance of intraregional migration flows as a main source of immigrants into Colombia. Table 3 shows that people from other Latin American countries account for 63 percent of the total immigrants in Colombia (mainly from Venezuela, Ecuador, Peru, Argentina, Mexico and Brazil), followed by other North Americans (the United States and Canada) with 14.44 percent and Europeans with 14.13 percent.

The above trends can be explained by the cultural and physical proximity of some of those countries and the ease with which controls along the lengthy borders can be circumvented.¹⁰³ In the case of the United States and Spain, immigration is associated with financially, politically and socially well-developed networks, the presence of companies from those countries in Colombia, and the lower costs of mobilization between the countries.¹⁰⁴ It is also of notice that the main countries of origin of immigration to Colombia are also the main destination countries for Colombians who emigrate, albeit with very different intensity with regard to numbers.

As far as the gender distribution of the stock of immigrants in Colombia, the 2005 census indicates that the proportion of men and women is almost identical, with 51.7 percent and 48.3 percent respectively, as shown in table 3 and graph 3.

In the age distribution of the immigrant population, using the data pooling applied by the census authorities, the majority falls within the span of 15 to 64 years of age (61 percent), which corresponds to the working age. The underage population between 0 and 14 represents 30.5 percent, and those 65 years of age and older represent 8.4 percent.

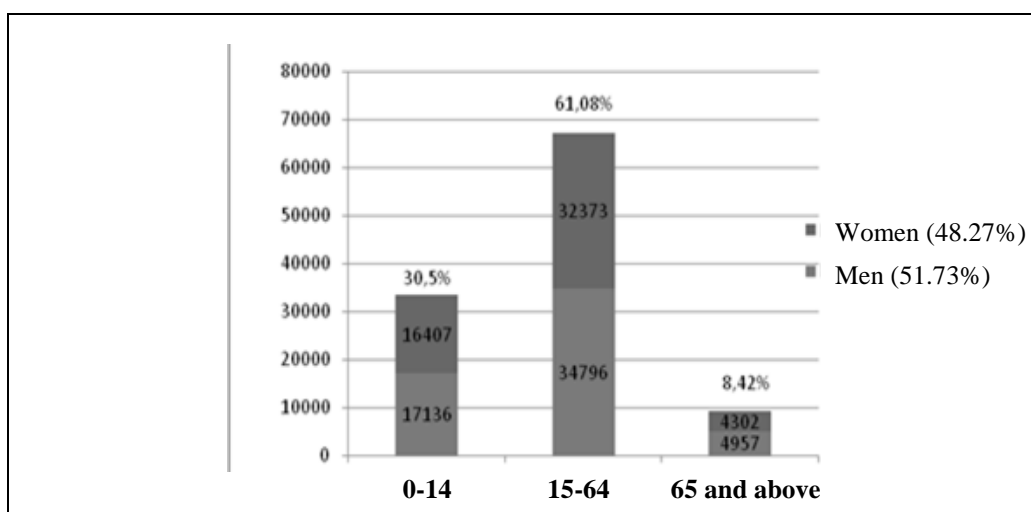
¹⁰³ Ibid., p. 29.

¹⁰⁴ Ibid., p. 30.

Table 3. Immigrant Stock in Colombia by Gender and Age

Age Span	Men (51.73%)	Women (48.27%)	TOTAL
0-14 (30.5%)	17,136	16,407	33,543
15-64 (61.08%)	34,796	32,373	67,169
65 and older (8.42%)	4,957	4,302	9,259
TOTAL	56,889	53,082	109,971

Source: DANE, Population Census 2005.

Graph 3. Immigrant Stock in Colombia by Gender and Age

Source: DANE, Population Census 2005.

The above data support the notion that the immigrant population in Colombia consists mostly of people who have arrived in the country to carry out specific work activities, rather than of mass migrations, since most of them are of working age.

The 1993 census recorded that with regard to the educational level of immigrants in Colombia, 44.2 percent of those 12 years of age and older had more than 10 years of education, which can be considered equivalent to a high school degree. The data for that year show that immigrants had an average of 8.1 years of schooling, which is slightly higher than the Colombian average of 7.5.¹⁰⁵

¹⁰⁵ Ibid., p. 31.

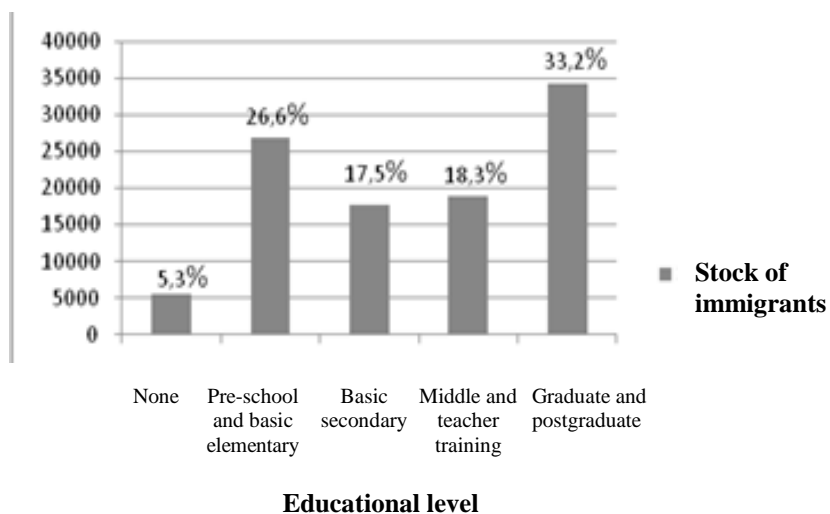
On the other hand, as indicated in table 4 and graph 4, the population census of 2005 showed that the majority of the immigrant population had high levels of education: 33.2 percent had undergraduate and/or postgraduate education, and 61 percent were at the level of elementary, middle or high school. Only 5.3 percent reported not having any schooling.

Table 4. Educational Level of the Immigrant Population in Colombia

Educational Level	Immigrant Stock	Percentage of total immigrants
None	5,460	5.30%
Pre-school and basic primary education	26,843	26.06%
Basic secondary	17,660	17.15%
Middle school and teacher training school	18,807	18.26%
Graduate and Postgraduate	34,232	33.23%

Source: Dane, Population Census 2005.

Graph 4. Educational level of the immigrant population in Colombia



Source: Dane, Population Census 2005.

Impact of Immigration in Colombia

The number of immigrants as a percentage of the total population in Colombia is so small that their demographic impact is accordingly very low. However, some specific contributions of immigrants in some professional activities can be mentioned, in addition to the impact of their investment or consumption on the country's economy.

With regard to their geographical location, the data for the intercensal period of 1973–1985 show that 27 percent of immigrants settled along the Caribbean coast, 18 percent in the eastern region, 17.8 percent in the central region, 16.4 percent along the Pacific coast and 19 percent in Bogotá.¹⁰⁶ This proportion has remained constant to this day, and immigration has had the most economic, social and cultural impact in these regions.

The 1993 census is the only one to have gathered information on the socioeconomic impact of the immigrant population, including their economic activity. Most were employed in the tertiary sector, such as commerce, restaurants and hotel business (25 percent).¹⁰⁷ The arrival of professionals in the services sector coincides with the entry of foreign capital investments and multinational companies into the country since the 1990s, when borders were opened.

1.3. Emigration of Colombians

1.3.1. Characteristics of the Emigration Movements

General Characteristics

National censuses, which have served as a basis to calculate the volume and evolution of emigration, have shown that the flows of population leaving the country has steadily grown since the 1950s¹⁰⁸ but that they have increased substantially with the beginning of this century. According to previous studies, three large waves of Colombian emigration can be established. Although there are records of emigrating populations before these diasporas, the phenomenon was not as significant:

1965–1975

The first mass movements of people leaving the country occurred during this period. As of 1970, 95 percent of the Colombians abroad had settled in four main destinations: Venezuela, the United States, Ecuador and Panama. This trend was a response both to external factors, such as economic booms in some bordering countries—Venezuela's oil boom, for example—and to internal ones, such as the agrarian crisis, unemployment, underemployment, and currency differentiation.¹⁰⁹

¹⁰⁶ See República de Colombia (1994), Op. Cit., p. 3.

¹⁰⁷ See Cárdenas and Mejía (2006), Op. Cit., p. 32.

¹⁰⁸ See DANE (2008), Op. Cit., p. 29.

¹⁰⁹ See Gloria Ayala et al. (2001), "Un acercamiento al actual éxodo colombiano al exterior," in *Colombia Internacional* 51, p. 90.

These circumstances motivated poorly educated low-income rural workers to migrate. However, once the economic situation that had driven people to migrate changed, the flow decreased.¹¹⁰ The migration reforms implemented by several countries also acted as a push factor, enabling the entry of graduated professionals into the United States and attracting unskilled labor to the commerce, hotel and restaurant sectors in the United Kingdom.¹¹¹

Mid-1980s

As the oil boom came to an end, the emigration of Colombians to Venezuela decreased. The migration flows moved to other destinations towards the mid-1980s. According to some authors, this had partly to do with the growth of drug trafficking in Colombia and the need to create a network of distributors and sellers in the destination countries of the most important routes.¹¹² After 1985 the flow of Colombians leaving the country plateaued, but it remained high compared to the movements in the first half of the 20th century.

1995–2000

Toward the mid-1990s, the flows of people emigrating from Colombia increased in an unprecedented way. This new wave of emigration is explained by a complex mixture of internal factors, including economic, social and political crisis and the intensification of the internal armed conflict, which in turn increased violence and the sense of insecurity.¹¹³ Whereas between 1980 and 1990 the Colombian population abroad had grown by 27.5 percent, between 1990 and 2000 it shot up by 70 percent.¹¹⁴ From 2002 onward, the numbers of Colombians leaving the country declined, although they continued to be high.

1.3.2. Statistical Figures on Colombian Emigrants in Comparison with the Total Population of the Country

As noted above, it is very difficult to access accurate information on the migration phenomenon, but the national population census is a very useful source for studying international migration in Colombia because of the wide range of demographic and socioeconomic data it provides.¹¹⁵ With regard to emigration of Colombians, the population census carried out in the second part of 2005 asked if members of the household had left permanently to live abroad and, if so, for the country of destination. Two questions relating to migration were included:

¹¹⁰ See Cárdenas and Mejía (2006), Op. Cit., p. 5.

¹¹¹ Ibid., pp. 5–6.

¹¹² Ibid., p. 93.

¹¹³ See Ayala et al. (2001), Op. Cit., p. 92.

¹¹⁴ See Cárdenas and Mejía (2006), Op. Cit., p. 8.

¹¹⁵ See Martínez and Villa (2004), Op. Cit., p. 58.

22. Has one or more members of this household left the country to live permanently abroad? If so,
- How many?
 - Where do they live at present and when did they leave the country? (A list of countries is included)¹¹⁶

As a result, the 2005 population census indicated that 3,331,107 Colombians lived abroad, which represents about 8 percent of the total population living in the country.

However, the 2005 census had two limitations. First, it offered no clear information on the migrants' socio demographic profile (age, sex, education level, marital status, and so on), which limited the possibility of drawing a characterization that would help shape public policies to address the needs of this population group. Second, it was impossible to collect migration data from the households in which all the members had migrated, since the question was formulated in such a way that nobody could report on them.¹¹⁷

Taking into account these methodological limitations, the statistical measurement carried out in 2005 was complemented with an official post-censal study in 2008.¹¹⁸ After some adjustments using the entry and exit information recorded by DAS, as well as the records kept at the consular missions provided by the Ministry of Foreign Affairs, it was possible to determine that 1,878,345 Colombians emigrated during the 1985–2005 intercensal period.

Lastly, some social organizations have indicated that, due to under-registration, the number of Colombians living abroad can be estimated to be more than 4 million.

1.3.3. Distribution by Destination Country

Overall, United States, Spain and Venezuela are the destination countries of three-fourths of the Colombians who live abroad (see table 5 and graph 5). In what follows, we shall analyze the phenomenon of migration to each of these countries, taking into account the specific characteristics of each case and the facts that we have already mentioned with regard to the present-day waves of Colombian emigrants.

¹¹⁶ Venezuela, United States, Spain, Mexico, Costa Rica, Canada, Australia, Ecuador, Panama, Peru, Bolivia and "Another Country."

¹¹⁷ See Daniela Vono de Vilhena (2010), *Panorama migratorio en Colombia a partir de estadísticas sociales*, CEPAL, Santiago de Chile, p. 8.

¹¹⁸ DANE carried out a post-census study in 2008 to provide adjusted demographic data that was based on the 2005 population census, but took into account previous censuses (1973, 1985 and 1993) for a wider scope of analysis. Based on an initial diagnostics of May 2006 (carried out jointly with the Faculty of Interdisciplinary Studies of the Pontificia Universidad Javeriana, based on the 2005 census which provided an initial figure of the number of Colombians abroad), the 2008 study took these results and adjusted them a partir de su dinamización by means of the net migration balance variable, which is the result of comparing the number of Colombians leaving with those entering the country in a particular period of time. Thus, the information from the 2005 census was complemented by the entry and exit records kept by DAS and the censuses of the main destination countries.

United States

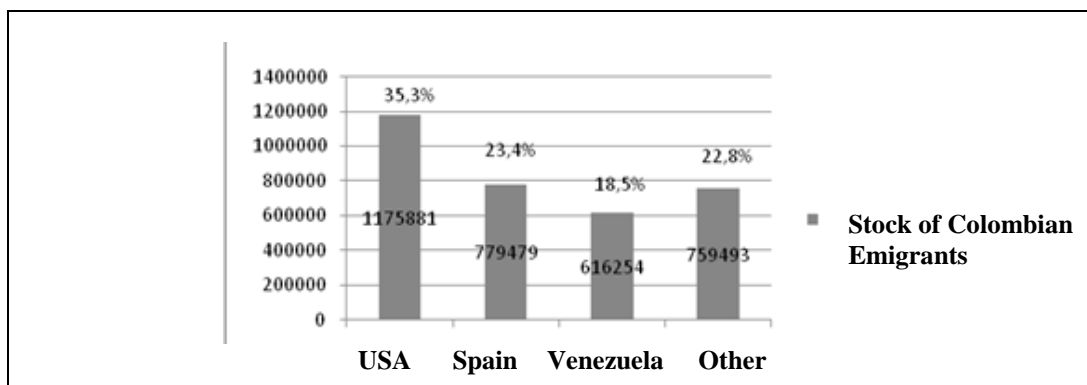
According to the figures given in the 2005 census, the United States is at present the main destination country of Colombian emigrants. According to the information provided by relatives who live in Colombia, 35.3 percent of the recorded emigrants currently live in that country, a total of about 1,175,000 people.¹¹⁹

Table 5. Stock of Colombian Emigrants by Destination Country

COUNTRY	STOCK OF COLOMBIAN EMIGRANTS	PERCENTAGE OF TOTAL EMIGRANTS
United States	1,175,881	35.3%
Spain	779,479	23.4%
Venezuela	616,254	18.5%
Ecuador	7,995	2.4%
Canada	7,329	2.2%
Panama	4,331	1.3%
Mexico	3,664	1.1%
Costa Rica	3,664	1.1%
Australia	1,666	0.5%
Other	47,635	14.3%

Source: DANE, Population Census 2005.

Graph 5. Stock of Colombian Emigrants by Destination Country



Source: DANE, Population Census 2005.

¹¹⁹ See Cárdenas and Mejía (2006), Op. Cit., p. 68; Martínez and Villa (2004), Op. Cit., p. 68.

Based on the census records of the United States on regular migrants, it is possible to identify three great waves of Colombian immigration. The first was in the 1970s, when the flow of Colombians represented 2.2 percent of the total migration movements toward the United States as a destination country. The second wave was in the 1980s, due to the opening of communication channels and increased access routes. The last one was between 2005 and 2008, when the economic downturn and the upsurge of violence in Colombia led some 130,000 Colombians to enter the United States.¹²⁰ Since 2008, the Colombian emigrant population—some 685,055 Colombians in 2007, according to the Organization for Economic Co-operation and Development¹²¹—has begun to decrease due to a process of return migration highlighted in the statistics of international organizations that keep demographic records on international migration.¹²²

It is worth noting that under-registration is particularly obvious in the case of Colombian emigrants in the United States, who often fear that the census might have legal repercussions. For this reason, the census figures in the United States do not record the more than one million Colombians living in that country, as calculated in the 2005 census in Colombia.¹²³

Spain

Spain is currently the second most common destination of Colombian emigrants, though this trend was established only in the 1990s. It has been said that the main causes of this migratory pattern are the increased severity of entry controls in the United States and the tightening of American migratory policy. Given the greater difficulty of obtaining American visas and the higher costs that undocumented migrants must incur to enter the United States, Spain became a viable option for migrants.¹²⁴

Although Colombians have needed visas to enter Spain since 2002, migration flows to that country remain significant for the statistics on human mobility in Colombia. According to the 2005 census, they represent about 24 percent of the stock (see table 5). Statistics show that though there had always been migration to Spain because of the cultural similarity and shared language, a veritable Latin American diaspora arose in Spain as of 1999, with Colombia as the second country after Ecuador in terms of the number of immigrants to Spain. The annual average was 26,000 people, although in 2001 the figure rose to 70,000.¹²⁵

¹²⁰ Compare with the migration statistics of the Organisation for Economic Co-operation and Development at <http://stats.oecd.org/Index.aspx> (accessed on 5 April 2011).

¹²¹ In contrast, according to the United Nations Population Division, the population of Colombian migrants in the United States was 566,394 in 2005. Compare at <http://esa.un.org/unmigration/migrantstockbyorigin.aspx> (accessed on 5 April 2011).

¹²² According to said statistics, the number of Colombian emigrants registered as legal decreased from 685,055 in 2007 to 598,489 in 2008. Compare at <http://stats.oecd.org/Index.aspx> (accessed on 5 April 2011).

¹²³ See Cortés, Almudena, and Sanmartín, Anna, “Transnacionalismo político: Políticas migratorias de vinculación de los estados de origen y de las asociaciones de migrantes en Spain. Los casos ecuatoriano y colombiano,” XIV Encuentro de Latinoamericanistas Españoles, congreso internacional, Santiago de Compostela, Spain, 2010, p. 1150.

¹²⁴ See Cárdenas and Mejía (2006), Op. Cit., p. 11.

¹²⁵ *Ibid.*, p. 11.

Venezuela

Venezuela was for many years the main destination country for Colombian emigrants, and it continues to be the main destination country at the regional level because of its geographic proximity and its periods of economic boom that have led many people to cross the border in search of a better future. The Colombian census of 2005 showed that Venezuela was the third receiving country for Colombians, after the United States and Spain, with 18.5 percent—that is, approximately 620,000 people—living there.¹²⁶

As stated above, the main flow of Colombians into Venezuela took place in the 1970s, thanks to a thriving economy driven by the oil boom; in the following decade, the pattern decreased significantly, though it remained significant. In 1990, 90 percent of the intraregional migration of Colombians was recorded in Venezuela (about 500,000 persons), according to data gathered by the censuses of the countries in the region.¹²⁷

According to information gathered by the IMILA Project, by 2001 the Colombian population in that country was greater than 600,000.¹²⁸ Their ages ranged from 25 to 50, and there was a slight majority of women. Those who were economically active, whether as professionals or technicians, were dedicated to teaching, paramedic services, or religious orders. Unskilled migrants worked in commerce, agricultural harvesting or domestic work.¹²⁹

As in the case of the United States, the information gathered by national censuses regarding Colombian migrants differs from the registry of the same in the consulates in Venezuela: the figure is much lower, suggesting significant under-registration. Compared to an estimated 2.3 million Colombian residents in the neighboring country, only 265,000 are registered in the Colombian consulates.¹³⁰

1.3.4. Gender and Age of Colombian Emigrants 1985–2005

The official postcensal exercise of 2008 is especially important for the estimates on the gender and age of Colombian emigrants, since it made it possible to integrate new variables into the net migration balance and establish more precise patterns regarding socio demographic characteristics by assuming a specific period of time for the preparation of migration profiles.

With respect to gender, there is a significant difference in the proportion of emigrating men and women, which comprise 54 percent and 46 percent, respectively (see graph 6), of Colombian emigrants.

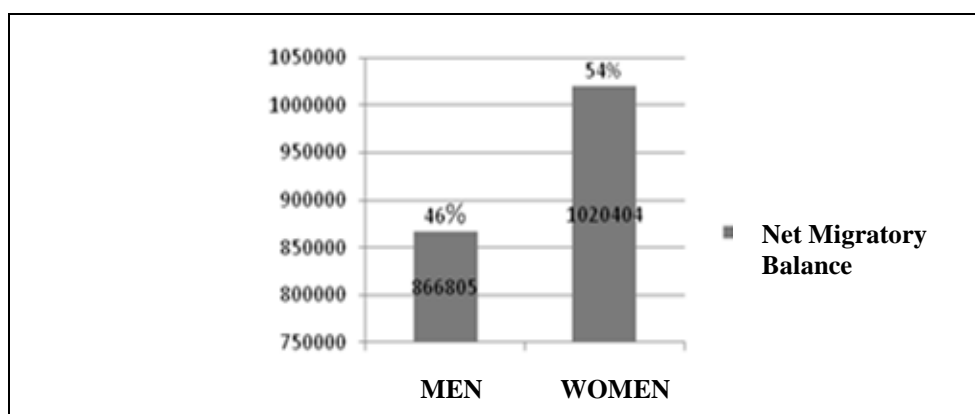
¹²⁶ *Ibid.*, p. 9.

¹²⁷ See Martínez and Villa (2004), *Op. Cit.*, p. 66.

¹²⁸ See Proyecto IMILA, <http://www.eclac.org/Celade/proyectos/migracion/IMILA00e.html> (accessed on 30 June 2011), which obtained its information from Venezuelan census statistics.

¹²⁹ See Proyecto IMILA, <http://www.eclac.org/Celade/proyectos/migracion/IMILA00e.html> (accessed on 30 June 2011).

¹³⁰ See Cárdenas and Mejía (2006), *Op. Cit.*, p. 8.

Graph 6. Migratory Balance 1985-2005 by Gender

Source: DANE, Postcensal Study 2008.

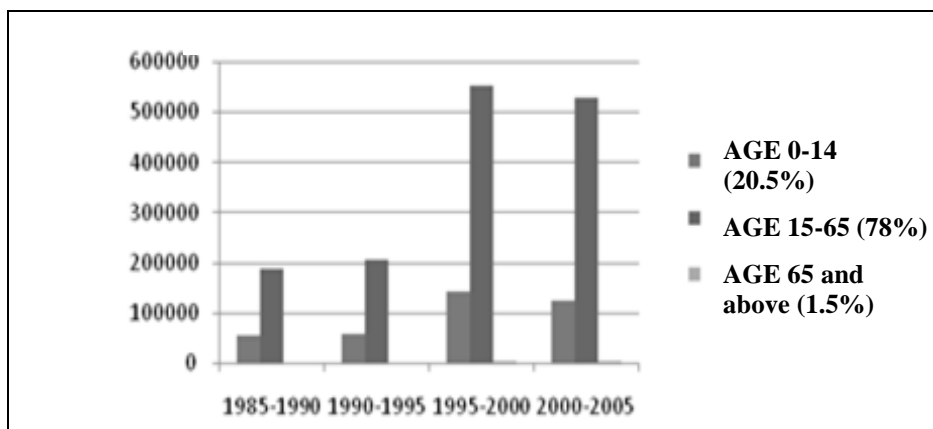
The postcensal study shows that, with respect to the age variable, the majority of the emigrant population, or 78 percent, were between the ages of 15 and 65, 20.5 percent were younger than 15, and 1.5 percent were older than 65 (see table 6 and graph 7). The study also confirmed that starting in 1995, emigration indexes of Colombians increased sharply, the number of net migrations doubling from the 1990–1995 to the 1995–2000 period.

Table 6. Stock of Colombian Emigrants by Emigration Period and Age 1985-2005

Period	Age			Total	Percentage of Total Emigrants 1985-2005
	0-14 (20.5%)	15-65 (78%)	65 or older (1.5%)		
1985-1990	56,124	187,591	1,872	245,587	13.07%
1990-1995	60,018	206,487	1,759	268,264	14.28%
1995-2000	144,564	553,567	5,212	703,343	37.44%
2000-2005	125,916	529,867	5,368	661,151	35.19%

Source: DANE, Postcensal Study 2008.

Graph 7. Stock of Colombian Emigrants by Emigration Period and Age 1985-2005



Source: DANE, Postcensal Study 2008.

1.3.5. Causes of Colombian Emigration Abroad

Before discussing the causes of Colombian emigration abroad, it is necessary to clarify certain issues in order to be able to understand the current status of the phenomenon:

First of all, the causes of Colombian emigration abroad involve both *push* factors—that is, internal circumstances that drive people to mobilize—and external *pull* factors that attract migrants.

Second, as a complex social phenomenon, human mobility processes emerge from a juxtaposition of motivations that lead to the decision to migrate. While it is relevant to establish causal categories, it is not possible to attribute autonomous causes a priori to explain Colombians' emigration abroad. Rather, it is by understanding the context of each process that it is possible to draw a complete map of the situation.

With this in mind, and taking into account the historical and national background outlined above, the causes of Colombian emigration abroad can be summarized as follows:

Economic Factors

<i>Push Factors</i>	<i>Pull Factors</i>
*Economic crisis in the country of origin	*Economic boom in destination countries *Stable economies in destination countries
*Unemployment, unsatisfactory work conditions in the country of origin	*Opening up of services trade at the regional level and with other countries with whom agreements have been signed *Explicit demand for Colombian professionals due to their expertise in certain areas

Social Factors

<i>Push Factors</i>	<i>Pull Factors</i>
*Situations of ethnic or sexual discrimination	*Societies with similar cultures that are open and have a positive attitude toward the reception of migrants, or that sympathize with Colombian culture
*Previous migration processes that have generated the existence of social networks	*Existence of family networks and zones with massive presence of Colombian residents in the receiving countries

Political Factors

<i>Push Factors</i>	<i>Pull Factors</i>
*Political persecution due to an internal armed conflict	*Countries that are sensitive to political persecution cases and offer the possibility of receiving that type of migrants

1.4. Conclusions

This study shows that Colombia is one of the main countries of origin of migrants at both the regional and international levels, a fact that contrasts with its low rates of reception of migrants.

While immigration to Colombia is not common, it has contributed sociocultural elements in certain regions of the country and entrepreneurial initiatives that are currently significant in the national economy.

On the other hand, emigration of Colombians abroad has been characterized by steady growth rates that are much more significant than immigration rates. The main extra-regional destinations are the United States and Spain, due to either the common language or the existence of transnational migrant networks, while Ecuador and Venezuela are the main receiving countries at the regional level, due to shared borders and cultural characteristics.

It is worth noting that as of 2002 there has been an exponential increase in the exodus of Colombians abroad because of a range of factors that, as a group, have exacerbated the phenomenon. Among these are the high levels of unemployment, economic crisis, and the political instability caused by the escalation of the internal armed conflict between the state and paramilitary and guerrilla groups. In addition, favorable economic conditions and the demand for workers to carry out certain types of jobs in other countries have contributed to shaping the mobility process.

2. Regulatory Framework and Public Policies regarding International Migration

The objective of this chapter is to make a systematic presentation of the set of provisions that make up the prevailing regulatory framework of migration law in Colombia. Although these regulations belong to different hierarchical levels and cover a considerable range of topics, they can be understood as being based on principles set

forth in the Political Constitution, which are then implemented through public policy instruments designed to provide comprehensive management of human mobility processes: the National Development Plan and the CONPES Documents on Economic and Social Policy, among others.

After discussing the abovementioned political-legal basis, the chapter goes on to describe the international legal framework—the supranational instruments that Colombia has ratified—and the national legal framework, including the institutional structure that has responsibilities related to the migration phenomenon, as well as the regulations regarding the status of migrants in the national territory, assistance to Colombians abroad and other related issues.

Finally, the chapter analyzes the most recent legislative initiative regarding the handling of migration, Law 1,465 of 2011, which created the National Migrations System and defined regulations for the protection of Colombians abroad, in view of the problems identified in CONPES 3,603 of 2009.

2.1. Political Constitution, Public Policy Instruments and Institutional Regulations

2.1.1 The Political Constitution of Colombia

Colombia's Political Constitution lacks specific provisions regarding the handling of the migration phenomenon, whether of foreign immigrants in Colombia or of Colombian emigrants abroad. Nevertheless, several constitutional provisions contain elements that suggest a series of general guidelines for addressing the human mobility process, from the political perspective of the social state based on the rule of law.

First of all, the Constitution incorporates the classical model of correlative attribution of rights/duties. On the one hand, as a result of the establishment of a social state based on the rule of law and grounded in the principle of human dignity (Article 1), the *raison d'être* of national authorities is to protect the rights and freedoms of persons residing in Colombia (Article 2), which would include both nationals and foreigners residing either permanently or temporarily in Colombia. Thus, there is a basic recognition of immigrants' rights, whose specific scope shall be dealt with below. On the other hand, Article 4 points out that both nationals and foreigners must abide by the constitutional and legal provisions, under the assumption of obedience to national authorities.

In a complementary manner, the principle of equality and nondiscrimination, set forth in Article 13 of the Constitution, provides orientation with respect to the treatment of immigrants in Colombian territory by specifying that national origin cannot be grounds for discriminatory treatment regarding the state's obligation to guarantee respect, protection, and satisfaction of rights.

However, that orientation regarding the equal guarantee of foreigners' rights and freedoms is altered by Article 100 of the Constitution, which qualifies the action of the nondiscrimination principle by listing the rights of immigrants. The result is a well-delimited three-level exercise of guarantees, thus:

- Foreigners in Colombia shall enjoy the same civil rights granted to Colombians, but those rights can be restricted for reasons of public order on the basis of the state's authority to establish special conditions for or even deny the exercise of those rights
- Political rights are reserved for nationals, but the law may in exceptional cases grant foreigners residing in Colombia the right to vote in elections and popular referendums at the municipal or district levels
- No mention at all is made of economic, social, and cultural rights, so there is no clarity regarding whether foreigners have any type of protection—at least at the constitutional level—beyond that provided to them by their embassies and consulates.

In addition to international treaties regulating the matter, Article 24 of the Constitution guarantees Colombians freedom of circulation and residence within the national territory, as well as the right to enter and leave the country without restriction, except in those cases in which a law establishes specific restrictions. It is worth noting that the extension of said rights to foreigners residing legally in the national territory is not mentioned, which contrasts with the content of the international and regional human rights treaties to which Colombia is a party.¹³¹

In this regard, it is also worth mentioning that Articles 93 and 94 expand both the content and the scope of the rights explicitly established in the Constitution. It is therefore clear not only that international agreements recognizing human rights are an integral part of the prevailing internal legislation, but also that their stipulation should not be construed as the denial of other rights that are not explicitly mentioned (unnamed rights clause) because they are inherent to the human person. Consequently, in view of the abovementioned regulations, the interpretation and application of constitutional provisions regarding the handling of immigration should be ample and inclusive.

Finally, it is peculiar that Article 2 of the Constitution, which refers to the ends of the state, makes no reference to the protection that authorities should grant to Colombians residing abroad, which should be the main *raison d'être* of Colombian embassies and branches of public authority in other countries, in conformance with international and national law regarding the matter.

2.1.2 Public Policy Documents

Because of the increase in migrant populations and new patterns of human mobility, public policy instruments have increasingly focused on the migration phenomenon and have started incorporating concrete guidelines for the handling of both foreign immigration into the country and Colombian emigration abroad.

¹³¹ In this regard, see the section on the international legal framework.

a) *Background of Public Policy on Migration*

The most recent precedent for the formulation of public policies regarding immigration to Colombia dates back to 1994, when CONPES Document 2,706 was issued regarding actions for the promotion of immigration into the country.¹³² The objective of said document was to set out the bases for public policy aimed at the promotion of immigration to Colombia, focusing on the entry of persons with specific qualifications related to competence in a profession, art or science and modeled after the policies of traditional receiving countries such as Australia and Canada in the sense of fostering immigration that would bring capital investments.

The document states that massive immigration processes in the nineteenth and twentieth centuries were not significant for the country due to workforce surplus, civil wars, economic problems, and deficient internal communications,¹³³ but that actions promoting immigration should nevertheless be implemented because the process entails economic benefits such as the creation of businesses.¹³⁴

Consequently, it formulated a series of actions aimed at generating specific obligations on the part of some government agencies. On the one hand, it promoted the simplification of procedures for granting visas and work permits and for recognizing academic degrees conferred abroad. Thus, certain actions were taken, such as training Ministry of Foreign Affairs personnel to expedite these procedures; ordering the ratification of The Hague Convention of 1961, whereby the legalization of foreign public documents was abolished; and overruling the prior opinion of the then Ministry of Labor in cases related to the exercise of a profession or trade by a foreigner.¹³⁵

On the other hand, with the goal of fostering immigration to Colombia, it ordered that two pilot programs be established: one permitting the selective immigration of persons from countries such as Germany, Russia, and South Korea, and another aimed at promoting scientific research by immigrants in the country, especially those coming from Eastern Europe.¹³⁶

b) *Involvement of the National Development Plan in the Determination of Public Policy on Migration*

Later on, the handling of the migration phenomenon began to be conceived comprehensively, in such a way that specific considerations on the issue were incorporated into the National Development Plan (PND) and other public policy documents. Thus, in its section on the international dimension, the PND 2002–2006 specifically mentioned the need to strengthen bonds with Colombian communities

¹³² CONPES documents are public policy instruments issued by the National Council on Economic and Social Policy with the purpose of providing general guidelines for the formulation, execution, and follow-up of state actions in accordance with its legal obligations.

¹³³ See República de Colombia (1994), Op. Cit., p. 3.

¹³⁴ Ibid., p. 4.

¹³⁵ Ibid., p. 6.

¹³⁶ Ibid., p. 6.

abroad. Likewise, the PND 2006–2010 combined the foreign policy and migration objectives, pointing out the fundamental need to design a public policy on migrations from an integrated perspective.¹³⁷ Similarly, the *Visión Colombia 2,019* document stated that it was a priority to reinforce bonds with Colombians residing abroad in order to integrate them into the nation's development and help achieve the objective of designing a foreign policy in line with a rapidly changing world.

c) *Formulation of a Comprehensive Migration Policy in Colombia: CONPES 3,603 of 2009*

As a consequence of the vision set forth in the abovementioned public policy documents regarding the need for a comprehensive public policy on migration, CONPES 3,603 was issued in 2009. This document seeks to work from the factual reality that Colombian emigration abroad has increased exponentially, generating both positive and negative effects on the country's development, as well as from the particular vulnerability of the migrant population due to the permanent risk, a result of critical mobility and settlement processes, that their human rights will be violated.¹³⁸

In this sense, the document attempts to integrate the guidelines, strategies, and actions for participation from a dual perspective: that of Colombians residing abroad and that of foreigners residing in the country,¹³⁹ without prejudice to the guidelines introduced in CONPES 2,706 with respect to promoting qualified immigration to Colombia. Additionally, the CONPES document provides two guiding principles at the structural level: comprehensiveness and effectiveness. To this end, it focuses on providing comprehensive handling of each aspect of development of the migrant population and on improving the level of institutional response regarding regulations, agencies and procedures aimed at implementing strategies and programs for the migrant population.

The Comprehensive Migration Policy (PIM) recognizes five principles that serve as the basis from which to address the dynamics of migration and the public policies implemented to remedy the insufficient attention paid to migration phenomena:¹⁴⁰

- *Coherence or reciprocity*: acting coherently with international migration policies, beginning with the immigrant population residing in the national territory
- *Comprehensiveness and long-term approach*: attention to the specific dynamics of the phenomenon, to the circumstances of globalization and to the milestones that mark the process of human mobility
- *Consistency*: migration policy is understood to be an essential part of Colombia's foreign policy and must therefore be consistent with it

¹³⁷ See República de Colombia (2005), Plan Nacional de Desarrollo 2006–2010, Section 7.9, Item 5.

¹³⁸ See República de Colombia (2009), CONPES 3,603, Política Integral Migratoria, Bogotá, p. 24.

¹³⁹ *Ibid.*, p. 1. The document states that the results presented are the product of a consultation process among institutions with competencies in the matter, diplomatic missions accredited in Colombia and communities of Colombians residing abroad.

¹⁴⁰ *Ibid.*, p. 25.

- *Observance of individual guarantees*: the migrant as a subject with rights and obligations
- *Focalization*: need to provide priority assistance to those in situations of severe vulnerability as a criterion for intervention.

After establishing those principles, the CONPES document's contribution to the formulation of a public policy on migration in Colombia is divided into three phases: the first is a diagnostic of the issue to justify the formulation of a public policy; the second is an action plan to address the issue; and the third sets forth recommendations for the authorities with specific competencies in the matter.

First Phase: Diagnostic

The diagnostic is structured as a formulation of the central issue—that despite the rise in immigration and emigration levels, the Colombian government has paid limited attention to the phenomenon—and two key problem areas comprising a number of causes related to concrete aspects of the inadequate handling of the migration phenomenon at the national level.

The first of those problem areas has to do with the fact that the instruments used to implement actions and strategies to assist the migrant population are not effective. They result in a limited institutional, organizational and regulatory response capacity due to their lack of adjustment to the changes in the dynamics of human mobility. This problem can be summed up as entailing three key issues: limited institutional structure, low-quality information regarding the migrant population and lack of coverage by the consular service.

The second problem area has to do with the fact that the different dimensions of development of the migrant population have not been attended to in a timely and complete manner.

- *Security*: problems associated with human and migrant trafficking
 - human trafficking
 - migrant trafficking
- *Civic and community participation*: spaces for the promotion of the social capital represented by the establishment of social networks and associations of Colombians residing abroad. No mention is made of immigrants to Colombia
 - social networks that link migrants to their country of origin
 - associations of Colombians residing abroad
- *Educational dimension*: generation of mechanisms that facilitate the academic reinsertion of Colombians residing abroad, and of the necessary strategies to take advantage of the potential represented by the educational preparation of Colombians abroad. No mention is made of immigrants to Colombia
 - absence of mechanisms to generate links between Colombian emigrant university students and the Colombian education system

- absence of mechanisms to generate links between Colombian students, professors and/or researchers residing abroad and the educational community in Colombia
- lack of information regarding the validation of higher education degrees abroad and of foreign degrees in Colombia
- *Cultural dimension*: guidelines and intervention strategies aimed at a better cultural integration of Colombians abroad. No mention is made of immigrants to Colombia
- *Social dimension*: quality of life of emigrants in their country of residence, especially in relation to the job market and access to mechanisms of social protection because of their migrant status
 - precarious employability of migrants
 - limited access to social protection
 - insufficient diagnostics for the definition of actions regarding gender and family
- *Economic dimension*: remittances and mechanisms to channel revenues coming in from abroad toward investment and/or savings, as well as to attract productive capital and new business to the country
 - remittances
 - direct foreign investment in Colombia and principle of national treatment.

Second Phase: Action Plan (see Annex I)

The action plan seeks to design tools to resolve the problems identified in the first part of the CONPES, in order to guarantee sufficient, effective, and coordinated attention to all the dimensions of the development of the Colombian population abroad and of foreigners residing in the country, bearing in mind a series of practical premises: the respect for the human rights of migrants; the need for a permanent, sufficient and effective offer of services based on migration dynamics; and the guarantee of legal migration in conformance with international regulations.¹⁴¹

To this end, the action plan sets forth a series of specific objectives that correspond directly to the problem areas and develops a series of structured products that involve concrete institutional actions aimed at providing solutions to each of the causes identified in the first phase.

Third Phase: Recommendations (see Annex II)

After identifying the problems facing the management of migration and designing a contingency plan to address them, the CONPES document makes some suggestions to each of the entities with specific competencies in public policy on migration.

Although the document represents a significant step because of its inclusion of an accountability mechanism, it only provides recommendations, making it impossible to hold anyone liable for noncompliance. In this respect, the Ministry of Foreign Affairs

¹⁴¹ Ibid., pp. 52–53.

has pointed out that the mechanisms for the evaluation and follow-up of the policy are the responsibility of the National Inter-sector Commission on Migration, through meetings with the Colombian community residing abroad and the publication of the results in the Redescolombia Internet portal.¹⁴²

It is problematic for the follow-up of a public policy to be carried out almost exclusively by those who designed it and those to whom it is applied. Thus, for any public policy instrument, it is necessary to develop regulations that establish not only the predictability of the behavior of the authorities but also specific obligations that entail tangible consequences besides political responsibility.

d) The National Development Plan 2010–2014 and the Management of the Migration Phenomenon

As a result of the significant development in public policy on migration represented by the issuance of CONPES 3,603 in 2009, and thanks to its comprehensive vision of human mobility processes, the National Development Plan 2010–2014 incorporated that vision as one of its cross-cutting mainstays, specifically in the area of foreign policy. The document “Bases of the National Development Plan 2010–2014” summarizes the actions carried out by the country in the last few years to advance the public policy on migration and strengthen consular services, including the preparation of CONPES 3602,¹⁴³ without prejudice to the fact that those results might not in any way be an integrated solution to the problem areas identified in the political diagnostic of 2009.

On the other hand, the Plan develops the goals of a public policy on migration much more extensively than previous plans, thanks to the existence of CONPES 3,603; thus, it reconfirms the Ministry of Foreign Affairs as being responsible for its coordination, bolsters the guiding principles of the comprehensive public policy on migration, recognizes the impact of migration processes at the local level and emphasizes the consequent need to work at that level, as well as the need to create inter institutional links to take advantage of a range of competencies. Finally, the Plan points out the need to carry out specific actions in developing characterization processes, creating and consolidating social networks, negotiating multilateral and bilateral agreements for managing orderly migration flows, and implementing comprehensive return plans.¹⁴⁴

¹⁴² Ibid.

¹⁴³ “With respect to consular services, 284 mobile consulates were established between 2005 and 2010 as a way for the government to address the inability to provide services abroad in those places where there was no consulate. There was also an increase in the number of Colombians residing abroad, which currently account for close to 10 percent of the total population of the country. In response to this phenomenon, a comprehensive migration policy was designed, with the participation of eleven government entities, to foster a sense of belonging and strengthen the attention to Colombian emigrants, to their families remaining in the country, and to foreigners residing in Colombia, taking into account that the low level of information regarding this population is one of the current obstacles to the formulation of the policy.” See Departamento Nacional de Planeación Nacional (2010), *Bases del Plan Nacional de Desarrollo 2010–2014*, Bogotá, pp. 499 and 508.

¹⁴⁴ Ibid., p. 512.

2.1.3 Legal Instruments Related to Institutionalism

Finally, it is important to mention that the National Migration System was created through Law 1,465 of 2011 and that regulations were issued for the protection of Colombians abroad. Given the importance of this set of regulations, their content and scope will be discussed in the section on the national legal framework.

2.2. International Legal Framework

The international commitments made by Colombia with respect to migration can be divided into three different levels of legal sources: universal, regional and bilateral.

2.2.1. Universal

a) *Consular Service*

Colombia is a party to the 1963 Vienna Convention on Consular Relations,¹⁴⁵ regarding the regulation of the states' foreign service offices and the procedures to provide assistance to their nationals residing abroad (information, customs, notary services, political registry and legal aid, among others).

b) *General and Thematic Human Rights Instruments*

Since the Universal Declaration of Human Rights of 1948, general instruments on human rights have focused on the migration phenomenon mainly from the perspective of the right to free circulation and residence.¹⁴⁶ Thus, those instruments recognize that while persons have the right to leave any country, they only have the prerogative to enter their country of origin, even though they might have travel documents that allow them to enter other countries by virtue of a specific nationality or other types of authorizations such as visas and permits. Likewise, the aforementioned instruments recognize that said right cannot be restricted, except when restrictions are contemplated by the law and when they are necessary to protect national security, public order, public health, public morals, or the interests and freedoms of third parties.¹⁴⁷

The principle of equality and nondiscrimination is also an integral part of international human rights instruments and as such, guides the action of the states with respect to the migrant population as a distinct group of persons found in their territory

¹⁴⁵ This Convention went into effect on 19 March 1967 and was included in the domestic legal framework through Law 17 of 1971.

¹⁴⁶ Article 13(2) states, "All persons have the right to leave any country, including their own, and to return to their country." While this instrument has no legal force per se, it is the basis for the development of all international and regional human rights treaties, hence its political and regulatory importance.

¹⁴⁷ See Article 12(2) of the International Covenant on Civil and Political Rights of 1966 (ratified on 29 October 1969 and included in the domestic legal framework through Law 74 of 1968) and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1966 (ratified on 2 September 1981 and included in the domestic legal framework through Law 22 of 1981).

and subject to their jurisdiction: equality with respect to the enjoyment of rights, without any distinction whatsoever, including national origin, and equality before the law so that the latter may provide uniform protection.¹⁴⁸

Finally, some thematic instruments on human rights to which Colombia is a party contain provisions related to the migration phenomenon: Article II(c) of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973¹⁴⁹ prohibits practices associated with apartheid that result in the prohibition to leave the country, and Article 10 of the 1989 Convention on the Rights of the Child¹⁵⁰ emphasizes the principle of family union with respect to the need for children or parents to leave or enter the territory of a state so that they can live in the same place periodically.

c) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Unlike the previously mentioned human rights treaties, which contain specific provisions related to the migration phenomenon, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁵¹ provides a general framework for the protection of this population group. According to its introduction, it is

*[A]n international treaty of a global nature, inspired by the currently existing legally binding agreements, by United Nations studies on human rights, by conclusions and recommendations provided by experts, and by the debates held and the resolutions concerning migrant workers, approved by United Nations organizations over the last two decades.*¹⁵²

Thus, the objective of the convention is to establish a series of basic provisions regarding the treatment of migrant workers and their families, especially those who lack documents legalizing their residence in the receiving country, due to their special condition of vulnerability deriving from the process of human mobility they have been subjected to. The structure of the document is the following: after recognizing a set of basic rights for immigrant workers and their families on the basis of the principle of equality and nondiscrimination, it establishes concrete provisions applicable to certain types of immigrant workers and expands the measures aimed at preventing clandestine movements and trafficking in workers.

In light of a comprehensive development, the main problem with the convention is a practical one: it has not been ratified by those countries with the highest levels of reception of emigrants, among them Colombians; thus, not only is the convention a

¹⁴⁸ See Articles 1, 2(1) and 7 of the Universal Declaration of Human Rights of 1948 and Articles 2.1 and 3 of the International Covenant on Civil and Political Rights of 1966.

¹⁴⁹ Law 26 of 1987.

¹⁵⁰ Law 12 of 1991.

¹⁵¹ This convention was included in the domestic legal framework through Law 146 of 1994, with accession on 24 May 1995.

¹⁵² See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Introduction.

political instrument that complements agreements issued in the context of the International Labor Organization (ILO), of which Colombia is not a member in any case, its applicability for imposing concrete obligations is limited.¹⁵³

d) *International WTO Legal Instruments related to Trade in Services – General Agreement on Trade in Services of 1994 and Colombian Obligations*

Just as international trade has erected barriers to trade in goods, international legal mechanisms have been developed to regulate the movement of persons across borders to provide services. These mechanisms specifically address the temporary presence of persons from one country in the territory of another to provide a service, whether on their own behalf or on that of their employer. In 1994 the World Trade Organization developed the General Agreement on Trade in Services (GATS),¹⁵⁴ to which Colombia is a party and which contains said possibility, commonly known as “Mode 4.”¹⁵⁵

In this manner, by negotiating said instrument, the country voluntarily acquired a series of commitments. Pursuant to the GATS, Colombia established a series of initial commitments to service providers, divided into two categories: *horizontal commitments* that generally affect all of the provision sectors included in the negotiations, and *sector-specific commitments* that depend on the type of service rendered.¹⁵⁶

Unlike its approach to the other types of provision of services, Colombia did not make Mode 4 specific, except with respect to the horizontal commitment categories: managers, legal representatives and specialists, with the exception of the professional services subsector.¹⁵⁷ This allows it to establish or maintain, in a certain sector and mode of provision, measures that are incompatible with the access to markets or national treatment, the fundamental principles of international trade law developed by the World Trade Organization,¹⁵⁸ and thus reflect the reluctance to allow entry of persons with low levels of qualification or specialization.¹⁵⁹

¹⁵³ These are Agreement 97 (1949, in effect since 1962), along with its Recommendation 86, and Agreement 143 (1975), along with its Recommendation 151.

¹⁵⁴ Included in the “The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.”

¹⁵⁵ In contrast with other ways of providing services, which are structured as follows: mode 1 – cross-border provision of services (the services cross the border while the supplier and the consumer remain in their respective countries); mode 2 – consumption abroad (the consumer travels to receive services in another country); mode 3 – commercial presence (companies establish affiliates, branches or offices abroad, with personnel from the country); mode 4 – movement of service providers. See Ministry of Foreign Trade, *Handbook for Entrepreneurs regarding Commercial Negotiations of Services in Colombia*, at <http://www.mincomercio.gov.co/eContent/Documentos/inversion/ManualServicios.pdf>.

¹⁵⁶ Services provided to companies, communications services, construction and engineering services, and financial services.

¹⁵⁷ See Ministry of Foreign Trade, *Handbook for Entrepreneurs regarding Commercial Negotiations of Services in Colombia*, Op. Cit.

¹⁵⁸ See Article XVII of the General Agreement on Trade in Services.

¹⁵⁹ See annex regarding Colombian commitments pursuant to GATS.

2.2.2. Regional

a) *Regional Human Rights Instruments – OAS Inter-American Human Rights System*

Following the same pattern of the universal instruments for the protection of human rights, the regulations of the Inter-American System of Human Rights (to which Colombia is a party by virtue of its membership in the OAS) and the international agreements signed pursuant to the same all contain provisions applicable in a general manner to the situation of the migrant population as a vulnerable group, as well as others that seek specifically to address certain aspects of the process of human mobility.

Thus, the American Convention on Human Rights¹⁶⁰ embodies both the principle of equality and nondiscrimination (Article 1) and that of equality before the law (Article 24), both of which cover the need to implement specific actions to protect migrants. Likewise, the convention includes the right to free circulation and residence (Article 22) in terms similar to those of the International Covenant on Civil and Political Rights, but adds provisions regarding the prohibition to expel foreigners when said deportation is collective or is not the consequence of a decision made according to the law.

In addition, two regional instruments deal with specific aspects of the migration phenomenon: the Inter-American Convention on the International Return of Children,¹⁶¹ whose object is the prompt return of minors that have been illegally removed from a state or who, having been removed legally, are being illegally retained;¹⁶² and the Inter-American Convention on the International Traffic in Minors,¹⁶³ which addresses the prevention and punishment of said practice in the region.

b) *Community Law*

As a result of the process of regional integration, Colombia belongs to a series of institutional blocs (Andean Community, MERCOSUR, UNASUR) that have focused on the liberalization of trade in goods and the development of joint infrastructure projects but have recently shifted their attention to the movement of persons through the territories of the member states as a way of potentiating regional development.

Consequently, those organizations have established a series of provisions—a sort of community law that is more or less binding for the member states, depending on the way said provisions are introduced and regulated in internal legislations—aimed at regulating the free movement of persons, labor migration and the provision of professional services.

¹⁶⁰ Signed on 22 November 1969 and ratified by Colombia in 1973, after its incorporation into the domestic legal framework through Law 16 of 1972.

¹⁶¹ Signed on 15 July 1989, incorporated into the domestic legal framework through Law 880 of 2004, and ratified on 12 May 2008; through a supplementary declaration, Colombia established that compliance with the obligations of this convention would be the responsibility of the Colombian Institute for Family Welfare.

¹⁶² See Article 1.

¹⁶³ Signed on 18 March 1994, incorporated into the domestic legal framework through Law 470 of 1998, and ratified by accession on 6 December 2000.

- ***Andean Community – CAN***

The current members of the CAN are Bolivia, Ecuador, Peru, and Colombia, and its associate members are the state parties to MERCOSUR (Brazil, Argentina, Paraguay and Uruguay) and those parties that withdrew (Chile and Venezuela). Although the latter do not have full membership, the regulations resulting from negotiations frequently affect all of the states.

With the goal of establishing public policy to create an area of free movement of persons for short-term migrations, the CAN has issued decisions regarding the creation of an Andean Migration Card to standardize the procedures for the circulation of people in border zones,¹⁶⁴ and the recognition of national identification documents as sufficient to cross intraregional borders without the need of passports.¹⁶⁵

With respect to long-term migrations, the CAN has issued important decisions concerning labor migration,¹⁶⁶ social security¹⁶⁷ and work safety and health.¹⁶⁸ These instruments created a legal framework to foster the movement of workers among countries belonging to the block in order to balance the specific demands of the job markets in each, in which a potential surplus of certain types of jobs can be absorbed in other places that require them. The instruments were complemented by Decision 439 of 1998, which established a general framework of Principles and Regulations for the Liberalization of Trade in Services in the Andean Community, and is similar to the provisions established in GATS – Mode 4.

- ***MERCOSUR***

Made up of Argentina, Brazil, Paraguay and Uruguay, MERCOSUR also has associate members, among them Colombia, that have participated in certain negotiation processes and are therefore subject to certain community regulations, including those concerning the handling of the migration phenomenon in the region.

On the one hand, Decision 03 of 2006 grants Colombian tourists a ninety-day period in which they can remain in the states party to MERCOSUR and in associate states without needing to obtain a visa. Decision 18 of 2008 specifies the agreed-upon travel documents that will be accepted in the state parties and associate states to enter their territory without the need for a national passport.

- ***Union of South American Nations – UNASUR***

Finally, in 2006 the Union of South American Nations (also known as UNASUR) issued an agreement that addresses the issuance of tourist visas and another that establishes which identification documents are valid for member-state nationals to enter and travel in the region.

¹⁶⁴ Decision 397 of 1996, regulated through Resolution 527 of 2001.

¹⁶⁵ Decision 503 of 2002.

¹⁶⁶ Decision 545 of 2003, Andean Labor Migration Instrument.

¹⁶⁷ Decision 583 of 2004, Andean Social Security Instrument.

¹⁶⁸ Decision 384 of 2004, Andean Work Safety and Health Instrument.

2.2.3. Bilateral

Colombia has signed several bilateral agreements with bordering countries regarding legal assistance and judicial cooperation. These agreements affect the specific dynamics of the migration phenomenon both directly and indirectly, as shown below:

- Agreement on mutual legal assistance and judicial cooperation between the government of the Republic of Colombia and the government of the Republic of Panama, signed in Panama City on 19 November 1993¹⁶⁹
- Agreement between the Republic of Colombia and the Republic of Peru regarding criminal judicial assistance, signed in Lima on 12 July 1994¹⁷⁰

Finally, on 24 August 2000, the governments of Ecuador and Colombia entered into a bilateral agreement to implement a permanent migration statute that comprehensively covers issues related to temporary migration, permanent migration, social security and protection and assistance to nationals of one country who reside in the other, in order to strengthen border integration and facilitate human mobility processes. Though the agreement was formalized through Law 968 of 2005, the Constitutional Court, through Ruling C-241 of 2006, declared it unenforceable due to procedural defects in the law that ratified the international treaty.

No additional bilateral negotiations with countries in the region have followed these initiatives; rather, attention has focused on the development of multilateral agreements in the framework of regional integration processes.

2.2.4. Discussion Forums – Consulting Processes Aimed at the Formulation of International and/or Regional Public Policies on Migration

As international forums for discussing and formulating regional public policy initiatives, regional consulting processes have become a fundamental element for the handling of the migration phenomenon, considering the comparative advantage that these have over the production of regulations in the framework of international law. In the latter scenario, several obstacles have arisen regarding the states' willingness to bind themselves with regard to issues that might limit their sovereignty, as is the case, with the free circulation of persons and the establishment of uniform conditions of treatment for both nationals and foreigners in their jurisdiction.

The main objective of these forums is to discuss issues related to migration processes in the region in order to reach essential agreements on shared problems and to establish consensus positions so as to be able to act as a bloc in global political-legal forums.¹⁷¹ Colombia is participating in two such processes: the South American Conference on Migrations and the Cuenca Action Program, in the sphere of the Ibero-American Community of Nations. The former, created in 1999 with the sponsorship of

¹⁶⁹ Law 450 of 1998.

¹⁷⁰ Law 479 of 1998.

¹⁷¹ See International Organization for Migration (2008), *World Migration Report 2008*, p. 368.

the IOM, is developing within the framework of the UNASUR consolidation process, and the latter brings together two conferences existing in Latin America: the Regional Conference on Migration, which includes countries from North and Central America, and the abovementioned South American Conference.

One of the results of these spaces for inter-state discussion is their influence on the formulation of policies and the design of regulations in the sub regional blocs (CAN, MERCOSUR and UNASUR), as well as on the migration legislation reforms carried out by each state without having to negotiate an agreement with binding legal effects for the signatory countries, which often limits the effectiveness of regional and global initiatives.

2.3. National Legal Framework

2.3.1. Institutional Framework

a) Public Institutions Dealing with Migration

The Colombian government, through the Ministry of Foreign Affairs, leads the formulation, execution and follow-up of national public policy on migration.

Following the recommendations of CONPES 3,603 of 2009, other authorities at the national level have specific competencies with respect to handling the migration phenomenon:

- *Ministry of the Interior and Justice*: deals with the issue of human and migrant trafficking through prevention and assistance programs
- *Ministry of National Education*: implements actions related to the integration of the immigrant population into the national education sector
- *Ministry of the Environment, Housing, and Territorial Development*: develops mechanisms associated with the use of remittances for the acquisition of housing
- *Ministry of Social Protection*: develops instruments and policies so that immigrants and Colombians residing abroad have access to social protection
- *National Planning Department (DNP)*: prepares diagnostic studies regarding the status and use of remittances entering the country
- *National Administrative Department of Statistics (DANE)*: develops demographic identification and characterization processes related to the migration phenomenon (immigration and emigration)
- *National Learning Service (SENA)*: includes the migrant population in the job market through work training programs
- *Colombian Institute of Credit and Technical Studies Abroad (ICETEX)*: promotes higher education through loans granted to the low-income population and facilitates access to educational opportunities for the international community

With respect to institutionalism, it is important to note some significant changes regarding the control over the procedures for foreigners' entering and remaining in Colombian territory, and over the phenomenon of human trafficking. Though CONPES 3,603 states that those responsibilities should be assumed by the National Administrative Department of Security (DAS), this institution was eliminated as part of the reform carried out in 2011.

Consequently, through Decree 4,062 of 2011, the Government created the Special Administrative Unit on Migration Colombia, a national entity attached to the Ministry of Foreign Affairs, to carry out the objectives and duties regarding surveillance and control of migration and foreigners' affairs.

Migration Colombia arose out of the need to have a technical entity specifically in charge of exercising surveillance and control of migration in the Colombian state because the DAS had not been effective in guaranteeing the transparency and security necessary to handle migrations. The new unit has a directorship supported by several specialized subdivisions: the Assistant Directorship for Migration Control, the Assistant Directorship for Foreigners' Affairs and the Assistant Directorship for Migration Verification. The new entity has the following responsibilities¹⁷²:

- Support the government in the formulation and execution of the public policy on migration
- Exercise surveillance and control of the migration of nationals and foreigners in the national territory
- Keep a registry of the foreigners entering Colombian territory
- Exercise judicial police responsibilities with respect to the handling of the migration phenomenon
- Manage information related to migration, including coordination of the exchange of information with national and international authorities within the framework of cooperation
- Issue documents related to migration
- Participate in the adaptation of and compliance with the international obligations on migration acquired by Colombia

¹⁷² See Decree 4062 of 2011, Article 4.

b) Instances of Inter-institutional and Inter-sectorial Coordination, and Programs related to the Execution of Public Policies on Migration¹⁷³

Although the public policy on migration is led by the government through the Ministry of Foreign Affairs, the National Inter-sector Commission on Migration, created by Decree 1,239 of 2003, is the main body for the execution of migration policy in the country, together with other entities with concrete obligations in this respect.¹⁷⁴

Taking into consideration the experience and objectives of each of the entities that comprise it, the commission suggests guidelines for, among other things, establishing and coordinating migration policies by identifying needs and protecting the Colombian population abroad; determining desirable patterns of immigration into Colombia, such as the type of persons and areas of settlement; following up on the relevant international legal instruments; and formulating return plans.

Furthermore, through Resolution 3,131 of 2004, the Ministry of Foreign Affairs created the Internal Work Group Relations with Colombians Abroad (Colombia Nos Une) to foster relations between Colombians residing abroad and their families, regions of origin, and Colombia itself,¹⁷⁵ and to coordinate the execution of the Comprehensive Migration Policy.¹⁷⁶

Despite the wide scope of the objectives mentioned above, the Program has focused on coordinating assistance and protection services for Colombian emigrants in order to facilitate inter-institutional management through the Portal Redes Colombia Internet tool, a technological platform aimed at establishing communication channels with Colombian communities residing abroad.

¹⁷³ Without prejudice to the specialized migration entities mentioned below, this issue is framed in the context of Colombian foreign policy by virtue of the National Development Plan. As such, it is organized around the National Administrative System of Foreign Policy and International Relations, structured through Decree 2884 of 2008 as a group of entities, regulations and procedures responsible for coordinating the activities of government, private-sector, and civil entities related to foreign policy and international relations, in order to generate an efficient, comprehensive and long-term vision. At the coordination level, said system is headed by the President of the Republic, who is supported by three entities: the Council on Foreign Policy and International Relations, made up of national organizations with competencies in foreign affairs; the nongovernmental Group for the Coordination of International Relations, responsible for articulating foreign policy with the private sector, academia and civil society; and the Inter-sector Commission on Border Integration and Development, responsible for coordinating the management and execution of border policies in the economic, social, regulatory, cultural, environmental, scientific and infrastructure areas.

¹⁷⁴ Made up of the Ministries of the Interior and Justice, Foreign Affairs, Defense, Social Protection, and Trade, Industry and Tourism; the National Security and Planning Departments; the Director of the Colombian Institute for the Promotion of Higher Education; and the Director of Consular Affairs and Colombian Communities Abroad from the Ministry of Foreign Affairs.

¹⁷⁵ <http://colombiaemb.org/docs/COLOMBIA%20NOS%20UNE.doc> (accessed on 30 June 2011).

¹⁷⁶ http://www.cancilleria.gov.co/wps/portal/espanol/tut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os_jQs (accessed on 30 June 2011).

2.3.2. Regulations on Immigration

a) *Migration Statute (Decree 4,000 of 2004 and Supplementary Provisions)*

The migration statute currently in effect in Colombia is the set of regulations that comprise 2004's Decree 4,000 and other provisions that supplement it, by modifying or adding to it,¹⁷⁷ without prejudice to a series of reforms that are being designed and should be in place in a few months. The decree addresses everything related to how foreigners' enter and remain in Colombian territory: it regulates the cases in which a visa or entry permit is required, establishing classes and categories that depend on the reason for entry and the characteristics of the person entering;¹⁷⁸ it determines the terms and procedures for the issuance of visas and entry permits, including the grounds for non admission or denial of requests for such authorizations;¹⁷⁹ it establishes the type and amount of the penalties imposed for violations of the abovementioned procedures;¹⁸⁰ and it designs the structure for immigration control at border checkpoints.¹⁸¹

With respect to the institutional structure that provides support in matters related to immigration into Colombia, the Ministry of Foreign Affairs is responsible for establishing and executing migration policy, on the basis of the coordination and orientation support provided by the National Inter-sector Commission on Migration.¹⁸² Thus, it is the government that has the authority to issue visas through the Ministry of Foreign Affairs,¹⁸³ or entry permits in the case of foreigners who do not require a visa, through the Immigration Authorities.

In accordance with the global restrictive trend regarding human mobility processes, the decree establishes, as its general operating principle and expression of internal sovereignty, the discretion of the government regarding the entry and stay of foreigners, regardless of the international treaties signed in that regard.¹⁸⁴

¹⁷⁷ In this regard, there are two sets of provisions: Decree 2,107 of 2001—the previous migration statute—has remained in effect regarding the establishment of the class, category, and code for visas, as well as the regulation of the so-called preferential visas. Decrees 164 of 2005 and 2,622 of 2009 modify the former with regard to, respectively, the issuance of courtesy visas for Ecuadorians, and the general regulations and granting of certain types of visas.

¹⁷⁸ Visa categories are the following: courtesy, business, crew member, temporary (worker, relative of a Colombian national, religious, student, refugee, asylum, special), resident (relative of a Colombian national, skilled worker, investor), and visitor (tourist, technical visitor, temporary visitor). The entry and stay permit is granted by immigration authorities in those cases in which, due to bilateral or multilateral agreements, foreigners do not require visas to enter the national territory (tourist, temporary visitor, technical visitor). See Articles 21 to 65 of Decree 4,000 of 2004.

¹⁷⁹ See Decree 4,000 of 2004, Articles 72 and 73.

¹⁸⁰ See Decree 4,000 of 2004, Articles 98 to 113.

¹⁸¹ See Decree 4,000 of 2004, Articles 66 to 71.

¹⁸² Created by virtue of Decree 1,239 of 2003.

¹⁸³ Resolution 0255 of 2005, issued by the Ministry of Foreign Affairs, contains the specific requirements for granting each type of visa.

¹⁸⁴ Article 1 of Decree 4,000 of 2004 states that “the national government, on the basis of the principle of state sovereignty, has the discretion to authorize the entry and stay of foreigners in the country.”

As a result, preferential entry is granted to persons with certain capacities that benefit the country's development, such as the capacity to contribute investment capital;¹⁸⁵ on the other hand, migration policy also establishes limits, such as for irregular migration, situations in which immigrants might compromise work opportunities for nationals, and cases in which it is decided "that, due to their number and distribution in the national territory, a problem might arise whose political, economic, social, or security implications could affect the Colombian state."¹⁸⁶

In this respect, the law contemplates the possibility that Colombian authorities might deny foreigners access to the national territory through an uncontested administrative decision made on the basis of a number of limited factors,¹⁸⁷ which are nevertheless supplemented by the possibility of a discretionary decision on the part of the authorities.¹⁸⁸

The decree establishes three types of sanctions: fine,¹⁸⁹ deportation¹⁹⁰ and expulsion¹⁹¹ for certain conducts related to irregular and/or fraudulent entry or stay,¹⁹² the commission of crimes or prohibited activities in the national territory, or the lack of compliance with the obligations previously established for foreigners in Colombia.

Unusually, although it establishes specific grounds for each of the above measures, the decree also states that despite the restrictive nature of the latter, the authorities can also expel foreigners whom they believe to be carrying out activities that threaten national security, public order, public health or public peace, or when intelligence information indicates that they represent a threat to national security, public order, or public peace,¹⁹³ as it is a discretionary measure that takes into account a set of broadly interpretable motivations.

Furthermore, the fact that the decree establishes that the acts ordaining deportation as the consequence of a visa cancellation, or expulsion as a result of the abovementioned

¹⁸⁵ See Decree 4,000 of 2004, Article 3.

¹⁸⁶ See Decree 4,000 of 2004, Article 4.

¹⁸⁷ Grounds for non admission or denial of a visa include suffering from a disease or mental disorder that could entail a public health risk; lacking financial resources for a decent existence; having a drug-trafficking record; having pending criminal processes with possible sentences of over two years, which could jeopardize the security of the state or public order; having been deported or expelled from the country; not having a visa at the moment of entry; having an Interpol warrant for arrest; lacking economic activity or a profession or trade, for which reason it may be considered that entry into the national territory is inconvenient; having a human trafficking record; trying to enter the country without documents or with forged documents; or having left the national territory by evading migration controls. See Article 73 of Decree 4,000 of 2004.

¹⁸⁸ Article 73.12 states as grounds, "Having incurred in conducts that, according to immigration authorities, make the foreigner dangerous for national security or public order."

¹⁸⁹ See Decree 4,000 of 2004, Articles 98–100.

¹⁹⁰ See Decree 4,000 of 2004, Articles 101–103.

¹⁹¹ See Decree 4,000 of 2004, Articles 104–107.

¹⁹² Understood as entry through a place not authorized for that purpose, evasion or omission of migration controls, or entry without documents or with forged documents.

¹⁹³ See Decree 4,000 of 2004, Article 105.

discretionary decision, are uncontested restrictions to the migrant population's right to legal guarantees.¹⁹⁴ Finally, the decree states that Colombian immigration authorities can determine the non-admission, deportation, or expulsion of foreigners and place them in the hands of the authorities of their country of origin, of the country from which they entered Colombia, or of whatever country that harbors them.¹⁹⁵ This presents a risk for immigrants who have left a state due to justified fear for their lives or personal integrity, since that provision is not compatible with the principle of non-refoulement adopted by international refugee law and recognized by Colombia as part of its constitutive legal instruments.

b) Regularization of the Status of Foreigners (Decree 3,970 of 2008)

In 2008 the Colombian government decided to implement a program to regularize the status of foreigners who had entered the country irregularly before April 1 of that year, and proceeded to issue Decree 3,970 to that effect.

Pursuant to the decree, irregular immigrants were asked to appear before DAS, today Migración Colombia, within 180 days after the regulation came into effect, in order to show proof of income and submit personal references, which would serve as the basis for a decision as to whether their status could be regularized and, if so, for the issuance of an authorization to process the corresponding visa.

If the request for regularization of status was denied, the decree established that no appeals were possible and that the person had to leave the national territory within sixty calendar days following the report issued by the Migration Authority, or risk being deported. However, although the procedure was designed to legally establish foreigners in Colombia, the regulation was emphatic in pointing out that “in any case, it is at the national government’s discretion, pursuant to the principle of state sovereignty, to authorize or not authorize the regularization of the status of a foreigner in the country,” thus reconfirming that the measure was absolutely discretionary.¹⁹⁶

2.3.3. Regulations on Emigration Abroad

a) Consular Service and Assistance to Colombians Abroad

In addition to the relevant international treaties to which Colombia is a party, such as the Vienna Convention of 1963,¹⁹⁷ the Colombian consular service is organized by Law 76 of 1993 (modified by Law 991 of 2005) and Decree 333 of 1995.

The abovementioned law establishes the obligation of Colombian consulates to hire specialized personnel to provide assistance and legal-social orientation in those cities

¹⁹⁴ See Decree 4,000 of 2004, Articles 101 and 105.

¹⁹⁵ See Decree 4,000 of 2004, Article 111.

¹⁹⁶ See Decree 3,970 of 2008, Article 12.

¹⁹⁷ See section on international legal framework.

where the Colombian population exceeds 10,000. In cities with fewer than 10,000 Colombians, such hiring is permitted when circumstances require, once approval has been granted by the head of the Office of Consular Affairs and Colombian Communities Abroad.¹⁹⁸

The provision of consular assistance services must be carried out in observance of the regulations and principles of international law, insofar as they must ensure respect of the human rights of the Colombian population residing abroad in matters related to nondiscrimination at work, due process, right to defense and procedural guarantees, protection of the interests of Colombians before immigration authorities, locating disappeared Colombians, and defense of the rights of minors and persons with disabilities.¹⁹⁹

As a tool to achieve said goals, the law authorizes the government to appropriate and transfer funds in order to comply with the obligation to provide assistance to Colombians abroad, as well as the Ministry of Foreign Affairs Revolving Fund to carry out programs aimed at promoting and protecting the rights of Colombians abroad.²⁰⁰

Decree 333 of 1995 establishes that the Ministry of Foreign Affairs, in coordination with the country's diplomatic and consular missions, shall carry out special protection and assistance programs for Colombians abroad, with respect to the objectives contemplated in Article 3 of Law 76 of 1993, as well as for the preservation and affirmation of the historical, cultural and social values of the communities of Colombians residing abroad.

To provide support to the Ministry of Foreign Affairs in its efforts to coordinate assistance to Colombians abroad, two entities, because of their specific competencies, have been made responsible for recommending actions on the matter:

The mission of the Inter-institutional Committee for Assistance to Colombians Abroad²⁰¹ (created through Decree 1,974 of 1995) is to suggest policies that would provide assistance to Colombians residing abroad and to create prevention and promotion campaigns within communities of residents abroad aimed at preserving their rights and the values inherent to their nationality.

In addition, the main objective of the Committee for Assistance to Colombians Abroad (created through Ministry of Foreign Affairs Resolution 326 of 2001) is to evaluate and analyze the situations of Colombians abroad in order to make recommendations to the Ministry of Foreign Affairs regarding the allocation, amount, and use of funds for effective and appropriate assistance to Colombians abroad, in accordance with the provisions of Law 76 of 1993.

¹⁹⁸ See Law 76 of 1993, Articles 1 and 2.

¹⁹⁹ See Law 76 of 1993, Article 3.

²⁰⁰ See Law 76 of 1993, Article 4.

²⁰¹ Comprised of institutions that, by constitutional mandate, have responsibilities regarding the promotion and protection of human rights: Office of the Inspector General of the Nation, Office of the Ombudsman, Office of the Attorney General of the Nation, Presidential Agency for Social Action and International Cooperation, National Prison and Jail Institute INPEC, among others.

b) New Law for Assistance in the Return of Colombians

Law 1,565 of 2012 issues provisions and establishes incentives for the return of Colombians residing abroad. Specifically, this regulatory mechanism seeks to define customs, tax and other financial benefits to facilitate the return of Colombian emigrants to the country, as well as to provide comprehensive support in the return process.²⁰² In order to access said incentives, the returning population must have lived abroad for three or more years, be of legal age and express in writing their desire to return to Colombia.²⁰³

On the basis of the diverse causes that might lead to the decision to return, the law contemplates the following types of return:

- Solidarity return: victims of the internal armed conflict or those classified as extremely poor
- Humanitarian return: force majeure situations or special causes that jeopardize the life or integrity of the persons
- Labor return: with the objective of putting into practice knowledge and skills acquired abroad
- Productive return: intention to co-finance public projects at the regional level

The law establishes specific support and benefits programs for each type of return that are directly related to the reasons that the person or group of persons is returning to the country. It addresses issues related to tax matters, joining the job market and economic support during the stabilization process. In order to implement the program, the law states that the Ministry of Foreign Affairs should create a network of Reference and Opportunity Centers for Return (CRORE), which should operate in both the emigrants' zones of origin and their zones of return.

c) Other Regulatory Initiatives related to the Emigration of Colombians Abroad

- ***Criminal Laws related to the Migration Phenomenon***

Colombian criminal legislation has incorporated the crimes of migrant and human trafficking. Article 188 of the prevailing Criminal Code includes the crime of migrant trafficking, understood as the participation in the entry into or departure from the country of persons without complying with legal requirements and in order to obtain profit or benefit for oneself or for another person.

In addition, Law 747 of 2002 included in the Criminal Code the crime of human trafficking (Article 188-A), understood as the participation in the transfer of persons within the national territory or abroad, resorting to any type of violence, threat, or deception, for the purpose of exploitation, prostitution, pornography, servitude due to

²⁰² See Article 1 of Law 1565 of 2012.

²⁰³ See Article 2 of Law 1565 of 2012.

debts, mendicancy, forced labor, civil marriage, or slavery, in order to obtain profit or benefit for oneself or for another person.

Likewise, specific situations giving rise to more severe punitive measures were established for both types of crimes (Article 188-B): when the crime is committed against persons in situations of particular vulnerability who consequently suffer serious physical or psychic damages, or when the perpetrator is a blood relation of the victim or is related through marriage to the same.

Finally, this regulatory instrument modifies Article 323 of the Criminal Code with respect to the crime of money laundering by including in this offense funds derived from migrant or human trafficking.

- ***Treatment of the Migration Phenomenon by the Legislative Branch***

Article 176 of the Political Constitution of 1991 establishes a special district within the House of Representatives so that Colombians residing abroad have a representative.²⁰⁴ Likewise, in 2006 the Congress's Migration Commission, known as the Comisión Accidental Migratoria, was created as a space for discussion at the legislative branch level among international organizations, academics and congressmen working on migration issues, in order to find mechanisms to provide solutions at the legislative level.²⁰⁵

- ***Local Public Policy on Migration***

While migration policy is mainly a national responsibility, initiatives have been developed in some cities with a high rate of migration, bearing in mind that the dynamics inherent to the human mobility process affect the points of departure, arrival, or return of migrants—that is, the local level.

The office of the Mayor of Bogotá has therefore designed and implemented public policies on migration at the local level, mainly through the Welcome Home Program. This program was structured by virtue of an agreement among the Capital District, the Ministry of Foreign Affairs, and the IOM, with the purpose of providing assistance to the migrant population that has returned to the country, specifically to the capital district, and of centralizing the institutional offer that is in place so that migrants can consolidate their process of socioeconomic stabilization.

²⁰⁴ Article 5 of Law 649 of 2001 states, “The candidates of Colombians residing abroad who hope to be elected to the House of Representatives must prove to the Colombian electoral authorities that they have resided at least five (5) continuous years abroad and have been endorsed by a party or political movement that is duly recognized by the National Electoral Council.”

²⁰⁵ See Comisión Accidental Migratoria, Act 1, of 14 September 2006, at http://www.migraciones.colombianas.edu.co/vieja/Documentos/politica/COMISION_ACCIDENTAL_MIGRATORIA/ACTA_1_2006.pdf (accessed on 21 June 2011).

2.3.4. Departure or Arrival Point? Laws regarding Public Policy on Migration in Colombia

Given all of the above, it is clear that there is an international and constitutional foundation that makes it possible to design a public policy on migration from an ethical and legal perspective. CONPES Document 3603 of 2009 responds to that need and efficiently identifies the main obstacles to comprehensively managing the migration phenomenon, as well as of protecting the rights of the migrant population. While this document identified, among others, a structural problem related to the content of migration policy (problem area 1), when it came to creating possible solutions to that problem, it only mentioned very specific ones: strengthening the National Inter-sector Commission on Migration, improving information regarding international migration and strengthening consular services.

Notwithstanding the prevailing laws previously mentioned and their good or inadequate design, the document makes no mention of the wider need to develop regulatory tools in order to establish the content and scope of obligations to the migrant population, while at the same time attributing concrete responsibilities to those public entities that, because of their nature and functions, have competency in the matter.²⁰⁶ The problem is compounded by the fact that, as a public policy instrument, CONPES 3603 can only make recommendations to the entities with competency in the matter, and those guidelines do not have the binding force of a law. Therefore, it is difficult to envisage a follow-up and accountability process.

In view of this lack and in order to supplement the advances made by the CONPES document, Law 1465 of 2011 was enacted, creating the National Migrations System and issuing regulations for the protection of Colombians abroad.²⁰⁷ This law is structured in three parts: the first formalizes the creation of the National Migrations System, defines its objective, and states its creation; the second partially reproduces the principles and objectives set forth in CONPES 3603; and the third, in an exceptional manner, develops genuine regulations on aspects related to providing comprehensive service to the migrant population.

Although the law establishes that the system's main objective is to assist the government in designing and executing a public policy on migration,²⁰⁸ and that the Inter-sector Commission on Migration is the government's main entity for that purpose, the composition of that commission is not clear. It states that the entity will be made up of "all state and government entities whose functions and objects are directly related to migration and immigration in Colombia," but it does not establish which entities are involved nor the terms of their involvement, a fact that perpetuates the existing gap

²⁰⁶ The same thing happened with Law 387 of 1997 regarding comprehensive service to the population displaced by violence through the creation of the National System for Assistance to the Displaced Population (SNAIPD). Despite the issuance of this regulatory instrument, it was only when the Constitutional Court defined the content and scope of said structure that it began to show results with respect to its obligations to that vulnerable population group.

²⁰⁷ This regulation derives from the draft bill originally filed in the Senate of the Republic in 2009, and from Draft Bill 070 of 2009, filed in the House of Representatives.

²⁰⁸ See Law 1465, Articles 1 and 2.

regarding attribution of responsibilities, notwithstanding the recommendations contained in the CONPES document.

Moreover, the participation of the migrant population in the design of public policies is uncertain. On the one hand, it is said that such participation would take place in the context of a “National Civil Society Working Group” made up of the members of the private sector, nongovernmental organizations, academia and organizations of Colombians abroad.²⁰⁹ The working group would also include a representative of the Inter-sector Commission on Migration, as coordinator of the system. The level of participation of migrants is therefore unclear and limited, even though they are the main beneficiaries of the public policy. There is a vague mention that “the national government will foster participation spaces to facilitate dialogue among associations, networks and federations of Colombians residing abroad,”²¹⁰ without specifying the conditions under which this would take place.

The above contrasts with the mention in Law 1465 that a guiding principle of the system is the “participation of the Colombian diaspora in the future of the country and their exercise of both active and passive suffrage under the same conditions as the rest of the Colombian population.” This principle is especially significant considering that, according to current statistics,²¹¹ the emigrant population accounts for almost 10 percent of eligible voters, which would make them an extremely relevant political group because of their potential voting power.

This regulatory instrument reaffirms three of the bases that support the management of the migration phenomenon: full respect for the human rights of migrants and their families; the need to develop international cooperation mechanisms to create an organized regime that guarantees human mobility; and the conception of the migrant as a factor in national, regional and international development. Based on these guiding criteria, a number of objectives are set forth that partially support the actions stated by CONPES as necessary to correct the existing flaws at the structural level and with regard to each aspect of the development of the migrant population. However, when it comes to establishing concrete regulations regarding those aspects, the law only creates the Solidarity Fund for Migrations and formalizes the Return Plan.

In conformance with the provisions of Laws 76 of 1993 and 991 of 2005 regarding the financing of the measures to provide assistance and protection to Colombians residing abroad, Law 1465 calls for the creation of a solidarity fund in cases of special vulnerability and for humanitarian reasons, whenever immediate assistance and protection are required,²¹² regardless of the budget appropriations that must ordinarily be made to that end and by virtue of the authorization granted in the abovementioned regulatory instruments.²¹³

²⁰⁹ See Law 1465, Article 5.

²¹⁰ See Law 1465, Article 7.

²¹¹ See Chapter 1.

²¹² See Law 1465, Article 6.

²¹³ See Law 76 of 1993, Article 4.

The law also states the need to formulate a return plan for Colombian migrants subject to deportation or for those who voluntarily or involuntarily return to the country. The objective of the plan is to make that process as painless as possible, ensuring that returning migrants and their families have access to basic services, socioeconomic stabilization programs, and legal tools for the exercise of their rights. This plan was supplemented by an order that consulates provide assistance to Colombians subject to deportation processes and by another prohibiting the state from booking those returning to the country as the result of deportation as offenders.²¹⁴

2.4. Conclusions

The above presentation of the regulatory framework for migration law in Colombia reflects the existence of a system with a generous set of provisions, issued at different historical moments and in a range of contexts, that nevertheless are not harmoniously articulated into the context of the complex phenomenon of human mobility.

While there have been recent initiatives aimed at the formulation of a general migration policy, which could potentially integrate the abovementioned disperse regulations, these initiatives lack a comprehensive understanding of the phenomenon or limit themselves to creating sophisticated mechanisms for the protection and attention to the migrant population, fulfilling only the general spirit of the regulation.

Such is the case of the limited participation of the migrant population in the Inter-sector Commission on Migration, the entity in charge of articulating public policy on migration, or in the Solidarity Fund for Migrations, which has no specific guarantees for its operability or sustainability.

3. The Participation of International Migrants

Population movements shape the composition of the modern state and at the same time account for transformations: development, ethnic cleansing, extermination and political transformation programs are promoted through migration.

This section of our chapter focuses on a specific problem: the establishment of the legal subjectivity of Colombian emigrants abroad, which serves as a representative case of the wider ongoing juridical disputes regarding migration. It describes the discursive relations among modern states of origin and destination, as well as the migrant population and their organizations. Although mention is made of international organizations and international law, the central thesis focuses on the relations between migrants and the Colombian state.

The identity of Colombian migrants is diverse, as there are several subjects of enunciation who interact and dispute among themselves the appropriation and government of the migrant population. This chapter reviews three of the main legal-political discourses on the identity of migrants. The first part describes the legal-political discourses on migration developed in migrant reception countries through the

²¹⁴ See Law 1465, Article 8.

mechanism of citizenship, understood as a relationship of strategic inclusion and exclusion of groups. The second part focuses on the discourses of the Colombian state as a country of origin of migrants, highlighting the fact that, like the receiving communities, it practices exclusions that reflect the options of the receiving countries. In fact, for both the former and the latter, citizenship has a functional relationship to social class; thus, insofar as they can be useful to the economic system, migrants exist and are sought out by the countries of origin and of destination. In contrast, when this relationship does not exist or becomes impossible, people are expelled from both the countries of origin and the countries of destination.

Legally, expulsion is achieved by transferring migration and foreigners' law to international criminal law, prosecuting organized crime, and expanding the war against terrorism. The third part addresses the perspective of migrants and their organizations. Faced with this dehumanizing phenomenon, migrants resort to multiple strategies that include seeking jobs around the world, political action aimed at achieving citizenship in the countries of destination, appealing to humanitarian systems of exception such as asylum, and creating transnational spaces for circulating persons and goods, among many others.

Our proposal is that in the field of contemporary migration, the law is a political arena for fundamental disputes in which both the claims of migrants and the composition of the States that seek out and transform them are being played out. Without falling into a naive optimism, it is worth acknowledging that migrants and their organizations are political subjects that claim their own agendas, deploy innovative strategies and wage significant battles in many fields, including that of human rights, in order to negotiate their existence among the states.

3.1. The Multiple Identities of Colombian Emigrants Abroad

The emigration of Colombians abroad is not a new phenomenon, as waves of emigration to other countries have occurred throughout the country's history. What do these groups have in common? Only their having established residence outside Colombian territory. As such, any other affirmation is a speculative construct regarding possible cohesion factors among the migrant group: belonging to a national community (citizenship, Colombian patriotism); the condition of being an immigrant; ethnic, Colombian or Latino homogeneity; their psychological or cultural characteristics (smart, crafty, workers, dancers); their political characteristics (liberals, conservatives, communists); their economic behavior (they save, send remittances, consume, invest, study); their religious beliefs (Catholics, agnostics); the language they speak (Spanish, regional forms of Spanish, indigenous languages, English).

The constitution of the identity of the group of Colombians residing abroad is shaped by many political wills, which, for purposes of this essay, we have classified into three categories:

First, the wills of the Colombian emigrants themselves. Empirical research has shown that Colombians abroad form diverse networks involving both Colombians and emigrants of other nationalities. The criterion of nationality is not always the defining factor in these networks (Riaño and Villa, 2007).

Second, the will of the states where the Colombians establish their residence. The treatment of Colombians abroad varies greatly depending on the country and on the migrants' economic situation, the ethnicity attributed to them, their migrant condition, and their educational background, among many other factors. For certain purposes and in countries such as Canada, the United States, and some European Union countries, multiculturalism is the basis on which the identity of these migrants is determined (Aparicio and Giménez, 2003). In border countries, however, the distinction based on strict considerations of nationality seems to prevail (Laverde and Tapia, 2009): Colombians living in border or Latin American countries are identified as foreigners, without resorting to the tools provided by multiculturalism or the denomination of national minority.

Third, the will of the Colombian state. The construction of Colombian identity is quite fragmented. As in receiving countries, class considerations prevail over any other, such that categories are established according to economic groups: investors-exporters, students, brain drain professionals, and so-called "migrants" (working class) (Republic of Colombia, Administrative Department of Security, 2000). Other categories, such as those of forced migrant and illegal migrant, are systematically ignored, so they are not taken into account in official estimates, as is the case in destination countries.

In the last decade, migrants' identity has been constructed from the economic perspective, thus producing categories such as those who send remittances or are great domestic market consumers (construction, food, electrical appliances) (Garay and Rodríguez, 2005). The population of Colombians abroad has been mobilized in specific situations to garner their support for internal or international policies, such as the war against internal armed groups or the signature of the free trade agreement with the United States (Medina 2010). Finally, the most problematic identity of Colombians abroad is that of drug traffickers and members of organized crime groups, which is built jointly by the Colombian state and the receiving states (Mejía, 2006).

The identity of Colombians abroad thus remains transitional: the country where they have established residence gives them a multicultural identity (Latinos, Colombians, blacks, other), seeking cohesion for purposes of administration (Bhabha, 1998).

The other side of this transitional identity is Colombian nationalism, which, in an indolent and self-interested manner, occasionally constructs identities for migrants residing abroad. However, the belonging of these persons to the national community tends to fade with distance, and the state does not recognize its obligation to provide services, satisfy demands, or open up spaces to allow migrants to participate in the political community, except when the state or certain groups have particular interests that migrants can help with (political and economic groups are those that show the most interest) (Republic of Colombia, Ministry of Foreign Affairs, Red Colombia Nos Une, 2006).

On the other hand, empirical studies show that the identities built by Colombian migrants abroad have a certain degree of autonomy and that they negotiate them mainly with the destination countries, and only secondarily with the Colombian state (Riaño and Villa, 2007).

3.2. Migration as the Negativity of Citizenship

Fustel de Coulanges's classic nineteenth-century book *The Ancient City* shows that the cultures of the ancient world developed the idea of the citizen to refer to persons who formed part of the city as a fundamentally religious organization. Most of the inhabitants of the city were denied citizenship, since citizenship depended on belonging to a specific domestic cult around which a particular religion that structured the family was formed. Thus, citizenship served primarily to draw an external distinction with respect to the citizens of a different city (Fustel, 1867). In this way, citizenship was defined through externalities such as everything that did not belong to other religions or cities.

Modern national states have used citizenship as an element in the configuration of the nation in a way that is no different from the mechanism of the ancient world: modern citizenship, though apparently no longer related to religious affiliation, depends on a cultural and ethnic universality that makes it possible to affirm national homogeneity on the basis of contrast with foreigners, who are, in principle, citizens of other countries. When globalization processes generalize the migration of citizens of other countries within one's own country, citizenship continues to be used to affirm the nothingness of migrants as political subjects by defining them through what they lack; this includes foreigners who are not tolerated for any number of reasons and those who are admitted but maintained as minorities by providing the elements that negate their identity.

Citizenship entails both internal and external discrimination mechanisms: noncitizens may be subjects of diverse types, including foreigners and nationals whose differences are not tolerated. The differences that are not tolerated can be political (terrorists, dissidents), social (vagrants, street people), ethnic (indigenous people, blacks), and religious (Jews, Catholics, Muslims, satanic cults), among others.

An interesting example in the European context is the Jewish question, which resulted in the denial of citizenship to people born in the country due to their religion. In colonial contexts, the negation of citizenship takes on many nuances in which the natives of the territory cannot exercise their rights because they belong to dominated groups, regardless of whether they are a majority or a minority.

In this internal and external negativity, multiculturalism arises as a Janus-headed mechanism that seeks to guarantee the access of certain groups to the benefits of citizenship while maintaining their condition as minorities. They are noncitizens who are treated as citizens, and the discourse of multiculturalism frames their externality. An example of how multicultural discourse generates externality could be that of communities made up of foreigners belonging to a different culture, who claim full citizenship without resorting to arguments linked to multiculturalism, as evidenced by certain migration flows in Western Europe. No multicultural discourse is used, for example, to receive Irish or Italian immigrants in France or Germany. Similarly, in Colombia no multicultural discourse is used to receive light-skinned immigrants of European origin because there is a will to integrate them into the sphere of citizenship (Carranza, 2000). In contrast, multicultural discourse flourishes when there is a

question of granting rights to groups whose full integration is undesirable and that need to be maintained as minorities: Latinos, people of African descent, indigenous peoples, gypsies, Muslims. Thus, multiculturalism serves to mark differences, even in the case of people who are not foreigners or minorities, such as third- and fourth-generation Latinos in the United States.

Therefore, the concept of citizenship lacks content and establishes itself as a relationship in which groups are strategically included or excluded,²¹⁵ in conformance with a political ideology. Such instability provokes permanent change, so that the subjects involved must repeatedly negotiate the contents of the distinction of inclusion or exclusion. From this perspective, inclusion in citizenship may contain unrelated and absolutely contradictory elements. Inclusion is therefore grounded not in logic but in successive strategic arrangements to which it is subjected depending on the political contingency.

The identity of Colombians abroad is an example of contingent citizenship. In the last stages of the 2008 presidential campaign in the United States, the press made it known that the Colombian and Latino communities would be crucial in the presidential election. It is worth asking, then, about the multiple meanings of “Colombianness” and “Latinness” abroad, which manifests itself during electoral events or, as Carmen Millán has pointed out, during the celebration of national holidays.²¹⁶ A detailed study of these communities reveals a contradictory reading of them as minorities for electoral registration or migration control purposes, or as an ethnic group, as evident in the distinction between citizen and alien, constructed in the United States and experienced by Colombians residing abroad. This is the case because, as empirical studies (Guarnizo, 2006) have revealed, Colombians are burdened by the multiple limitations and fragmentations of citizenship that exists in Colombia, making it extremely difficult for migrants abroad to organize among themselves. Migrants take with them their own history and their regional, class, gender, ethnic and cultural affiliations, which prevent the creation of large organizations of Colombian nationals abroad but which do not prevent the creation of multiple associations that share a range of interests and connections: relatives, people from the same town, poor and undocumented individuals, students, professionals or investors.

In her study of Salvadoran communities abroad, Langer records the contradictions they are subjected to as social subjects grouped according to the strategy deployed by

²¹⁵ “In Fredric Jameson’s words, culture ‘is not a “substance” or a phenomenon in its own right, it is an objective mirage that arises out of the relationship between at least two groups. [N]o group “has” a culture all by itself: culture is the nimbus perceived by one group when it comes into contact with and observes another one.’ Multicultural States approaches ‘multiculturalism’ in the same way, as no less relational, no more essential a concept than culture, articulating its ‘mirages’ across a range of national and institutional sites, with a view to identifying shared principles and problems in the ways that culturally diverse and divided societies are being represented today.” David Bennett (1998), *Multicultural States: Rethinking Difference and Identity*, Routledge, London, p. 2.

²¹⁶ Since 2006, Carmen Millán, researcher at the Instituto Pensar of the Pontificia Universidad Javeriana in Bogotá, has been researching “Fiestas patrias fuera de la patria” (“National Holidays outside the Country”), in which she looks into the construction of nationalities and representations of *Colombianness* in diaspora settings.

the receiving state, which takes into account elements that are relevant for the management of migration but fails to recognize the changing historical and political identities of migrant communities.²¹⁷ Thus, Salvadorans end up being labeled Latinos for the purpose of access to social services in Spanish, which has a political effect. However, that Latino identity is superimposed on the specific history of the multiple Latin American political, national and cultural identities.

In brief, multiculturalism could be used, as it is in fact widely used, as a mechanism to obtain recognition for one's identity, as feminist and countercultural groups and others have done. Deprived of all essence or fixed and obligatory meaning, multiculturalism is a valid and dynamic strategy for political action.

3.3. The Access to Citizenship of Expatriates in the Country of Origin

Colombian expatriates occupy a range of political positions determined by well-known and unrecognized factors alike. The Colombian diaspora includes people from a wide diversity of situations that reflect the fragmentation of the country of origin and the diverse positions they come to hold in destination countries.

The fact that lower income social groups have become an increasing part of the migration phenomenon in the last decade has modified the traditional conception of the migration experience as a marker of social differentiation, reserved in the past for the social elites. To this one would have to add the growing flow of forced international migrations, which includes a new group of Colombian refugees who have been forced to flee the armed conflict, mainly to neighboring countries, and who, because they do not constitute a group, are exposed to victimization abroad²¹⁸ (Riaño and Villa, 2007; Laverde and Tapia, 2009).

As a political inclusion strategy, citizenship becomes highly sensitive to expatriation in the case of Colombia. On the one hand, the state interprets its consular functions as merely processing documents abroad; thus, claiming a lack of resources, it exempts itself from any participation in protecting the rights of its nationals abroad, except in very few cases and due to the individual initiative of certain civil servants. It

²¹⁷ "The idea of a single 'Spanish-speaking community' may rest on an impossible separation of language and culture from class, politics and history, but the alternative of recognizing the competing claims of national groups whose communal boundaries and leadership are continuously contested and renegotiated is beyond the already stretched resources of the host states. Salvadorans are therefore likely to remain within the administrative confines of Hispanic or Latin American 'community,' whether its fictive boundaries coincide with their own communal 'imaginaries' or not. The fiction of 'ethnic community' is particularly strained in the Salvadoran case because the history that divides continues to be contested, but there is no reason to suppose that 'ethnic communities' in general are necessarily more cohesive. What looks like unity from the outside is invariably diverse and conflictual from the inside, particularly when the historical conditions under which 'communities' have been constituted are taken into account." Beryl Langer (1998), "Globalization and the Myth of Ethnic Community: Salvadorian Refugees in Multicultural States," in Bennett (1998), *Op. Cit.*, pp. 163–178.

²¹⁸ Riaño and Villa have registered this type of situation in Canada and Ecuador, which is contrary to the experience of refugees from other conflicts, in which people fled for basically similar causes, such as the Latin American diaspora during the twentieth-century dictatorships.

is a policy of the Colombian state not to act as guarantor of the rights of Colombians abroad (Díaz, 2009).²¹⁹

Along the same lines, the Colombian government draws a distinction between nationals abroad who are of interest and have visibility and those who are and do not, depending on foreign policy strategies. The Ministry of Foreign Affairs therefore created the Colombia Nos Une program, which manages relations with professionals, emigrant talents, emigrants with the capacity to make investments and send remittances, and investors. On the other hand, the same ministry has an office responsible for undocumented and imprisoned Colombians abroad and other emigrants who need not be made visible. In this sense, the state makes distinctions regarding its function as a guarantor of rights and claims depending on foreign policy criteria. Thus, both administrative structure and institutional actions show that Colombians abroad comprise not a homogeneous group of expatriate citizens but rather a multiplicity of communities that receive different degrees of attention from the state itself (Republic of Colombia, Ministry of Foreign Affairs, 2000).

It is worth highlighting the similarity between visibility criteria regarding international migrants in both the countries of origin and those of destination. Special consideration is granted to investors, professionals, or students in the receiving state, which makes them visible, protects their rights, welcomes them, and makes them part of the political and economic community. Colombia, the country of origin, shows the same preferences by fostering public programs that make visible, stimulate, and politically seek out those migrants, making them part of its community (Republic of Colombia, Ministry of Foreign Affairs, 2000).

Thus, migration becomes a problem according to the same criteria in the country of origin and that of destination. In the context of international law, the disagreement regarding the controversial WTO Convention on the Human Rights of Migrant Workers, which is not considered part of the International Human Rights Charter (Castro-Fox, 2004), is an illustrative case. In contrast, the Palermo Convention against Organized Crime, which criminalizes irregular migration through the crime of migrant and human trafficking, has received wide acceptance (United Nations Office against Drugs and Crime, 2004).

The main problem is that in a climate of national migration restrictions and in conformance with the international right of states to select those individuals they want to admit into their territory, the globalization of migration has entailed an increase in the flows of irregular migrants through a wide range of means, on a continuum from appealing to the trafficking networks to the reinterpretation of the rights of refugees; utilizing the corrupt networks in embassies and consulates of every country.

Irregular migrants are persecuted both by countries of origin and by countries of destination, in accordance with security measures and the war on terrorism. Accompanying the exclusion from citizenship is the attribution of new labels to those excluded: traffickers, dealers, illegal immigrants, drug traffickers, terrorists. Faced with

²¹⁹ This differs greatly from the attitude of colonial states that claim extraterritorial competencies in order to protect their citizens abroad, even going beyond international law, as the United States has done in the past.

these new ideologies, multicultural discourse turns out to be highly restricted in countries both of destination and of origin. Thanks to these labels, people are foreigners in both.²²⁰ Those migrants who fall outside the sectors privileged by national states are trapped between persecution and being invisible in both departure and arrival countries.

This trend is confirmed from the perspective of political representation. While the state, through its interventions or omissions, fragments the identities of Colombians abroad, it also restores them selectively for the national community. We have witnessed a thoughtful debate brought about by World Bank research regarding the use, regulation and surveillance of remittances sent by emigrant Colombians (all of them, without discrimination) to their families back home, as the state has become aware of their critical importance for the national gross domestic product (Orozco, 2006).

Naturally, this economic consideration is accompanied by the guarantee of political representation: over four million Colombian expatriates are represented before the national community through a single representative to the House of Representatives, for whom residents in the country can also vote.²²¹

These “antiseptic” contacts of the Colombian state with migrants abroad impose restrictions on the exercise of rights and the articulation of claims, not only in the countries of destination but also in the community of origin. By emigrating, Colombians become foreigners, which is another way of saying that citizenship is selectively transformed according to state criteria.

Colombian emigrants abroad are thus treated as a minority with restricted rights, partial representation, and selective recognition. The great mass of expatriates, who are invisible because they do not deserve the labels of visibility contemplated by Colombian foreign policy and are sometimes persecuted in their own country by human traffickers, drug traffickers or terrorists, become a minority in both the destination country and the country of origin, subject to a regime of limited citizenship expressed in the multicultural concessions of the liberal state.

It is also clear that when these migrants are discriminated against for this condition in particular, they are not allowed to take on higher identities in the name of humanity. International migrants’ access to human rights tools is restricted by international conventions. Thus, we are facing a globalization of mechanisms that restrict rights and political participation, since these discrimination mechanisms are shared by all states.

²²⁰ “The doctrine of cultural relativism to which this Eurocentric view of civilization gave way in modern anthropology was no less humanist in its credentials: by pluralizing the concept of culture, it sought to resist imperialist world-views and colonialist practices, viewing cultures as relatively autonomous and incomparable, rather than as more or less civilized or barbaric than one another. One of the legacies of this ‘anthropological culturalism,’ however, is what Etienne Balibar has called ‘neo-racism,’ or ‘racism without races,’ which holds that racial divisions have no biological or scientific foundation but that populations will continue to behave as if they did, and that this racist conduct needs to be ‘managed’ (by immigration policies, for example) in ways that respect the ‘tolerance thresholds’ of social groups, allowing them to maintain ‘cultural distances’” Homi Bhabha (1998), “Culture’s in Between,” in Bennett, Op. Cit., pp. 29–37.

²²¹ Questioning the participation system is not exclusive of migrants, as any group of citizens may do so. From the beginning, the representative system opposed the democratic system, since it guaranteed that political action would be limited to an aristocratic elite. D. Laycock (2004), *Representation and Democratic Theory*, UBC Press, Vancouver.

3.4. Conclusion: The Agency of Migrants and Their Multiple Forms of Insertion into the Community

By going beyond the theory of push and pull factors as constituting the underlying logic of migrations, it has been possible to visualize the migration process in and of itself, and not merely as a relationship or variable that depends on the conditions and dynamics of the countries of origin and reception.

The fruitful analysis of migrants' social networks reveals ever more nuances of the complex migration phenomenon. From this perspective, migrants cease to be mere victims or isolated subjects, as represented through images of complacent humanitarianism. They are much more than the fallen, captured, killed or defeated traveler who appears in worldwide campaigns against human mobility. The networks have shown, instead, processes of intensive collective agency that bring together a wide range of organizations that challenge the perception of the saturation of space by countries.

Migration networks are complex and involve the following main processes: resorting, in families connected to emigrant groups from the same town and affiliated with churches, sometimes to trafficking networks and at others to legalization through documentation or access to refugee status; pooling of savings to finance extremely expensive and dangerous trips whose benefits can only be seen one or two generations later; looking for jobs that guarantee access to welfare in wealthier countries that are usually taking advantage of near-slave conditions in the countries that deport many immigrants; sending regular remittances to cover the costs of elementary, secondary, and university education, housing, and luxury or everyday items; obtaining resources to finance businesses or simply improve social status in the communities of origin; a population that seeks no help from the states which abandons and persecutes them, but instead guarantee their rights through multiple organizations from soccer teams to religious organizations until national groups saturate areas of production.

By crossing borders, these uprooted individuals abandon their legal status, their government, and their health, police, and culture controls. They create societies with a territoriality that extends across every continent, thus becoming agents of their own transformation and of that of both countries of destination and communities of origin. These supranational networks, which learn how to evade or utilize states, create multinational solidarity, families with very different backgrounds that have settled in different countries. Their stories resemble those that until a few years ago belonged exclusively to the elites of postcolonial countries.

From the perspective of the agency of migrants, identities are multiple and mobile, since migrants are subjects who relate differently to the states, some evading it systematically and others seeking paths for integration or formulation of claims. The antagonisms between the multinational social networks of migrants and state organizations reciprocally transform these two groups.

It is worth asking whether these multiple identities can be grouped into a Colombian identity abroad, and to what extent these networks have a national affiliation. It seems, rather, that they share the path of denationalization of capital. As

Linebaugh and Rediker have shown, such networks have existed since the beginning of the colonial enterprise, and they have had strong cultural identities and significant political programs that have deeply transformed the situation of the states: pirates, slaves, victims of trafficking, smugglers, revolutionaries, anarchists (Linebaugh and Rediker, 2000).

Just as national governments have been able to use citizenship as a tool against the groups they want to exclude, strategic multiculturalism, which does not correspond to a traditional identity established by the states, could become a vehicle for political action for migrants both in countries of destination (as it traditionally has been) and in countries of origin. A vision of ethnic and cultural diversity that includes Colombian expatriates could reactivate the tools used to open up political spaces. This agenda could include extensive representation and participation of transnational migration networks, and be extended to the rights and jurisdictions themselves. Furthermore, it can give rise to territorial organizations such as municipalities, districts and departments made up of expatriate populations, with the unusual characteristic that such movements can act in multiple state levels.

As Bhabha has suggested, we are speaking not of a liberal-style multiculturalism that distinguishes between majorities and minorities but rather of a kind of multiculturalism that articulates the experience of human diversity (Bhabha, 1998).

PART II

INTERNAL DISPLACEMENT: DYNAMIC, POLICIES AND PARTICIPATION

1. General Analysis of the Dynamic of Displacement

Forced displacement has been a constant in the history of Colombia. In fact, it could be seen as key to involuntary migration, brought about by widely varying objectives (political, economic, ideological and strategic) that have had an important influence on the foundations of society and the state over time. Nonetheless, this kind of exodus only started to be considered as a problem in and of itself in the last decade of the twentieth century. As a consequence, studies of forced displacement are relatively recent, though the volume of literature on the topic, just over two decades in the making, is quite substantial.

This chapter presents an analytical summary of the most representative studies that have been carried out on this subject, with the aim of giving an overview of forced internal exoduses and outlining the profile of those sectors of the population that have been most affected. To this end, qualitative and quantitative data gathered from various sources will be presented in the first section. The second section deals with the phenomenon itself and its victims, for which it is necessary to pose a basic question: What do we understand to be forced displacement in Colombia? Interestingly, this is an issue that has only recently generated some debate, despite the fact that the definition offered by the state authorities is limited to the exoduses provoked by the country's ongoing internal armed conflict. This restricted definition of internal displacement is tantamount to throwing a thick veil over involuntary migration, which is caused by many other factors, such as the struggle for the appropriation of land and the so-called war on drugs, and entails excluding people who have been driven from their homes by the conflicts imposed by public policies intended to help displaced people.

After raising this issue, the section sets out the characteristics of the displaced population, placing emphasis on the factors that make it especially vulnerable. In particular, light is shed on the process of dispossession and uprooting that comes along with the type of migration these people have experienced. Finally, there is a consideration of these people's desire to return to the places from which they have been evicted—that is to say, their hopes and plans to pick up their lives at the same point where they left them when they were expelled from their home. The chapter ends with a few brief conclusions on the concept of internal displacement and its current situation.

1.1. Sources and Data on Internal Forced Displacement

Internal displacement in Colombia has been intensely studied, both on an internal level and on an international level, and is constantly mentioned in the different forums of discussion and analysis on the subject. The Colombian state has so far been one of

the few countries to adopt a policy of addressing this phenomenon, based on the guidelines developed by the United Nations. Factors such as the extent and magnitude of forced exodus, which affects practically the whole of the national territory, and their link to one of the most long-lasting internal conflicts in contemporary history, have made this the object of global attention.

This attention explains the ease with which figures and data on this phenomenon can be collected, from both official and private sources. Nevertheless, the abundance of information does not guarantee its quality. The majority of the sources do not reflect the entirety of the displaced population, whether because the data do not cover the entirety of the national territory, or because they apply restrictive criteria when defining the condition of displacement.

It is essential to carry out cross-analyses of the information offered by the various available sources with the objective of developing a profile of people in a situation of internal displacement and the degree of efficacy of the policies designed to assist them. For the sake of cohesion, the sources have been divided into two classes: primary sources, which gather information from people in a situation of forced exodus by means of registry systems or surveys, and secondary sources, which consolidate and assess the information gathered in primary sources.

1.1.1 Primary Sources

The current study was carried out using three primary sources: the Single Registry of the Displaced Population (Registro Único de Población Desplazada, RUPD); the system of the National Secretariat of Social Ministries, called RUT; and the Third National Survey for the Monitoring of the Rights of Internally Displaced Persons.

The RUPD is the official registry system for displaced populations. It was created by means of Decree 2,569 of 2000, which regulates Law 387 of 1997, through which the bases of state policies regarding attention to this population are established. It supplies information to the authorities on the figures and characteristics of people in need of attention. In addition, displaced persons and members of their families must be registered in this system in order to be recognized as such and thus be considered entitled to receive the rights merited by their situation.

To register in the RUPD and have their condition as victims of internal forced exile be recognized, interested parties must make a declaration to an official of the Public Ministry (Attorney General's Office, the Ombudsman's Office and the Municipal or District Administrators) regarding the circumstances that have caused them to flee. This declaration is sent to the Presidential Agency for Social Action and International Cooperation (Agencia Presidencial para la Acción Social y la Cooperación Internacional—hereinafter referred to as Social Action) for evaluation to determine whether the declaration meets the required conditions to consider the claimants displaced persons according to the criteria established by Law 387 of 1997. If the declaration is accepted, they are included in the register.

This system of information presents two important advantages for researchers. First, it offers a great quantity of data on the profile of people in a situation of displacement at the time that they make their declaration to the Public Ministry (place of origin, gender, age, ethnicity, reasons for flight, etc.). Furthermore, a certain amount of this information is made public and easy to access through Social Action's own web page.

However, this system suffers from a serious flaw, which is a level of underreporting. The Third National Survey for the Monitoring of the Rights of Internally Displaced Persons, carried out in 2010, to which we will be referring in this section, indicates a noninclusion rate of 22.8 percent. The same study reports that 72 percent of unregistered people have chosen not to carry out the process (for lack of knowledge of the process, or for fear of being identified), while the remaining 28 percent carried out the procedure but were rejected.²²²

The next system that will be taken into account in the present study is the RUT,²²³ created by the Department of Human Mobility of the National Secretariat of Social Ministry of the Episcopal Conference (*Movilidad Humana del Secretariado Nacional de Pastoral Social de la Conferencia Episcopal*) of Colombia in 1995. Its objective is to gather, systematize and analyze data that serve as an input for the design and implementation of solutions for restoring violated rights. This system does not include a census of the displaced population, nor does it intend to, as the information that it contains is given voluntarily by the displaced individuals. To this end, these individuals complete a survey in the parish where they have sought help; the results are centralized and analyzed by the Department of Human Mobility of the National Secretariat of Social Ministry.

The database offers information on 572,387 people from 124,299 families registered from 1995 to 2009. The database includes personal information (gender, age group, composition of family group, membership in certain ethnic groups and the presence of any kind of disability), conditions of the person before displacement (place of origin, ownership or possession of property and reason for expulsion), and the socioeconomic conditions after the fact (place of reception, current occupation and unmet basic needs).

Though the system has the advantage of covering a great number of aspects, it also has as a major weakness in that it has not been implemented in all dioceses and therefore does not offer a global perspective on the problem. The RUT also does not include a monitoring system that allows for the collection of information on advances or setbacks in the situations of registered people so it can be applied in enacting public policies.

Finally, there is the data collected in the Third National Survey for the Monitoring of the Rights of Internally Displaced Persons. This survey was carried out in 2010 by the Center for Development Research of the *Universidad Nacional de Colombia*, with financing from the Dutch embassy. The study was carried out in compliance with

²²² Comisión de Seguimiento (December 2010) *III Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento*, Bogotá, pp. 31 and 32 (Monitoring Commission, *Third Monitoring Report on the Enforcement of Rights for the Displaced Population*).

²²³ The name for this system of information has been taken from "Rut," the Spanish for Ruth, the character described in a book of the Old Testament.

Constitutional Court Judicial Decision 008 of 2008, in which the court determined that the survey would be the most effective methodological instrument for quantitatively measuring the extent to which the rights of people in a situation of forced displacement are being granted. For the execution of the study, 10,433 households of displaced persons in 68 municipalities and 26 departments of the country were interviewed between July and August of 2010²²⁴; 8,304 responded to the questions that were posed, which means that the study is representative. In addition, the survey also includes both those people who were registered in the RUPD and those who were not.

This study was the third of its kind to be carried out in the country, but unlike the two that preceded it, this study emphasizes the loss of assets and property of displaced people.²²⁵ In fact, the respondents were posed 377 questions, 149 of which related to the dispossession of movable and immovable assets (animals, machinery and items relating to their business).

The results of this survey have been analyzed by the Monitoring Commission for Public Policy on Forced Displacement, a nongovernmental body that since August 2005 has been overseeing the enforcement of the Constitutional Court's Ruling T-025 from 2004. The result of this analysis has been consigned to the Third National Report on the Monitoring of the Rights of Displaced Peoples, which was made public in December 2010. This document is very useful for characterizing the displaced population and emphasizing the degree of dispossession to which it has been subjected.

1.1.2 Secondary Sources

Three secondary sources have been used in the development of this work. The first is the System of Information on Displacement, Armed Conflict and Human Rights (*Sistema de Información sobre Desplazamiento, Conflicto Armado y Derechos Humanos*, SISDHES) from the Observatory on Human Rights and Displacement (*Consejería para los Derechos Humanos y el Desplazamiento*, CODHES). This is the first nongovernmental organization in the country to address the issue of forced exile. The NGO produces its figures on forced displacement through a process of estimation based on a variety of different primary sources. The methodology employed to manage the information consists of four steps. The first is the daily and systematic monitoring of forced displacement and internal armed conflict. The second is the verification of information and addition of secondary sources. Next the sources are contrasted and weighted. Finally, a calculation is made of the final statistics for municipalities and the final figures produced.

²²⁴ The concept of the displaced home that is approached by this study refers to the person or group of people, including relatives or otherwise, who constitute some or all of the residents, address their needs through a shared budget and generally share food. These homes are not necessarily made up entirely of displaced people; it is enough for one of the members to be one.

²²⁵ The First National Monitoring Survey was carried out in 2007 and analyzed the situation of 6,600 displaced homes; the second was conducted in 2008 and carried out a survey of 6,113 homes. Both were carried out by the Center of Investigation for Development at the Universidad Nacional de Colombia.

The second source is the 2010 report “Displacement and Poverty,” put together by the consultant Armando Escobar for Social Action with the support of the IOM. The study is a joint analysis of the situation of the displaced population and that of the poorest groups in the Colombian population, according to the data recorded by the Social Protection Network for Overcoming Extreme Poverty (*Red de Protección Social para la Superación de la Pobreza Extrema*, JUNTOS). This program was created by the state as part of the efforts to overcome poverty, achieve the Millennium Development Goals and attend to displaced families.²²⁶ The work outlines the profile of the most vulnerable population in the country—both the displaced and the structurally poor—and analyzes the activities that have been carried out to decrease their vulnerability.

The analysis is based on the situation of 1,577,221 families²²⁷ who submitted to a characterization process by means of a JUNTOS survey. From this group, 108,151 families declared that some of their members found themselves in a situation of displacement. However, the work only considers 92,556 families who are registered with the RUPD within this group. Although this is a valuable report in the way it compares the situation of two particularly vulnerable demographics, the data that it uses are partial, as at the time it was produced it did not take into account information from major cities such as Bogotá. As a consequence, the report sheds only partial light on the issue it attempts to address.

Lastly, reports and analysis developed by international actors were also put to use. These secondary sources were employed in a timely fashion, though they do not offer an overview of the phenomenon or the specific reactions of national authorities. In fact, the Colombian office of the United Nations High Commissioner for Refugees produced three consecutive analyses on the situation of internal forced exodus in the country and an assessment of the state’s policies regarding it; this last document was published in 2007, so the information it offers, or rather used to offer, is not entirely systematized or up to date. However, these publications were referred to for certain specific aspects. The IOM and the Internal Displacement Monitoring Centre (IDMC), which was created by the Norwegian Refugee Council, also offer important information on certain aspects.

1.2. The Profile of Displaced People

Using the data and figures collected from a combination of both direct and indirect sources, in this section we shall seek to define the demographics of internally displaced people—that is to say, the set of characteristics that allow this population to be identified as one of the particularly vulnerable groups in Colombia. Nevertheless, it is important to clarify that though as a group they share a good number of features, it is not possible to establish a profile of the displaced population because although exodus unites these people, it is not a basic feature of their identities but rather a circumstance that has been imposed on them.

²²⁶ JUNTOS is based on the consideration that in order for families to improve their situation, they must overcome the traps of poverty, which can be inherited from one generation to another. Avoiding a trap of poverty is considered by JUNTOS to be an “Achievement.” They have identified 45 Achievements that families must earn to escape from poverty.

²²⁷ It is important to point out that, unlike the Third Monitoring Survey, this work is based on numbers that take families into account rather than households.

If there is one aspect that characterizes the demographic of people who had to take flight over the last few years it would be their heterogeneity, which reflects the diversity of catalysts for displacement and the dynamic of the armed conflict in Colombia, a conflict that has affected the different regions of the country to varying degrees. Forced exodus affects people regardless of their allegiance with any specific group; displaced people are members of many ethnicities, adhere to various faiths and are aligned with multiple political ideologies or none at all. In other words, displaced people do not have a preexisting unifying identity. Nevertheless, despite the diversity of their origins it is possible to find certain attributes that are common to most of them (Naranjo, 2000: 80; Sánchez and Atehortúa, 2008: 3).

This section begins by presenting a definition of forced internal exoduses in Colombia and its victims. In what follows, the magnitude of these migrations, their causes, their perpetrators and the ways people are displaced are addressed. Once these parameters are defined, the section addresses the characteristics of this population that make it possible to see it as a population in a state of displacement. In the last section, the return intention of these people is presented, as the cessation of their current condition greatly depends on this event.

1.2.1. The Concept of Displacement

Sketching the profile of internally displaced people demands, as a first step, establishing some type of content for this category. This task is far more complicated than it may first appear because, although the phenomenon of forced migration has existed for quite some time, it has only been the subject of studies since the final decade of the last century.²²⁸ The answers provided by the state likewise go back only to 1997, when the law was passed that to this day still constitutes one of the columns of the policy on assistance for people in a situation of internal displacement. However, as will be demonstrated below, the viewpoints used in the studies and to design policies on this subject differ in important respects.

The studies that have been carried out in relation to forced exodus since just under twenty years ago offer a broad scope on the topic and its victims, showing that these migrations can be considered a constant that has become apparent throughout the history of the country and that has been determinant in the process of nation building. Some authors even consider it “a motor of the country’s history, a sort of vicious cycle of destruction, reconstruction, and destruction of economic, political, technical, ecological and cultural relations in Colombian society” (CODHES, 1999: 75). However, perhaps the most appropriate reading of its prevalence throughout time would be to consider it not as a phenomenon in and of itself, but as a mechanism that has been employed throughout the history of the country by different actors and with various intentions. Displacement has been a weapon of war in every continent during internal

²²⁸ The Episcopal Conference of Colombia was the first to put together a report on the situation of displaced people in their publication on human rights and internal displacement in Colombia, in 1995. This work opened up a debate that was reinforced by the first visit of a representative of the secretary-general of the United Nations for internal displacement, Francis M. Deng, in 1994. Doc. N.U. E/CN.4/1995/50/Add.1.

armed conflict, an instrument that has been employed by land owners to expand their domains; an exception employed by the state to guarantee the survival of its threatened communities where the safety of their place of origin could no longer be guaranteed; a means for the development of infrastructure projects for dams, motorways and hydroelectric plants; and a strategy for the development of an economic model based on projects for extracting raw materials and cultivating industrial crops that require a large amount of space. At the same time, it has become an indirect consequence of the activities of a state fighting against the cultivation of hallucinogenic substances, as well as of the armed confrontations that develop within the context of internal conflict.

It could be said that, in essence, forced exoduses have been an instrument employed throughout Colombian history by the most diverse actors with the aim of obtaining control over land, resources and human beings, whether motivated by economic goals, by strategic aims in the country's many internal conflicts or by mixed objectives. In other words, forced exoduses have been a tool in the development of the multiple types of internal conflict that have been present since the beginnings of the republic and that have yet to be resolved. Alongside these instrumental exoduses we also have others that come as a consequence—meaning they are not foreseen but are accepted as possible—of actions developed within internal armed conflicts, of state programs to combat drug trafficking and of the enactment of economic growth plans that function on the basis of the extraction of raw materials and the development of infrastructure (Molano, 2000: 35; Lemaitre, 2011: 15; CODHES, 2011: 3).

A displaced person is, therefore, a person who has been forced to flee for any of the reasons mentioned above. Nevertheless, the response that the state has designed to confront these exoduses and assist their victims, does not include all the people who meet this characterization. In the eyes of the law, only “people displaced by violence” have been expelled from their homes as a consequence of armed conflict.

Law 137 from 1997 defines people who have been internally displaced by the violence in Colombia in its first article in the following way:

[D]isplaced people are those who have been forced to migrate within the national territory, abandoning their place of residence or typical employment, because their life, physical integrity, security or personal freedoms have been compromised or are being directly threatened, in the case of any of the following situations: internal armed conflict, internal strife and tension, generalized violence, massive violations of human rights, violations to international humanitarian rights or other circumstances stemming from previous situations that could alter or drastically alter law and order.

This rather broad definition has been used by the authorities tasked with identifying the beneficiaries of the policies of assistance for forced exoduses as a result of armed conflicts. That is to say, the authorities only recognize displaced people as those who have abandoned their home and properties as a direct or indirect consequence of confrontations between various armed groups who are fighting for control of the state.²²⁹

²²⁹ This interpretation continues to be paradoxical, given that during the eight-year presidency of Álvaro Uribe the government systematically denied the existence of an internal armed conflict in the country.

This interpretation has been the subject of criticisms from civil society because it drastically narrows the picture of internal displacement and stigmatizes those who suffer from it as an active part of armed confrontation (Vidal, 2005: 216 and 217). However, the Constitutional Court²³⁰ itself upholds this definition of displacement in the majority of its cases. Ruling SU-1150/00 constitutes the court's central piece of work on the subject of internal displacement; it has given rise to the jurisprudential line that stretches out to Ruling T-025/04. This ruling, passed down in 2000, was developed following the analysis of various reports and national and international studies.²³¹ It defines forced exodus as "a social phenomenon that results in multiple, massive and continuous infringement of the fundamental rights of Colombians who are forced to migrate internally." A subsequent ruling²³² attempted to emphasize the humanitarian character of this issue without contradicting the existing definition, presenting displacement as a violation of Article 17 of Protocol II of the Geneva Convention, but it did not achieve resonance through subsequent decisions.

This complex infringement of essential rights, both those that fall into the category of civil and political rights as well as those that fall under economic, social and cultural rights, has its origins in the armed conflict that has wracked the country. As a result, a restrictive interpretation of the causes of the involuntary movement of people is assumed, articulated in the first article of Law 387/97, dismissing not only natural disasters and development projects, which are expressly excluded by the law, but also violence induced by the conflict for land or fumigation against illicit crops.²³³ The court jurisprudence that has been created on the basis of this interpretation would serve to confirm this approach to the point that Ruling T-025/04 would emphatically state that the fight for control of the state is the only cause of forced displacement of people.

²³⁰ This court has played a pivotal role in developing the policies on assistance and protection for the rights of people in a situation of displacement, as will be shown in the section dealing with the legal framework.

²³¹ This ruling is supported in the following works: Conferencia Episcopal Colombiana, "Derechos humanos y desplazamiento interno en Colombia," 1995; Boletín N° 28 de Consultoría para los Derechos Humanos y el Desplazamiento (CODHES); Roberta Cohen, and Francis Deng (1998), "Masses in Flight: The Global Crisis of Internal Displacement"; CODHES, European Union and UNICEF (1998), "Esta guerra no es nuestra: niños y desplazamiento forzado" (This Is Not Our War: Children and Forced Displacement), in Colombia Presidential Council for Attention to the Population Displaced by Violence and the General Directorate for Human Rights from the Interior Ministry, "Report to the Congress of the Republic on the Application of the Policy of Attention to People Displaced by Violence."

²³² Constitutional Court, Ruling T-1635/00.

²³³ Constitutional Court, Ruling SU-1150/00: "42. The problem of forced displacement is derived fundamentally from the armed conflict taking place in the country. The peace that has been waited for could still take years to materialize. As such, it is necessary to make every effort to ensure that all armed actors respect the civilian population. It is therefore essential that compliance with laws on human rights and international humanitarian rights be imposed. In this same vein, it is the responsibility of the government to engage with the actors in the armed conflict with the aim of involving them in protecting international humanitarian rights and ensuring that the forced displacement of Colombians ceases to be part of their military strategy. Furthermore, it is precisely in government-organized peace talks that the subject of the humanization of the war and of the rejection of forced displacement takes a priority role. Without overlooking the importance of the other points of debate, it is crucial that putting a stop to the barbarism of the sacrifice of civilians in the context of armed confrontation should immediately become part of the negotiations with rebel groups."

This jurisprudential position, however, has been modified by way of the decisions that have been adopted to add monitoring to the compliance with the orders dictated by Ruling T-025/04.²³⁴ In fact, in Constitutional Court Judicial Decision 005 of 2009, which addresses the special protection required by communities of African descent, the Court acknowledges that, at least in this case, displacement can also be caused by “the existence of mining and agricultural processes in certain regions that imposes strong tensions over their ancestral territories and has promoted their dispossession.” This factor is combined with the structural migration situation to which these communities have been subjected, which makes them particularly vulnerable to the processes of expulsion because of armed parties.

In this somewhat unorthodox way,²³⁵ the court has opened a door to the recognition of other causes of forced exoduses besides confrontations between the actors of the armed conflict. Therefore, the court has also broadened the concept of the displaced person. Despite these efforts, however, the gap that exists between the entirety of people who have been violently expelled from their places of residence and those who have the right to receive protection from the state within the framework of the public policy of assistance and protection has not been closed. Proof of this is the sustained refusal of Social Action to include people in the RUPD who have been displaced by the activities of armed groups other than the guerillas since 2006, the year in which the process of paramilitary demobilization culminated. The argument for such an exclusion is based on the assertion that the actors who currently generate displacement must be merely criminals—because the paramilitary groups no longer exist in a formal way—which implies that the activities of these bands (some of them consisting of reconfigurations of demobilized paramilitary troops) are not covered by the policy designed by Law 387 from 1997 and should be addressed via other mechanisms (CODHES, 2007: 16; HOWE, 2009).

For the purposes of this study, a broad definition of forced internal exoduses and displaced people has been adopted that includes not only people expelled as a result of armed conflict but also those who have been expelled due to a situation of structural violence, land struggles or the implementation of the economic model. This decision was made for two reasons. The first is the need to approach displacement as a structural problem that has its roots in a multitude of causes, related not only to the fight between the state and insurgent groups but also to the economic model and land management. The second is that the suffering of those who have been expelled from their usual place of residence, and the magnitude of the rights violations they have suffered, do not vary depending on the reason for their exodus. The suffering of the victims and the magnitude of the violations of rights are just as profound for those expelled as a result of the actions of criminal gangs or private armies acting on behalf of a land owner as for those displaced by internal wars.

²³⁴ Only one ruling before 2004 applies a broad interpretation of internal displacement. This was Ruling T-268 in 2003, which assessed a situation of large scale displacement in Medellín. On this occasion the court stated that the incidence of urban violence generates internal displacement and that its victims should be included in the RUPD. This is, however, an isolated ruling.

²³⁵ In fact, it is very curious that a jurisprudential line be modified by a judicial decision, a decision which should limit itself to defining the orders to ensure the enforcement of a ruling.

As a consequence, the work is supported to a large extent by the results gathered by the Third Monitoring Survey, as this instrument takes into account the situation of not only the people recognized by the state and included in their protection plan but also those who don't qualify under those specific criteria.

1.2.2. Magnitude of Displacement

Colombia is currently the country with the highest number of internally displaced people in the world, far ahead of the Democratic Republic of Congo and Pakistan (UNHCR, 2010: 21). The exact figure varies depending on the source consulted. According to the official data, it is above 3.5 million,²³⁶ while the figure generated by NGOs is above 5 million (CODHES, 2011: 8).²³⁷ Whether one or the other figure is closer to the truth, it is undeniable that close to ten percent²³⁸ of the population of the country has been ejected from their homes in a violent fashion and condemned to wander in search of a place where they can rebuild their lives.

Forced migration affects the whole of the national territory. This territory, in accordance with what is established in the Constitution, is divided into thirty-two departments and one capital district (Bogotá). All of these territorial entities, to varying degrees, expel and receive people. According to the figures released by Social Action on 31 March 2011, the departments that have expelled the highest number of people are, in descending order, Antioquia, Bolívar, Magdalena, Chocó and Nariño. At the same time, the departments that have taken in the highest number of displaced people are Antioquia, the Capital District of Bogotá, Bolívar, Valle del Cauca and Córdoba.²³⁹ The data provided by CODHES for the period from 1999 to 2010 differ slightly in naming the highest receiving districts as the following: Bogotá, Antioquia, Valle del Cauca, Nariño and Magdalena.²⁴⁰

What all the reports agree on is the rural origins of the majority of people experiencing displacement. Furthermore, the Third Monitoring Survey states that 60 percent of the family groups registered were expelled from rural areas, 24 percent from urban areas and 15 percent from municipal centers (Comisión de Seguimiento 2010b: 33). This tendency is confirmed by Social Action's report, which states that 78 percent of displaced people come from rural areas (Escobar, 2010: 33). This shared background

²³⁶ According to the RUPD, and managed by SA, on 31 March 2011 the number of displaced people amounted to 3,700,381. Figure taken from the web page <http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=383&conID=556> (accessed on 8 June 2011).

²³⁷ The exact figure cited by CODHES is 5,195,620, and it is acknowledged that the actual number could be even higher.

²³⁸ The last census carried out in Colombia, in June 2005, showed that the population was 42,888,592. The National Administrative Department for Statistics estimated on 6 April 2011 that the figure would have grown to 45,920,560.

²³⁹ Figures taken from Social Action's website, <http://www.accionsocial.gov.co/EstadisticasDesplazados/GeneralesPD.aspx?idRpt=2> (accessed on 8 June 2011).

²⁴⁰ Figures taken from the CODHES website, http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=39&Itemid=51 (accessed on 8 June 2011).

is related to the process of territorial dispossession that this demographic is subject to, the volume of which had been measured by the Monitoring Commission,²⁴¹ for the period between 1980 and July 2010, at 6,65 million hectares (not taking into account the territories of ethnic communities), which amounts to 12.9 percent of the agricultural surface of the country's arable land (Comisión de Seguimiento, 2010a: 4).

The process of the expulsion of the populace, from both urban and rural origins, has been extended over time. However, as has been mentioned previously, the only data available were collected relatively recently, as the official registry system for these movements only came into being in 1998. Nevertheless, the analysis of the information collected by the Third Monitoring Survey indicates that before that date, 11 percent of the people registered in the RUPD and 30 percent of those who were not registered had been displaced. Following this milestone, it is acknowledged that the period of most intense displacement was between 2000 and 2004, affecting 45.2 percent of those registered and 31.7 percent of the unregistered. Some 34 percent of those registered were displaced between 2005 and 2009, compared to 24 percent of those not registered in the RUPD (Comisión de Seguimiento, 2010b: 29).

It is important to note that expulsion has slowed since 2004 (with a brief rise in 2008), and the number of people in a situation of displacement has decreased every year.

1.2.3. The Causes and Authors of Forced Exoduses

Displacement does not strike without warning. As a general rule, displacement takes place in a context of generalized violence, armed conflict and/or constant violation of human rights, in which the local population has been threatened or suffered personal damages. In fact, 85 percent of family groups interviewed in the Third Monitoring Survey reported a situation of generalized violence in their place of origin: 75 percent reported armed confrontations, 41 percent the burning of crops or houses, 73 percent the armed occupation of towns or villages, 76 percent restricted access to the area and 58 percent containment practices.

Furthermore, a substantial proportion of these people report figures that indicate the existence of land-grabbing strategies: 9 percent reported situations in which vast amounts of land have been purchased, 10 percent reported the proposal or enactment of large-scale projects, 8.55 percent reported the sowing of new crops such as African palm or sugar cane, 27 percent indicated the sowing of illicit crops or trade thereof, and 24 percent reported the transportation of these same substances (Comisión de Seguimiento, 2010b: 38). It is therefore very likely that in these cases displacement was caused by the need to consolidate such strategies.

²⁴¹ The Commission Monitoring Public Policy on Forced Displacement is a civil initiative created in November 2005 to build on the conclusions of a conference on this subject organized in cooperation with the Universidad de los Andes, CODHES, Viva la Ciudadanía and the Confluence for Democracy. The commission periodically publishes reports on the degree of compliance with the orders handed down by Ruling T-025 from 2004 and its multiple orders of compliance that are presented to the Constitutional Court, which has been openly recognized as overseer. The commission has thirteen members from the academy, NGOs and indigenous and Afro-descendant organizations.

With regard to the direct causes of exodus, direct threats constitute the most significant one. In 2010, 53.4 percent of family groups registered in the RUPD reported direct threats as the motive for their flight. Furthermore, when comparing this figure with other historical periods, we see that the incidence of this cause is growing over time. The figure among groups of displaced people reporting direct threats as a cause between 1980 and 1997 was 40 percent, which rose to 50 percent between 1998 and 2004, and again to 65 percent and above from 2005 onwards. Curiously, the incidence of this cause is lower among families who are not registered, at 46 percent.

The second greatest cause is violence suffered in a nearby location that has led to the death of a family member or friend, which was present in 16.7 percent of registered families and 11 percent of unregistered families. Massacres constitute the third greatest cause, cited by 8.7 percent of registered families and 10 percent of their unregistered counterparts (Comisión de Seguimiento, 2010b: 33–34).²⁴²

According to the Third Monitoring Survey, in terms of the actors responsible for the causes leading to forced exoduses, the paramilitary forces are the most frequently cited; they have been reported by 31.2 percent of households registered in the RUPD and by 33.5 percent of those that are not registered. These are followed by the FARC guerillas that are responsible for 26.7 percent of displacements in registered families and 22.9 percent of unregistered families. The third place is taken by unidentified guerilla groups, with 14.5 percent of exoduses in the official register and 9 percent of those not registered. Unidentified armed groups occupy fourth place, with 8.6 percent of registered households and 9 percent of the rest. Finally, 10 percent of both registered and unregistered households report multiple groups as the cause of their situation (Comisión de Seguimiento, December 2010: 36).²⁴³

As noted above, it is worth stressing that, although the actors in the armed conflict are also those mainly responsible for displacement, this does not mean that the entirety of forced exodus should be considered an act or consequence of this war. In fact, various studies have concluded that when searching for reasons for displacement, one finds reasons in addition to the desire for territorial control, which is the primary objective of the parties involved in armed conflict. The implementation of a particular economic model, which is based on the mining industry and extensive agriculture, also constitutes a reason for the expulsion of farmers (Lemaitre, 2011). The same can be said of the process of concentrating the most fertile territories in a few hands, a structural problem²⁴⁴ that has a close relationship to forced migration, insofar as it is

²⁴² The figures cited by the RUT for 2010 support this claim. Some 51.8 percent of people registered reported direct threats as the cause of their displacement. Fear is the second most commonly reported, at 12.8 percent; violence is the third most common, with 8.5 percent; and the murder of someone close to the displaced person is the fourth, with 6.1 percent.

²⁴³ On this point, the information offered by the RUT is in direct contradiction, as the people registered in this system report the FARC as the main agent of their displacement (45 percent), while paramilitary and self-defense groups occupy second place, with 27 percent of cases. Armed groups of unknown origin take third place, with 17 percent of displacements, and the police force is reported in 2 percent of cases.

²⁴⁴ The Agustín Codazzi Geographic Institute, the official body responsible for the cartography of the country, presented a summary of the trends in Colombian territories in 2007. According to this document, 94 percent of land owners in the country (3,346,445) own a mere 18.7 percent of its surface (12,683,460

one of the mechanisms employed for its development. It is not a coincidence that both processes—the concentration of rural property ownership and forced migration—have been exacerbated since 1996 (Comisión de Verificación, 2008: 22).

The violent appropriation of territories is undeniably a strategy of war that complements efforts for territorial control and helps finance rebel forces (Ibáñez and Querubín, 2004: 60). The complex dynamic of internal armed conflict allows for the establishment of alliances between armed actors and groups with legal and illegal economic interests, who employ forced exodus as a means of expanding the lands in their possession, which further increase their profit-making activities. However, we should not discard the possibility that this may simply be a way of gaining access to land on behalf of large-scale landowners, who employ conflict as a means and excuse to satisfy purely economic objectives.²⁴⁵

1.2.4. Types of Displacement and Their Frequency

The process of forced internal migration occurs in three different ways. The first type is mass migration involving at least ten families, grouped or individual. This has been the most common among families registered in the RUPD, with a 40 percent rate of incidence. In the case of those that are not recognized by the state, the figure is 36.8 percent; the similarity of the figures is explained by the fact that the visibility characterized by this type of exodus constitutes a certain pressure for its recognition on the part of authorities. The second type has involved 28 percent of the families registered and 28.7 percent of those that are not. Finally, the third type has been the mode of displacement of 32.4 percent of registered households and of 34.5 percent of unregistered households (Comisión de Seguimiento, 2010b: 35).

It is important to point out that these results of the Third Monitoring Survey contrast with the idea that has been upheld up to this point, which maintains that internal forced exodus in Colombia has been a phenomenon experienced mostly on an individual level, an idea supported by the figures supplied by Social Action (Rodríguez and Rodríguez, 2010: 17). On the contrary, the data found in the studies carried out reveal a growing tendency for mass displacement. Indeed, the first survey, carried out in 2007, showed that 21 percent of exoduses belonged in this category, a figure that grew to 40.7 percent in the second survey in 2009. The third survey revealed a very slight decrease, placing the figure at 40 percent (Comisión de Seguimiento, 2010b: 66).

According to the same source, 90 percent of displaced households have been displaced once. Just over 7 percent have been displaced twice, and 1 percent have experienced it three or more times (Comisión de Seguimiento, 2010b: 29).

hectares), and 1.4 percent of land owners (48,212) own 65.4 percent of the surface (44,260,931 hectares). Analysis cited by the Monitoring Commission in its fourth report from June 2008, p. 22.

²⁴⁵ On this point, it is important to recall the work of Mauricio Reyes during the nineties, in which he established the connection between drug trafficking and the concentration of land ownership. Particularly with respect to the purchase of land by drug traffickers, see Francisco Thoumi (Ed.) (1997), *Illicit Drugs in Colombia: Its Economic Political and Social Impact*, Ariel-PNUD, Bogotá.

1.2.5. Profile of Internally Displaced Persons

As has been previously mentioned, there is no archetype for a displaced person. However, it is possible to establish certain characteristics that are unique to this demographic. In brief summary, it could be stated that it is a mostly young, female group, with a growing presence of people belonging to ethnic minority groups, which experience a series of challenges that increase their vulnerability.

According to the Third Monitoring Survey, this demographic is mostly female (52.4 percent), compared to the 50.7 percent present in the general population of the country.²⁴⁶ In addition, the survey reveals that children and adolescents play a large role in displaced households. Sixty-five percent of those registered in RUPD are under the age of 25, a proportion that is slightly lower among the unregistered, where it is 60.7 percent. These figures contrast with those provided by DANE, according to which 47.8 percent of the country's population is under the age of 25. It is worth mentioning the heightened proportion of children under 4 years of age among the displaced population, as they represent 13.7 percent of registered households and 14.3 percent of the unregistered, even though this age group makes up only 9.1 percent of the national population²⁴⁷ (Comisión de Seguimiento, 2010b: 52–54).

The young age of a significant part of the displaced population contributes to its vulnerability, not only because of the particular needs of children and adolescents but also because of the increased rate of economic dependency. This situation is exacerbated in cases of female-headed households, which represent 45 percent of the displaced (much higher than the national figure of 29.9 percent), as in these cases the heads of the household are responsible for 4.6 people as opposed to the national average of 2.9, who are generally the responsibility of male-headed households. It appears that the difference is due to the fact that in the latter situation there tends to be a spouse who shares the responsibility, which is usually not the case in the former (Comisión de Seguimiento, December 2010: 60).

The notable presence of ethnic minority groups constitutes another important characteristic of the displaced population. In fact, these groups represent 14.01 percent of the Colombian population²⁴⁸ and 28.8 percent of the population of people expelled from their home. People of African descent, who represent 10.6 percent of the country's population, are the most affected group, constituting 22 percent of displaced households (22.5 percent of those registered in the RUPD and 19.4 percent of unregistered

²⁴⁶ The RUT offers a different viewpoint, stating that 49 percent of the displaced population is made up of women. It is, in any case, a minority figure, and the report mandated by SA recognizes a female preeminence in the composition of this demographic. The data offered by the RUPD reveal a majority female presence.

²⁴⁷ The RUT also points out that, according to their records, of the children in displaced households, 21 percent are under the age of seven. The report by SA places the figure at 13 percent, which is a lower figure than that cited by the impoverished population who are aided by JUNTOS, where it is 15 percent.

²⁴⁸ Figure collected by the last national census carried out in 2005, in accordance with DANE. See "The Statistical Visibility of Colombian Ethnic Groups" ("La visibilización estadística de los grupos étnicos colombianos"), available at http://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf (accessed on 8 June 2011).

respondents). Indigenous people, who represent 3.4 percent of the Colombian population, have also been disproportionately affected, constituting 6.1 percent of the population in a situation of forced exodus (6.4 percent of people registered and 4.5 percent of the unregistered)²⁴⁹ (Comisión de Seguimiento, 2010b: 57). The greater effects experienced by these people can be explained by the interests representing the territories they occupy, both because of the territories' strategic position in the context of armed conflicts between the different factions and because of the value of the soil and what lies beneath it. These statistics reveal the particular vulnerability of these groups, which cannot count on the effective protection of the state, a condition that facilitates their expulsion.

The combination of the common characteristics in gender, age group and ethnic background allows for a glimpse into the fragility of the displaced demographic, whose members have been ripped from their communities of origin and forced to wander the country in search of a place to settle. This vulnerability is further increased by three additional factors: the rate of disability they represent, their low level of education and the dispossession they have been victim to.

Five percent of displaced people present some physical or mental disability. These disabilities are most often experienced by people over the age of 65 (30 percent of people in this group have a disability), 9 percent of which are among heads of households, which makes them and their families more vulnerable by hindering their ability to earn an income (Comisión de Seguimiento, 2010b: 56 and 57).

The low level of education among this population constitutes another element of their fragility. Some 20 percent of heads of households are illiterate, which reflects the structural problems of education policy, particularly in the rural parts of the country, where the majority of this demographic come from. But this is not only a problem among heads of households: 14.95 percent of the displaced population above fifteen years of age find themselves in this situation. This high proportion is in contrast to the 6.9 percent of illiteracy in the general population of the country (Comisión de Seguimiento, 2010b: 58).²⁵⁰

Finally, the dispossession that these people have been victim to constitutes a third and significant factor in their vulnerability. In Colombia displacement has been a means of illegally appropriating territory and movable and immovable assets, which has sentenced the groups of displaced people affected by it to poverty. The Third Monitoring Survey showed that 84 percent of registered households in the RUPD displacement involved the loss of goods (not including household goods, as this would bring the figure to 99 percent). These losses have been classified in the following way: 72 percent lost animals, 50 percent machinery and equipment, 42 percent land, 32 percent crops, 24 percent productive infrastructure and 19 percent non-rural real estate. The situation among the unregistered is similar, as 78 percent have lost some goods,

²⁴⁹ The RUT confirms this tendency, stating that 15.1 percent of people registered are of African descent and 3.9 percent are from indigenous groups. Furthermore, the report from SA indicates that 5 percent of displaced families aided by JUNTOS are indigenous, while 16 percent are of African descent.

²⁵⁰ According to the RUT, 16 percent of the people registered have received no school education.

separated into the following categories: 63 percent animals, 45 percent machinery and equipment, 36 percent land, 23 percent permanent crops, 17 percent non-rural real estate and 16 percent productive infrastructure.

These properties were forcefully taken or simply lost. The consolidated analysis of registered and unregistered households in the official register reveals that a mere 3.5 percent of them managed to freely sell their land, leave it to be looked after by family or friends, or set up sharecropping contracts. An equal percentage was forced to sell the land, and 2.2 percent gave it up without receiving anything in return. The remaining 90 percent simply felt forced to abandon their possessions.

This abandonment is particularly serious in a country where the registry systems for rural property are characterized by their informality. Thus, although 78.3 percent of households are considered owners of the land they possessed before they fled, only 21.2 percent were in possession of the official documents that accredited this ownership. This absence of titles enables the dispossession of these goods and considerably hinders their recovery by their rightful owners (Comisión de Seguimiento, 2010a: 3).

In summary, it could be said that people in a situation of forced exodus, despite their diversity, share two common characteristics. First, they meet certain conditions of gender, age, ethnicity and provenance that put them in a vulnerable position, independently of the migration that has been imposed upon them. That is to say, their situation was relatively fragile even before they were forced to abandon their place of usual residence. In addition, these people had possessed goods, relationships and knowledge that provided them resources that enabled them to go through everyday life. Their brutal expulsion from these places robbed them of these assets, sinking them into poverty and destroying their condition as members of a community, turning them into constant outsiders.

1.2.6. Intention to Return

People cease to be in a situation of displacement when they return to their place of origin or when they settle in another place. In both of these cases, the Constitutional Court has made the point that it should be a voluntary decision that should be carried out under the supervision of the state in a way that guarantees the safety and fundamental rights of returnees and resettled people.²⁵¹

State policy in this regard has centered on return as the path to overcoming the condition of displacement (Escobar, 2010: 24). However, the wish to return to the place of origin is rare among those who find themselves in this situation. According to the Third Monitoring Survey, only 5.7 percent of households registered with the RUPD and 6.1 percent of those not registered have this intention. The majority of this population would prefer to remain in the municipality they are in, as reported by 72.4 percent of registered households in the RUPD and 74 percent of those not registered. A substantially smaller proportion contemplate the possibility of relocation in another municipality (10.4 percent and 9.4 percent respectively) or have yet to decide what to

²⁵¹ Constitutional Court, Rulings T-372/02 and T-025/04 and Judicial Decision 383/10, among others.

do (9.3 percent and 9.0 percent). Finally, a small amount of people consider leaving the country altogether as an option (2.1 percent and 1.6 percent respectively).²⁵²

The reason that return is not an option for the majority of these people has to do with the unsafe conditions in their place of origin, the lack of a place to return to, and the low probability of access to certain goods and public services (such as electric power, education and healthcare services).²⁵³ In addition, the time that passes after the exodus also influences the intention to return: the more time has passed, the lower the intention to return (Comisión de Seguimiento, 2010b: 39–41).

1.3. Conclusions

Forced displacement is not merely a consequence of the internal armed conflict that Colombia has been facing for over six decades. Its causes have their roots in structural conflicts that have been present throughout the country's history. Development has implied the armed appropriation of various areas of the national territory, both for strategic aims and to exploit the conquered territories. Yet the public policy on displacement, which was designed and implemented from 1997 onwards, does not acknowledge the existence of this broad spectrum of causes and nuances, only offering assistance to those who can prove that they have been expelled from their places of usual residence within the context of the war for control of the state. The consequence of this decision has been the vulnerability of a sector of the demographic that finds itself in a situation of displacement, even though their circumstances are similar to those experienced by people who are able to receive protection from the state.

The population of displaced people, moreover, constitutes one of the most vulnerable demographics in the country. Their fragile situation, despite what some might think, is not solely related to the exodus they have been victims of. The expulsion from their place of residence has brought with it the dispossession of their goods and the destruction of the social fabric in which their life had developed. These people must therefore confront their new nomadic situation, having been deprived of nearly all ownership but also of their condition as members of a community and as a consequence a part of their identity. In addition, these people already have a number of disadvantages that aggravate their situation. Their elevated illiteracy rate reveals longstanding serious flaws in the public policies designed to guarantee the fundamental rights of the entirety of the Colombian population. Therefore, a policy aimed at their protection should address not only the situation brought about by expulsion and uprooting but also the deficiencies that they endured even before they faced this particular situation. This is an

²⁵² The RUT shows a slightly higher intention to return: 7.3 percent want to return, 17.2 percent want to relocate, 1.65 percent wants to leave the country and 61.6 percent want to stay in the municipality that took them in.

²⁵³ The study surveyed people who were displaced after 1998 and looked into the reasons that they would not want to return. The results for registered and unregistered are as follows: 37.4 percent because of fear and terror, 12.8 percent because they know or think there are persistent unsafe conditions, 16.8 percent because they lack the resources, 3.1 percent because of the poor living conditions in their place of origin, 3.1 percent because of the better employment conditions in their adopted place of residence, 1.0 percent because of the better education opportunities in their adopted place of residence.

opportunity that cannot be allowed to slip away; an opportunity to guarantee the effective enjoyment of socioeconomic rights by a part of the population that has previously been marginalized.

Finally, the vast majority of people in a situation of displacement do not intend to return to the place from which they were expelled. This decision is partly due to the unsafe conditions of these populations' places of origin, but it can also be explained by the fact that they have decided to reorganize their life in the places where they have found refuge, particularly among people who have spent longer amounts of time in these situations. It is a fully legitimate decision made as an exercise of a person's right to self-determination and should therefore be respected by public authorities. As a consequence, it would be helpful to revise the policy that prioritizes return as the definitive solution to the situation of forced exodus. It is important to design new alternatives that are consistent with the wishes of those affected.

2. Colombian Policy of Comprehensive Assistance for Displaced Persons

The responsibility to assist and protect persons who are recognized as internally displaced individuals has been dealt with by the Colombian State through an extremely complex social policy, the structure and operation of which rests on two pillars: The first is the legal one, stated in Law 387 of 1997—supplemented by Law 1,190 of 2008 and developed through multiple decrees—which establishes the institutional framework for providing comprehensive assistance to persons in situations of forced exodus, through the stages of prevention, humanitarian care, social and economic stabilization, and return or relocation. The second is a broad set of cases of jurisprudence drawn up by the Constitutional Court, whose centerpiece is ruling T-025 of 2004. Through this sentence, a rights-oriented approach has been incorporated into the assistance scheme established by the laws.

The conjunction of these two provisions has produced what constitutes undoubtedly the most complex, ambitious, and sophisticated social policy designed so far. Unfortunately, it is also one that has generated major frustrations. Despite the reforms introduced, the resources invested in its development, and the constant surveillance of civil society, especially through the Monitoring Commission, its performance has failed to prevent forced exoduses or to comprehensively reestablish the rights of those who have been arbitrarily expelled from their homes, although some progress has been made in matters of health care and education.

This chapter offers an overview of the complex Colombian policy of assistance to persons in situations of forced exodus. To this end, the historical background is provided to allow for an analysis of the reasons that led to the policy's emergence and development and, in particular, the decisive influence of the Constitutional Court in its design and implementation, as well as the inclusion—through its jurisprudence—of the international standards of protection for displaced persons contained in the UN Guiding Principles on Internal Displacement. The policy's current structure is then described. Finally, the implementation balance is presented, analyzing, for each stage of assistance established by the policy itself, the effective degree of rights protection offered to those who have been expelled from their homes.

2.1. Establishment and Development of the Public Policy on Forced Displacement

2.1.1 Origins of the Policy

Internal forced exoduses have been a constant in the history of Colombia, their progressive increase made evident in every city by the poverty stricken exurbs that surround them. Up to the last decade of the last century, however, internal displacement was not on the state agenda as a specific problem requiring a specialized response. Until that time, it was considered nothing more than a side effect, and not necessarily the most relevant one, of other situations perceived as real problems that had to be dealt with, such as natural disasters, terrorist acts and, in particular, the internal armed conflict.

Although in 1993 the national authorities took the first steps to assist people expelled from their homes by the armed conflict,²⁵⁴ there was not yet the will to recognize displacement as a problem in itself. In fact, the National Planning Department indicated that such recognition should be avoided because it would mean channeling most of the resources to a sector of the population affected by the violence generated by the confrontation between the state and the subversive groups, and leaving those who had not fled unprotected.²⁵⁵

The change in the perception of internal forced exoduses was motivated by the conjunction of both national and international elements. In the foreground, the study developed by the Observatory on Human Rights and Displacement (CODHES) and the Colombian Episcopal Conference, “Derechos Humanos y desplazamiento interno en Colombia” (Human Rights and Internal Displacement in Colombia), published in 1995, revealed the number of internally displaced persons in the country to be between 544,801 and 627,720. The size of this figure and the horrific living conditions of these people, made clear by this work, led some nongovernmental organizations to demand that the State act to assist this group.²⁵⁶

The panorama presented by this first analysis of forced internal exoduses in the country coincided with the interest shown by two international institutions that made two visits to the country. The first, carried out by a commission of the Permanent

²⁵⁴ The Solidarity and Social Emergency Fund of the Presidency of the Republic, regulated by Law 104 of 1993, offered humanitarian assistance for the victims of terrorist attacks, including displaced persons. In addition, some agreements were signed with international organizations to provide assistance to groups of displaced people. Such was the case of the agreement signed with the Red Cross to assist 1,500 displaced persons. National Department of Planning, CONPES Document 2,803 of 1995, p. 4.

²⁵⁵ Assuming a policy aimed at persons displaced by violence would focus governmental action on reducing the impact of this phenomenon on the people who decide to migrate as a result of a confrontation between the social forces in conflict or of personal threats. However, that is only a part of the population that suffers from the impact of the violence. There are also those who decide to stay where they have settled despite threats against their life, in what could be termed “civil resistance.” The target population should then be defined based on criteria of violence and not of migration.

²⁵⁶ In particular, the Catholic Church and CODHES.

Consultancy on Internal Displacement in the Americas (CPDIA),²⁵⁷ resulted in a reserved memorandum proposing a series of measures for dealing with displacement as a problem in and of itself (Cohen, 2007). The second was performed in 1994 by the then representative of the secretary-general of the UN for internally displaced persons, Francis M. Deng, whose reflections²⁵⁸ helped lay the groundwork for the first state policy of assistance to displaced populations.

With data provided by the national analysis and the proposals for action suggested by international observers, the government proceeded to design a strategy that would allow it to face the now acknowledged phenomenon of forced displacement and attend to its victims. This task was taken over by the Economic and Social Council,²⁵⁹ which prepared Social CONPES Document 2804 of 13 September 1995, titled “National Program of Comprehensive Assistance to Populations Displaced by Violence.”²⁶⁰ This document set out the basic structure of what was to be the state’s response to this phenomenon, if understood as a violation of international humanitarian law—that is to say, viewing it as a consequence of the armed conflict.²⁶¹ Accordingly, a definition of “displaced person” was adopted that included only those expelled from their home due to confrontations of armed actors. It is worth noting that, although this definition leaves out a great number of those affected by displacement, it was nonetheless set out in Law 387 of 1997.

This first project of state response was never implemented. Lack of will and resources on the part of the public institutions involved in assisting the displaced prevented the established system from being put into practice. However, together with CONPES Document 2429 of 1997, the basis for what even today is one of the central pillars of the state response (i.e., Law 387 of 1997) was set.

²⁵⁷ The CPDIA is an informal independent group, created by the Human Rights Institute of Costa Rica in 1992, that brings together representatives of UNCHR, the United Nations Program for Development, the United Nations Children’s Fund, the World Food Program, the International Organization for Migration, the Inter-American Commission on Human Rights and the Inter-American Institute of Human Rights. The CPDIA also brings together nongovernmental organizations such as the World Council of Churches and the Group of Policies on Refugees, independent experts, and an observer from the International Committee of the Red Cross. Created with the purpose of acting as a point of exchange for information and analysis of specific cases, it prepares recommendations for governments that request them and offers technical advice to governments and organizations dealing with displaced persons. It should be noted that participants from regional agencies and the UN act in their personal capacity; the activities of the CPDIA must not duplicate those of their agencies.

²⁵⁸ The comments and recommendations of the representative were submitted in his report to the United Nations Commission on Human Rights of the. Doc. N.U. E/CN.4/1995/50/Add.1.

²⁵⁹ The National Council of Economic and Social Policy, CONPES, was created by Law 19 of 1958 and operates under the direction of the president of the republic.

²⁶⁰ The function of CONPES documents is to guide the actions of the government. Public policies are set out and evaluated through them. These documents have no binding force, and the policies that they establish are only governmental in nature. They are, nonetheless, fundamental for the preparation of any public policy since they establish mechanisms for their financing.

²⁶¹ “Forced displacement, as a violation of international humanitarian law, is a situation in which there is a simultaneous violation of both civil and political rights and economic, social and cultural rights.” Presidency of the Republic, CONPES 2,804, p. 3.

2.1.2 Law 387 of 1997

The Law for the Assistance to Displaced Populations (hereinafter Law 387 of 1997) establishes a legal framework that allows the state as a whole to respond to the needs of displaced populations, to seek definitive solutions to their situation, and to prevent new exoduses. This regulation, which was approved by the legislature and therefore endowed with binding force, was the result of the joint work of the Presidency of the Republic, specifically the Presidential Advisory Board for the Displaced, academics from the Universidad Nacional and the Pontificia Universidad Javeriana, the Ministry of the Interior, the Office of the Ombudsman, and the Church (Rodríguez and Rodríguez, 2010: 21).

Law 387 of 1997 establishes four axes around which the policy of assistance to displaced persons must be developed: prevention of displacement, humanitarian emergency assistance, socioeconomic stabilization, and voluntary return or population resettlement. The development of tasks aimed at implementing these axes is entrusted to an institutional network, called the National System of Comprehensive Assistance for Populations Displaced by Violence (hereinafter the SNAIPD for its acronym in Spanish),²⁶² which consists of twenty-seven public entities operating at the national level. These carry out specific assistance actions under the coordination of Social Action.²⁶³

This assistance scheme has been developed on the basis of a “handout” approach²⁶⁴ that emphasizes the tasks that the various state entities must carry out, whether to “seek to guarantee humanitarian assistance” during the crisis phase²⁶⁵ or to “generate sustainable economic and social conditions” during the stabilization and consolidation phase.²⁶⁶ Thus, the entities involved are assigned simple intermediation tasks that do not

²⁶² The SNAIPD consists of twenty-seven entities: Presidential Agency for Social Action and International Cooperation; Vice Presidency of the Republic through the program of Human Rights and International Humanitarian Law; Ministry of the Environment, Housing and Territorial Development; Ministry of Commerce, Industry and Tourism; Ministry of National Education; Ministry of the Interior and Justice; Ministry of Finance and Public Credit; Ministry of National Defense; Ministry of Agriculture and Rural Development; Ministry of Communications; National Department of Planning; Ombudsman’s Office; National Educational Service, Fonvivienda; National Commission of Television; Colombian Institute of Family Welfare; Agrarian Bank; Colombian Institute for Rural Development; Bank of Foreign Trade of Colombia; Presidential Advisory Board for the Equality of Women; National Commission for Reparation and Reconciliation; National Registrar of the Civil State; National Institute of Legal Medicine and Forensic Sciences; Superintendence of Notaries and Registry; Attorney General’s Office and Fund for the Financing of the Agricultural Sector.

²⁶³ Originally, the coordination of the system corresponded to the Presidential Advisory Board for Displaced Persons, which disappeared in 1999; coordination was taken over by the Social Solidarity Network, which in turn became Social Action in 2005.

²⁶⁴ Various independent reports which on the development and implementation of the policy of assistance to displaced people in Colombia have coincided in pointing out its “handout” approach and in recommending that a rights-oriented approach be adopted. Among others, the three reports developed by UNHRC for the period 1999–2002, 2002–2004 and 2004–2006, and the reports on the Public Policy for Displacement submitted to the Constitutional Court by the Verification Commission.

²⁶⁵ Law 387/97, Article 15.

²⁶⁶ Law 387/97, Article 17.

involve the recognition of rights to their beneficiaries. The regulation does not recognize rights, only benefits whose delivery is conditioned on the existence of resources to fund them.

The law only sets out the basic guidelines for what the policy should be, and it cannot be otherwise. Its implementation is the task of a body established under the same law: the National Council for Comprehensive Assistance to Populations Displaced by Violence²⁶⁷ (hereinafter referred to as the National Council). Led by the Colombian president and formed by several ministers, presidential advisers, and directors of administrative departments, as well as the ombudsman, it is responsible for formulating policies and ensuring the existence of sufficient resources to operate, through the enactment of the National Plan for Comprehensive Assistance to Populations Displaced by Violence²⁶⁸ (hereinafter referred to as the National Plan), which must be adopted according to a decree from the national government. It should be noted that, despite its critical importance, this plan was not actually formulated until 2005. While it is true that the National Council formulated a plan in 1998,²⁶⁹ it soon became obsolete because it corresponded to an embryonic stage of the system.²⁷⁰ Thus, it was necessary for the Constitutional Court to intervene so that a real plan would be made, eight years after having been mandated by the law.

The final important aspect of Law 387 of 1997 is the participation of territorial entities (provinces, municipalities and districts), as well as that of the displaced populations themselves, in the formulation and implementation of policy. The SNAIPD, as mentioned before, is located in the central administration; however, it has Territorial Committees for Comprehensive Assistance to Populations Displaced by Violence²⁷¹ that perform as interlocutors at departmental and municipal levels. These committees constitute the only spaces for the participation of displaced populations established by the law, which stipulated that two of their members should be representatives of that group.²⁷²

²⁶⁷ Law 387/97, Article 9.

²⁶⁸ Law 387/97, Article 9.

²⁶⁹ Decree 173 of 1998.

²⁷⁰ In 1999 there was a failed attempt to formulate a second National Plan, which was included in CONPES Document 3,057; it never made it into a decree.

²⁷¹ Law 387 of 1997, Article 7.

²⁷² Law 387 of 1997, Article 7: "Of the Municipal, District, and Provincial Committees for Comprehensive Assistance to Populations Displaced by Violence." The national government will promote the creation of municipal, district and provincial Committees for Comprehensive Assistance to Populations Displaced by Violence, in charge of supporting and providing cooperation to the National System of Comprehensive Assistance to Populations Displaced by Violence; the committees will consist of : (1) the Governor or the Mayor, or whoever acts on their behalf, who will chair the committee; (2) the Brigade Commander or his delegate; (3) the Commander of the National Police in the respective jurisdiction, or his delegate; (4) the Director of the Regional Health Service or the head of the respective health unit, as the case may be; (5) the Regional Director, Coordinator of the Zonal Center or Director of the Agency of the Colombian Institute for Family Welfare in the new provinces; (6) a representative of the Colombian Red Cross; (7) a representative of the Civil Defense; (8) a representative of the churches; (9) two representatives of the displaced population.

The Colombian government, which is responsible for the development and implementation of the provisions of Law 387 of 1997, undertook its task slowly. One year after its approval, the government organized and launched the National Fund for Comprehensive Assistance to Displaced Populations, which would ensure the resources required for the implementation of the policy.²⁷³ In 2000 the government established the Single Registry of the Displaced Population (RUPD),²⁷⁴ which has been a key instrument for the operation of the SNAIPD because it allows organizations to identify the affected populations and keep records of the assistance they have received as well as of their current situation, while also being an instrument for all displaced persons to access the state protection system (as explained in the first chapter).

CONPES documents constituted a second strategy for developing and complementing the dictates of the law. Thus, Document 3057 of 1997 included a proposal to improve the mechanisms and instruments of assistance to the population from the prevention stage until return or relocation, one of the main points being the creation of an early warning system whereby any person can give information on events that might trigger forced exoduses. This system is currently operating under the coordination of the Office of the Ombudsman.

The timid steps taken by the government in these first years of the policy's existence did not provide the impetus needed to effectively handle the growing number of displaced people. An analysis of this policy carried out by UNHCR revealed that it lacked a proper core, since the entity responsible for its coordination lacked the necessary authority to direct the actions of its numerous members. Consequently, the analysis stated, it could only address one-off aspects of the situation of displaced persons, without being able to follow a comprehensive action plan. The International Agency also expressed concern about the "handout" approach of state actions and the concentration of efforts on the stage immediately following exodus (humanitarian assistance), with the consequent disregard for the prevention phase and the search for definitive solutions (UNHCR, 2002).

2.1.3 The Intervention of the Constitutional Court

The insufficiencies of Law 387 of 1997 and the initial hesitant position of the government with respect to its enforcement resulted in a protection gap that was gradually filled by judicial decisions issued by the Constitutional Court. At this point it is necessary to clarify that the Court has played a key role in the design and implementation of the Colombian policies of assistance to internally displaced persons. Its decisions have changed the very structure of the policy by introducing a rights-oriented approach that was absent from the regulations approved by the legislature and the government. In addition, it has incorporated a system to monitor government measures based on indicators of the effective enjoyment of rights; the system requires authorities to make sure that the actions carried out contribute to restoring the rights of displaced persons.

²⁷³ Decree 501 of 1998.

²⁷⁴ Decree 2,569 of 2000.

In short, it can be said that the Constitutional Court is a genuine coauthor of the public policy for assistance to the displaced. At first glance, such a role may seem strange because in a democracy based on the principle of separation of powers, policymaking is a task assigned to the legislature or, more commonly, to the executive branch rather than the judiciary. While the participation of judges in central political debates in contemporary states is relatively common (Santos, Marques, and Pedroso, 1995) and it is no longer news that constitutional courts have ceased to be exclusively negative legislators in states such as Hungary (Zizark, 1996), South Africa (Burham, 1998), and even in countries with a profound continental tradition (Aja, 1998), the Colombian case is unusual in that the Constitutional Court has assumed a much more complex role than its counterparts, formulating parameters to be followed by both the legislature and the executive branch when designing and implementing a specific public policy.²⁷⁵ This has been not only possible but also acceptable in Colombia because of two factors: on the one hand, the constitutional structure of justice, which includes mechanisms that allow citizens to resort to constitutional judges with relative ease,²⁷⁶ as well as the possibility for the court to review any matters related to the protection of fundamental rights,²⁷⁷ enabling this body to establish their content and the doctrine concerning them; and on the other hand, a series of structural political factors related to the crisis of representation faced by Colombian society and the weakness of social movements, which results from, among other things, the tendency to deem the various manifestations of peaceful protest subversive acts. As a result, claims against social policies are usually channeled through legal actions. The decision of some judges to urge the defense and development of fundamental rights, demanding that they be included in the design of public policies, must be added to these two elements. As a group, these factors have produced a jurisprudence that is not only very active and of high impact on the legal system, but also deeply concerned with guaranteeing the protection of rights (García and Uprimny, 2004).

Having explained the structural causes that allow us to understand the active role of the Constitutional Court in the construction of the state's response to internal forced exodus, it is possible to begin to analyze its role.

The protection of the rights of persons in situations of forced displacement has been a matter of interest for the Constitutional Court since 1997. It should be noted that the first ruling on this subject was handed down a few months before the passage of

²⁷⁵ It is likely that only the experience of the Supreme Court of India matches the role of the Constitutional Court of Colombia in the creation of public policy. S. Muralidhar (2008), "India: The Expectations and Challenges of Judicial Enforcement of Social Rights," in M. Langford (Ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Cambridge University Press, New York, pp. 102–124.

²⁷⁶ Since 1910, Colombia has had a provision for public claims of unconstitutionality. Any citizen can sue at any time for the annulment of a law that violates the Constitution. On the other hand, the 1991 Constitution introduced the judicial action of protection whereby any person may file a claim before any judge in the country for the protection of their fundamental rights against an action, omission, or threat by a public authority and, under certain circumstances, by private individuals.

²⁷⁷ The Constitutional Court has competence to review last instance sentences in cases that claim protection of fundamental rights.

Law 387.²⁷⁸ Up to the year 2000, however, the decisions of the Court did not aim to alter the structure of public policy but to issue a series of orders aimed at ensuring the most essential rights in one-off cases.

However, the lack of interest shown by the government in the development of the assistance policy, and the poor results of the same, led this court to modify its attitude. Thus, Ruling SU-1150 of 2000 instructs the President of the Republic to carry out the activities necessary to overcome the stagnation into which the policy has fallen, effectively guaranteeing the protection of persons in situations of internal displacement. Ever since, the pronouncements of this court have attempted to have a direct influence on specific aspects of the assistance system established by Law 387, thus filling the gap created by the absence of a true National Plan and insisting in particular on the need to incorporate the rights-oriented approach into the benefits provided for by that law.

The efforts made in this second stage did not produce the expected results. The expulsion of populations continued to increase, reaching a historic peak in 2002, while the growing number of displaced persons faced a double victimization: that caused by the exodus imposed on them, and that caused by the inability of the authorities to restore their rights.²⁷⁹ This situation led the court to modify its strategy and directly influence the structure and the design of the policy.

Such a step was taken through Ruling T-025 of 2004, which declared the current situation an “unconstitutional state of affairs”²⁸⁰ with regard to the conditions of the displaced populations, which meant that there was a structural failure in the actions of the state, which resulted in turn in a massive violation of essential rights. The ruling also established the parameters that should be followed for the policy to conform to the constitutional mandates relating to the guarantee of fundamental rights and special protection for vulnerable groups. In other words, through this decision the Constitutional Court went from issuing somewhat specific orders to establishing basic guidelines that the executive branch must follow at the time the institutional network established by Law 387 was launched. These guidelines, incidentally, also applied to the legislature, should the law be modified or replaced.

The approach on which these parameters are based differs from that used by the government and even the legislature. The court considers displaced persons to be holders of fundamental rights, not simple beneficiaries of a specific public policy. Therefore,

²⁷⁸ Constitutional Court, Ruling T-227 of 1997.

²⁷⁹ The situation of extreme vulnerability of displaced individuals, which results from the inefficacy of the state in properly looking after them, was noted by the Constitutional Court in its Ruling T-025 of 2004: “92 percent of the displaced population have unsatisfied basic needs (UBN), and 80 percent are destitute. Also, 63.5 percent of the displaced population have inadequate housing, and 49 percent do not have suitable facilities.”

²⁸⁰ The unconstitutional state of affairs is a judicial creation that appears for the first time in Ruling SU-090 of 2000. For one to be declared, the following conditions must be met: (1) repeated violation of the basic rights of many persons, who can resort to an Action for the Protection of their Fundamental Rights (known as a *tutela* in Colombia) to defend their rights, which carries as a consequence the risk of a collapse of the judicial system, and (2) the cause of that infringement is not to be attributed solely to an authority but must rest on structural factors. This figure has not only been used by the Colombian court; the Supreme Court of India has resorted to similar constructs as well (Muralidhar (2008), Op. Cit.).

assisting and protecting displaced persons is a priority that cannot be deferred on the grounds that the funding system has failed or because there are other issues of a more general interest. Moreover, persons who have been forced to abandon their place of habitual residence have a fundamental right to be assisted in their basic needs, since the vital minimum that allows an individual to enjoy a dignified existence is at stake.

State action, when further forced exoduses cannot be prevented, should be directed toward the comprehensive reparation of the rights that have been violated due to the expulsion and toward allowing those who have been displaced to regain control over their lives. The SNAIPD as a whole must therefore work toward this end, and must therefore be provided with the necessary resources and legal mechanisms for action and coordination.

In order to achieve this purpose, the ruling established a series of orders directed to the authorities responsible for the assistance given to displaced populations. First, it demanded the creation of a true National Plan that would replace the obsolete instrument approved in 1998. This plan should include the collection and systematization of basic information on the situation of displaced populations, as well as the provision of the resources needed to proffer assistance; the latter required establishing the origin of those sources and distributing budgetary efforts among the central government, the provinces, the municipalities and institutions of international cooperation. In addition, the ruling established the obligation to make every effort to achieve the budget required to assist the displaced. Finally, it was determined that measures had to be taken to ensure this collective's effective enjoyment of its fundamental rights—that is, the right to life, dignity and personal integrity; the right to a family and to family unity; the right to subsistence and to basic health; the right to not be discriminated against; the right of children to basic education; the right to counseling for socioeconomic stabilization and the right to decide freely whether to return to the place of origin or to stay in the place of displacement.

To ensure that these orders were met, the court retained jurisdiction over the subject and took over the task of performing ongoing detailed monitoring of the performance of the state. This process will be analyzed below, but first it is necessary to address a particularly relevant aspect of constitutional jurisprudence: the incorporation of international rules relating to the protection of IDPs into the national policy.

2.1.4 Guiding Principles on Internal Displacement and Their Incorporation into Colombian Policy

The Guiding Principles on Internal Displacement are an instrument developed within the Organization of United Nations; they set forth the parameters to be followed by states when assisting and protecting displaced populations. These principles, prepared under the direction of the special rapporteur of the secretary-general of the United Nations for internally displaced persons and approved by the Commission on Human Rights in 1998, bring together the rights held by people who face forced exodus through a reinterpretation of the conventions and other regulations of international human rights law, refugee law and international humanitarian law. This instrument also

establishes that the primary responsibility for assisting displaced persons lies with the state. Other members of the international community, however, have a subsidiary responsibility that legitimates their collaboration in the assistance given to this group.

The protection offered to forced internal migrants through this set of principles revolves around two elements. The first is the right not to be arbitrarily displaced, which is considered essential for guaranteeing the dignity of every human being, in that it is a requirement for the enjoyment of other rights.²⁸¹ The second is the situation of extreme vulnerability faced by those who suffer violations of this right, which are always more serious than those of other victims of the same situation or conflict.²⁸² Consequently, a responsible state must offer displaced people special and priority treatment.

Despite its nonbinding nature,²⁸³ this instrument has been widely distributed and very well received. In fact, it has had a decisive influence on the design and implementation of the responses to internal forced exoduses by the African²⁸⁴ and Inter-American²⁸⁵ human rights systems. National policies in this area have also been influenced by this instrument, as in the case of Mexico, whose government has committed to developing actions based on it.²⁸⁶ In 2004, Peru approved Law 28,223, which establishes measures for the protection of internally displaced persons based on these guiding principles. Nevertheless, Colombia is probably the country where this instrument has made a greater impact.

Because it was passed shortly before their formulation, Law 387 did not take these Guiding Principles into account. This absence, however, has been amply compensated by the work of the Constitutional Court, which adopted them as a central element in justifying its views on what the state response to forced exodus should be. That is, the guiding principles are the basis on which this court has constructed its rights-oriented approach. It must be taken into account that Law 387 enshrines no rights—and neither

²⁸¹ UN Document E/CN.4/Sub.2/1997/23, paragraph 12.

²⁸² UN Document E/CN.4/1995/50, paragraph 14.

²⁸³ Most of the doctrine considered the Guiding Principles a soft law instrument, as they came out of the work of a group of experts and a reinterpretation of the rules of international law that has not been approved by nations through the signing of a treaty. However, a minority sector holds that, given its content, they are hard law rules and therefore fully binding (Kälin, Walter, 2002, “How Hard is Soft Law? The Guiding Principles of Internal Displacement and the Need of a Normative Framework”; Cohen, Roberta, Deng, Francis, and Kälin, Walter, “Recent Commentaries about the Nature and Application of the Guiding Principles on Internal Displacement,” document available at <http://www.brookings.edu/projects/idp.aspx>).

²⁸⁴ On 22 October 2010 in Kampala (Uganda), the African Union adopted the Convention for the Protection and Assistance of IDPs in Africa, to which twenty-six states are signatories and which has already gone into effect. This treaty is inspired by the Guiding Principles, although it establishes provisions to deal with the special characteristics of the phenomenon in the region.

²⁸⁵ The Inter-American system has not yet produced a specific instrument to deal with internal forced exoduses. However, the General Assembly of the Organization of American States has addressed the issue in several resolutions, and the Inter-American Court of Human Rights has made several decisions in this regard. The Guiding Principles have been used by the latter as a tool to interpret the obligations of the state to its displaced persons.

²⁸⁶ UN Document E/CN.4/2004/77, paragraph 18.

do the decrees regulating it—but only benefits for the users of the SNAIDP. Therefore, upon demanding a structural change in the state response, the court had to present arguments to legitimize its position; as an international regulation that guarantees human rights, the Guiding Principles constituted such an argument.

In order to achieve this, since 2000 constitutional jurisprudence has noted that although not an international treaty, “these principles... should be taken as parameters for policy creation and interpretation in the field of the regulation of forced displacements and the assistance given to displaced persons by the state”,²⁸⁷ because the wide acceptance they have had makes them a valid instrument to fill the gaps in international law against involuntary exoduses. This function operates notwithstanding the fact that, according to the court, several of the provisions of this instrument are simple iterations of provisions included in treaties of international human rights law and international humanitarian law, and therefore, have constitutional status under the mandate of Article 93 of the Constitution.²⁸⁸ The Guiding Principles are, therefore, superior in nature to the national legislation, which must be respected by the legislature and by the government when designing and implementing mechanisms of assistance for internally displaced persons. This means that the rights it grants these persons, as well as the obligation to guarantee them in a special and priority form, must be incorporated into the public policy intended for their assistance.

This line of legal argumentation has remained largely unchanged since then. However, Ruling T-025 of 2004 went a step further and, by identifying the rights that have been violated as a result of a forced exodus, determined exactly which provisions of the Guiding Principles must be taken into account when establishing actions to restore each one.

In summary, it can be said that through constitutional jurisprudence the Guiding Principles for Internal Displacement have not only been incorporated into the national policy of assistance but also become central to it.

2.1.5 The Process of Monitoring Enforcement of Ruling T-025 of 2004

As mentioned before, once the ruling was enacted, the Constitutional Court retained jurisdiction over the case, which resulted in an interesting follow-up process for the ruling’s enforcement. Monitoring has been carried out through three different mechanisms: public hearings, the Verification Commission and subsequent judicial decisions.

These public hearings are convened by the court, which examines government reports in the presence of the heads of the entities responsible for enforcing the policy, international organizations, NGOs, and organizations of displaced persons. The Monitoring Commission comprises various sectors of civil society—as mentioned in

²⁸⁷ Constitutional Court, Ruling SU-1150 of 2000.

²⁸⁸ The Colombian Constitutional Court has developed, through an extensive case-law exercise, the concept of constitutionality block, in which regulations that are not part of its text are included in the Constitution. International human rights and humanitarian treaties ratified by Colombia are part of this set of rules to which constitutional status is attributed.

the first chapter—and has assumed overseeing compliance with the ruling, submitting reports to the court on a regular basis. Finally, the court has made further decisions on the enforcement of its own rulings, mostly on the grounds of information provided through the hearings and the commission.

Both the hearings and the Monitoring Commission will be analyzed in greater depth in the third chapter, which is devoted to the study of spaces established by the policy for the participation of civil society in general and of displaced populations in particular. This section will therefore focus on the judicial decisions. These are intended to give continuity to the orders given in rulings, to require reports and concrete actions on the part of the responsible authorities and to assess the evolution of the policy, as a whole, as well as in terms of specific aspects. Consequently, these decisions have complemented the obligations of the authorities responsible for the protection of persons in situations of displacement, demanding that new elements necessary to achieve comprehensive protection for this group be taken into account. In addition, a monitoring system based on indicators of the effective enjoyment of rights has been established.

The court has been prolific in the production of these decisions. In fact, from February 2004 to June 2011 it issued 89 dispositions that can be grouped into three chronological periods. During the first period, from 2004 to 2006, it made a critical analysis of the policy, identifying a series of recurrent performance failures and giving orders aimed at overcoming them.²⁸⁹ The second period, between 2007 and mid-2008, focused on correcting a deficiency identified in the previous stage: the absence of a system for evaluating the results of the policy. After an intensive process of coordinated work involving the central government, the Office of the Attorney-General, the Monitoring Commission and UNHCR, the court passed a set of indicators to monitor the effective enjoyment of rights and measure the impact of the state response on a set of twenty rights.²⁹⁰ These indicators have been intensively employed by the court in monitoring government actions during the last period, and this close observation has led it to demand concrete results and issue quite specific orders to achieve this end.²⁹¹ Also at this stage, it has demanded that the authorities use a differential approach to develop programs and actions specifically aimed at the protection of certain particularly vulnerable displaced persons or groups with special needs, such as women,²⁹² children and adolescents,²⁹³ indigenous peoples²⁹⁴ Afro-descendant peoples,²⁹⁵ and disabled persons²⁹⁶ (Rodríguez and Rodríguez, 2009: 30–34).

²⁸⁹ Constitutional Court, Judicial Decisions 185 of 2004; 176, 177 and 178 of 2005; and 218 of 2006, among others.

²⁹⁰ Constitutional Court, Judicial Decisions 109 and 233 of 2007 and 116 of 2008.

²⁹¹ Constitutional Court, Judicial Decisions 008 and 011 of 2009, and 383 of 2010, among others.

²⁹² Constitutional Court, Judicial Decision 092 of 2008. This decision instructs the government to adopt thirteen programs designed to “fill gaps in the public policy of assistance to forced displacement victims from the women’s perspective, in such a way as to effectively counteract the gender risks in armed conflicts and the gender facets of forced displacement.”

²⁹³ Constitutional Court, Judicial Decision 251 of 2008. This decision ordered the creation of fifteen pilot projects addressing children and adolescents who are victims of forced displacement. Authorities were also ordered to take specific measures in relation to the eighteen thousand children and adolescents identified in the decision.

2.2. Public Policy of Assistance to Displaced Persons in Colombia

The extensive jurisprudence of the court, expressed both in rulings and in judicial resolutions, has led to intensive work on developing and modifying the policy, carried out basically by the government, although the legislature has also participated with regard to the latter.

At present, Law 387 of 1997 remains in effect. The structure of the assistance to displaced populations it sets forth, and in particular the institutional network it provides for, remain essentially as they were designed in 1997, even though two of its provisions have been found unenforceable by the Constitutional Court.²⁹⁷ A decade after the enactment of that provision, Law 1,190 of 2008 added some points to the assistance scheme without fundamentally altering it. Thus, it establishes that the National Council is responsible for coordinating the central level of the policy with the provincial, municipal and district levels. Up to now, this task had been entrusted to the Ministry of the Interior and Justice, which had been seriously criticized by the Constitutional Court for its inability to develop a strategy that would allow coordinated institutional efforts at the national and territorial level aimed at achieving a greater budgetary and administrative commitment to assist displaced populations.²⁹⁸ Although the change of the responsible entities was intended to meet the court's requirements, the problems of coordination between the nation and the territorial entities have not been overcome, as the court itself has pointed out.²⁹⁹

Law 1,190, on the other hand, establishes new obligations for the local authorities with regard to the displaced persons' right to housing, and orders the formulation of an assistance strategy, which must be clearly stated in a Single Comprehensive Plan and have clear financial sources. It also establishes, for the entities that comprise the institutional network, a commitment to involve the private business sector in the processes of socioeconomic stabilization.

Obviously, this legislation does not introduce the structural changes that would truly meet the requirements of the Constitutional Court, but rather a set of more or less

²⁹⁴ Constitutional Court, Judicial Decision 004 of 2009. This decision ordered the creation of an "agenda for guaranteeing the rights of indigenous peoples affected by displacement," as well as the adoption of thirty-four ethnic safeguard plans, one for each of the villages at risk of disappearing.

²⁹⁵ Constitutional Court, Judicial Decision 005 of 2009. It ordered the creation and implementation of a plan for characterizing collective ancestral territories inhabited by this ethnic group, as well as a comprehensive plan for prevention and protection specific to this group.

²⁹⁶ Constitutional Court, Judicial Decision 006 of 2009. It required the adoption of mechanisms to compensate for the inadequacy of the information about that population as well as the design and implementation of a program with a differential approach, and five pilot prevention and assistance projects.

²⁹⁷ Judgment C-278 of 2007 declared the paragraph in Article 15 concerning the temporary limitation to humanitarian aid unconstitutional, as it did of the paragraph in Article 18 requiring displaced persons to collaborate with the state "in the improvement, restoration, consolidation, and stabilization of their situation."

²⁹⁸ Constitutional Court, Judicial Decisions 177 of 2005, 218 and 266 of 2006, and 233 of 2007.

²⁹⁹ Constitutional Court, Judicial Decisions 008 and 314 of 2009 and 383 of 2010.

specific modifications that do not cover all of the orders given by the Constitutional Court, such as programs with a differential approach, which are still under preparation.

Decree 205 of 2005 constitutes one of the centerpieces of this process, since it complies with the court orders by establishing a National Plan that sets guidelines for the policy and assigns new assistance responsibilities in the fields of health and education for displaced populations. Likewise, regulations for developing various assistance programs—many of which predate the T-025—have been approved. Thus, the registration system and the basic aspects of the return of displaced persons (Decree 2,569 of 2000) continue to be used. Humanitarian aid is governed by Decrees 250 of 2005 and 1,997 of 2010. Access to education has been regulated by Decree 2,662 of 2001, the right to health care by Decree 2,131 of 2003, and the protection of abandoned lands by Decree 2,007 of 2001.³⁰⁰ Finally, access to housing is governed by Decrees 951 of 2001 and 2,100 of 2005.

These decrees are accompanied by numerous decisions made by the entities that constitute the SNAIPD for developing the programs they are in charge of, as well as by regulations issued by the regional and local authorities for compliance with their responsibilities concerning assistance to displaced populations. However, all these rules must be interpreted and applied in accordance with the rights-oriented approach introduced by the constitutional jurisprudence, so that they comply with their objective of guaranteeing the enjoyment of essential rights for displaced populations.

All these provisions combine into a complex and intricate legal framework, from which the model of assistance offered by the government to displaced person has been derived. This model has three lines of action: prevention and protection; comprehensive assistance; and truth, justice and reparation. The actions taken along these lines are developed based on four aspects that cut across all the lines: a differential approach; institutional capacity and information systems; participation; and territorial articulation. The central aim is to achieve the return or resettlement of those who have been displaced (Escobar, 2010: 19).

Before analyzing the results obtained through the application of this model, it should be noted that the assistance given to displaced persons is not limited to programs specially designed for them, as shown by the Social Protection Network for Overcoming Extreme Poverty (JUNTOS). Through this program, Social Action seeks to deliver a comprehensive assistance package to families belonging to the lowest strata in the country, allowing them not only to meet their needs but also to overcome the conditions that condemn them to dependency. This program aims to serve 1,500,000 families, of which some 300,000 are expected to be displaced persons (Escobar, 2010: 22).

While JUNTOS coexists with a public policy oriented exclusively toward providing assistance to persons displaced by the internal armed conflict, it points to a

³⁰⁰ The Victims and Land Restitution Law sanctioned by the Colombian president on 10 June 2011 establishes numerous provisions to facilitate the recovery of land and property left behind by the victims of the country's armed conflict, including displaced persons (or at least some of them). It is still too early to determine how it will transform the approach set out by Decree 2,007 of 2001.

new trend in the way the state treats forced exoduses. It places less emphasis on these people's special status—owing to their situation of expulsion and uprooting—and includes them in a wider group, and is thus able to incorporate them as beneficiaries of policies that address structural problems in the country apart from forced displacement. Thus, in the case of this program, poverty is given priority when designing and implementing state actions against displacement.

Similarly, Law 1,448, known as the Victims and Land Restitution Law, passed by the Colombian Congress in June 2011, establishes a reparation scheme for those whose rights have been violated as a consequence of the internal armed conflict. While it is too soon to determine the effects that this law will have on the model of assistance to displaced populations, it can be expected that in its implementation a status as victim of the conflict will take precedence over that of displaced person. This will depend largely on the government because the law gives it broad powers to determine how to implement the guidelines provided.

The question to be posed with regard to this new rule is whether its development and application will establish a new model of assistance or, on the contrary, whether it will maintain the rights-oriented approach of the current policy of assistance to displaced persons, expanding it to include other categories of victims. The Monitoring Commission is already working to get the second option adopted,³⁰¹ but it is too early to know what path the executive branch will choose.

2.3. The Results of the Policy of Assistance to Internally Displaced Persons

The model of assistance to displaced populations aims at restoring the full enjoyment of these persons' rights so they may regain the ability to exercise the self-determination they were deprived of when forced out of their homes. Therefore, assessment of the performance of this model revolves around the effectiveness of the measures and programs implemented by the SNAIPD in restoring the rights that have been violated.

This section will present the results that the public policy has yielded in terms of protecting and restoring these rights throughout the four stages of assistance outlined by Law 387 of 1997: prevention, humanitarian care, social and economic stabilization and return or relocation.³⁰²

³⁰¹ Interview with Luis Jorge Garay, president of the Monitoring Commission, held on 21 June 2011.

³⁰² The analysis of the results of this policy is based on several documents, particularly the Third Monitoring Survey. In this case, the data provided in the text refer only to persons who are recognized as displaced individuals by the state and have been registered in the RUPD.

2.3.1. Prevention

Preventing displacement constitutes, a priori, the first and in a way principal obligation of the state with regard to forced exoduses, because protecting the rights and physical safety of the citizens is the *raison d'être* of the authorities. The state's inability to fulfill this basic duty lies at the root of forced exoduses and, in turn, generates the obligation to assist those affected. Nevertheless, this aspect has not actually been developed in this policy, as it has been incorporated into the overall strategy of state security.

Although the Constitutional Court has pointed out that avoiding forced exoduses is one of the core obligations of the state, which is ultimately responsible for guaranteeing the rights and physical security of the inhabitants of the national territory,³⁰³ this assertion has not been accompanied by a consistent jurisprudential development nor by the design and development of programs in line with the importance of this aspect of the policy. Constitutional jurisprudence has focused on post-exodus assistance and considered previous stages only briefly. With respect to legal and regulatory developments, although the letter of Law 387 of 1997 establishes that the bulk of the responsibility falls on the local and provincial levels,³⁰⁴ this provision has not been regulated.

Thus, displacement prevention has been left out of the policy of assistance and since 2003 has been integrated into the current Defense and Democratic Security Policy and the Consolidation Plan (Escobar, 2010: 20). The latter has been designed to defeat insurgent groups by increasing the military presence in conflict areas and destroying illicit crops, one of the main funding sources of the guerrilla.³⁰⁵ The rationale behind this strategy is that once the armed insurgent groups are defeated, displacement will cease without the need for further action.

The reality of the displacement figures mentioned in the first chapter reveals that this option has not been successful; although the number of expulsions has sometimes fallen in certain periods after 2003, they have never ceased altogether.

2.3.2. Humanitarian Aid

Humanitarian aid is the first stage in the chain established by the state policy of assistance to and protection of internally displaced persons. Constitutional jurisprudence has pointed out that it is a fundamental right of the displaced.³⁰⁶ The assistance offered at this stage has been designed to provide displaced people with the goods and services they require to meet their most basic and urgent needs, those usually

³⁰³ Constitutional Court, Ruling SU-1150/2000.

³⁰⁴ Law 387 of 1997, Article 8.

³⁰⁵ The foundations of this policy are contained in the Ministry of National Defense document "Defense Policy and Democratic Security," published by the Presidency of the Republic in 2003. The approach used in this document equates the actions of the actors in the armed conflict to acts of terrorism, without allowing the slightest justification for them. Paradoxically, the same document states that the options for negotiating with those groups remain open.

³⁰⁶ Constitutional Court, Ruling C-278 of 2007.

experienced by persons who have just been expelled from their homes, such as food, medical emergency care, or temporary shelter. Consequently, it is initial assistance of a temporary nature, as it is expected that with the passage of time, these early deprivations will be covered by other programs offering solutions that, if not permanent, will at least be stable.

This stage has undergone the most significant modifications over time. Its original design, set by Law 387 of 1997 and its regulatory Decree 2,569 of 2000, established registration in the RUPD as a prerequisite for receiving assistance. Displaced persons had to request aid by submitting a statement of the facts leading to their expulsion within a year of its occurrence. Additionally, it was stipulated that the assistance would be given only during the first three months following the exodus but could be extended in exceptional circumstances for three more years.³⁰⁷

These limitations were declared unconstitutional in several court rulings,³⁰⁸ thus making it necessary to restructure the humanitarian aid. This task was ordered by Decree 1,997 of 2010 and by Social Action Resolution 03069 of 12 May 2010, but even though these regulations introduced changes in the design, they did not change the provisional character of the measures adopted during this phase. In fact, while they established somewhat longer periods, these continued to be short and its extension was still conditioned on extremely vulnerable factors.

In its new design, humanitarian aid is conceived as a process consisting of three stages: immediate humanitarian assistance (IHA), emergency humanitarian assistance (EHA) and transitional humanitarian assistance (THA).³⁰⁹ The IHA assists those who have just been displaced, so it is not necessary to be registered in the RUPD to receive it; making a statement before an agent of the public prosecutor's office is enough. The declaration will be studied throughout the month in which immediate assistance is provided, and the person or family will be included in the official register, which will allow them to gain access to the subsequent program—that is, the EHA.

The assistance provided under this program is directed to all those who have been displaced in the year prior to their declaration, once they have been included in the official register. This aid consists of a package that includes basic goods and some minimum basic services offered for three months. The extension of this aid implies moving to the THA phase and is conditioned on an assessment, carried out by Social Action, of the needs and capacities of the displaced family. In any case, it cannot be extended beyond one year, including the three months of EHA.

³⁰⁷ Article 21 of Decree 2,569 of 2000 determined that this extension could take place only if the head of the displaced family was a female or an adult over 65, and also in cases in which one or several of the members of the family suffered from a severe disability or were seriously ill.

³⁰⁸ The requirement to submit a statement of facts for registration in the RUPD during the year following expulsion was declared unconstitutional by the First Section of the Contentious Administrative of the Council of State in its ruling of 12 June 2008 (CP. Marco Antonio Velilla Moreno), which overturned several sections of Decree 2,569 of 2000. Likewise, the Constitutional Court Ruling C-278 of 2007 declared unconstitutional the limitation of humanitarian aid to three months, noting that aid should be given as long as it was needed.

³⁰⁹ Social Action Resolution 03069 of 2010, Article 3.

Likewise, people registered in the RUPD, after having submitted their statements, can access the THA a year after their expulsion. However, Social Action must assess their condition and determine whether they are in a situation of extreme need. The provision of this assistance can only be extended for nine months.

The maximum duration of the THA, however, can be extended in some situations of extreme frailty, as in the cases of households whose head is an unemployed female without any other resources, homeless or abandoned minors, homeless older adults, and disabled people who cannot work and do not have relatives to provide for them³¹⁰—that is, in situations in which denying the extension would constitute a flagrant violation of the right to the minimum subsistence.

This new scheme of emergency assistance has been subject to strong criticism, especially from the beneficiaries, because the conditions for obtaining the THA do not follow the guidelines of the Constitutional Court, according to which the provision of humanitarian aid must be carefully analyzed in each particular case, since the State cannot abruptly suspend the humanitarian aid given to those who are not able to support themselves.³¹¹ The provision which excludes extensions for all the families enrolled in the contributory health care system is particularly rejected because it is based on the fact that they receive a legal minimum monthly wage. In this regard, they criticize the fact that the minimum wage is very low³¹² and therefore cannot objectively and in all cases, be considered as a proof that the family's situation has stabilized to the extent that it no longer requires direct state aid (Comisión de Seguimiento, 20010b: 73).

Once the structure of this stage has been outlined, it is possible to analyze the elements that make up the assistance package and the degree of effective protection it provides. Regardless of the program, the aid package incorporates health care elements (medical evaluation, emergency medical and psychosocial care and medicines), temporary shelter, food, personal hygiene kits, kitchenware, beds or mattresses and clothing.

The delivery of IHA has been only partial. According to the Third Monitoring Survey, only 0.5 percent of the households enrolled in the RUPD have received all the components of this assistance; 33.8 percent report having received some and 66.2 percent claim not to have received any. Nevertheless, these figures show significant progress as compared to the situation reported by the First Monitoring Survey in 2007, which placed the latter percentage at 80.7 percent, and moderate progress compared to the results of the Second Monitoring Survey conducted in 2009, which revealed that 60.4 percent had not received any of the elements of the aid package.

The increase in IHA coverage is not only due to the effectiveness of the system. It is also the result of an increased number of mass exoduses, combined with the fact that the visibility of this kind of displacements forces the state to respond promptly, which is not the case when it comes to discrete individual displacements (Comisión de Seguimiento, 2010b: 66).

³¹⁰ Social Action Resolution 03069 of 2010, Article 1.

³¹¹ Constitutional Court, Rulings C- 278 and T-496 of 2007.

³¹² In 2011, the minimum monthly wage amounted to 535,600 pesos, an amount equivalent to just under 300 dollars.

The EHA has reached more persons as, according to the Third Monitoring Survey, 74.3 percent of those enrolled in the official record have received some of the components of the aid package. This figure shows improvement when compared to the 61.5 percent reported in the First Monitoring Survey, and a setback compared with the 83.2 percent reported in the Second Monitoring Survey. There is no data to explain the setback that occurred between 2009 and 2010, although some speculate that it might have been due to the increased demand for services resulting from an larger displaced population, but it might also have been a consequence of the change in strategies that led Social Action to replace the delivery of goods with cash, which is not perceived as a benefit by the beneficiaries (Comisión de Seguimiento, 2010b: 70). Finally, it is not possible to measure the percentage of displaced persons covered by the THA; because it was created in May 2010 and its implementation took months, no data are available yet.

It must be pointed out that food aid has been the most widely delivered component, both in the IHA and the THA. According to the Third Monitoring Survey, it was received by 15.1 percent of the households benefiting from IHA and by 51.9 percent of EHA beneficiaries (Comisión de Seguimiento, 2010b: 69–71). The primacy of this element coincides with the “handout” approach with which it has been handled. Undoubtedly, despite the guidelines of the Constitutional Court, the Monitoring Commission has objected on several occasions that the assistance has been managed in a limited and fragmentary manner, isolating it from other stages of the public policy, all of which prevents the restoration of rights, in spite of the amount of resources invested (Comisión de Seguimiento, 2010b: 74).

Humanitarian aid faces more than these structural problems. A second aspect, which is just as serious, is the fact that 18 percent of the beneficiaries had to file a suit claiming the protection of their fundamental rights (*tutela*) just to obtain what they were already entitled to; 27.9 percent had to resort to the right of petition to Social Action, and 23.1 percent had to go to an organization of displaced persons that would support their claims (Comisión de Seguimiento, 2010b: 74). These data suggest that the entities responsible for this stage are operating according to a logic of their own that hinders access to the assistance and not only goes against the mandates of the law and its regulatory decrees, but also reveals the inability of the system to adopt the rights-oriented approach demanded by constitutional jurisprudence.

2.3.3. Social and Economic Stabilization

Once a person has been recognized as a displaced person and received emergency aid, the most complex stage of the assistance model begins: social and economic stabilization. This stage aims at helping these persons regain full control over their lives. To that end, actions intended to restore their full status of citizenship—by guaranteeing them effective enjoyment of their fundamental rights violated at the time of the exodus—have been prepared. Additionally, programs for integration into the labor market have been developed to make it possible for them to support themselves.

This is, then, a phase as complex as it is ambitious, consisting of multiple programs directed to ensuring effective exercise of the right to legal personhood, to health,

education, housing and the generation of income. This diversity is a first challenge to the effectiveness of the state's actions, since success at this stage depends to a considerable extent on the capacity of coordination of the State bodies involved in designing and executing these measures. A second challenge is the need to introduce the rights-oriented approach in a public policy initially conceived as a more or less articulated set of programs, designed to bring the situation of IDPs on a par with that of the rest of the inhabitants of the country, by facilitating their access to public goods and services whose provision was interrupted at the time of the exodus that was imposed on them. All this is supposed to be achieved without acknowledging the beneficiaries of such measures any rights beyond that of aspiring to a series of benefits, provided the entity responsible for granting them has sufficient funds to cover them.

As will be seen below, the first challenge has been partially overcome, but the second is still in progress and has yet to be achieved.

2.3.4. The Right to a Legal Personality

Guaranteeing their right to a legal personality is the first step for displaced persons to be able to exercise their citizenship status. For that purpose, it is necessary to provide them with official documents that attest to their status as members of society. They require these documents in order to be able to carry out important everyday transactions such as enrolling in educational institutions, renting or purchasing a house, signing a work contract or accessing state subsidies.

In Colombia, the type of identity document used depends on a person's age group and gender. Thus, minors under seven must have a birth certificate; minors between seven and seventeen must have an identity card; and from the age of eighteen, adults must have a citizenship card. In addition, males between eighteen and fifty years of age must have a military card certifying that they have regularized their situation with regard to the military service, which is mandatory in the country. This document is of vital importance, as it is required at all public levels for any type of contract and by higher education institutions in order to grant a degree.³¹³

According to the Third Monitoring Survey, the guarantee of this right has shown very positive results when it comes to basic documents. Thus, 98.3 percent of minors under seven years of age are registered in the Civil Registry; 87 percent of minors seven years or older have an identity card; and 91 percent of the women and 94.7 percent of the men have a citizenship card.³¹⁴ The percentage of men with military ID cards, on the other hand, is very low: only 11 percent (Comisión de Seguimiento, 2010b:79).

While no one denies that these people have not completed the compulsory military service, their situation must nevertheless be defined and the document delivered. For this to be fulfilled, all that is required is the commitment of the military authorities to

³¹³ Article 36 of Law 48 of 1993; this regulation also establishes it as a requirement to enter the field of public administration, collect debts from the state, and carry out notary procedures.

³¹⁴ These data show that progress has been made if compared to the data recorded by the Second Monitoring Survey.

the process of guaranteeing the rights of the displaced; this step has not yet been taken. It is interesting to note how this situation contrasts with that of the demobilized paramilitary troops. Through Decree 128 of 2003, the government established that in order to facilitate their integration into civilian life and promote peace, the Ministry of the Interior would ensure that they would receive the required identity documents, including the military card.³¹⁵ The national army has actively collaborated on this last point, enabling an option to request it through an online application.³¹⁶

2.3.5. The Right to Health Care

In Colombia, health care is a fundamental right, as established by the Constitutional Court in Ruling T-760 of 2008 and guaranteed within the framework of the General System of Social Security for Health (hereinafter SGSSS for its acronym in Spanish) established by Law 100 of 1993. The SGSSS is an extremely complex system with two different regimes: the contributory regime, for those who can make contributions from their salary if they have a job or from their income if self-employed; and the subsidized regime, for those with limited or no ability to pay, in which case the state must finance, partially or totally, the value of the compulsory insurance. The first regime is managed by private entities (HMOs), while the second is the responsibility of public bodies. However, by order of the aforementioned Ruling of 2008, the basic medical services offered in either case must be the same.³¹⁷

The Third National Survey for the Monitoring of the Rights of Internally Displaced Persons reveals that there has been progress with regard to the affiliation of displaced persons with the SGSSS: 85 percent are now included in it, as compared to the 75 percent reported by the Second Monitoring Survey. However, 93 percent of the affiliates belong to the subsidized regime, which reveals their economic fragility since they have not managed to enter the labor market successfully and do not even earn a legal minimum wage per month (Comisión de Seguimiento, 2010b: 81).

Affiliation with the SGSSS is an important but not decisive factor in the full enjoyment of the right to health care. It is necessary to analyze whether, once included in the system, displaced persons can effectively access medical prevention and assistance services. In this regard, the Third Monitoring Survey shows some positive results, some less positive ones and a few disappointing ones.

Thus, regarding effective access to health care, figures reveal that 94.3 percent of the persons registered in the RUPD who requested it received it. This assistance, however, did not include psychosocial support services, which despite their importance have traditionally had very low coverage. The Second Monitoring Survey had already

³¹⁵ Decree 128 of 2003, Article 6.

³¹⁶ See the website of the National Army of Colombia, http://www.ejercito.mil.co/?idcategoria=197342&asunto_n1=37&dependencia_default=192

³¹⁷ The ruling is based on the current situation, in which the services provided by the contributory system far exceed those of the subsidized system. For that reason, it establishes an action plan to gradually equalize both offerings.

revealed that only 4.9 percent of the displaced population had requested this kind of support, and 81.6 percent had received assistance of those who requested it. In 2010 the Third Monitoring Survey presented a more serious situation: it was requested by 4.1 percent of the population, of which 79.8 percent had received it (Comisión de Seguimiento, 2010b: 86–88).

With respect to prevention, data indicate that there is still work to do concerning the vaccination of children under five and the generalization of check-ups for growing children. With regard to this last point, it should be noted that 71.6 percent of the children under the age of five have had these check-ups, out of which 34 percent were found to be underweight for their size and age; however, only 51 percent received appropriate attention. In addition, it is still necessary to improve the check-ups for pregnant women, since only 28.7 percent of them have had the nine check-ups established by the law, while 11.7 percent have not had any (Comisión de Seguimiento, 2010b: 89–94).

In summary, it is undeniable that there has been progress regarding the inclusion of the displaced population in the health care system, but this is not enough to ensure full enjoyment of the fundamental right to health care. Effective assistance and preventive measures still require a greater effort, as well as the inclusion of the psychosocial component.

2.3.6. The Right to Education

The Colombian Constitution establishes the fundamental nature of the right of children and adolescents to education,³¹⁸ which has been highlighted by constitutional jurisprudence on multiple occasions. In the particular case of displaced children, the enjoyment of this right has been pointed out to be an indispensable condition for overcoming their vulnerable state, given the connection that has been established between the guarantee of this fundamental right and the free development of personality.³¹⁹

In response to this pressing need, the executive branch issued Decree 2,562 of 2001, which orders the establishment of quotas to receive displaced children in schools and public institutions upon their arrival. The primary responsibility for the expansion of the educational offer fell on the municipalities, while provinces were assigned financial support function. As a complementary measure, the Ministry of National Education established lines of action for displaced minors to be incorporated into the school year courses.

The result of these measures has been a high rate of 91.6 percent of children between five and seventeen years of age enrolled in the school system; of this percentage, 87 percent of the children and adolescents are placed in the level of education corresponding to their age group (Comisión de Seguimiento, 2010b: 103–108). These data should be supplemented with statistics concerning the offer of cost-free education, dropout rates, and quality of the service, to verify effective enjoyment of this right.

³¹⁸ Political Constitution of Colombia, Article 44.

³¹⁹ Constitutional Court, Rulings T-098/02, T-215/02, T-419/03 and T-025/04.

In relation to the first point, which is essential to ensure access to the education system, there have been advances with respect to exemptions from paying tuition. In 2008, 64 percent of the children did not have to pay for their courses, and this percentage increased to 78 percent in 2010. In terms of registration and monthly fees, about 95 percent of the population was exempted both in 2008 and in 2010. However, education involves other expenses, such as uniforms, books, school supplies and transportation, which are not often covered by the government aid, and the Third Monitoring Survey revealed that 98.1 percent of the children declared having at least one need in this respect, and only 5.9 percent reported having received some assistance (Comisión de Seguimiento, 2010b: 108–110).

The second point is even more complex. The Third Monitoring Survey revealed that 12.9 percent of children and adolescents of school age were not attending classes at the time the survey was carried out. The reasons for their absence from class varied, but it should be noted that 19.6 percent cited economic problems such as lack of money to pay for the costs of education, or the need to work to help support the family. On the other hand, 27.3 percent mentioned lack of interest in studying as the cause of their absence. Regarding this last aspect, it should be noted that not liking to study is not unique to displaced children and adolescents. This high rate reveals the inability of the education system to provide an environment that suits the skills, expectations and needs of children and adolescents (Comisión de Seguimiento, 2010b: 112).

Finally, with regard to the quality of education, the Third Monitoring Survey asked about the perception of households with children who had entered the education system. The main problems perceived were an excess of students per classroom (17.6 percent); the lack of libraries, laboratories, and computer rooms (15.2 percent); insecurity on the school premises (12.8 percent); and the presence of drugs or alcohol in the classroom (8.4 percent). These problems become more complex as grade level increases. Insecurity in school, violence, and drugs or alcohol were identified as problems by parents of students in middle and secondary school, while the inadequate teacher-student ratio was pointed out by parents of children enrolled in primary and basic secondary. On the other hand, parents of students in all levels referred to the lack of adequate facilities (Comisión de Seguimiento, 2010b: 117).

In summary, as in the case of the right to health care, the effective guarantee of the right to education shows important advances in terms of inclusion in the education system. This coverage, however, must be complemented with measures to ensure the total the service does not cost anything—to reduce absenteeism and dropout rates—as well as improve the quality of the facilities and programs.

2.3.7. The Right to Housing

The right to adequate housing is valued by the decisions of the Constitutional Court as being particularly important for the resettlement of persons in situations of forced displacement.³²⁰ This same court pointed out, in a ruling in 2003, that the concept of

³²⁰ Constitutional Court, Rulings SU-1150/00, T-1346/01, T-098/02, T-602/03 and T-025/04.

decent housing encompasses more than just a roof to protect against the elements, since it must be a point from which people can develop their lives privately and within society. Therefore, all housing solutions must comply with minimum habitability requirements, including the level of hygiene, quality and space required, so that individuals and their families can occupy them without danger to their physical integrity and health.³²¹ It is important to note that this concept implies not ownership of the dwelling but legal certainty of tenure, offering a wide range of possibilities (individual property, collective property, rented property, leasing, usufruct), as long as they are legally protected, mainly against eviction, harassment or any other form of arbitrary dispossession.

Decree 951 of 2001 was enacted to ensure effective enjoyment of this right via a positive discrimination approach, in which a specific program of urban and rural subsidies assists in the acquisition of housing for displaced people. This program offers more favorable conditions than those available to other Colombians. Decree 2,100 of 2005 partially modified the regulation to allow the subsidy to also be used for rent payments. Both provisions have been supplemented with in-kind subsidy programs specifically developed by the Ministry of Environment, Housing and Territorial Development for displaced populations. Likewise, several regulations have established the framework that allows local authorities to grant complementary subsidies conditioned on the aid provided by the national authorities.³²²

This policy has been criticized, especially because of the amount provided in the national subsidies is very small, equivalent to minimum wage for 21 months, which corresponds to a little over 11 million pesos (about 6,249 dollars)—not enough to buy a house. It has also been pointed out that the requirements to apply for this subsidy are so strict that they make it very difficult to obtain (Comisión Colombiana de Juristas, 2004).

As a result of these two factors, only 46.6 percent of the displaced persons have requested national aid, and 34.5 percent of those who requested it have received it. Out of this percentage, 27.5 percent requested the complementary subsidy offered by local authorities, which was granted to 74 percent. When these data are cross-checked, the result shows that only 3 percent of the total number of displaced families entitled to a subsidy obtained one (Comisión de Seguimiento, 2010b: 155).

The results of the implementation of these programs are not only unsatisfactory in terms of the allocation of aid. They also show serious deficiencies concerning the guarantee of the elements that comprise the right to decent housing. Thus, regarding legal certainty, the Third Monitoring Survey noted that 36.4 percent of the displaced persons lived in their own home, but only 47.4 percent had documents that accredited them as owners, granting them full protection against arbitrary evictions. People who

³²¹ Constitutional Court, Ruling C-936 of 2003, which reviewed the constitutionality of Law 795 of 2003, related to the Organic Statute of the financial system.

³²² Among others, Law 1,190 of 2008 and Decree 875 of 2006. The subsidies granted by local authorities must also be included in the Comprehensive Plan and approved by the respective departmental assembly or municipal council.

have a leasing contract, which is 39.2 percent of displaced households, are even more vulnerable because only 7.7 percent of them have a written contract. This is compounded by the fragile situation of the 12.9 percent who are staying in the homes of relatives and friends, the 9.5 percent who have occupied other people's properties and the 2 percent living in temporary shelters (Comisión de Seguimiento, 2010b: 140–142).

The coverage of public utilities, an essential factor in decent housing, also shows failures. The energy service has the greatest coverage, 97.8 percent, followed by the garbage collection service, available to 81.7 percent of the displaced households. Running water is available to 73.5 percent, and sewerage to 62.7 percent of the households. Only 54 percent of households have all four services. This last percentage shows improvement as compared to that reported by the Second Monitoring Survey, which was 50 percent. Nevertheless, it is important to note that all these figures indicate not only the precarious conditions of the dwellings inhabited by displaced families but also the fact that the living conditions of this population are worse than those of the rest of the country. Indeed, according to the Survey on Quality of Life carried out by DANE in 2008, 99 percent of the households in municipal capitals have electricity, 94.6 percent have garbage collection, 94.8 percent have water supply, and 90.6 percent have sewerage (Comisión de Seguimiento, 2010b: 145–146).

Finally, the analysis of the materials used to build the home walls, ceilings and floors reveals that only 67.7 percent of the dwellings inhabited by displaced households meet the necessary conditions to be considered appropriate, let alone dignified, housing (Comisión de Seguimiento, 2010b: 149).

In conclusion, given the poor results that it has yielded, it is necessary to redesign this component of the social and economic stabilization phase.

2.3.8. Income Generation

Income generation, through inclusion in the labor market, the creation of small and medium-sized viable productive projects and other initiatives, is a key element for achieving economic self-sufficiency, which is the ultimate objective of the policy of assistance to displaced populations. Despite its undeniable importance, this component has been the most uncertain due to a combination of three factors. The first is the situation of the Colombian labor market, which, according to DANE, has a rate of unemployment of 11.4 percent and a very high rate of informal employment.³²³ On this last factor, no recent data are available; those published most recently for thirteen big cities by the official entity correspond to the last quarter of 2008. On that occasion, the level of informality recorded was 57.7 percent, and there are no indications that would allow us to assume this figure has changed dramatically (Correa, 2009).

The characteristics of the displaced persons constitute the second factor: they are mostly of rural origin, with high rates of illiteracy; the majority of them are women, very young and thus with a high rate of dependency. The group cannot be automatically

³²³ Data published on the website of DANE in May 2011, http://www.dane.gov.co/daneweb_V09/#twoj_fragment1-4 (accessed on 18 July 18, 2011).

incorporated into the labor market of the cities and municipalities in which they have arrived. However, despite this group's conditions, the programs designed to ensure revenue generation are oriented to creating productive projects that would require transforming these people into micro entrepreneurs, even though most of them lack the necessary skills and experience to make them viable. This approach constitutes the third factor hindering the full enjoyment of the mentioned right.

The Second Monitoring Survey points out that, of the total number of displaced people over twelve years of age enrolled in the RUPD, 43.3 percent were working during the week prior to the survey, 3.8 percent were unemployed, and 52.9 percent were inactive. From these results, we can infer that the unemployment rate of this population is 8 percent, which is lower than the national rate. However, the conditions of their working relationships are precarious. Thus, 48.5 percent of the displaced persons have access to the labor market as independent workers, usually in the informal sector, and a significant percentage of them have found jobs involving the hardest, lowest-paying tasks. Indeed, 28.4 percent of the displaced women work in domestic service and 15.6 percent of the men as day laborers or unskilled laborers. Only 27.8 percent of these people have obtained employment contracts in the public or private sectors, a figure that must be contrasted with the 44.78 percent of the economically active population of the country in the same situation. Also worth noting is the fact that among this population there are no employers, which constitute 4.8 percent of the economically active population in the country (Comisión de Seguimiento, 2010b: 163–167).

The working conditions of the displaced population also reveal a poor quality of employment. Only 27.8 percent of the employed population keep working hours in line with labor laws—that is, between forty and forty-eight hours per week—while 33 percent have fewer hours and 18.3 percent longer hours totaling as many as sixty hours per week. Moreover, out of the already small group of people who have a job, only 5.7 percent have a written contract of employment of indefinite duration, and 6 percent a written contract of fixed duration. The remaining 88.3 percent do not have any document to guarantee a minimum of security or stability in their jobs.

The small percentage of workers with a written contract and the high number of self-employed workers explain the low levels of affiliation with the health, pension, and occupational hazards systems. Only 13.9 percent of the employees are affiliated with the contributory health care system, 11.6 percent with a pension fund, and 13.6 percent with an occupational hazards system. Only 9.5 percent of displaced workers are fully affiliated with the social security system (Comisión de Seguimiento, 2010b: 172–175).

The low income of the displaced population completes the bleak picture. The Third Monitoring Survey enquired about the net profits of this population—both employees and independent workers—asking the interviewees to take into account their working income (including tips, commissions, premiums, transportation subsidies, food, etc.) as well as their nonworking income (pensions for disability and old age, leasing of properties, interest on loans, etc.). This exercise showed that only 11 percent of this population had an income equal to or higher than a minimum legal monthly wage, and that nearly 60 percent received less than half this amount (Comisión de Seguimiento, 2010b: 177–178).

This population's precarious working conditions and their unstable situation in the labor market result in harsh living conditions, as their earnings are not sufficient to cover the basic needs of their households. Thus, 96 percent of them live below the poverty line; even more severe is the case of women as head of households, for whom that figure reaches 98.5 percent. In addition, 78.8 percent of the poor households are below the food poverty line.

In conclusion, it can be said that the income generation component has failed entirely in its purpose of ensuring the self-sufficiency of the displaced population. Moreover, it can also be said that its inadequate design may have contributed to worsening their already critical situation of vulnerability.

2.3.9. Return and Relocation

Return and relocation constitute the final stage of the policy of assistance to displaced populations, and imply, at least in theory, the end of their condition of displacement and the full restoration of their status as citizens and masters of their own destinies. Although, as mentioned in the previous chapter, the majority of displaced persons are not inclined to return to the places they were displaced from, the authorities continue to hold this as the most appropriate solution to their condition. In fact, Article 16 of Law 387 of 1997 refers to this option as the only one worthy of state support for the purpose of economic and social stabilization. Nevertheless, the development of this provision has taken under consideration a relocation option, both because of the dynamics of the armed conflict, which makes it impossible for those who have fled to return, and because it is so ordered by Ruling SU-1150 of 2000. The ruling establishes voluntary return under secure conditions as a right, and determines that if its exercise is not possible, it is the state's duty to facilitate relocation. This provision has been supplemented by Ruling T-025 of 2004, which identifies a series of duties for public entities in order to ensure that returning to the place of origin is fully voluntary as well as to guarantee adequate conditions of safety and protection for those who undertake it.³²⁴

The jurisprudential and legal mandate has been developed by Decree 2,569 of 2000, which establishes the basic guidelines for this stage of the policy, trying to get the population to return to their places of origin voluntarily and under appropriate security conditions. The process must start with an assessment of the conditions of public order in the areas to which the population is supposed to return; the results of the evaluation have to be communicated to the community so that it can decide whether it wants to

³²⁴ Constitutional Court Ruling T-025 of 2004. With regard to displaced persons returning to their place of origin, the state is obligated to "(i) refrain from implementing measures of coercion to force people to return to their place of origin or be reestablished elsewhere;" (ii) refrain from preventing displaced persons from returning to their place of habitual residence or being reestablished at another point; (iii) provide the necessary information about security conditions in the place of return, as well as the commitment to safety and socioeconomic assistance that the state will assume to ensure a safe return under conditions of dignity; (iv) refrain from promoting return or reestablishment if that decision involves exposing displaced persons to risks to their life or personal integrity; "and (v) provide the necessary support for the return to take place under safe conditions, and for those who return to be able to generate revenues to survive independently."

return. If the conditions are inadequate, the will of the community prevails; if it opts to return, the decision must be confirmed in writing. Once the decision has been made, the state and the affected community will define a social and economic stabilization program to ensure full reintegration. A competent territorial committee will evaluate the results of this program every six months.

This regulation was supplemented by the Social Action Protocol of 2006 for the institutional support of individual and collective returns and relocations. The document stresses the convenience of opting for return as a final solution to the displacement and establishes the principles that should govern the process: it must be voluntary, in safety and with dignity. Additionally, in October 2009 this same entity launched its campaign “Retornar es vivir” (To return is to live), reinforcing this option as the most appropriate and prioritizing 115 municipalities for the development of organized return processes.

The implementation of this protective regulatory and jurisprudential framework has shown some major flaws. That is what the Constitutional Court pointed out through its Verification Decision 383 of 2010, in which it evaluated, among others, this aspect of the policy. First, it notes that the principle of voluntary return is not being respected. Sometimes the displaced persons are directly pressed by the Security Forces to return to their places of origin. In other cases, they are forced to do so by the lack of assistance in the municipalities in which they have sought refuge.³²⁵ Second, the principle of safety is not being observed either since, according to the figures supplied by the government, nearly 70 percent of the displaced persons return without the safety conditions’ having been previously verified; more than 90 percent are relocated under these same conditions. Even more worrisome is the fact that the security forces do not have plans to protect irregular returnees. In addition, the court detects, on the part of the police and the army, a certain attitude of suspicion against these people, whom they treat as potential enemies rather than as persons under their responsibility who must be given special protection.

Third, it is pointed out that returns do not have adequate institutional support. Based on the reports submitted by the attorney general, the ombudsman and UNHCR, the court has concluded that in practice this support is the exception and not the rule. In addition, the authorities of the municipality of origin do not participate in assisting the returnees. As a result, the occurrence of new displacements is not uncommon, due to the precariousness of living conditions in the place of origin.

Finally, the court points out that there is not a reliable record of the number of persons who have returned, since the figure of 148,370 persons provided by the government corresponds to 4.3 percent of the displaced persons included in the RUPD, which does not reflect actual returns because it ignores irregular returns without accompaniment. The latter seem to be substantial, according to reports submitted by the Office of the Advocate-General, the Attorney General’s Office and UNHCR.

³²⁵ In its report to the Constitutional Court, UNHCR makes reference to cases of the indigenous population of Awa Tortugana, Telembí, displaced in September 2009, which stopped receiving fresh food five months after their displacement. It mentions also the displaced population of the Eperara Siapidara community in the River Guanguí (Cauca), which was receiving aid less frequently and in considerably lower quantities. In both cases the reduction was intended to press them to return.

To sum up, it is disconcerting to verify that the return, despite having been considered by the government the ultimate solution to displacement, has been given so little attention. The fact that return processes have been carried out without institutional support and without the security conditions required to ensure that returnees remain in their places of origin is especially inconsistent with the very purpose of the public policy.

2.4. Conclusions

The response of the state to displacement constitutes probably the most complex of public policies in the country. Its structure, based on a multiplicity of regulations approved by the Congress of the Republic, the central government, the Constitutional Court and the territorial entities, resembles a huge puzzle in which many pieces do not fit. And the pieces do not fit because they have been constructed on the basis of two different types of logic. Laws 387 of 1997 and 1,190 of 2008 and the bulk of decrees by which the government regulated them, as well as the decisions of other authorities of the executive branch at the national, regional, district and municipal levels, are all based on a “handout” approach. From this perspective, displaced persons are simply beneficiaries of a series of more or less similar programs aimed at restoring the situation prior to their exodus by giving them access to goods and services available to the rest of the population, sometimes through positive discrimination actions. The emphasis of these actions is merely on the delivery of those goods and access to such services, on the assumption that they guarantee the improvement of the condition of displacement.

On the other hand, the orders and guidelines stipulated in the decisions of the Constitutional Court have been developed on the basis of a rights-oriented approach. This implies considering the person in a situation of displacement to hold fundamental rights whose enjoyment must be guaranteed. According to this view, state actions must focus on safeguarding these rights, the effective exercise of which will allow those who have been displaced to resume control of their lives under conditions of full dignity, overcoming their present situation of vulnerability and dependence.

Despite the efforts made both by the Constitutional Court and by the authorities of the executive branch, the gap between these two notions of the assistance that must be provided to internally displaced persons persists. The language of rights used in the formulation of measures and programs is just a light varnish that does not penetrate to the heart of the actions, which continue to revolve around the provision of goods and services.

This gap can be easily perceived in the formulation of policy, but it broadens when analyzing the enforcement of laws and regulations. State actions focus on the emergency assistance stage and on the access to the public education and health systems, which are precisely the aspects involving delivery of material elements and access to existing public services. Conversely, aspects of the policy that involve complex actions aimed at restoring the enjoyment of rights necessary to recover the autonomy of persons in situations of displacement, such as housing and income generation, have

very low coverage rates. To obtain a different result, the “handout” approach must be overcome and rights-oriented programs must be designed to provide for more than the delivery of benefits.

It is necessary, therefore, that the rights-oriented approach be effectively internalized by the authorities at all territorial levels so that it becomes a guiding principle in the design and implementation of measures. It is the most appropriate way to achieve a truly comprehensive protection of displaced persons, since the “handout” approach only allows one-off achievements and advances.

Finally, it is necessary to highlight the fact that state efforts, as a whole, have focused on forced displacements once they have taken place, neglecting prevention. The latter has been assigned to the national security policy, which is aimed at the military defeat of guerrilla groups. The constantly increasing number of displaced persons reveals that this was not an appropriate strategy to protect the Colombian population against involuntary exoduses. This failure can be attributed to two factors: first, the design of the security policy as such, since it does not provide for the prevention of displacement as a priority, and second, the fact that the armed conflict is not the only factor causing the expulsion of populations. Given that the *raison d'être* of the state is to guarantee the rights and well-being of its citizens, it is imperative to design and implement a real strategy for the prevention of displacements, taking into account their multiple causes and ensuring the effective enjoyment of the rights of all Colombians.

3. The Participation of Civil Society in the Public Policies to Assist Internally Displaced Persons

Participation is both a fundamental right and a founding principle of the Colombian Constitution. The latter defines the Republic of Colombia as a multiethnic and pluricultural state based on the social rule of law, with a participatory and pluralist democracy.³²⁶ Accordingly, the Constitution establishes a broad range of mechanisms of popular participation that extend beyond voting, thus granting space and instruments to citizens to enable them to participate in the debates concerning public decisions.³²⁷

This emphasis on participatory democracy, which can be seen also in an extensive constitutional jurisprudence,³²⁸ implies that the authorities are under the obligation to create spaces for citizen participation in the construction of public policies. This obligation has a special meaning with regard to the displaced population. In fact, Ruling T-025 of 2004 established that overcoming the unconstitutional state of affairs was linked to guaranteeing the right to effective participation of the internally displaced persons,

³²⁶ Colombian Constitution of 1991, Article 1.

³²⁷ Colombian Constitution of 1991, Article 103: “The mechanisms of participation in the exercise of the sovereignty of the people are: the vote, the plebiscite, the referendum, the popular consultation, the open council, the legislation initiative and the revocation of mandate. They shall be regulated by law.”

³²⁸ Constitutional Court, Rulings T-469 of 1992, C-011 of 1994, C-336 of 1994, C-021 of 1996 and C-179 of 2002, among others.

which in turn implies the creation of mechanisms that enable them to learn about the measures that are being proposed by official entities and to express their opinion about them. The Constitutional Court does not demand that the opinions, suggestions or concerns of the displaced persons be binding, but it does require that said opinions, suggestions and concerns be taken as the basis of the dialogue that leads to the adoption of the measures and actions that define this policy.

This provision has not been fully complied with. As can be seen in the first section of this chapter, authorities have indeed opened up spaces and created instruments for the participation of displaced persons. However, this does not necessarily imply that their concerns are really taken into account when designing and implementing public policies. Nonetheless, in addition to these ways of participation, other forms have been created to enable the participation of displaced persons and of civil society at large. The Constitutional Court has set forth the mechanisms to integrate these persons and organizations into the monitoring process regarding compliance with Ruling T-025. Also, the decisions of this court have had the effect of promoting participation in groups that had been traditionally marginalized from decision making. Both the means created by the court and the ramifications of its rulings will be discussed in the second section of this chapter. Lastly, on the side of civil society, new forms of intervention have been created, such as the Monitoring Commission, which will be discussed in the third section.

It is worth noting that there is very little literature available on the subject of participation in the design of public policy regarding assistance to the internally displaced. Therefore, and unlike the two previous chapters, this chapter is based on the existing regulations, some of the reports prepared by civil society organizations and interviews carried out with persons working with organizations dedicated to guaranteeing the rights of displaced persons.

3.1. The Right of Internally Displaced Persons to Effective Participation in the Design of Public Policies

3.1.1 Evolution of the Legal Framework of Participation

Law 387 of 1997 was drawn in the first decade after the 1991 Constitution came into effect. In spite of this, it does not take into account the participation of the internally displaced persons as a central element in the design of public policy. In fact, it grants a very marginal place to it, since it establishes as the only spaces of participation for this population the municipal, district and departmental Councils for the Comprehensive Assistance to Populations Displaced by Violence, which include two sets for the representatives of the displaced. On the other hand, they have no participation in the National Council, which is the level at which the comprehensive assistance plan is designed and the resources allocated.³²⁹

³²⁹ Law 387 of 1997, Article 6: "On the National Council for Comprehensive Assistance to Populations Displaced by Violence. The National Council for Comprehensive Assistance to Populations Displaced by

This situation continued until 2004, when Ruling T-025 of the Constitutional Court demanded that the public policy regarding assistance to the displaced population be revised. The ruling did not merely order the creation of adequate spaces to guarantee the effective enjoyment of the right to participation of the displaced persons, one of the fundamental guarantees to which the displaced are entitled at all times. It also ordered that the revision process itself should be carried out with the active participation of representatives of the displaced.

To respond to the requirements of the court, a year later the government issued Decree 20 of 2005, by means of which the National Plan for Comprehensive Assistance to Populations Displaced by Violence was formulated. This document reorganized the SNAIPD by creating greater spaces for participation for the displaced populations and their organizations.³³⁰ To this end, the Plan establishes a matrix structure around three elements or stages of intervention: prevention, humanitarian emergency assistance and economic stabilization. These elements or stages are carried out along four basic strategic lines: humanitarian actions, local economic development, social management, and habitat.³³¹ The definition of the specific activities to be developed at each stage shall be delegated to the corresponding working groups, where the heads of the different entities that constitute the SNAIPD sit.³³² These groups are the National Working Group for Protection and Prevention, the National Working Group for Humanitarian Emergency Assistance, and the National Working Group for Social and Economic Stabilization. Current regulations establish that these three groups must encourage the participation of representatives of the displaced population, without specifying, however, their number or the weight their contributions can have in the design of programs and actions.

Violence is hereby created as a consulting and advisory organ in charge of formulating the policies and guaranteeing the budget allocation to the programs carried out by the National Council for Comprehensive Assistance to Populations Displaced by Violence. This National Council will consist of the following: a delegate of the president of the republic, who shall preside it, the presidential advisor on internally displaced persons or his/her deputy, the minister of the interior, the minister of finance and public credit, the minister of defense, the minister of health, the minister of agriculture and rural development, the minister of economic development, the director of the National Planning Department, the ombudsman, the presidential advisor for human rights or his/her deputy, the presidential advisor for social policy or his/her deputy, the director of the Social Solidarity Network or his/her deputy, and the high commissioner for peace or his/her deputy.”

³³⁰ Active participation of the displaced is considered one of the guiding principles of this plan, as stated in Item 1.2.

³³¹ It must be noted that the current structure is not exactly like the assistance model discussed in the previous chapter.

³³² Provisions for these lines are set forth in Sections 5 and 6 of Decree 250/05. The National Working Group for Protection and Prevention is composed of the Ombudsman’s Office, the Ministry of the Interior, the Ministry of National Defense, Social Action and the Office of the Vice President of the Republic. The Working Group for Humanitarian Emergency Assistance is led by Social Action and consists of the Colombian Institute for Family Welfare and the Ministries of Education and Social Protection. Lastly, the Working Group for Social and Economic Stabilization consists of the Ministry of Agriculture and entities under this ministry, such as the Agrarian Bank, INCODER, and FINAGRO, as well as the Ministry of the Environment, Housing and Territorial Development; the Ministry of Education; the Ministry of Social Protection and its subordinate entities SENA and ICBF; and the Ministry of Commerce, Industry and Tourism and its subordinate entities BANCOLDEX, FOMIPYME and Social Action.

Equally ambiguous language was used when creating the Working Group on Strengthening the Organizations of the Displaced Population,³³³ an institutional formation which has the double purpose of monitoring and evaluating the policy, as well as generating spaces for the effective participation of the displaced population. The decree indicates that this working group is constituted by organizations for displaced population (hereinafter ODPs), one of which is in charge of the technical secretariat. It does not establish, however, the number of representatives the displaced have or the selection procedure to be part of this working group.

On the other hand, the decree indicates that at the territorial level—departments, municipalities and districts—the committees that were established under Law 387 shall support and complement the work of the SNAIPD. The committees in turn shall be organized in regional working groups and thematic committees, where the displaced community shall participate, and the work of the displaced shall contribute to the formulation of the Single Comprehensive Plan (hereinafter, PIU) for each territorial entity. The PIU establishes the lines of action, programs and resources that shall be allocated to the assistance of the internally displaced persons.

In short, the new National Plan establishes several spaces for participation at the national and regional levels, but it does not set forth in a concrete manner how this participation of the displaced population should take place, nor did it determine how to guarantee that the voices of ODPs are taken into account when designing and implementing policies. Therefore, it is not surprising that this scheme should be harshly criticized throughout the monitoring process carried out by the Constitutional Court regarding compliance with Ruling T-025.

In fact, the deficiencies of this aspect of the policy have been highlighted in several monitoring judicial decisions.³³⁴ Through these decisions, the Constitutional Court has pointed out five areas in which the participation component of the policies is failing. The first and most serious one is the fact that the creation of spaces for ODP participation does not mean that the proposals put forward by these organizations are taken into account for policy design or implementation. The presence of the representatives of the displaced population in these bodies has been conceived as a mere formality, and the fact that it represents their fundamental right to effective participation has been fully ignored. The second aspect is equally significant and has to do with the legitimacy of those who have access to these spaces to represent the displaced as their leaders. The third has to do with the fact that many efforts are concentrated at the national level while the territorial levels tend to be neglected. The fourth refers to the need to include a differential approach regarding participation to ensure that there are spaces for the most vulnerable among the displaced, such as women, indigenous peoples, Afro-descendant communities and disabled persons. Lastly, the Court has pointed out the need to develop a set of indicators for the effective enjoyment of the right to participate that allow the advances of the policy in this regard to be measured.

³³³ Decree 250/05, Item 6.

³³⁴ Constitutional Court, Judicial Decisions 176, 177 and 178 of 2005; 218 and 333 of 2006; 109 and 233 of 2007; 116 of 2008; and 008 of 2009, among others.

The government has partially responded to these observations. After a long negotiation process with the Monitoring Commission, a set of indicators was set up that was adopted by the Constitutional Court through Judicial Decision 116 of 2008.³³⁵ The participation mechanism that was established in Decree 250 of 2005 was reformulated in 2009 by means of the Protocol for the Participation of the Organizations of Displaced Populations (hereinafter, the Protocol), prepared by Social Action. The purpose of this instrument was to respond to the strong criticism expressed in Judicial Decision 008 of 2009. This instrument has been complemented by a regulatory document regarding its application that specifies some aspects that are just outlined in the Protocol.

3.1.2 The Current Framework for Participation in the Policy of Assistance to Internally Displaced Persons

Unlike Decree 250 of 2005, the Protocol was subjected to a consultation process with the ODPs, which was conducted by Social Action. The consultation was carried out through nine workshops with the displaced population in different departments of the country and one workshop with twenty-four members of the National Work Group on Strengthening the ODPs. Once the protocol was approved, Social Action disseminated it through the departmental committees and in some regional Working Groups on Strengthening the ODPs. Although both processes are an important step in the process of achieving true and effective participation, they have been criticized by civil society. It has been pointed out that the methodology employed for the consultation was not adequate because the text of the protocol was not sent in advance, before the workshops with the ODPs took place. Therefore, Social Action was unable to study the document and form a judgment. Also, during the workshops the discussions and the collection of suggestions did not follow clear guidelines. In addition, it has been noted that the socialization process of the approved instrument has been very slow. The process should have been finalized by April 2010, but it was still being carried out in June of that year (Comisión de Seguimiento, 2010c: 20).

The starting point of the Protocol is to consider the effective participation of ODPs, but not of displaced persons as such, as a right that entitles them to “be consulted with regards to the definition, execution, monitoring and evaluation of public policies pertaining to the prevention of forced displacement and the assistance of victims thereof.” However, not all organizations can exercise this right since the instrument sets forth a set of conditions that must be met with regards to their objectives and internal organization.³³⁶ This provision has been criticized for being state interference in the

³³⁵ This judicial decision establishes four indicators for the effective enjoyment of the right to participation: ODPs must have adequate settings to be able to participate effectively in public policy decisions regarding forced displacement; they must also enjoy adequate conditions to participate; they must enjoy guarantees to participate effectively; and there must be an adequate response to their suggestions and observations. Also, the decision sets forth a set of supplementary indicators by which three tasks that the state must undertake can be measured: training for the ODPs, the supply of material support, and the effective consideration of the suggestions put forward by the displaced regarding the different design and implementation processes for actions and programs that are part and parcel of the policy.

³³⁶ Protocol for the Participation of the Organizations for Displaced Populations:

autonomy that these organizations are entitled to enjoy and setting conditions for their presence in the spaces of participation (Comisión de Seguimiento, 2010c: 13).

The participation of ODPs must take place, according to this instrument, in two types of settings: national and regional. The former comprise the bodies where the policies, plans and programs are designed and the funds for their implementation are allocated. A longer list of participants has been established for the Protocol than for Decree 205 of 2005, since the Protocol includes the National Council for Comprehensive Assistance to the Populations Displaced by Violence (CNAIPD); the Technical Committee of the National Council for Comprehensive Assistance to the Populations Displaced by Violence; the National Working Groups for Prevention and Protection, Humanitarian Emergency Assistance, and Social and Economic Stabilization; the National Working Group on Strengthening the ODPs; the National Planning Council; and the Ministerial Councils in which issues related to displacement are discussed. Likewise, the Protocol sets forth the obligation to convene the representatives of the displaced populations to all SNAIPD and Social Action meetings in which issues related to their situation are discussed.

The regional settings also include a long list of participants. These are the bodies that design and apply departmental, municipal and district plans; they also establish the strategies to enforce the guidelines created at the national level. The territorial, departmental, municipal and district committees to assist displaced populations created by Law 387 operate at this level, as do diverse forums for discussion on regional and local lines of action that have emerged over time, such as the technical committees of the territorial committees; working groups or thematic committees on prevention and protection, humanitarian emergency assistance and social and economic stabilization; regional working groups on strengthening ODPs; social policy councils; local planning

An ODP is taken to mean a collective development nonprofit organization, in the form of an association, corporation, foundation, etc., that has been constituted by persons who have been displaced, who can be members of an indigenous or Afro-descendant community, women, adults, disabled persons or young persons. For the purposes of this Protocol, organizations for displaced population will mean the Work Groups on Strengthening the ODPs and their legally constituted organizations, provided they have been constituted for at least one year and/or are acknowledged by the community.

The work groups must meet the following requirements:

- They must be officially recognized by the territorial and national entities by means of an administrative act
- have clear objectives
- have an organizational structure supported by internal regulations
- have an operational plan aimed at fulfilling the function that Decree 250 of 2005 allocates to the National Work Group on Strengthening Organizations for Displaced Population: “To monitor and evaluate the policy of comprehensive assistance to displaced populations
- create spaces for effective and timely participation in the coordinating bodies under the principle of shared responsibility”
- ensure that the leaders of these organizations have basic knowledge regarding the management of organizational processes and updated knowledge of the public policies regarding forced displacement, and
- establish flexible and inclusive mechanisms to enable new organizations to participate in these spaces.

Each of these elements must comply with a set of conditions for which the criteria must be set in order to ensure the effective enjoyment of the right to participation.

councils; regional restitution commissions; and land commissions. Additionally, the Protocol establishes the obligatory presence of the ODP representatives in the spaces where the PIU and the regional development plans are designed.

The number of ODP representatives that must appear in each of these settings and the frequency of the meetings of each body are also determined.³³⁷ The Protocol also sets forth rules to guarantee a differential approach regarding this participation—that is, the proportion of ODP representatives who must belong to groups of women, indigenous peoples, Afro-descendants and disabled persons.³³⁸

After determining the spaces, the Protocol establishes a series of conditions and guarantees. The purpose of the former is to ensure that the interventions of the ODP representatives are timely and effective. Accordingly, provisions are established with regard to training and to the basic material support that these representatives must receive to travel to the places where the meetings are held and pay for accommodation and expenses. The guarantees consist of a set of basic rules for carrying out the working meetings in the abovementioned settings to ensure that the ODP representatives receive in advance the proposals that are going to be discussed, so that they can prepare their comments and suggestions in good time, as well as to guarantee that they shall be taken into account during the discussion.

In conclusion, the Protocol and the regulatory document establish the bases of a complex and ambitious participation mechanism that opens up spaces for the ODPs to get involved in the design and implementation of all aspects of the public policy on assistance to the displaced. However, despite the undeniable effort that went into elaborating this instrument and the progress that represents the creation of multiple settings for the participation of the displaced population—as well as the cross-consolidation of the differential approach—this mechanism has not managed to guarantee the effective enjoyment of the right to participation for the displaced population.

The above has been concluded from the analysis of the Constitutional Court on this strategy in its Verification Decision 383 of 10 December 2010. After considering the reports and data supplied by the government, the Monitoring Commission, the Office of the Ombudsman and the Office of the Inspector General, the court concluded that the efforts have focused on the formal aspects of participation while neglecting the effective impact that the proposals of the ODPs and of the displaced persons should

³³⁷ For example, it is determined that there shall be six ODP representatives at the CNAIPD, which must meet at least twice per year. There must be one representative in the technical committee of this council, four in each of the national working groups, except for the Working Group on Strengthening ODPs, where there must be one representative for each department in the country. All these bodies must meet at least four times per year. At the regional level, the Protocol sets forth that in the departmental committees, which must meet four times per year, there shall be six representatives of the displaced population and four in the municipal committees.

³³⁸ The Protocol establishes that in the departmental committees, of the six ODP representatives, four can be chosen according to the differential approach. In local settings, the four representatives must also represent the differential and population approach. The regulatory portion indicates that six representatives in the National Council for Comprehensive Assistance to the Populations Displaced by Violence must be chosen according to the differential approach.

have in the construction of the programs designed to assist them. As the court expressed it, “beyond the creation of adequate spaces for participation, these spaces and the proposals of the population have no incidence in the formulation and use of the planning and coordination of the policies to assist the displaced population.”

Although it could be possible to think, at first glance, that this harsh ruling emerges from the fact that the instrument is recent and that both government officials and the displaced face difficulties in implementing the mechanism the actual reason that effective participation does not occur is an underlying structural problem. Participation is conceived, in the norm itself, as a process that gives beneficiaries an opportunity to learn about the public policy and express their opinion about it, but not to act as active participants in its construction and evaluation. Also, the fact that the contributions of the representatives of this population are not binding has been construed as an authorization not to take them into account. Accordingly, the mechanism as a whole has been aimed at the simple collection of suggestions from civil society, which, regardless of their relevance or value, are doomed to be filed away and perhaps to be included in official reports on participation.

In addition to this problem, which lies at the core of the mechanism that the Protocol and the regulatory document enshrine, there are two equally important issues. The first one has been pointed out by the court, not only in this decision but also in previous ones, and involves the lack of representativeness of some of the leaders who attend the meetings, as denounced by the displaced themselves and by the Office of the Inspector General.³³⁹ Although this is a central problem, neither of the norms establishes the conditions to guarantee that those who attend the decision-making meetings have been designated by the population they purport to represent.

The second problem has been pointed out by nongovernmental organizations and the ODPs. It entails the lack of guarantees regarding the life and safety of those who have committed to the participation process. Leaders are subject to death threats, which are occasionally carried out, and the state has not been able to perform its basic mission of protecting the lives of its citizens.³⁴⁰ This is even more serious considering the evident vulnerability of this population, leading to the tragic conclusion that in Colombia people have to pay with their life to exercise the fundamental right to participation.³⁴¹

³³⁹ Judicial Decision 363 of 2010 includes excerpts of the report submitted by the Office of the Inspector General that give an indication of the depth of this entity’s concern regarding this issue.

³⁴⁰ Interview with Liliana Chaparro, coordinator of the legal division of access to justice of SISMA-Mujer, an NGO dedicated to combating violence against women, conducted on 16 June 2011.

³⁴¹ From 1 March 2002 until 30 June 2011, fifty displaced leaders have been murdered in Colombia. The record that CODHES keeps of these victims can be consulted at <http://www.codhes.org/images/stories/pdf/cld%20asesinados%20junio%20i%20%202011.pdf>

3.2. Spaces for Participation Opened Up by the Constitutional Court

The Constitutional Court, as already argued above, has played a central role in the development of the public policy on assistance to people who have experienced forced displacement. Its jurisprudence has introduced a rights-oriented approach that was lacking in the original formulation, creating structural changes both in the form in which the responsibility of the authorities toward the displaced population is conceived, and in the design and implementation of the specific programs and actions aimed at guaranteeing assistance for and protection of these persons.

The role played by this institution with regard to the effective guarantee of the fundamental right to participation has been just as crucial. In a number of ways, the court has actively encouraged the participation of the displaced population and of civil society at large in the process of debating and constructing this public policy, some of which follows a strategy intentionally set out by the court, while other processes have been the product of the way in which some of the actors involved have dealt with decisions that in principle had a different purpose. In fact, the court has invited different actors to participate in the debate and the decision-making process of its rulings and judicial decisions, using tools established in the legislation that regulates it and exercising its power to order the entities that constitute the SNAIPD to comply with its rulings, within the monitoring process set forth by Ruling T-025 of 2004. At the same time, the court's decisions have had an effect on the displaced by encouraging their participation in the decisions that affect them.

3.2.1. The Participation Strategy Set Up by the Court

The Constitutional Court addresses effective participation of displaced persons in the assistance policy regarding their condition from a double perspective. On the one hand, participation is a fundamental right of displaced persons and must be guaranteed by the authorities in charge of their protection. At the same time, it constitutes an essential requirement to overcome the unconstitutional state of affairs.³⁴² In accordance with the importance granted to this aspect, the Court has developed a strategy to ensure the participation of displaced persons and of civil society at large in the settings where this policy is debated and decided.

This is a two-part strategy. The first was discussed in the previous section. The court has demanded that the government and other entities that make up the SNAIPD create spaces for effective ODP participation at the same time that it has approved indicators to ensure the effective enjoyment of this right and monitored the results. The second part of the strategy has consisted in including displaced persons and civil society organizations in the discussion process that leads to the judicial decisions issued within the monitoring of compliance with Ruling T-025 of 2004 by inviting them to participate in the proceedings. Since these rulings set forth the guidelines that must be followed by those who design the different aspects of public policy, the possibility of submitting arguments and suggestions during the design process is a valuable opportunity to contribute in the construction of the state's response to forced exoduses.

³⁴² Constitutional Court, Ruling T-025 of 2004.

The participation of the displaced and of nongovernmental organizations in the proceedings to make monitoring decisions has been possible thanks to two instruments provided for in Decree 2,067 of 1991, the norm regulating judicial procedures before the Constitutional Court—namely, citizen participation³⁴³ and public hearings.³⁴⁴ The first instrument enables the court to request that public entities, private organizations and experts submit writs or documents that may contribute to illustrating relevant aspects of the issues being analyzed by the court. This mechanism has been employed frequently since the first years of this court's existence,³⁴⁵ and has made important contributions to the decision-making process on complex issues that require expert knowledge to be understood in depth, such as the worldviews of indigenous peoples. On the other hand, this mechanism has become an instrument that allows different civil actors to participate in the debates that take place at this court by inviting them to present their positions and arguments. In the specific case of the policy on assistance to internally displaced persons, the Court has requested the participation of experts, nongovernmental organizations and academia³⁴⁶ throughout the process to monitor compliance with the orders issued under Ruling T-025 of 2004.³⁴⁷ The documents submitted by these actors have contributed to analyzing the failures in the policy and seeking alternatives to address such deficiencies.

³⁴³ Decree 2,067 of 1991, Article 13.

³⁴⁴ Decree 2,067 of 1991, Article 12: "Up to ten days before the expiration of the term to issue a ruling, any magistrate may propose to have a hearing convened so that whoever has issued the norm or participated in its elaboration, directly or through a legal representative, and the claimant can meet to answer questions to discuss further the arguments that were submitted in writing or clarify facts that are relevant for the decision. The court, by majority vote of those attending the hearing, will decide whether to convene a new hearing, set the date and time at which it shall take place and grant the summoned parties a brief but reasonable time to prepare their arguments. Hearings are public. The court will set an adequate term for the claimant and for whoever has issued the norm or participated in its elaboration to present their arguments. The Inspector General can participate in the hearings as he or she considers relevant, after having expressed an opinion. In exceptional cases, when the court considers that it may be useful to clarify a specific aspect of constitutional nature, whoever has acted as challenger or defender of the norms subject to review may be invited to submit oral arguments before the hearing."

³⁴⁵ This instrument was first employed for Ruling T-428 of 1992 by Magistrate Ciro Angarita Barón, who requested opinions from three experts on the cultural impact suffered by an indigenous community when a road was built in their traditional territory.

³⁴⁶ The Court has sought support from academia to address the most delicate and complex issues regarding assistance to displaced persons. Through Judicial Decision 068 of 2008, the Court requested analysis and diagnoses from these institutions on six specific issues that are especially complex: the system of registration and characterization of the displaced population; prevention of forced displacement; forced displacement in the context of legitimate actions carried out by the public force or through omissions of the state; guaranteeing protection and restitution of lands and immovable property that have been abandoned by the displaced population due to the displacement they suffered; the supply of dignified housing to the displaced population; and the development of return and resettlement processes. A result of this request from the court is the book *Más allá del desplazamiento* (Beyond Displacement), published by the Universidad de los Andes, which has been quoted several times in this study.

³⁴⁷ For example, the National Indigenous Organization (ONIC), an indigenous NGO, and UNHCR participated in the process of Judicial Decision 004 of 2009. This participation was even greater in the process of issuing Judicial Decision 008 of that same year, in which UNHCR, several organizations of displaced populations, and academic institutions were involved.

Public hearings play a similar role, but they enable civil actors to participate more actively in the debate. Unlike citizen participation, using them was not an established practice when the court began to hold them in the context of monitoring compliance with T-025 of 2004. Nonetheless, this has not prevented them from becoming a core element of this process. As of July 2011, more than a dozen hearings have taken place with a constant presence of the institutions that make up the SNAIPD, the Office of the Ombudsman, the Office of the Inspector General of the Nation and the Monitoring Commission. In this regard, it is worth noting that the national government and the control entities of the state have shown great commitment. Not only have they attended the hearings they have been summoned to, but they have actually sent the highest ranking officials from each institution.³⁴⁸

ODP participation in this space has been improving gradually, once some of these organizations managed to overcome their reservations regarding the Constitutional Court's willingness and ability to carry out a process aimed at guaranteeing the effective enjoyment of their rights.³⁴⁹ In this case also, the commitment of the government has been critical to guaranteeing the success of the hearings: it has taken care of travel and accommodation expenses for the leaders of the displaced population, which ensures their attendance.³⁵⁰ Other actors, both public and private,³⁵¹ have participated in debates depending on their area of expertise. For example, the commander in chief of the armed forces, General Fredy Padilla de León, attended the hearing held on 12 December 2008 to address the problem of the safety guarantees offered to displaced persons, and he made a commitment in this respect.

In brief, the court has made a deliberate effort to gradually incorporate different civil actors, and more specifically ODPs, in the debate process prior to the issuance of judicial decisions that shape the public policy on assistance to victims of forced exoduses. Thus, it has opened up a new space to guarantee the fundamental right to participation, ensuring that the proposals of both the beneficiaries of these policies and the organizations that work with them are taken into account. Additionally, the court has established a mechanism to legitimize decisions, as they now are sustained, not only on the authority of a constitutional judge but also with the support of public debate in which the relevant authorities, civil society and the victims have participated.

3.2.2. Effects of Court Decisions on the Participation of the Displaced Population

The Constitutional Court has developed several mechanisms to ensure the effective enjoyment of the right to participation of internally displaced persons in elaborating and implementing the policies designed to assist them. Its role in this sense is not limited to the strategy that has been designed for this purpose. The court's decisions and the

³⁴⁸ The ministers and directors of the entities that make up the SNAIPD have personally attended these hearings, actively participated in the debates and acquired specific commitments.

³⁴⁹ Interview with Jorge Rojas, president of CODHES, carried out on 4 July 2011.

³⁵⁰ Interview with Jorge Luis Garay, president of the Monitoring Commission, carried out on 21 June 2011.

³⁵¹ Governors, mayors, UNHCR, and academics have attended hearings on different occasions.

changes it has made to the structure of the SNAIPD have had the effect of promoting the participation of this group of persons, even in ways that the court itself had not foreseen.³⁵²

The displaced population has been portrayed, more often than not, as helpless victims who are incapable of fighting to defend their interests. But this image does not match the reality of the situation. Although the displaced are undeniably vulnerable, this has not prevented them from organizing and mobilizing to fight for their rights (Brookings, 2007).

The case of the movement of the displaced in Medellín illustrates the ability of these persons to create organizations and design strategies for collective action that are flexible enough to adjust to changes, both in public policy and in the way that authorities respond to those policies. It is worth noting that this city is one of the main centers of reception for the displaced population,³⁵³ so this movement may have emerged from others that started in other parts of the country.

The movement came out of a combination of several factors, including the increase in the displaced population in Medellín since 1992, the conditions of extreme poverty they suffered and the lack of social and governmental support they encountered. Indeed, assistance to internally displaced persons only began after Law 387 of 1997 came into force. It is also important to keep in mind that several years passed before municipal authorities assumed the responsibility of assisting this population, arguing that the matter should be dealt with by the national government (Granada and González, 2009: 115).

The conditions of extreme poverty and the indifference of authorities that internally displaced persons were facing triggered the first mobilizations in 1996. Most of them involved direct actions, such as invading private and public lands to build houses on them, blocking public roads and more frequently, occupying public or church-owned buildings.³⁵⁴ These actions were combined, to a lesser extent, with filings of legal and administrative actions before the authorities. They used this strategy until 2004, when they moved on to actions taken within the institutional framework.

Ruling T-025 of 2004 and the changes in public policy from that point on played a fundamental role in the change of strategy this movement adopted, as the legal instrument opened institutional spaces to include the displaced in the process of public policy design. Repression of the movement by the public forces and the poor results they obtained through direct action were also contributing factors (Granada and González, 2009: 116–121).

³⁵² Interview with Liliana Chaparro, coordinator of the legal division of access to justice of SISMA-Mujer, an NGO dedicated to combating violence against women, conducted on 16 June 2011.

³⁵³ According to Social Action, as of 30 September 2010, Medellín is the second most common place of reception of displaced persons after Bogotá, with 181,059 persons (43,680 households). The city also experiences thousands of intra-urban displacements, which have not been fully included in the official records (Personería de Medellín [2010], *Situación de los Derechos Humanos en Medellín*, Medellín, p. 23).

³⁵⁴ The movement occupied the church of La Candelaria in July 1996 and the church of La Veracruz in 1998. In June 1996 they occupied the premises of the Universidad Nacional in Medellín, and in October 1996 and November 2002 they occupied the Universidad de Antioquia.

Nonetheless, the decision to participate in the process opened up by the Constitutional Court and in the official spaces of participation was a matter of debate within the movement. Around the country, the movement had been led by people who already had experience with organization and mobilization before they were displaced from their places of origin. Traditionally, grassroots movements, especially those involving peasants, have been wary of state institutions and even more so of the effectiveness of legal actions to achieve their claims. Therefore, to participate in the process opened up by the court implied not only overcoming deeply set and well-founded misgivings but also adopting an entirely different approach to the struggle for their rights. This step was taken after a long internal debate in which Ruling T-025's changes to the political structure and the decisions issued to monitor its enforcement played a significant role. In fact, the Constitutional Court demonstrated, through its decisions, its determination to continue with the process protecting the rights of the displaced population, which in turn provided the movement the necessary confidence in the institution to participate in official settings.³⁵⁵

The decisions of the Court have unwittingly modified the actions of the movements of the displaced and the means by which they participate in public policy design. They have also become an empowering instrument for these persons, especially for the most vulnerable sectors of this population. Judicial Decision 092 of 2008, which addresses the situation of displaced women, is a perfect example of this effect.

The decision compiles a set of claims that displaced women and their organizations had been putting forward for many years but that had gone largely unheeded by state institutions, such as the need to adopt measures to combat the violence against women and sexual violence that occur in the context of displacement. Beyond the specific orders issued by the Constitutional Court to different public entities regarding the protection of women,³⁵⁶ Judicial Decision 092 has an important symbolic significance for this group. Its dissemination has enabled women to feel, perhaps for the first time in their lives, that they have support from a state institution, which has produced intense mobilization among them. They have created new organizations and strengthened existing ones, and some mixed organizations have created women's chapters. Another interesting development has been the inclusion of female leaders in a movement that had been dominated by a male-centered logic.³⁵⁷

However, the participation that has been enabled by the rulings of the Constitutional Court is afflicted by the same serious problem that afflicts the public policy—namely, the lack of protection for those who decide to exercise their fundamental rights. Although the national government has frequently expressed its determination to guarantee the lives and rights of the movement's leaders, threats and assassinations continue, and no progress has been made in the investigation to discover

³⁵⁵ Interview with Jorge Rojas, president of CODHES, carried out on 4 July 2011.

³⁵⁶ The Constitutional Court ordered the design and implementation of thirteen programs to cover the specific needs of women, mentioned in chapter 2. Additionally, it confidentially transferred a set of cases of sexual violence to the Office of the Attorney General for criminal prosecution.

³⁵⁷ Interview with Liliana Chaparro, coordinator of the legal division of access to justice of SISMA-Mujer, an NGO dedicated to combating violence against women, conducted on 16 June 2011.

the perpetrators. This situation was already alarming enough on its own, but it has become even more serious since the enactment of the Victims Law, which establishes a means to restore the lands that the displaced were forced to abandon. The high levels of impunity have hindered many land restitution processes, as many spokespersons for the displaced have been murdered.³⁵⁸

3.3. The Monitoring Commission for Public Policy on Forced Displacement

Not only has civil society used the real and symbolic spaces for participation created by public institutions for designing public policies, but it has also engaged in creating and strengthening its own means of participation. In the previous section we discussed how the movements of the displaced have appropriated the jurisprudence generated by the Constitutional Court and incorporated it into their strategies. This section will analyze the mechanism created by actors from different sectors of society to monitor the actions of the state, as well as the formulation of proposals to ensure the effective enjoyment of fundamental rights for the displaced population.

The Monitoring Commission for Public Policy on Forced Displacement is a unique body, the product of mechanisms put in place to prosecute human rights violations and, crucially, of the role that the Constitutional Court has assumed with regard to policies designed to address the situation of forced displacement.³⁵⁹ In fact, the declaration of an unconstitutional state of affairs through Ruling T-025 of 2004 was accompanied by a requirement to institute measures to prevent a repeat of what had happened in the past when such a state of affairs was declared—namely, that no changes had been introduced in the public policies it was meant to affect.³⁶⁰ The time that elapsed between the handing down of the ruling and the almost insignificant action taken by the government to enforce it was grounds enough to fear that Ruling T-025 would be treated as its predecessors had been.

The response from one sector of civil society to prevent this from happening was to create the commission. It stemmed from a meeting that took place in 2005 at the law school of the Universidad de los Andes, convened by the dean, Eduardo Cifuentes (who had been a magistrate of the Constitutional Court and ombudsman), with Jorge Rojas, director of CODHES, and Pedro Santana, director of the corporation Viva la Ciudadanía. They concluded that it was necessary to create a monitoring body that would assume the role of citizen oversight of the enforcement of this ruling and that would denounce, if necessary, the authorities' failure to act. The idea was presented to Manuel José Cepeda, magistrate of the Constitutional Court and the proponent of

³⁵⁸ The media constantly refer to the assassination or torture of displaced leaders, but the Ministry of the Interior points out that it is impossible to provide bodyguards for all of them (*El Tiempo*, August 2011).

³⁵⁹ Interview with Jorge Luis Garay, president of the Monitoring Commission, carried out on 21 June 2011.

³⁶⁰ Ruling T-153 of 1998 declared an unconstitutional state of affairs with regard to the situation of systematic overcrowding and infringement of rights experienced by the prison population, a situation that as of August 2011 had not yet been addressed. An unconstitutional state of affairs was also declared in Ruling SU-559 of 1997 with regard to the fact that many teachers had no pension fund, and in Ruling T-144 of 1999 when a municipality failed to pay the salaries of its public servants.

Ruling T-025, who supported it on the grounds that it was a novel and legitimate form of participation by civil society, and invited them to participate in monitoring compliance with the ruling.³⁶¹

These founders were the commission's first members, but new members from academia, civil organizations, the media, gender rights organizations and ethnic rights organizations were soon invited to join. At present, the commission is composed of the economist Luis Jorge Garay (who chairs it); Marco Romero, professor at the Universidad Nacional and codirector of CODHES (who acts as technical secretary); Eduardo Cifuentes, professor at the Universidad de los Andes; the journalist Patricia Lara; Monsignor Héctor Fabio Henao, national director of the Social Ministry of the Colombian Catholic Church; Dr. José Fernando Isaza, president of the Universidad Jorge Tadeo Lozano; Rodrigo Uprimny Yepes, director of the Center for the Study of Law, Justice and Society, DEJUSTICIA; Luis Evelis Andrade, president of the National Indigenous Organization of Colombia (ONIC); Rosalba Castillo, leader of the organization Afroamérica XXI; and Pedro Santana, president of the corporation Viva la Ciudadanía. The commission also has international participation from Rigoberta Menchú, Nobel Peace Prize recipient, Plan International and the former representative of UNHCR in Colombia, Roberto Meier.

The commission does not represent the displaced population, nor does it purport to do so. However, it has set up a dialogue with most of their associations through meetings held with each of them. In this way, the commission also informs the displaced population of the enforcement process for Ruling T-025 and listens to their concerns and suggestions. In these meetings the ODPs have acquired basic knowledge of the policy's legal framework and of the possibilities of developing it by means of Constitutional Court decisions.³⁶²

As mentioned above, the commission was devised as a mechanism to oversee the actions of the national government and other authorities with regard to enforcing Ruling T-025, but it has gone well beyond that purpose. In fact, it plays a central role in promoting the public policy by submitting periodical reports to the Constitutional Court on the situation of the displaced. These reports often differ substantially from official records. It also presents proposals for assistance to the displaced population using a rights-oriented approach. The commission publishes its reports and involves the public by creating critical awareness of the authorities' response.

The work of commission has been carried out mostly before the Constitutional Court, taking advantage of the spaces that it has created for participation in the process for monitoring compliance with T-025 of 2004. As the president of the Commission explains, the work has developed in several stages.³⁶³ The first stage centered on the debate over the indicators for the effective enjoyment of the rights of internally displaced persons. As a matter of fact, the model of indicators that was ultimately adopted by the court is based on the Commission's work. The second stage focused on

³⁶¹ Interview with Jorge Rojas, director of CODHES, carried out on 4 July 2011.

³⁶² *Ibid.*

³⁶³ Interview with Jorge Luis Garay, president of the Monitoring Commission, carried out on 21 June 2011.

describing the situation of the displaced. Elaborating on this analysis was essential, as the state lacked sufficient and up-to-date information and was thus unable to design operative action to ensure the effective enjoyment of the rights of internally displaced persons. In this context, the First National Monitoring Survey was carried out as a key instrument to identify the situation and the needs of the displaced. As already noted in the chapter that deals with the situation of displacement, three of these surveys have been carried out to date. So far, the government has not questioned the validity of the results, but it has chosen to develop its own measuring devices.

Once the initial diagnosis was established, the third stage began, with the commission analyzing the different components of the public policy, placing special emphasis on income generation and land restitution, since they are the key elements in the process of restoring the rights that have been infringed by forced exodus. At this stage there were some discrepancies with the government due to the large amount of land that had been taken away from those who had been forced to abandon it. This was reflected in the Second Monitoring Survey, which indicated that the exoduses had left 5.5 million hectares abandoned. This figure corresponds to 10.8 percent of the agricultural land in the country (Comisión de Seguimiento, 2009: 57). Although the administration of President Uribe did not accept this figure, the present administration has acknowledged that some six million hectares have to be restored to displaced persons (Senado de la República de Colombia, 2011). Although these differences have been settled, the dispute generated some friction between the government and the commission, and the relationship, although not severed, has lost the collegiality enjoyed up to that point.

The fourth and last stage has been determined by the results of the Third Monitoring Survey, which covered a larger population and confirmed the existence of structural problems underlying the public policy. During this stage, the commission participated in the debate about the Victims and Land Restitution Law, of which it continues to be critical. The Commission acknowledges that the law represents major progress in that it recognizes that there are victims of the conflict and that they have the right to recover the lands they have been dispossessed of, but it considers that the law does not properly incorporate the rights-oriented approach that developed by constitutional jurisprudence (Comisión de Seguimiento, 2011). It is therefore expected that in the fifth stage of its activities the commission will monitor the enforcement of this law and its impact on the policy to assist the displaced population.

In short, the commission constitutes an unprecedented mechanism and a very valuable space for the participation of civil society in constructing the response to the situation of forced exoduses and protecting the rights of those who have suffered them. Its research has yielded results that can be contrasted with those presented by the government, offering a picture of the situation that is closer to the reality of the displaced persons, the rights they have been deprived of, and their needs. Additionally, the commission has actively contributed to devising mechanisms to measure and guarantee the displaced population the effective enjoyment of its rights. It has been able to act thanks to the spaces opened up by the Constitutional Court, and the thorough work of its members has resulted in reports and proposals solidly supported by facts.

3.4. Conclusions

The effective participation of the displaced population—and of civil society in general—in the construction of public policy to assist the victims of forced exoduses has yet to be achieved. Some progress has certainly been achieved since the first formulation of the policy, as several spaces and mechanisms have been created in which representatives of ODPs can participate at the national, regional and local levels. However, two major obstacles for the full enjoyment of this right have not been overcome.

One is the fact that the participation, as it is handled within the SNAIPD, is still a mere formality, as noted in Constitutional Court Verification Decision 383 of 2010 and the report of the Monitoring Commission. The contributions of displaced persons to the discussion have no real effect on the formulation and implementation of the different aspects of the policy, as it is assumed that the government's providing information about and discussing plans is enough to guarantee the right of participation. This interpretation of the right is not unique to the authorities and public officials responsible for providing assistance to the displaced; it can be observed throughout public entities at all levels despite the constitutional jurisprudence that stresses the material dimension of this right. It is therefore highly relevant to revise the concept of participation by taking into account the decisions issued by the Constitutional Court and applying them in the design of the response given to forced displacements.

The second obstacle is also related to a structural problem—namely, the state's inability to guarantee the life and safety of those who exercise their right to participation. The effort of opening channels of communication between public authorities and civil society is pointless if using them comes, more often than not, at the price of one's own safety or even one's own life. The exercise of rights cannot continue to be seen as a heroic task in a country that prides itself on the solidity of its institutions and remarkable indicators of economic growth.

The displaced population and civil society have manifestly expressed their desire to participate in formulating a public policy that can restore the effective enjoyment of the most fundamental rights to one-tenth of the population of the country. They have actively and creatively opened spaces and devised proposals. An honorable state, one that does not humiliate its citizens, is obliged not only to listen to what they have to say and to take the concerns they voice into account, but also to guarantee that this process takes place without the participants' having to choose between remaining silent and losing their lives.

PART III

REFUGEES AND ASYLUM SEEKERS: DYNAMICS AND PUBLIC POLICIES

1. General Analysis of the Dynamics of Refugees and Asylum Seekers

1.1. Profile of Refugees in Colombia

Individuals Requesting International Protection in Colombia

With respect to the number of persons requesting asylum in Colombia, it is worth highlighting that in 2010 there was a reduction of 236 cases, equivalent to 61.94 percent, according to data obtained from the Refugee Program of the National Social Ministry Secretariat, Caritas Colombia. Yet while in Colombia asylum requests decreased significantly in 2010, this was not the case in other countries of the region such as Panama, Ecuador, and Venezuela.

Of the total of 161 persons who received assistance in 2010, 40 requested asylum in 2011. These figures mark a notable contrast with those for the asylum requests received in that same year in Panama (517), Ecuador (24,595), and Venezuela (3,426).

Table 7. Number of Persons Requesting Refugee Status in Colombia 2005-2010

YEAR	N° OF REQUESTS
2005	78
2006	84
2007	141
2008	88
2009	381
2010	145

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia

With respect to the place of origin of people requesting international protection in Colombia, there is a clear prevalence of people from the Americas, followed by Africa, Asia and other regions. The tables below show that the majority of those requesting asylum in Colombia come from African countries (Horn of Africa) and Cuba.

Table 8. Asylum Seekers in Colombia by Place of Origin

	2005	2006	2007	2008	2009	2010
	Requests %	Requests %	Requests %	Requests %	Requests %	Requests %
Europe						
Africa	2.56	10.71	30.49	51.13	84	52.41
America	94.87	86.90	65.24	44.31	13.1	51.72
Asia			2.12	2.72	4	6.89
Other territories	2.56	2.38	2.83	2.72	0.78	1.37

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia.

Table 9. Asylum Seekers in Colombia by Nationality

COUNTRY	N° PERSONS	COUNTRY	N° PERSONS
AFGHANISTAN	5	MAURITANIA	1
BANGLADESH	7	IRAN	4
BRAZIL	1	JAMAICA	1
BOLIVIA	1	KENYA	1
CONGO	3	NEPAL	15
CUBA	324	PALESTINE	1
ETHIOPIA	71	PAKISTAN	1
EGYPT	1	PERU	6
ERITREA	198	SALVADOR	7
IVORY COAST	2	SOMALIA	207
ECUADOR	17	SRI LANKA	9
GHANA	8	SIERRA LEONE	1
GUINEA BISSAU	1	SUDAN	1
GUINEA CONAKRY	1	TURKEY	1
IRAQ	4	UZBEKISTAN	1
LIBERIA	1	VENEZUELA	43
		ZIMBABWE	1

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia.

With respect to gender, the immense majority of those requesting international protection (2005–2010)—over 80 percent—are men, which marks a clear trend with respect to the characterization of those who cross the Colombian border in search of asylum.

Table 100. Asylum Seekers in Colombia by Gender

Women	181	(19.05%)
Men	769	(80.94%)

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia.

The table below shows the results regarding administrative procedures for the granting of asylum during the 2005-2010 period:

Table 111. Status of the Procedures for Admission of Refugees in Colombia

Positive	Denied	Abandoned Procedure	Did not submit request	Pending as of 2010	Other situations
95	612		108	63	

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia.

Finally, it is important to note that there was only one case of an unaccompanied minor requesting asylum in Colombia in 2010.

1.2. Recognition of the Condition of Refugees in Colombia by Country of Origin, Gender and Age between 1990 and 2010

Age Groups

The following table shows the distribution of the population who have been granted refugee status in Colombia, broken down by gender and age groups. The majority (71.2 percent) are concentrated in the 18–59 age group, and most of them (65.1 percent) are men.

Table 122. Distribution by Gender and Age of Recognized Refugees in Colombia

Age group	Men		Women		Total	
	N°	%	N°	%	N°	%
0-4	4	1.9	6	2.8	10	4.7
5-11	6	2.8	9	4.2	15	7.1
12-17	9	4.2	6	2.8	15	7.1
18-59	107	50.5	44	20.8	151	71.2
60 y +	12	5.7	9	4.2	21	9.9
Total	138	65.1	74	34.9	212	100

Source: Refugee Program of the National Social Ministry Secretariat, Caritas Colombia.

Supplementary data shows the following:

- Refugees who work or receive income from productive projects or informal jobs: 106
- Older adults who receive income or pensions from their families: 14
- Older adults who receive annuities from the refugee program: 4
- Refugees who have their own productive project: 7

1.3. Characteristics of Refugee Movements in Colombia (1990–2010)

Because Colombia is not a receiving country, one of the great challenges faced in handling the refugee phenomenon is finding accurate and concrete data. The collection and systematization of data is informal and heterogeneous due to the confidentiality with which the information must be handled.

Thus, while data regarding the migration phenomenon in Colombia are scarce, data concerning the presence of refugees in the country are even more limited. The sources consulted on this matter were the Ministry of Foreign Affairs, where everyone requesting asylum and granted refugee status is registered; the National Social Ministry Secretariat, due to the support it provides through its Refugee Program; and the Administrative Department of Security (DAS), the migration authority. Finally, we must mention that DANE did not report any data on the presence of refugees in Colombia in the national census carried out in 2005.

In its last report, based on statistics about Colombia, UNHCR reported that 212 persons had been recognized as refugees in the country (UNHCR 2010).

2. Framework of Public Policies on Refugees in Colombia

According to international law, refugees are persons who are not in their country and who have “justified fear of being persecuted for reasons of race, religion, nationality, belonging to a determined social group or political opinion.”

Latin American states expanded that definition to include persons who flee their countries due to civil disturbances, war, or massive violations of human rights, thus expanding the old notion of asylum conceived as state protection for victims of political persecution. That expanded definition, contained in the 1984 Cartagena Declaration on Refugees, provided guidelines regarding legal principles and criteria for dealing with the refugee crisis, on the basis of the principles of refugee law grounded in human rights. Consequently, refugee status ceased to be understood as a privilege of politicians and professionals and came to include all persons who needed it, regardless of their social or economic condition.

2.1. The National Legal Framework and Its Relation to International Legal Frameworks

The Colombian legal framework regarding refugees is made up of three levels. The first contains the laws approving the Convention of 1951 and the Protocol of 1967. The second contains the decree that develops the provisions of the convention and establishes applicable national procedures. The third includes the jurisprudence of the High Courts, the Constitutional Court, the Council of State, and the High Council of the Judiciary, which interpret and apply the provisions of both the convention and the decree.

a) *Laws Approving the Convention of 1951 and the Protocol of 1967*

Colombia became party to the Convention of 1951 relating to refugee status through Law 35 of 1951, while the Protocol of 1967 was approved through Law 65 of 1979. By virtue of these, the Colombian state undertakes to comply with the duties deriving from said international instruments. In addition, the concept of refugee has made it possible for Colombia to develop the protection of individuals who risk torture in another country, which also entails the development of Colombia's international obligations in that respect.

b) *Administrative Provisions*

The Colombian government applies international regulations through statutory decrees that develop the content of the laws approving those international treaties. The prevailing administrative regulation is Decree 4,503 of 2009, which is divided into two sections.

The first section of the decree establishes the definition of refugee under Colombian law. The definition includes three different meanings, all of them deriving from various sources but having, for the purposes of the internal legal condition, identical effects.

First of all, those individuals included in the definition established by the Convention of 1951 and the Protocol of 1967 are considered refugees—that is, those persons who are outside their country of residence and are the object of persecution for reasons of race, religion, belonging to a social group, or political opinions, in those cases in which their country cannot or will not protect them adequately.

In the second case, refugees are those persons who have been forced to leave their country because their lives, freedom, or safety have been threatened due to generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other situations that entail a serious disturbance of public order. This definition of refugee derives from the Third Conclusion to the 1984 Cartagena Declaration on Refugees.³⁶⁴ This expanded conception was also drawn from the

³⁶⁴ Colombia is a signatory as of November 22 of that year.

Convention of the Organization for African Unity.³⁶⁵ Though in principle, according to international law, declarations are nonbinding expressions,³⁶⁶ meaning that in general they do not generate obligations for the states that are party to them unless expressly stipulated, the adoption in the decree of the expanded definition of refugee has transformed it into a binding regulation for the Colombian state.

According to the third and last case, refugees are those persons of whom there are justified reasons to believe that they could be subjected to torture, punishment, or other cruel, inhumane or degrading treatment if they were forced to return to their country of nationality or, in the case of stateless individuals, of residence. It is worth noting that the inclusion of refugees under this definition is in accordance with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁶⁷ and the Inter-American Convention to Prevent and Punish Torture.³⁶⁸ Though the original obligation contained in those conventions is limited to *non-refoulement* to the country where the risk exists, the Colombian state, by establishing that the legal protection of those individuals must be the same as that granted to refugees, has created a new regulatory framework that is much more favorable than that of the Convention, for which reason it prevails in the domestic order.³⁶⁹

The second part of the decree establishes the procedure that must be followed to obtain refugee status. The determination of said status is a recognition of a preexisting condition—that is, persons “do not acquire the status of refugees by virtue of the recognition, but rather, they are recognized as such because they are refugees.”³⁷⁰

The objective of the procedure is to determine whether the facts stated by the requesting party are true and call for recognition of refugee status. The effect of granting said status is access to protection by the Colombian state according to the terms of the Convention of 1951, and it allows legal residence in the country and the practice of a profession once the requirements established by the decree have been fulfilled. This procedure is carried out before the Advisory Committee for the Determination of Refugee Status, which then makes a decision recommendation to the Ministry of Foreign Affairs. In turn, the latter issues a resolution granting or denying recognition, a decision that may be appealed. The final decision can also be the object of an action to set aside and restore rights, which shall be decided by a court.³⁷¹

³⁶⁵ Article 1, paragraph 2.

³⁶⁶ United Nations Treaty Reference Guide, available at <http://untreaty.un.org/ola-internet/assistance/guide.htm> (accessed on 29 June 2011; last update, 17 January 2001).

³⁶⁷ Article 1, Section 1. Colombia signed the convention on 10 April 1985, and it was approved through Law 70 of 1986.

³⁶⁸ Article 13, final subparagraph. Colombia approved the convention through Law 409 of 1997.

³⁶⁹ Convention against Torture, Articles 1.2 and 16.2.

³⁷⁰ UNHCR Manual, paragraph 28.

³⁷¹ Given the previous impossibility of a solution through government channels, the action to set aside and restore rights is appropriate against particular administrative acts, as contemplated in Article 86 of the Administrative Litigation Code.

c) *Jurisprudence*

The jurisprudence has developed refugee law in Colombia in some limited cases. There have not been many legal rulings because the action to set aside and restore rights is not an appropriate mechanism, and actions for the protection of fundamental constitutional rights (*tutelas*) have not been frequently filed.

However, in the few cases in which there have been rulings, the High Courts have emphasized the intrinsic relationship between the procedure for the recognition of refugee status and Colombian constitutional law, framing it in light of the obligations to protect human rights and administrative due process.³⁷²

2.2. Institutional Framework

• Presidency of the Republic

The President has the legal power³⁷³ to issue, abrogate and modify the decrees regulating the definition of refugees and the procedure for their recognition.

• Ministry of Foreign Affairs³⁷⁴

The ministry³⁷⁵ carries out various duties at different levels:³⁷⁶

- Asks the Administrative Department of Security to issue the pass permitting the applicant to remain in the country legally during the process³⁷⁷
- Issues the resolution containing the decision with respect to recognition, in both the expedited³⁷⁸ and the regular³⁷⁹ processes

³⁷² See Rulings T-704/03 and T-321/05 of the Constitutional Court, the ruling of 22 October 2009 of the Supreme Court of Justice's Civil Cassation Court, and the rulings of 20 and 27 March and 8 May 2003 of Section 3 and that of 20 April 2006 of Section 4 of the Administrative Litigation Chamber of the Council of State, among others.

³⁷³ Political Constitution of Colombia, Article 189, Section 11.

³⁷⁴ Decree 4,503 of 2009.

³⁷⁵ The functions of the ministry are generally regulated in Article 59 of Law 489 of 1998, and particularly in Article 3 of Decree 3,355 of 2009.

³⁷⁶ The functions of the ministry are generally regulated in Article 6 of Decree 3,355 of 2009.

³⁷⁷ Decree 4,503 of 2009, Article 8.

³⁷⁸ Decree 4,503 of 2009, Article 12, Section 2.

³⁷⁹ Decree 4,503 of 2009, Article 15.

- **Deputy Minister for Multilateral Affairs**³⁸⁰
 - Presides over the Advisory Committee for the Determination of Refugee Status³⁸¹
 - Receives the requests for recognition of refugee status³⁸²
 - Decides whether the requests submitted late are justified³⁸³

- **Advisory Committee for the Determination of Refugee Status**³⁸⁴

Made up of the deputy minister for multilateral affairs or his delegate; the deputy minister of foreign affairs or his delegate; the director of international legal affairs or his delegate; the director of human rights and international humanitarian law or his delegate; the director of migration, consular, and citizen service affairs or his delegate; an advisor of the deputy minister for multilateral affairs who acts as secretary; and a member of a national or international institution who attends as a guest with the right to participate but without a vote.³⁸⁵

 - Interviews the applicant if deemed necessary³⁸⁶
 - Studies the case and makes recommendations to the ministry regarding the decision to be made³⁸⁷
 - Once refugee status has been granted, decides on the matter of economic dependency and coexistence in conformance with the principle of family union³⁸⁸
 - Decides on cases of exclusion³⁸⁹
 - Recommends revocation of refugee status³⁹⁰ in cases of cessation³⁹¹

³⁸⁰ The functions of the deputy minister are generally regulated in Article 62 of Law 489 of 1998 and particularly in Article 5, Section 2, and Article 13 of Decree 3,355 of 2009.

³⁸¹ Decree 3,355 of 2009, Article 13, Section 17.

³⁸² Decree 4,503 of 2009, Article 2.

³⁸³ Decree 4,503 of 2009, Article 5.

³⁸⁴ Decree 4,503 of 2009, Article 29.

³⁸⁵ Decree 4,503 of 2009, Article 29.

³⁸⁶ Decree 4,503 of 2009, Article 9.

³⁸⁷ Decree 4,503 of 2009, Articles 14 and 15.

³⁸⁸ Decree 4,503 of 2009, Article 18, Section 6.

³⁸⁹ Decree 4,503 of 2009, paragraph of Article 25.

³⁹⁰ Decree 4,503 of 2009, Article 27.

³⁹¹ Decree 4,503 of 2009, Article 26.

- **Office of the Director of International Legal Affairs**³⁹²

Prepares the draft of the resolution deciding on the appeal against a decision resolving a case, in the expedited procedure,³⁹³ or against a decision in the case of the regular procedure.³⁹⁴
- **Visas and Immigration Group**³⁹⁵

Grants refugee visas after recognition of refugee status by the ministry.³⁹⁶
- **General Archive of the Ministry of Foreign Affairs**³⁹⁷

Keeps the files once the process has been completed.³⁹⁸ All documents related to the procedure are confidential.³⁹⁹
- **Administrative Department of Security (DAS)**⁴⁰⁰
 - National administrative entity that replaced the Colombian Intelligence Service⁴⁰¹; acts as the migration authority in Colombia
 - Together with police authorities, receives the requests for recognition of refugee status of people at the country's borders, ports, or airports and sends them to the deputy minister for multilateral affairs as soon as possible⁴⁰²
 - When requested by the Ministry of Foreign Affairs, issues the pass that allows applicants to remain in the country legally while the procedure takes place, and renews it when necessary⁴⁰³
 - Informs the Advisory Commission if the applicant is stopped when trying to leave the territory, in which case the request would be considered abusive, triggering the expedited procedure⁴⁰⁴

³⁹² The general duties of the Office of the Director of International Legal Affairs are found in Article 8 of Decree 3,355 of 2009.

³⁹³ Decree 4,503 of 2009, Article 12, Section 3, subparagraph 2.

³⁹⁴ Decree 4,503 of 2009, Article 16.

³⁹⁵ The Visas and Immigration Group is part of the Office of the Director of Migration, Consular, and Citizen Service Affairs, whose duties are set forth in Article 18 of Decree 3,355 of 2009.

³⁹⁶ Decree 4,503 of 2009, Article 18.

³⁹⁷ The general duties of the Archive are found in Article 31 of Decree 3,355 of 2009.

³⁹⁸ Decree 4,503 of 2009, Article 21, subparagraph 2.

³⁹⁹ Decree 4,503 of 2009, Article 24, in conformance with Article 9 of Decree 274 of 2,000 and Article 35 of Decree 2,105 of 2001.

⁴⁰⁰ Decree 4,503 of 2009, Article 8.

⁴⁰¹ Decree 1,717 of 1960.

⁴⁰² Decree 4,503 of 2009, Article 2, subparagraph 2.

⁴⁰³ Decree 4,503 of 2009, Article 8.

- Carries out the legalization of applicants whose recognition has been denied and who wish to remain in the country⁴⁰⁵
- Facilitates the departure from the country of those applicants whose recognition has been denied⁴⁰⁶

- **Colombian Institute of Family Welfare – ICBF**⁴⁰⁷

This entity, created in 1968, is attached to the Ministry of Protection.⁴⁰⁸

The ICBF provides applicants who are minors with a legal representative during the process in order to guarantee their rights when they are not accompanied by an adult. They carry out interviews with the minors to respond to their special needs.

- **National Police**

The National Police is a civil armed organization responsible for internal order.⁴⁰⁹

Together with DAS, it receives the requests for recognition of refugee status of people at the country's borders, ports, or airports and sends them to the deputy minister for multilateral affairs as soon as possible.⁴¹⁰

a) *Inter-institutional Forms of Coordination*

There is inter-institutional coordination between the Ministry of Foreign Affairs and the abovementioned entities. The Ministry has the initiative in most cases; ICBF and DAS act within their spheres of competency when the Ministry so requires.

However, there are three cases in which coordination begins with other entities and then involves the Ministry: when the president issues, modifies or abrogates the decree regulating the status and procedures for refugees;⁴¹¹ when DAS informs the ministry that it has stopped an applicant in the process of leaving the country;⁴¹² or when DAS or the national police receive requests for asylum at borders, ports or airports and submit them to the ministry.⁴¹³

⁴⁰⁴ Decree 4,503 of 2009, Articles 11, 12.

⁴⁰⁵ Decree 4,503 of 2009, Article 20.

⁴⁰⁶ Decree 4,503 of 2009, Article 20.

⁴⁰⁷ Decree 4,503 of 2009, Article 4.

⁴⁰⁸ Law 75 of 1968.

⁴⁰⁹ Political Constitution of Colombia, Article 218. See also Decrees 049 of 2003 and 4,222 of 2006.

⁴¹⁰ Decree 4,503 of 2009, Article 2, subparagraph 2.

⁴¹¹ Political Constitution of Colombia, Article 189, Section 11.

⁴¹² Decree 4,503 of 2009, Articles 11 and 12.

⁴¹³ Decree 4,503 of 2009, Article 2, subparagraph 2.

b) *Treatment of the Issue by the Legislative Branch*

The only legislative developments in Colombian refugee law are the two laws approving the Convention of 1951⁴¹⁴ and its Protocol.⁴¹⁵

Since then, Congress has not issued any other laws developing this area of law. There is no specialized body or entity within the legislative branch to deal with the issue.

c) *Treatment of the Issue by the Judicial Branch*

The treatment of the issue by the judicial branch can be analyzed from two different perspectives: first, the way the judicial branch can hear a case, and second, the legal development promoted by the courts.

A case concerning refugees may be heard by a judge of the republic for two reasons. The first case is one in which an action to set aside and restore rights is filed against a decision that definitively denies a request for refugee status. This action is filed against administrative acts—in this case, the resolution denying refugee status—and seeks to have the judge declare the act null and order the administrative authority—that is, the Ministry of Foreign Affairs—to act differently and restore the individual rights that have allegedly been violated by the administrative decision.⁴¹⁶ Thus, the judge can mandate the recognition of the plaintiff as a refugee. The maximum term within which such an action can be filed is four months, after which the possibility expires.

However, the exercise of this action involves many problems that detract from its usefulness in cases of asylum requests. First of all, the maximum term for filing the action is four months after the decision, while the applicant can remain legally in the country for only thirty days, thus limiting the possibility of seeking that remedy. On the other hand, the procedure in the administrative litigation jurisdiction could take years. Hypothetically, an asylum seeker could file an action to set aside and restore rights against the definitive resolution denying recognition and request the temporary suspension of the effects of said resolution while the litigation is going on. Nevertheless, given the nature of this process, it makes no sense for applicants to wait several years for a decision that might or might not be favorable, as they would not be allowed to work to support themselves or their families.

For this reason, the jurisprudence of the High Courts has repeatedly acknowledged that the action to set aside and restore rights is neither an effective mechanism nor the appropriate legal manner to seek protection when the resolution

⁴¹⁴ Law 35 of 1951.

⁴¹⁵ Law 65 of 1979.

⁴¹⁶ Administrative Litigation Code, Article 85.

denying recognition ignores the fundamental rights of the applicant,⁴¹⁷ for which reason the action for protection of fundamental constitutional rights (*tutela*) would be more appropriate.

The *tutela* action is a subsidiary mechanism, meaning that it is only appropriate when there is no other mechanism or the existing one is so ineffective and inadequate that it might as well not exist.⁴¹⁸ The High Courts have recognized that this situation exists in the case of refugees, since the action to set aside and restore rights is not adequate to protect their rights.⁴¹⁹

The *tutela* action seeks to have a judge order the Ministry of Foreign Affairs, as head of the Advisory Commission, to reexamine the request for recognition of refugee status, and to do so properly, in case this was not done in the original process and the applicant's rights were consequently violated. It is important to point out that the *tutela* judge has not been able to recognize refugee status himself; rather, his task is to indicate to the Ministry in what senses its examination of the case violated fundamental rights and order it to revisit the case to correct the errors incurred in the original decision.

2.3. State Programs on Refugees

To date, there is only one refugee program in Colombia:⁴²⁰ one executed by the Office of the United Nations High Commissioner for Refugees, UNHCR, together with its implementing agency, the National Social Ministry Secretariat of the Colombian Episcopal Conference. The UNHCR operates in Colombia because the nation signed the Convention of 1951 and the Protocol of 1967, and its current work is also carried out within the framework of the Memorandum of Intent, signed by the parties in January 1999.

The cooperation of the UNHCR on the refugee issue, which is mainly technical and apolitical, involves advising the government. The cooperation of the National Social Ministry Secretariat, through the refugee program, is carried out at two levels: first, by helping asylum seekers apply for recognition of refugee status by providing legal aid; and second, by implementing measures to guarantee the rights to education, health and housing of asylum seekers, as well as lasting solutions for recognized refugees, to the extent that economic aid is available.

⁴¹⁷ Constitutional Court, Ruling T-704/03, and Council of State, Administrative Litigation Chamber, Section 5, Ruling of 20 April 2006.

⁴¹⁸ Constitutional Court, Rulings T-01/92 and C-543/92, which give rise to a long line of jurisprudence on this matter.

⁴¹⁹ Constitutional Court, Ruling T-704/03, and Council of State, Administrative Litigation Chamber, Section 5, Op. Cit.

⁴²⁰ The work carried out with refugees from other countries in Colombia, which is the object of study of this document, must be distinguished from the work carried out by the country to assist Colombian refugees abroad.

PART IV

RECOMMENDATIONS

1. Recommendations on International Migration

a) *Regarding the institutional structure for the management of the migration phenomenon:*

- Strengthen the institutional capacity of response with respect to the migration phenomenon, bearing in mind the recent creation of Migración Colombia, a permanent structure that seeks to comprehensively integrate public policy on migration
- Expand the developments made thus far regarding the management of the migration phenomenon at the legislative level, in order to define the content and scope of the institutional responsibilities of national and local government entities regarding the migrant population on the basis of the recommendations formulated in CONPES document 3,603 of 2009, Law 1,465 of 2011, and Decree 4,062 of 2011
- Define clearly the procedures (access routes) through which the migrant population can access their rights by virtue of the existing national and international legal framework. This implies establishing precisely which authorities and procedures will be in charge of this task

b) *Regarding the available information on the migration phenomenon in Colombia:*

- As soon as possible, implement technical mechanisms for gathering, storing, and processing updated quantitative information on migration movements from and into Colombia, in order to be able to identify the specific needs of the migrant population and establish the levels of demand for assistance and support to both immigrants in Colombia and Colombians abroad, by virtue of the legal obligations of the state
- Inform the migrant population so that they possess concrete knowledge of their rights as Colombian citizens abroad or as foreigners in Colombia

c) *Regarding the budget capacity to address the migration phenomenon:*

- Increase the budget for the comprehensive attention to migrations from and into Colombia, taking into account the complex nature of the phenomenon and

the great volume of Colombians residing abroad (approximately 10 percent of the total population, according to the 2005 census)

- Complement the existing regulations regarding the nature and management of resources for serving the Colombian population abroad, assets that are managed by the Ministry of Foreign Affairs through its Revolving Fund (Law 991 of 2005) and the Solidarity Fund for Migrations, recently created through the law that establishes Colombian public policy on migration

d) Regarding the participation of the migrant population in the formulation, execution and follow-up of public policy on migration:

- Grant authentic representation to the migrant population before the entities in charge of coordinating public policy on migration, bearing in mind the limited participation that the new law regarding public policy on migration grants to that population by establishing that only one representative of the National Civil Society Working Group—made up of diverse sectors, including the migrant population—has a seat on the Inter-sector Committee on Migrations, the entity in charge of coordinating public policy on migration
- Strengthen the mechanisms for the participation of the migrant population, with respect to both the budget and their recognition by national authorities, in order to achieve their direct participation in the development of decisions that affect that population group
- Revise the programs currently carried out by the Colombian government to connect Colombian communities abroad (Colombia Nos Une, Redes Colombia, etc.), in order to assess whether their focus is in line with the specific needs of the majority of that population, independent of their economic or academic activity abroad, taking into account the fact that most migrants find themselves in precarious due to their irregular status or lack of job opportunities
- Adopt measures aimed at increasing the number of representatives of the migrant population in the Congress of the Republic, considering their number and capacity as an electoral factor that is currently not in accord with the prevailing principles of participative and representative democracy

e) Regarding other specific issues:

- Promote a cross-cutting gender approach to the formulation and execution of public policy on migration, bearing in mind that according to the statistics and socio demographic profiles of the migration phenomenon in Colombia, there is a trend toward the feminization of migration that contrasts with the lack of recognition of women's special needs as a vulnerable group

- Promote the development of public policy on migration at the local level, considering the specific dynamics of the phenomenon and the situation of the returning population, which requires immediate responses to their need for humanitarian assistance and options for income generation
- Promote strategic litigation on behalf of the migrant population to take advantage of legal instruments for the vindication of their rights, and advocate the development of their content and legal scope, using the case of the internally displaced population as an example.

2. Recommendations on Internal Displacement

a) Revise the concept of Internally Displaced Person:

There is a pressing need to start a debate regarding the restrictive definition used until now by government authorities, which limits the internal forced migrations addressed by public policy to those caused by the internal armed conflict. Such a definition not only restricts the understanding of the phenomenon but also excludes part of the victims from the public policy aimed at attending to displacement.

The complexity of the armed conflict affecting the country, particularly after the demobilization of paramilitary groups, and the pressures that will most likely be exerted on rural communities as a result of the new development policy based on extractive industries such as mining, pose new scenarios of forced migration that require a policy aimed at the comprehensive protection of victims. Said policy should be based on a broad yet precise notion that can guide state actions aimed at prevention and protection.

This complex debate requires defining the state's responsibilities regarding the expulsion of vulnerable population groups by non state actors in contexts other than that of the armed conflict but that, like that conflict, derive from structural flaws. Despite its complexity, there are enough elements to launch that debate. The Constitutional Court has recognized, on specific occasions, that situations of generalized violence and internal tension, as well as mining and agricultural processes, generate displacement. In addition, reports prepared by nongovernmental organizations register involuntary population flows due to causes other than the internal armed conflict, and whose victims are not formally recognized as displaced persons.

b) Reformulate the Single Registry of the Displaced Population (RUPD):

Despite the efforts made by Social Action, this system features an under-registration rate greater than 20 percent, which means that one out of every five displaced persons has not been recognized as such by the state and is therefore excluded from the programs contemplated in the public policy.

The reformulation of the registry system will entail settling the debate over the definition of internal displacement and its victims, and requires the design and

implementation of mechanisms that provide information to displaced persons regarding the existence and consequences of the registry system. Additionally, it is necessary to provide guarantees with respect to the personal safety of those implementing the registry edict, since the Third National Monitoring Survey showed that 72 percent of the unregistered persons have not submitted a declaration to the authorities, either due to lack of knowledge or out of fear for their lives.

c) Emphasize the public policy's prevention component:

Episodes of forced displacement do not usually come as a surprise, since the victims of the phenomenon have reported a series of situations of tension and violence preceding their expulsion. Nevertheless, the authorities have remained deaf and blind to these warning signals. Consequently, the number of persons thrown out of their homes has continued to rise since registration began.

Despite the provisions of Law 387 of 1997, prevention does not constitute an actual component of the public policy regarding attention to displacement, since it has been incorporated into the national security policy. The annual increase of displacement rates reveals the inadequacy of such a decision. Therefore, it is necessary to design and implement a strategy aimed specifically at preventing that type of exodus. Said strategy must also assess whether the early warning system, currently the responsibility of the Office of the Ombudsman, should continue. Its poor results to date make it necessary to determine whether the system should be bolstered or replaced by a more effective one, that involves the security forces in handling such alerts and requiring them to act to prevent the expulsion of the population.

d) Effectively apply the guidelines issued by the Constitutional Court regarding the return of migrants:

The authorities have opted for return of the population as the best solution to the problem of displacement. The Constitutional Court considers that it is an adequate solution provided that the wishes of the displaced population are respected, their safety is guaranteed, and they are given the necessary support to rebuild their lives. In line with these ideas, Social Action has designed the “Retornar es vivir” campaign.

The analysis of return processes, however, reveals that the constitutional principles have not been respected. The returning population is not being given the necessary support for reintegrating into their communities and assuming control over their lives once more, and they often must face the same situation of violence; furthermore, they are treated with suspicion by the authorities and security forces. Consequently, these return processes are not sustainable, and the returning population often has to move again.

Therefore, it is essential that voluntary return programs be executed in conformance with the provisions of the Constitutional Court; otherwise, the most essential rights of the displaced population are jeopardized and the process runs the risk of becoming a mockery of the expectations of those who have put their own and their families' lives in the hands of the state, hoping to build a future in the place they never wanted to leave. The failure of these processes will only prolong the situation of forced displacement indefinitely.

e) Formulate and implement sustainable resettlement programs:

Given that a significant portion of those persons do not want to return to their places of origin and the fact that the causes of the exodus have not been overcome in most of the country, it is impossible to guarantee the return of the entire displaced population. Options other than return must therefore be considered as a definitive measure to put an end to the situation of displacement.

These options should include the possibility that displaced persons remain in the places where they have found refuge, or that they decide to settle elsewhere. In any case, those options should abide by the principles of willingness, security and support established by the Court for return programs.

f) Shorter, clear, and concise decisions on the part of the Constitutional Court:

The Court has played a fundamental role in developing the public policy on attention to forced displacement by introducing a rights-oriented approach, which the initial formulation lacked. Its decisions, expressed in both rulings and follow-up orders, establish the guidelines that all other institutions must respect when designing and implementing measures, aimed at ensuring that forcibly displaced persons effectively enjoy their fundamental rights. At the same time, those decisions have served to empower this population.

However, the Court's decisions are often set forth in extremely long texts whose sophisticated arguments require specialized knowledge to unravel their meaning. While judges have the obligation to justify their decisions soundly, sufficiently and adequately, greater clarity would be very desirable, especially considering that the rulings and orders are targeted not only at the authorities in charge of attention to displaced persons but at that very population.

g) Revise the conditions for access to transitional humanitarian aid:

The transitional humanitarian aid program currently excludes persons and families registered in the contributory health system, since this proves that they are not in a condition of extreme vulnerability as they make at least one prevailing legal monthly salary. Given the reduced amount of that salary, which is insufficient to

support a family decently, we recommend that said exclusion be eliminated and that the situations of displaced families be analyzed case by case to determine whether they need that aid.

This suggestion is grounded in the provisions of the Constitutional Court, according to which humanitarian aid must be carefully analyzed in each specific case, since the state cannot abruptly suspend humanitarian aid to those who are not able to support themselves.

h) Take into account the impact of interurban displacement:

It has traditionally been held that internal displacement affects the rural population that is obliged to migrate toward urban areas. However, recent data show that there has been an increase in forced interurban displacement. Therefore, it is necessary to revise the programs related to all the phases of the policy and establish measures aimed at the special needs of this population.

i) Restructure income generation programs:

This key component of the recovery of displaced persons has focused on the creation of productive projects despite the low sustainability of said initiatives. It is necessary to reassess the bases on which these programs have been structured and allow for more space and resources aimed at hiring these persons. Furthermore, it is necessary to ensure that contracts comply with the prevailing regulations regarding the rights of workers and affiliation with the social security system for health and pensions.

j) Revise the housing guarantee program:

The reduced number of subsidies and the difficulties in obtaining them have made it impossible to guarantee the effective enjoyment of the right to housing. It is necessary to restructure this component, taking into account the particularities of the real estate market and the tendency of most displaced persons to remain in urban areas, where the cost of housing is much higher than in rural areas.

k) Reformulate the concept of participation in the context of public policy regarding attention to displacement and in all areas of state actions:

While the public policy includes enough spaces for the participation of displaced population and nongovernmental organizations, the authorities do not take into account the contributions made by these actors when it develops measures and programs. A merely formal concept of the right to effective participation is used at the institutional level. Authorities and civil servants must appropriate the definition given to this right in the constitutional jurisprudence and apply it in the construction of all public policies, starting with that on displacement.

- l) Create and implement a mechanism to effectively protect the life and safety of displaced population leaders and civil society actors participating in designing public policy:***

The state has proven incapable of guaranteeing the life and safety of the persons who have opted for the fundamental right of participation with respect to the public policy on internal displacement. It is necessary to design and implement a new, adequately financed protection program that brings together security entities and organizations, as well as the Attorney General's Office and the judicial branch, in order to eliminate impunity.

3. Recommendations on Refugees

- a) Formulate a fair and efficient migration policy rather than a mere control mechanism:***

Migration movements have become increasingly complex in the last few years and are ever more "mixed." States have responded to the challenges of mixed irregular movements by tightening control mechanisms without considering mechanisms that guarantee the protection of human rights, regardless of the condition of the persons involved. This has resulted in cases of *refoulement* and denied admission to asylum seekers and irregular migrants to the territory, and as a consequence, the whole process of asylum because they see these movements as a threat to their security and sovereignty.

It is therefore necessary to adopt measures aimed at establishing registry systems upon entry that are sensitive to the migration situation, and make it possible to identify those persons who need international protection in order to offer appropriate and differentiated solutions, as well as to provide solutions for other groups of persons involved in mixed movements.

- b) Formulate and facilitate complementary protection measures in cases in which refugee status is not recognized, in order to avoid the use of irregular channels to enter or leave the territory or remain in it:***

When the process for requesting asylum is completed, those people denied recognition of their refugee status are given a period of thirty days to leave the country and seek legal admission to another (ordered to exit the country), or to regularize their immigration status. In practice, the lack of other alternatives turns into a vicious cycle that repeatedly violates the rights of persons who find themselves in such a situation.

c) *Enforce a regulatory framework that corresponds to a comprehensive migration policy:*

There is no law that effectively guarantees the rights of migrant foreigners in Colombia. National policy does not recognize the condition of forced international migrant, which would allow those persons access to mechanisms for the protection of their fundamental rights, particularly health, education, work and attention to basic needs, among others.

State institutions in charge of international migration in Colombia, basically the Inter-sector Commission on Migration, managed by the *Colombia Nos Une* program, shows inadequate human resources,⁴²¹ lack of coordination and coherence among state entities both in the national territory and abroad, and have limited budgets.

d) *Migrants are subjects with human rights:*

It is necessary to guarantee conditions that reflect the dignity of migrants as human beings by developing policies that help improve their capacities, give information, provide adequate services and grant a dignified reception.

e) *Revise and adjust the procedures and guarantees for the recognition of asylum in Colombia:*

We suggest that the current regulations be modified in such a way that asylum seekers can obtain a temporary work permit while their case is under review, that they be allowed to circulate freely within the territory to facilitate procedures at government entities centralized in the capital city, and that they be guaranteed access to the legal remedy of appealing decisions regarding the recognition of their status as refugees.

⁴²¹ It is made up of approximately fifteen persons, according to the estimates included in the explanatory memorandum of Draft Bill 070/09, promoted by the Hermes Social Migration Platform.

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CHAPTER IV

PUBLIC POLICIES REGARDING MIGRATION AND CIVIL SOCIETY IN MEXICO

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LIST OF ACRONYMS

AMERIPOL (PCA)	Police Community of America
BANSEFI (NSFSB)	National Savings and Financial Services Bank
BANXICO (BM)	Bank of México
CA	Central America
CDI (NCDIP)	National Commission for the Development of Indigenous Peoples
CEB (EBC)	Ecclesiastical Base Communities
CEIDAS (CSRDSA)	Center for Studies and Research in Development and Social Assistance
CELADE (LACDC)	Latin American and Caribbean Demographic Center
CEM (CMS)	Center for Migration Studies
CEM (MBC)	Mexican Bishops' Conference
CENCOS (NCSC)	National Center for Social Communication
CIDAC (CRD)	Center of Research for Development
CIDE (CERT)	Center for Economic Research and Teaching
CIESAS (CRHLSA)	Centre for Research and Higher Learning in Social Anthropology
CNDH (NCHR)	National Commission for Human Rights
CODAIF (CAFM)	Committee for the Assistance of Frontier Migrants
COLEF (CNB)	College of the Northern Border
COLMEX (CM)	College of Mexico
COMAR (MRAC)	Mexican Refugee Assistance Commission
CONACYT (NCST)	National Council for Science and Technology
CONAPO (NPC)	National Population Council
CONAPRED (NCPD)	National Council for the Prevention of Discrimination
CONDUSEF (NCPDFSU)	National Commission for the Protection and Defense of Financial Service Users
CONEVAL (NCESDP)	National Council for Evaluation of Social Development Policy
CONOFAM (NCSAMA)	National Coordinator of State Agencies for Migrant Affairs
CSO	Civil Society Organizations
DHS	Department of Homeland Security

DIF (MSIDF)	Mexican System of Integral Development of the Family
DOF (OJF)	Official Journal of the Federation
DPMH (PDHM)	Pastoral Dimension of Human Mobility
ECLAC (UNECLAC)	UN Economic Commission for Latin America and the Caribbean
EMIF-NORTE (SMMNB)	Survey on Migration across Mexico's Northern Border
EMIF-SUR (SMMSB)	Survey on Migration across Mexico's Southern Border
FEVIMTRA (SPCVWHT)	Special Prosecutor for Crimes of Violence against Women and Human Trafficking
FLACSO (LAFSS)	Latin American Faculty of Social Sciences
GFMD (GFMD)	Global Forum on Migration and Development
IAP (PAI)	Private Assistance Institutions
ICHR (IACHR)	Inter-American Court of Human Rights
IDB (IADB)	Inter-American Development Bank
IFE (FEI)	Federal Electoral Institute
ILO	International Labor Organization
IME (IMA)	Institute for Mexicans Abroad
IMF	International Monetary Fund
IMSS (MSSI)	Mexican Social Security Institute
INDESOL (NISD)	National Institute of Social Development
INEDIM (IMSD)	Institute for Migration Studies and Dissemination
INEGI (NISG)	National Institute of Statistics and Geography
INM (NMI)	National Migration Institute
INMUJERES (NIW)	National Institute for Women
INS	Immigration and Naturalization Service
INTERPOL (ICPO)	International Criminal Police Organization
IOM	International Organization for Migration
IRCA	Immigration Reform and Control Act
JAP (BPA)	Board for Private Assistance
LGP (GPA)	General Population Act
MMP	Mexican Migration Project
NAFTA	North America Free Trade Agreement
NBA	National Basketball Association
NGO	Non-Governmental Organization

OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
OPI	Officers for the Protection of Infants
PCS	Project Counseling Service
PGR (FAG)	Federal Attorney General
PROFECO (FAC)	Federal Consumer Office
RCM	Regional Conference on Migration
RNCOM	Regional Network of Civil Organizations on Migration
SAGARPA (MALRDFP)	Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food
SCT (MCT)	Ministry of Communications and Transportation
SEDESOL (MSD)	Ministry of Social Development
SEGIB (IAGS)	Ibero-American General Secretariat
SEGOB (MI)	Ministry of the Interior
SEP (ME)	Ministry of Education
SICA(CAIS)	Central American Integration System
SIEDO (SPOOC)	Special Prosecutor's Office for Organized Crime
SIOM (CMMS)	Comprehensive Migration Management System
SRE (MFA)	Ministry of Foreign Affairs
SS (MH)	Ministry of Health
SSP (MPS)	Ministry of Public Security
STPS (MLSW)	Ministry of Labor and Social Welfare
TFR	Total Fertility Rate
UNAM (NAUM)	National Autonomous University of Mexico
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNFPA	United Nations Fund for Population Activities
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Education Fund
UNODC	United Nations Office on Drugs and Crime
VAT	Value Added Tax
WB	World Bank

Executive Summary

Mexico's geographic location and level of development have conditioned migration flows throughout its territory. At present, the country features every type of migration process. Emigration, which had been massive for decades, has begun to decrease for many reasons: internal migration has increased; immigration has always been low; forced internal displacements are a recent and increasing phenomenon; return migration, whether voluntary or due to deportation from the United States, has increased; and the number of individuals granted asylum and refuge has remained low.

The migration policies applied have consisted of control and attention to migrants, especially to Mexicans who have emigrated to the United States. Recently, however, greater attention has been paid to solving problems and attempting to protect the rights of irregular migrants passing through the country, in conformity with the international commitments acquired. Nevertheless, these efforts have taken place in the context of a precarious democratic culture in which corruption, discrimination and impunity have increased in an environment of violence exacerbated by organized crime and the war against it undertaken by the government and affecting over one third of the national territory. At the same time, substantial progress has been made regarding the legal framework for migration. The Migration Law was enacted in 2011, and assistance, regulation and protection programs have been implemented in order to attend to the needs of the diverse types of migrants who find themselves in a situation of vulnerability.

The legal framework serves to back the work of civil organizations. Together with the government, and sometimes in opposition to it, humanitarian work with migrants is being carried out throughout the country, with approximately fifty shelters and migrant houses run predominantly by the Catholic Church. However, in the current context of violence, humanitarian aid workers face the same risks as Mexican and foreign migrants, many of whom have suffered kidnapping, extortion, and assassination. Since 2007, the discovery of clandestine mass graves, such as the well-known case of San Fernando, Tamaulipas in August 2010, has had a tremendous impact on domestic and international public opinion.

The challenges for the State are enormous: improving control of flows at the borders and attending to the basic demands of civil society and international organizations, such as combating organic corruption and providing security for human mobility. There is a pressing need for public security guarantees in order to prevent crime, punish the perpetrators by seizing their assets, and put a stop to the systematic violation of human rights, especially those of the most vulnerable populations such as transmigrants, women and children. This is urgent not only for ethical-juridical reasons, but also for functional reasons, given that a population who which feels unprotected, tends to draw away from the State and its institutions. The same thing occurs with migrants who turn away from the laws and programs aimed at protecting them, thus increasing the climate of violence and the threats to their safety.

Introduction

Migration is a fundamental human process. In this line of thought, the migration of cells toward specific sites in order to carry out formation, growth and regeneration functions is no different from human migration, since both migrations involve living organisms. Seen as biological processes, migrations are also subject to alterations and unforeseen events in the development of said functions; therefore, they need to be studied carefully in order to achieve a better understanding of the phenomenon.

The study of migration in Mexico, which forms part of a regional Latin American study, reveals a country with characteristics that are very different from those of other nations in the region. However, given that migrants pose similar problems and opportunities for governments, countries in the region share an interest in fostering bilateral or regional agreements on the matter of migration and in adopting similar positions before the international community. Such is the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The issue of migration is part of Mexico's national agenda, and, at the same time, it has become cause for concern, surprise and shame in view of the massacres of numerous *transmigrants* and national migrants on the part of organized crime, with the complicity of members of the police force and public servants.

In an attempt to achieve clarity regarding the migratory processes taking place in Mexico, this study addresses the specificity of migratory dynamics in the country; the policies formulated and implemented in order to solve problems and comply with international agreements; and the humanitarian labor of civil society, focused on shelters for the protection of migrants, and their relationship with the government, their means of financing, and the problems they face due to the changes that the generalized violence has brought about and which has been exacerbated by the war against organized crime. In this context, social relations have changed in Mexico and the negative effect of these changes on the migrant population is an issue addressed in this study.

Two specific features are highlighted in this analysis of migration in Mexico: the significant weight of emigration and the intense and difficult job of protecting and providing assistance to migrants across the routes that take them through the country toward the Mecca of migration: the United States. These features stand out when analyzing data regarding migratory dynamics, public policies and programs for migrants and the role of civil society in its humanitarian work in a country that is both an example and a laboratory in this respect.

Mexico's 3,152-kilometer border with the United States, one of the most active borders in the world, and its 1,149-kilometer border with Guatemala and Belize, characterized by similar populations and blurry dividing lines with the tropical rainforest, have shaped historical relations of interactions between persons and exchange of goods and services. These relations have been marked by economic,

demographic and institutional inequality among these neighboring countries. The maritime borders, along both oceans, have not been particularly active, not even for international trade.

Given its geographic location, territorial extension and level of development, Mexico has been mainly a country of emigration and scarce immigration. Transit migrants, asylum-seekers and refugees, and internally displaced persons have followed different trajectories. Nevertheless, like almost any other country, Mexico currently has migrants leaving the country, returning to the country and/or transiting through its territory. The old dichotomy between country of origin and host country has been overcome.

In the first chapter, Jorge Durand explores migratory dynamics, highlighting the repercussions that United States migration policies have had in Mexico. The opening or closing of access to the North has consequences on the flow of persons from all over the world throughout Mexican territory.

With respect to the immigration of Mexicans to the United States, a process that has gone on for over 160 years and began with the Mexican Cession of 1848, the data revealed by the respective censuses of 1910 in both countries are worth highlighting. Results show a decrease in the number of Mexican emigrants, caused by numerous factors but mainly by demographic factors, thus showing that the population growth rate has diminished significantly and that large families are now the exception. In the 1970s, Mexican families had an average of seven children, whom they could not support. Migration was thus the perfect solution. Currently, with families averaging two children, the option of migration is neither an obvious alternative nor the perfect option.

Demographic pressure, which had found an escape valve in international migration has changed substantially. There is still a demographic bonus, but the pressure is entirely different. Another structural factor is economic growth, which is supposed to go hand in hand with the decrease in birth rates. In the last few decades, Mexico has shown an average growth rate of 2.7 percent while other Latin American countries such as Chile, Peru and Brazil have doubled that figure. Though general conditions in Mexico have improved, they have not done so at the expected rate. The fundamental problem continues to be the low capacity to generate employment and the persistence of low salaries. It cannot be said that the economic variable has played a fundamental role in the decreasing trend in undocumented migration; however, when steady economic growth is achieved, its impact on migratory flows shall be determinant. This process might take a decade or so, but it will achieve control of massive flows. This is good news for Mexico since, despite the high volume of remittances and the decrease in social pressure at the local level brought about by emigration due to unemployment and low salaries, the amount of those remittances does not compensate for the loss of an economically active population. While this amount is important in helping to satisfy the basic needs of numerous families, it amounts to a little over 2 percent of the GDP. When observed from this perspective, emigration is draining Mexico's population.

On the other hand, the rise of massive immigration of Central Americans along Mexico's southern border, caused mainly by the internal conflicts of the 1980s, transformed Mexico into a refugee reception center, which was in line with the

country's tradition of granting asylum dating back to the 19th century. The number of Central American refugees rose to 43,000 in the 1980s but has currently decreased to less than 1,500, a figure that includes people from the Caribbean, Africa and Central America. Later, the changes in economic development models for the region, which led to the so-called "lost decade" in Latin America, together with great natural disasters such as hurricane Mitch in Honduras and the earthquake in Haiti, the constant social instability in Guatemala, and the expansion of organized crime in its many forms, have caused an increase in human mobilization of all sorts.

Immigration, internal migration, and displacement are less significant phenomena in Mexico, and they have been addressed by the government in different periods. Immigration figures are not significant because Mexico lacks an attractive job market. With respect to internal migration, government attention has focused on agricultural workers. Given the current extended violence, forced displacement is a new phenomenon on which there is insufficient information, except for news reports that estimate population displacements in 3 percent of the country's municipalities.

In view of the increase in transmigration, governmental agencies in charge of its management are on the alert. Historically, Guatemalans have older links to Mexico, followed by the more recent presence of Salvadorans and Hondurans.

New challenges have been posed by migration in the context of restrictive migratory policies over the last ten years and especially since 2001, due to the hemispheric security strategy pursued by the United States. In order to face these challenges, Mexican administrations have sought to reform legal frameworks, albeit always *a posteriori*, seeking the advice of international organizations specialized in the issue by implementing public policies and programs, aimed at dealing with the challenges posed by disorderly migratory movements.

Public policies regarding migration, along with their respective programs, constitute the topic of Chapter Two, in which Cecilia Imaz provides an overview of the legal framework and its connection to international agreements on the matter, as well as a trajectory of the development of legislation regarding migration, in its attempt to respond to the challenges it has faced and to currently adapt to the respect for human rights. It is worth highlighting that, given the exhaustive compilation of materials it includes, this chapter on public policies and programs on migration constitutes a significant contribution to a topic of study that is relatively new in Mexico.

The most recent laws passed are the Refugee Law and the Migration Law of 2011. Congress has taken migratory issues more seriously, focusing initially on the situation of *émigrés* and, more recently, on that of *transmigrants*. It could be said that the participation of the judiciary branch in migratory issues is practically nonexistent. However, during the last decade, the Supreme Court of Justice of the Nation and the Collegiate Circuit Courts have issued certain mandatory interpretive criteria that protect the rights of immigrants, particularly with respect to labor issues, regardless of their migratory condition.

In addition to federal legislation, several States of the Republic have issued ordinances on issues ranging from the protection of the social and political rights of

migrants to the struggle against human trafficking. In this context, two efforts stand out: the Special Prosecutor's Office Specialized in Crimes against Migrants in the State of Chiapas and the Federal District's Hospitality, Intercultural Attention to Migrants and Human Mobility Law in the Federal District

Of the three migration processes, emigration is that in which the greatest progress has been achieved in terms of inter-institutional coordination and on which most federal and state programs have focused. Programs for *transmigrants* and immigrants have been granted almost the same importance, though attention to them is more recent.

In terms of bilateral agreements, only the nostalgia for the Bracero Agreements with the United States (1942–1964) remains. The agreement with Canada concerning agricultural workers, which dates back to the 1970s, is still in place. Regional agreements on human mobility exist only in Central America, and they are focused not on the labor market but on sharing good practices, technical training, formulation of policies for the defense of the rights of migrants and refugees, and the struggle against human and migrant trafficking. Additionally, these countries participate in a multilateral regional forum (Regional Conference on Migration), known as the Puebla Process.

A country's public policies regarding migration can only be understood within their context, and the latter is currently one of widespread insecurity provoked by organized crime and by the war waged by the government against the latter since 2006. This has affected human mobility throughout Mexican territory. The Integrated Strategy to Prevent and Combat the Kidnapping of Migrants, adopted in 2010, had four objectives: immediately dealing with the kidnapping of migrants; strengthening the participation of the three branches of power in combating and prosecuting crime and in providing attention to the victims; combining international and inter-institutional efforts to protect the human rights of migrants; and contributing to civil society organizations and human rights commissions.

Progress toward achievement of these objectives has been unsatisfactory to date, since the strategies aimed at establishing agreements regarding attention and support to migrant victims of crime have not been implemented among the three levels of government. Furthermore, operations targeted at eliminating organized crime gangs along migration routes, capturing the kidnappers and making use of prior investigations have been insufficient. Neither have integrated attention mechanisms with the participation of civil society organizations and human rights commissions been created yet.

Progress has been made, however, in prevention, information, and awareness campaigns targeted at the Mexican population, migrants, and countries of departure, and greater attention has been paid to training migration, police and civil service agents. Likewise, special attention has been given to both Mexican and foreign unaccompanied minors.

In sum, government forces do not seem to have been equal to the war on drugs; the population rejects most of the strategies adopted; efforts and resources are dedicated to

the confrontation with drug-trafficking groups, so that the problems deriving from this war can only be attended to marginally.

Given the impossibility of carrying out an exhaustive analysis of civil society participation in public policies regarding migration in the context of this research project, the chapters on that topic analyze the situation of migrant shelters and houses in view of the challenges posed by the expansion of different types of violence against migrants, especially Central Americans, a violence that has extended to personnel engaged in humanitarian work. These migrant flows, analyzed by Rodolfo Casillas in Chapter Three, are largely connected to the flow of refugees in the 1980s, and they constitute the social fabric of daily life on the southern border of Mexico. In the face of undocumented regional migration from Central America, Mexican migration authorities opted for facilitating entry and permanence for many years. Transmigration was not an issue due to its low figures. That flexibility fostered cross-border social permeability, thus providing the border zone with social stability and cheap labor in the context of a work culture located outside the legal framework. Little was done to counteract the abuses and excesses of those hiring undocumented migrants and of local inhabitants, who thrived on regional migration.

Traditional migrant workers who moved along the northern and southern Mexican borders were gradually joined by *transmigrant* unaccompanied minors, diverse types of migrant traffickers, trafficking victims' traffickers and, more recently, forcibly displaced persons, around whom the occupations that promote the so-called migration industry diversified. These processes have brought about changes in values, behaviors and social relations, transforming the countries of origin, transit and destination. This issue is taken up by Father Flor Maria Rigoni, who highlights the need to rethink the concept of migrant in our country, since the current mobility of persons, determined by the context of violence and criminality that is affecting Mexico and Central America, cannot be grasped by the traditional meaning of the term as it has been used up till now.

The underlying cause of the aggressions against *transmigrants* is the existence of an old practice of abuse against the foreign migrant, simply because he or she is a foreigner, a phenomenon that can be explained by cultural, ideological and legal reasons. This situation is currently exacerbated. The former sanctuaries of humanitarian action have been transformed by criminal actions. Today, like never before, aggressions against migrants have extended to migrant shelters and houses as well as to humanitarian aid workers. For several years, civil society organizations dedicated to the protection of migrants have carried out an arduous battle in defense of migrants' rights, and, recently, the issue of migrant victims has been placed on the agenda of social organizations claiming security and justice.

Cecilia Imaz

Mexico City, August 2011

PART I

MIGRATION DYNAMICS IN MEXICO

Jorge Durand

Mexico is located at a geopolitical crossroads. Historically, it is part of Mesoamerica and of the Spanish colonial system, which links it to Central and Latin American countries. But, at the same time, it is part of North America, as a neighbor of the United States, to which it has been related historically. In economic and commercial terms, Mexico is part of NAFTA (North American Free Trade Agreement), but in terms of circulation of persons, Mexicans need a visa in order to enter the territory of Mexico's main trade partners. In contrast, Mexicans do not need a visa to circulate throughout Central America, but Mexico does require a visa for its Central American neighbors wishing to travel through its territory.

This somewhat contradictory situation is one of the paradoxes of Mexico's situation as a neighbor of the United States, the most powerful country in the world, toward which the most important and diverse global migratory flows are directed. The United States is the only country in the world that grants visa quotas to almost every country; thus triggering parallel migratory flows that affect Mexico as the privileged irregular transit country for migrants.

North American migration policies have direct repercussions on Mexico. Whether the northern border is open or closed, Mexico suffers the consequences of the flow of persons from all around the world. This phenomenon is as old as it is current. The Chinese Exclusion Act (1884) and later the Japanese Exclusion Act (1907) redirected migratory flows from Asia to Mexico and, by the early 20th century, the INS (Immigration and Naturalization Service) was already reporting the existence of Chinese and Japanese coyotes operating in Ciudad Juárez and El Paso (microfilmed INS files found at the Regenstein Library of the University of Chicago).

On the other hand, Mexico was and continues to be the place of origin, transit, return and destination for migrants. But given its location and vicinity, it also became the main source of cheap labor for the American job market. Apart from the differential advantages of vicinity with the United States, it is necessary to highlight that Mexico has not managed to fully integrate its surplus population into the job market and that, logically, this population opts for emigration. Mexico's centuries-long tradition of migration to the United States has, for over a century, woven an intricate web of social, cultural, and family relations between the two countries, to which must be added the economic and political causes that generate migration flows.

1. Demographic Dynamics

Mexico is the eleventh most populated country on the planet and the third on the American continent, after the United States and Brazil. The 2010 census reported 112 million inhabitants, 15 million more than the 2000 census, a result that greatly surprised demographers, who had estimated a much lower growth, closer to 11 million. Mexico was expected to reach equilibrium with respect to population growth in the year 2010, but the census contradicted demographers' projections. Although the study of this phenomenon is still in its preliminary phase, the following reasons have been given for the growth (not listed in order of importance): 1) the disregard for family-planning policies during the two six-year National Action Party Administrations; 2) the generalized decrease in emigration trends due to the economic crisis and restrictive measures in the United States; 3) the return of migrants due to deportation and the impossibility of emigrating again; 4) social policies aimed at supporting children and large families; 5) the influx of immigrants to Mexico; and 6) errors in the 2005 population count.

However, despite the results of the 2010 census, Mexico shows an annual growth rate of 1.8 percent which indicates that the process of demographic transition is a reality. In fact, the total fertility rate (TFR) decreased from 5.7 children per woman in 1976 to 2.2 in 2010. Nevertheless, we must acknowledge that Mexico still has a demographic bonus and that the latter will continue to have social and economic impacts over the second decade of this century, especially in some regions like Chiapas, Guerrero and Durango, where the TFR is 2.6, compared to that of the Federal District, which is equivalent to 1.8. Living in rural areas or belonging to the indigenous population is still a significant factor affecting high birth rates.

Table 1

Population in Mexico		
	2000	2010
Men	47,592,253	54,855,231
Women	49,891,159	57,481,307
Total	97,483,412	112,336,538

Source: National Institute of Statistics and Geography (INEGI), Statistics, Censuses, and Population and Housing Counts, General Population and Housing Census, 2000 and 2010.

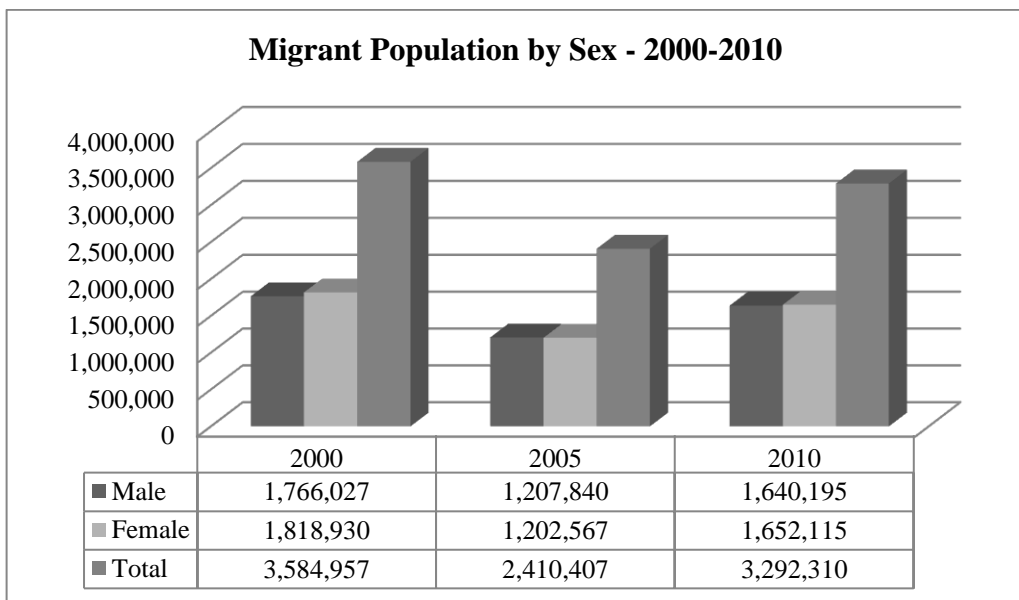
In 2010, the average age of Mexicans was 26, and the general life expectancy was estimated to be 76 years. While Mexico is still a country of young people, the process of demographic aging has already begun and this phenomenon has increased in the last decade due to advances in health services and general coverage. Mexico is a country of young people and adults who, for the most part, live in an urban setting (77.8 percent) and have access to education and health services (INEGI, 2010).

With respect to the men to women ratio, the 2010 census indicates that there are 95.4 men for every 100 women, which proves that there is still a higher proportion of male emigrants, despite the fact that international emigration in recent years has diversified with respect to gender and the relevance of male emigration is gradually decreasing. In fact, the 2005 count reported a male emigration rate of 94.6, and by 2010 the gap between male and female emigration had decreased.

2. Internal Migration

Internal migration displayed its greatest activity in the 1960s and 1970s, mainly due to the growth of the big cities like Mexico City, Monterrey and Guadalajara and to a lesser extent, León and Puebla (Arias, 1985). Later on, during the 1980s, the growth of border cities like Tijuana, Mexicali, Ciudad Juárez, Nuevo Laredo and Matamoros skyrocketed. The 2000 census, the 2005 population count and the 2010 census report a general downward trend in internal migration. However, it is worth mentioning that while there was a significant drop between 2000 and 2005, internal migration increased once again in the following period, though at a lower rate than in the year 2000. This change in the trend was most likely due to the security crisis affecting the country, which has generated a greater displacement of persons deriving from the violence that is particularly severe in certain areas such as Chihuahua, Tamaulipas and Durango (see Graph 1).

Graph 1



Source: Designed by the author using data found on the INEGI website: Statistics, Topics, Demography and Population, Migration, Internal Migration, Migrant Population, Gender, 1990-2010, www.inegi.org.mx/sistemas/sisept/Default.aspx?t=mdemo59&s=est&c=23610, accessed 05/03/11.

On the other hand, a clear decrease can be observed in the internal migration flows that had been taking place to border cities over the last few decades, which contributed significantly to increasing the population of that region. Once again, violence seems to be the explanation for this drastic change in the trend, although it is possible that the recession in the United States and the reduction in the work demand in exporting maquilas in the last few years may have influenced those results.

In fact, between 2005 and 2010, the main border cities showed a minimum population growth, which, in some cases, does not even correspond to the natural population growth. The city most affected by this process was Ciudad Juárez, which featured a minimum growth (0.31) in its metropolitan area.

Table 2: Population Growth in Border Metropolitan Areas 1990-2010

CITY	Tijuana	Mexicali	Piedras Negras	Ciudad Juárez	Matamoros	Nuevo Laredo
pob_1990	798,938	601,938	115,100	798,499	303,293	219,468
tc_90_95	5.84	2.60	3.08	4.28	3.26	4.08
pob_1995	1,100,817	696,034	136,650	1,011,786	363,487	275,060
tc_95_00	4.92	2.22	2.39	4.45	3.33	2.91
pob_2000	1,352,035	764,602	151,149	1,218,817	418,141	310,915
tc_00_05	2.73	2.01	2.07	1.33	1.78	2.41
pob_2005	1,575,026	855,962	169,771	1,313,338	462,157	355,827
tc_05_10	2.31	1.96	1.35	0.31	1.23	1.65
pob_2010	1,751,430	936,826	180,734	1,332,131	489,193	384,033

Source: CONAPO, on the basis of INEGI Censuses and Counts 1990-2010.

In the last five years, a migration flow that could be defined as “displacement”, using Colombian terminology, has been detected. These migrations are forced by situations of insecurity and violence, which cause the population to opt for another place of residence, whether in the same state, moving from rural to urban settings, or moving to other locations or abroad. Several experts on border issues have reported the significant arrival of Mexicans belonging to the middle or high sectors of society to the cities of San Antonio and Houston (Romo and López, 2010). On the other hand, the Mexican press has systematically reported the exodus of persons and the closing down of businesses due to the situation of insecurity. The minimum growth registered by the 2010 census in border cities confirms this hypothesis.

The new demographic dynamics will have to be studied according to the basic questions involved in the analysis of internal migration: who moves and what locations are growing? The data provided by the census of vacant houses is an indicator of this process of mobility. According to a BBVA report (2011), an increase of 33.5 percent in vacant houses was reported in border states during the 2005–2010 period, while in cities with high migration, the increase in vacant houses was only 17 percent. This seems to indicate that, in addition to international migration, which accounts for a large number of vacant houses, violence along the border region has also had a direct impact on this new process of population displacement.

3. Immigration

While it is true that Mexico is a country of emigrants and not of immigrants, it is also true that it has never had an open and assertive policy in this respect. Pablo Yankelevich (2011) has carried out a sharp analysis of post-revolutionary Mexico, revealing the inner workings of a migratory policy that is formulated in terms of “desirables and undesirables,” as well as the manner in which Article 33 of the Constitution was used to exercise a policy of strict control of the foreign population. Subsequently, the Population Law of 1974 refers to the issue of immigration in very general terms, stating that it is necessary to “subordinate the immigration of foreigners to the modalities considered pertinent, and to seek their favorable adaptation to the national environment and their adequate distribution throughout the territory” (Article VII). The term “subordinate” is highly suggestive in terms of a restrictive migratory policy. In effect, over the last four decades, foreigners have been subject to this discretionary policy that subordinates immigrants to the vagaries of what the Ministry of the Interior (Secretaría de Gobernación) considered “pertinent.” Although, at the official level, Mexico is considered open to immigration and is generous with refugees, the results of a closed-door policy can be easily verified on the basis of the data of the 2010 census, which reported the presence of 961,121 foreigners who represent 0.86 percent of the national population. This situation is complicated by the fact that some of these foreigners, whose number is difficult to determine statistically, are actually American-born children of Mexicans, who are classified as North Americans in the census.

The new migration law of 2011 does not define a proactive policy in this respect. Surprisingly, in the 21st century, the new law has left up in the air a proactive definition aimed at attracting the immigration of highly-qualified professionals whom the country needs. While developed countries are competing over foreign brains and their policies have changed from “a red card to a red carpet strategy,” Mexico has missed the opportunity to legislate in that respect. This issue is particularly significant, given that the country’s national accounts show the emigration of 1,357,120 qualified Mexican professionals (Lozano and Gandini, 2011). Other sources estimate the number of Mexicans with PhD degrees working in the United States at 20,218 (See Table 3). This reason could be the possible explanation for the phenomenon; if Mexico cannot retain its own professionals, much less can it attract qualified foreign professionals who could contribute to the growth and development of the country.

Table 3

Mexican migrants with Doctorate in the U.S. according to their date of entry		
Period	Number	% share in the total
Prior to 1970	4,002	19.8
1970-1980	6,832	34.0
1990-2009	9,383	46.0
Total	20,218	100

Source: BBVA Research with Census Bureau data, Current Population Survey (CPS), USA, March 2009. **Taken from:** Albo, A., & Ordaz, J. L. (2010, Nov., p. 26).

Though Mexico is not a country of immigrants, it is a much visited country with a significant resort and cultural tourism industry. In the last few years, the number of non-immigrant visitors has been approximately 20 million per year. It is important to highlight, however, there has been a decrease in the arrival of tourists in the last two years, due partly to the global economic crisis and partly to insecurity. The State of Quintana Roo is the main tourist destination, with 10.2 million tourists a year, followed by the capital city with 2.2 million, Jalisco with 1.8 million, Southern Baja California with 1.4 million and Chiapas with 1.4 million.

Table 4

Arrivals to the Country according to Migratory Status 2005-2010						
Migratory Status	2005	2006	2007	2008	2009	2010
Non-immigrants	20,611,979	20,438,802	21,520,205	21,521,274	18,876,585	19,783,819
Immigrants	75,335	85,353	97,231	98,192	67,015	52,754
Total	20,687,314	20,524,155	21,617,436	21,619,466	18,943,600	19,836,573

Source: Prepared by the author with INM data (2009 a, p. 1; 2009 b, p. 1; 2010, p. 1.)

4. Refugees

There have been three extremely relevant episodes in Mexico's migration policies regarding refugees and asylum-seekers. First of all, President Lázaro Cárdenas specifically designed a policy for the reception of Spanish Republicans at the end of the Civil War. Second, diverse groups of Latin-American were granted asylum in the decade of the 1970s, Chileans, Argentineans, Bolivians and Uruguayans, among others, through a policy designed specifically by President Luis Echeverría. Third, Guatemalan refugees were welcomed in the 1980s in the context of the Central American conflict, in which Mexico displayed a proactive and mediating regional policy. Apart from these

interventions, which were widely recognized at the regional and international levels, Mexico's policies regarding refugees and asylum-seekers could be described best as discreet, at the international level, and contradictory in terms of its internal policies (Somohano and Yankelevich, 2011).

In effect, only 1,455 of the 4,569 requests have been accepted in the last decade. On average, Mexico has accepted 21 percent of those seeking asylum, and the countries that have received the most attention on the part of the Mexican government have been Colombia, Haiti and El Salvador.

In contrast, according to UNHCR, in the last five years there have been close to 40,000 cases of Mexicans seeking asylum. In total, 6,435 Mexicans have been granted asylum; 5,000 of them are in Canada, 1,384 in the United States, and 51 in other countries (*El Universal*, 20 June 2011).

5. Transit Migration

In addition to being a country of emigrants, Mexico is and has always been a country of transit. However, transit migration has currently become a visible phenomenon, as well as a significant security and human rights issue that seriously affects our multilateral relations and the general perception of our country. This phenomenon has acquired relevance in the last two decades, mainly because of Central American emigration and the terrible threats to which migrants are exposed.

The transit of migrants toward the United States is a past, present and future issue (Casillas, 1994). In the past, it was handled discretionally, and those in charge of doing so were the different officers involved in the migratory flow, through systematic corruption. Nevertheless, there were some limits, when compared to the current situation.

Today, in fact, corruption has been compounded by extortion, robbery, threats, rape, kidnapping and even death and massive extermination, which is absolutely intolerable. More than a migration crisis, what we have is a security crisis, since transit migration has decreased significantly in the last five years, dropping from 250,000 persons deported by the Mexican government in 2005 to only 65,505 in 2010. This reduction in the flow from Central America has to do with multiple factors, among them, the financial crisis of 2008, border control measures and a decrease in demand in the North American job market.

However, in the Mexican case, the policy applied has been that of shifting and externalizing its borders; now the Suchiate River and not the Río Bravo is the United States border (Casillas, 1994). In practice, Mexico deports more Central Americans than its northern neighbor. In 2010, the United States deported 43,000 Central Americans, while Mexico deported 65,505. Obviously, this policy is imposed in a context of power asymmetry.

In Mexico, the problem of transit migration is fundamentally Central American: 42 percent of irregular migration comes in from Guatemala, the most populated country in the area, 34 percent from Honduras and 15 percent from El Salvador, for a total of 92

percent. If the causes of migration from these countries are addressed, a good part of the problem will be solved. The question that needs to be asked is: What is the policy of Central American countries and the United States in this respect (INM, 2011)?

The other alternative is that of having reached a very high limit of massive migration, a saturation point, which would be in the case of El Salvador, a country with 20.5 percent of its population living abroad. This is quite possibly the reason why transit migration of Salvadorans has decreased significantly. In contrast, the emigrant population of Guatemala is only 6.1 percent and that of Honduras is 7.5 percent (World Bank, 2011).

On the other hand, regional differences in Central America continue to be important in terms of income per capita, a gross indicator that does not take inequality into account, but that can be relevant for the analysis of migration. According to the International Monetary Fund, Mexico's income per capita in 2010 was \$14,430 dollars a year, El Salvador was \$7,430, Guatemala was \$4,885, and Honduras was \$4,417. But there are worse situations, such as that of Nicaragua, whose income per capita was \$3,045, which contrasts with that of its neighbor Costa Rica, which was \$11,216, a fact that partly explains the significant regional flow between Nicaragua and Costa Rica.

International experts have proposed the principles of shared responsibility and institutional coherence as possible solutions to the issue of transit migration, but their practical application is almost utopian. The recent case of Tunisian migration to Italy, where migrants obtained permits (*laissez passer*) and France's refusal to accept them is quite significant, since it directly affected free transit and the Schengen Treaty. In this case, Italy's responsibility as a neighbor and that of France toward its former colony was not respected; neither were the international agreements on free transit in the zone, which demanded a certain level of coherence.

In general, migratory affairs are resolved unilaterally, and in this context the principle of "shared responsibility" has scarce application at the bilateral or multilateral levels. On the other hand, given that migration is a federal issue in many countries, migration policies often contradict local and regional interests and policies, and the principle of "institutional coherence" is not respected. This is the case of several American states (Arizona, South Carolina, Alabama, Georgia, Utah, Texas and Indiana), whose anti-immigrant laws run counter to federal policy and generate a high level of tension/opinion against migrants.

6. Emigration

Mexico is a country of emigrants, although it is not recognized as such. For the majority of Mexicans, having a relative or acquaintance abroad is so normal that we are not aware of the fact that we are one of the main labor exporters in the world, according to the World Bank's latest report (2011). This lack of awareness is explained by the predominantly regional character of migration until the 1980s (concentrated in the western part of Mexico), by the importance at the time of internal migrations toward the capital and other cities such as Guadalajara and Monterrey, to which it was easier to migrate, and by the absence of a tradition of international migration to many central and southern Mexican states (Durand and Massey, 2003).

However, since the year 2010, it is possible to say that the entire country, all of the states and all of the municipalities are involved in the international migration process, though with different degrees of intensity. It is a massive phenomenon in which 10 percent of the population participates directly and approximately 40 percent indirectly.

Moreover, 98.7 percent of the Mexican migrant population goes to the United States, which makes emigration a completely unidirectional phenomenon, with all of the disadvantages and possible advantages that this entails. On the other hand, over 50 percent of Mexican migrants are irregular migrants. The massively unidirectional nature and the dual condition of regularity and irregularity of Mexican emigration are the fundamental components of the contemporary migratory pattern.

In the first place, the massive character of emigration is a wake-up call for governments and society as a whole. Something is failing that prevents us from retaining 11 million Mexicans, our best men and women, the most daring, enthusiastic, hard-working and enterprising. When the phenomenon becomes massive, it becomes a problem for both the country of origin and that of destination.

The prevailing legislation according to which it is necessary “to restrict the emigration of nationals whenever national interests so require” is not enough, and has led to the application of the so-called “non-policy policy,” in other words, the policy of *laissez faire*, or that of disregarding the issue completely. After all, it is in the national interest to have Mexicans seek opportunities in our neighboring country, since it is an “escape valve” for the country’s economic, social, and political problems (Durand, 2005).

Second, the unidirectional nature of migration is also problematic. Migrants are like Mexican economists in that they only look to the North. But this type of blinders makes it difficult to see the big picture, something that is always advisable. Porfirio Díaz (1877–1880, 1884–1911) had already seen this; although he had fought against the French, he was always interested in maintaining political and commercial relations with Europe precisely because we are neighbors of the United States, the most powerful country in the world. Something similar could be said of emigration to the United States; migrants establish relations, connections, and businesses, and the more diversified they are the better for them, for their country of origin and for the country of destination.

Third, Mexican emigration has a markedly dual component of regularity and irregularity, which is not convenient. It is estimated that of the 11 million Mexicans living in the United States, 6.5 million are undocumented migrants (Passel, et al., 2011). In order to have a point of comparison, it is worth highlighting that the total of irregular migrants in Europe in 2008 was less than 4 million, according to the European Union “Clandestine” report. Irregularity puts half of the Mexican emigrants in a context of high vulnerability, a situation that has personal, psychological, and family consequences for the migrants, in addition to the economic, political, and social costs that belonging to the lowest rung of the American social ladder entails.

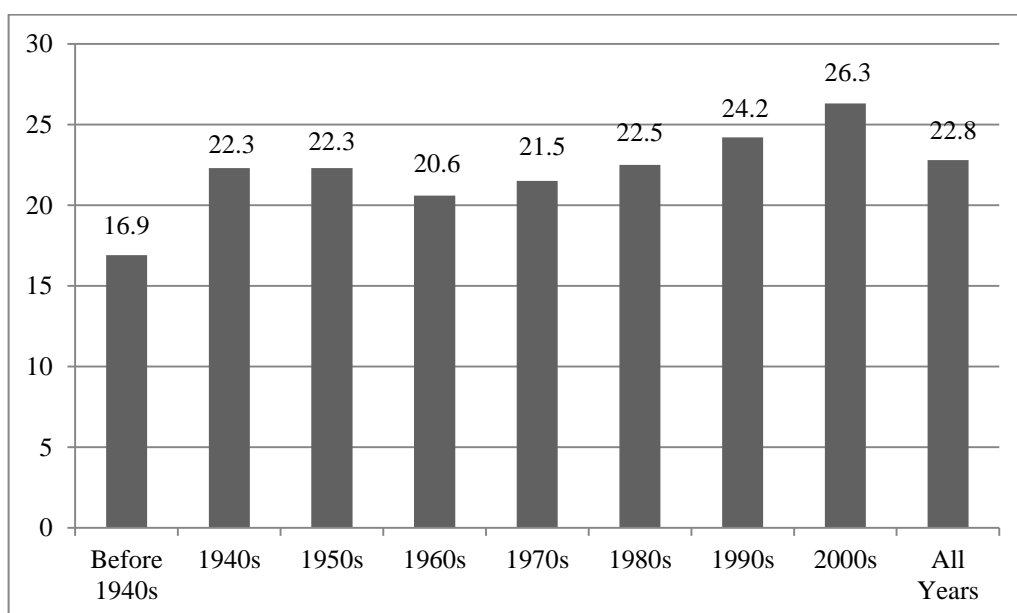
The massive, unidirectional and irregular character of Mexican migration requires public policies suited to the magnitude of the challenge. Little has been done until now

with respect to legislation. However, at the level of discussion, it has been pointed out that the best way to address the issue is from the perspectives of “shared responsibility” between the countries and organizations involved, and of “institutional coherence,” which entails establishing general principles that must be accepted and assumed by the governments and the different governmental institutions involved in the matter.

6.1. Profile of Mexico-United States Migration

Currently, the average age at which Mexicans emigrate for the first time is 26.3 years; thus, it is a young population, fully capable of carrying out any type of work. Before 1940, the average age was 17 because family migration was common at the time and entire families, children included, would work in the fields. Later on, during the Bracero Program (1942–1964), the average age increased because the program stipulated that it preferred married workers and there was no family migration. During the decade of the sixties, the average age decreased because the Bracero Program opened up the possibility of family migration and resident visas were granted more easily. Nevertheless, from that date on, the average age increased steadily until it reached 26 in the first decade of the 21st century (See Graph 2). This is partly due to the fact that young people in Mexico are dedicating more time to their school activities and entering the job market later in life, there is a greater number of women in the migrant group and the job market has diversified, especially in the services sector.

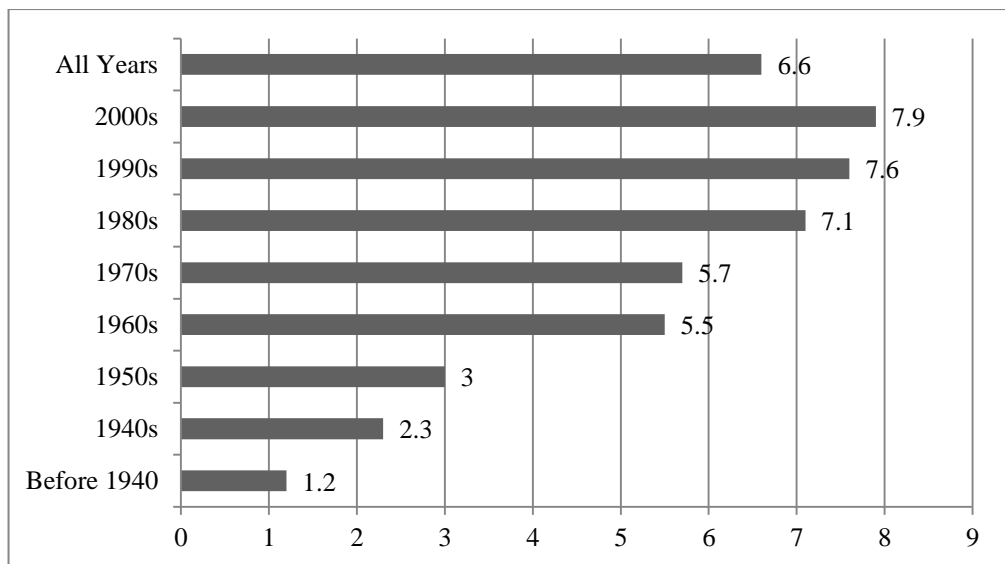
Graph 2. Average Age of Migrants on their First Trip to the United States, 1960 -2010



Source: MMP 128.

Consequently, there has also been an increase in the schooling level of Mexican migrants. Until the 1950s, migrants had only a few years of elementary school. However, by the 1980s, migrants were leaving with completed elementary school studies, and the level of schooling kept rising over the years until it reached an average of 7.9 years during the last decade. This increase correlates with the gradual progress the Mexican educational system has made with respect to retaining young people in school for a longer period of time. However, the average schooling level of 8 years indicates that the Mexican migrant population is wholly lower class, with a low level of education and dedicated to unskilled labor (See Graph 3). The average education of Mexican migrants to the United States is among the lowest, when compared to that of other Latin American countries (Durand, 2010).

Graph 3. Average Education of Mexican Migrants on their First Trip, by Decades



Source: MMP 128.

With respect to the composition of the migrant group by gender, several of the sources traditionally used to analyze migration feature methodological problems. Both the Mexican Migration Project (MMP) and the Survey on Migration along the Northern Mexican Border (EMIF Norte) are strongly biased, since they were carried out at the place of origin and do not include the totality of the female migrant group. The index of males in the 2010 census makes it possible to infer that a greater number of men left (86.5 men for every 100 women), while sources analyzing migration at the place of destination usually indicate that women account for 44 percent (Imaz, 2006). In any case, MMP data show a clear increase of female migration over time and, despite the fact that they do not represent the general total, the trend is suggestive. During its first phase (1940–1950), the Bracero Program limited female migration, but this phenomenon increased until it reached its maximum in the decade of the 1990s. Finally, during the period between 2010 and the present, the trend dropped mainly due to the difficulties and dangers entailed by the border crossing.

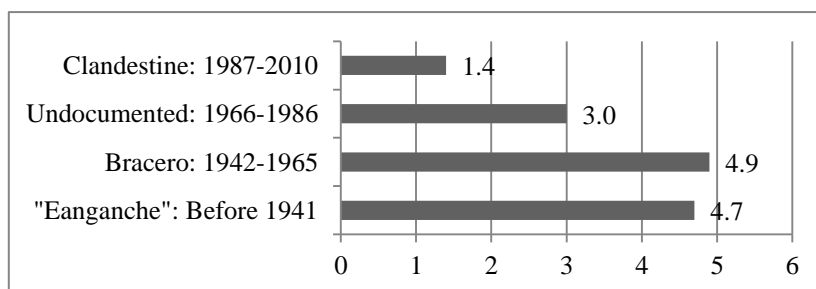
Table 5. Proportion of Male and Female Migrants, by Decades

	Percentages	
	Men	Women
1940s	94.8%	5.2%
1950s	90.4%	9.6%
1960s	76.0%	24.0%
1970s	72.4%	27.6%
1980s	71.4%	28.6%
1990s	67.4%	32.6%
2000s	77.1%	22.9%

Source: MMP 128.

Another element that needs to be taken into account when drawing a profile of Mexican migration is the number of trips. This indicator reveals the degree of circularity of Mexican migration, and Graph 4 shows a significant change and a downward trend regarding said circularity. In effect, during the Bracero period, migrants came and went, as they did during the undocumented period, when crossing the border was much easier than it is now. The change in American migratory policy has increased the costs and risks of clandestine migration.

Starting in 1993, the circularity trend was broken and the time of permanence in the United States increased with the Hold the Line and Gatekeeper operations in El Paso and San Diego respectively, and increased border control in general. Coming and going is no longer easy, so migrants do not risk going back. After the 1986 legalization (Immigration Reform and Control Act, IRCA) the migratory pattern changed, since it became increasingly difficult for undocumented migrants to return to Mexico, which, in turn, forced them to stay longer.

Graph 4. Number of Trips by Periods

Source: MMP 128.

In fact, if we analyze the length of stay of the Mexican migrant in the United States, we can observe a clear change from the circular migratory pattern that prevailed during the Bracero and undocumented periods, to one of settling or permanence in the United States. The first column of Table 6 shows that during the Bracero period (1940–1950), two thirds of the total migrants went to work in the US for a short period of time, less than a year; however, in the year 2000 only 21.7 percent of the migrants made short trips. Consistently with this, medium periods of 1 to 3 years increase to 41 percent, and longer stays of 3 to 5 years and more also increase.

Table 6. Length of Stay on Last Trip (1940-2010)

	Less than a year	1 to 3 years	3 to 5 years	5 to 10 years	More than 10 years	
1940s	61.5%	22.0%	6.4%	5.2%	4.9%	100.0%
1950s	67.0%	15.9%	3.7%	3.3%	10.1%	100.0%
1960s	39.4%	20.9%	5.3%	5.5%	28.8%	100.0%
1970s	31.0%	22.4%	9.2%	8.4%	29.0%	100.0%
1980s	28.7%	26.5%	11.3%	15.5%	18.0%	100.0%
1990s	25.1%	31.2%	17.9%	17.6%	8.2%	100.0%
2000s	21.7%	41.5%	21.4%	15.4%	0.0%	100.0%

Source: MMP 128.

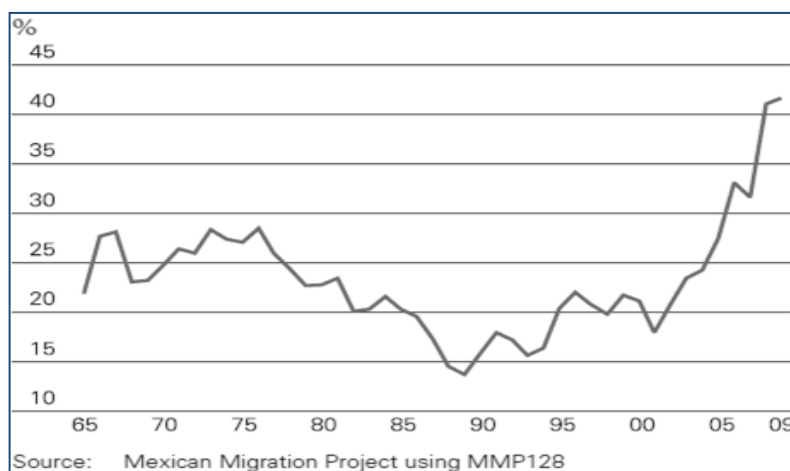
As a matter of fact, after the Immigration Reform and Control Act (IRCA) of 1986, which legalized 2.3 million Mexican migrants, new arrivals were unable to legalize their situation and became part of the group of undocumented migrants. The IRCA opens up a new period characterized by the dual composition of migration: half the migrants were legal and many are naturalized by now, while the other half is undocumented. This period has been called the clandestine period in order to distinguish it from the previous period (Durand and Massey, 2004).

After the legalization of 1986, border restrictions increased, crossing costs rose, crossing routes shifted toward the desert, routes became more dangerous and the Border Patrol budget and work hours increased significantly. The change in the migratory pattern is directly related to the change from a semi-open border to a closed border American migratory policy. For this reason, migrants who manage to cross the border no longer return and extend their stay as much as possible. Thus, an unforeseen consequence of such a policy was that the stock of undocumented migrants started growing gradually, a trend that had had been controlled when circular migration was allowed (Imaz, 2007; Durand, Massey and Parrado 1999).

American migratory policy is defined as a deterrent, and the two main instruments for its application have been the higher costs and increased risks. Thus, migrants face

multiple difficulties when attempting clandestine crossings and the rationale is that this will make many potential migrants change their mind. The strategy has worked (Fieldman and Durand, 2007) and the likelihood of detention of migrants can be confirmed statistically.

Graph 5. Probability of Detention by the Border Patrol when Crossing the Border, 1960–2009



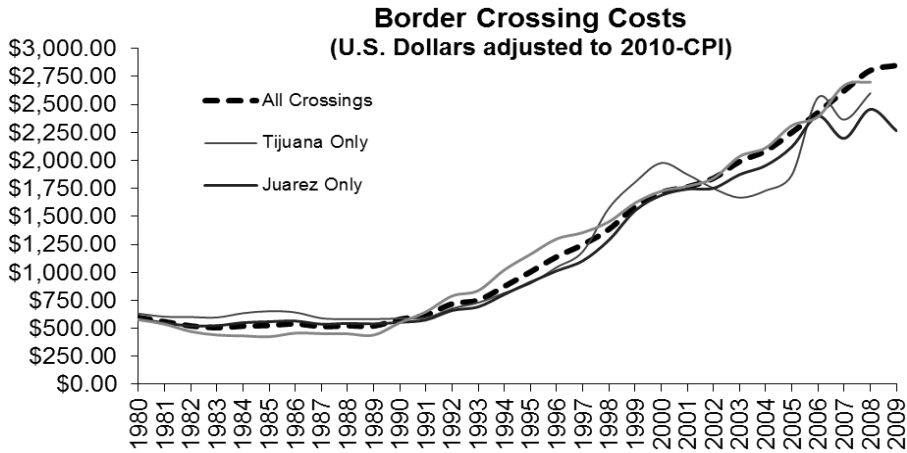
First of all, it is important to consider the rise in costs. While in 1990 coyotes charged approximately \$200 dollars, in 2010 they charged between \$3,000 and \$5,000 dollars. Though the price depends on the crossing conditions and different arrangements between migrants and coyotes, the increase has been significant due to the fact that the border is no longer open and is now constantly patrolled, especially in urban border contexts such as Tijuana, Ciudad Juarez, Laredo, Matamoros, etc.

This increase in costs generated an important change in financing sources. Migrants could no longer finance that cost with their Mexican salaries or savings but instead asked for help from their Mexican relatives already living in the United States. These remittances, which are called “systemic” because they keep the system operating, worked efficiently until 2008 when the financial crisis caused many migrants to lose their jobs or to have their work hours reduced (Durand, 2006).

Relatives living in the United States used to pay the coyote and then the migrants would pay their debt once they had entered the job market. Since the crisis reduced employment opportunities in the United States, it became impossible to finance the arrival of new migrants. The exception is family reunification processes, in which fathers finance the entry of their spouses or children, as a non-repayable expense.

Graph 6 shows the increase in costs as of 1993 due to the Hold the Line and Gatekeeper operations and after September 11, 2001, when border control increased dramatically due to the linking of border migration policies to national security.

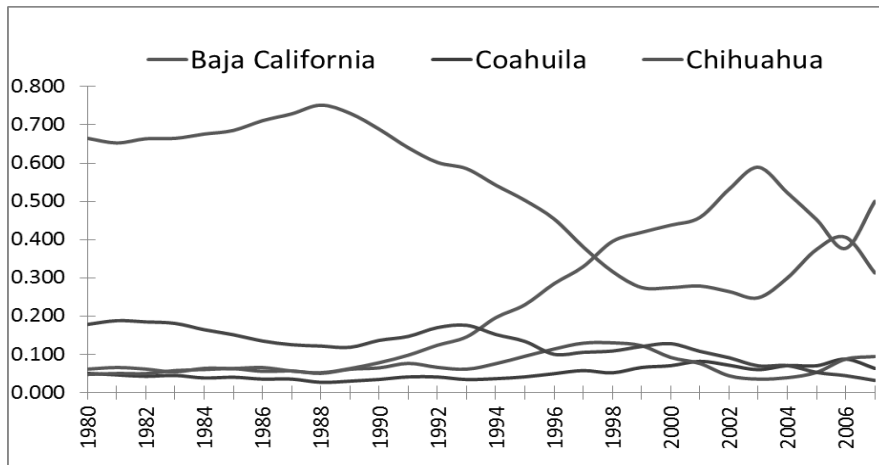
Graph 6. Costs of Clandestine Border Crossing at Different Crossing Points 1980-2009



Source: MMP 128.

The cost of the coyote depends on the point of crossing and the difficulty to get across. When it was possible to cross through Tijuana, at Cañón Zapata or El Bordo, it was feasible to reach San Isidro after an hour’s walk. This is no longer possible, since routes have shifted to harsher and less accessible places such as the deserts of Altar and Sonora. This explains the drastic change from crossings carried out along the Tijuana-San Diego corridor in the state of Baja California to the diversification of crossing points, and the notable increase of such points in the state of Sonora, which is now the main location for clandestine crossings. This change has also caused a significant increase in the number of migrant deaths in their attempt to cross the border.

Graph 7. Border States for Clandestine Crossing, 1990-2010



Source: MMP 128.

7. Temporary Migration

Mexico and the United States have a long history of temporary migration that began in 1906, when President Taft formally asked Porfirio Díaz for *braceros* to work in sugar beet fields (Durand, 2007). Then, during World War I, American consuls constantly asked that Mexican workers be sent to the United States (Alanís, 1999). The Bracero Program, which lasted 22 years, was formalized during World War II. Finally, in the 1990s, the granting of H2 visas to Mexican temporary workers increased (Durand, 2006).

In 2010, legal Mexican migration increased significantly and amply exceeded estimates regarding undocumented migration. In effect, that year, 301,558 persons migrated legally with different types of visas (MMP, 2011), while the number of undocumented migrants was estimated at 150,000 (Passel et al., 2011).

The reduction of irregular migration in the last few years is partly due to the granting of different types of visas to Mexicans. Apparently, the traditional policy of denying visas on financial grounds reduced the possibility of getting one dramatically. In 1999, the index of access to visas was 0.024, while ten years later, when the economic crisis was in full swing, it was 0.173 (MMP, 2011).

The greatest increase was observed in H2A and H2B visas for agriculture and services, respectively. 84,754 visas were granted in the year 2000, three times that number or 277,725 in 2008, and over twice that number or 206,144, in 2009 (See Table 7).

Table 7. Temporary Migration. H2 A and B Visas for Mexicans 2000 - 2009

Visa	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
H2B	51,462	72,387	86,987	102,833	86,958	NA	97,279	75,727	104,618	56,381
H2A	33,292	27,695	15,628	14,094	22,141	NA	46,432	87,316	173,103	149,763

Source: US Department of Homeland Security. *2009 Yearbook of Immigration Statistics*.

It is worth highlighting that H2 visas are not part of a bilateral program like the Bracero Program was. On the contrary, these visas are granted by a unilateral decision of the United States, which grants visas to employers requesting them and they, in turn, make arrangements with contractors or *enganchadores* in Mexico, who recruit workers and support them in the process of getting their visas. The lack of a bilateral agreement created an alarming situation of corruption in Mexico and of worker abuse in the United States.

In Mexico, contractors charged a commission that was not stipulated in the contract, and in the United States, different methods were used to retain the workers, such as indebtedness or passport retention. In some cases, both of these practices verge on worker exploitation. However, we cannot generalize. Some employers abide by labor regulations and others do not. However, there is a total lack of control by the office of the United States Secretary of Labor, and it is impossible for the Mexican government to monitor the situation in the US in any way.

8. Remittances

The issue of remittances and their impact on the development of the issuing countries has been widely discussed in diverse forums, congresses and meetings over the last few years, among them the Global Forum on Migration and Development (GFMD). The relationship between migration and development arises from the academic discussion over the “productive investments” of migrants (Durand, 1988; Jones, 1998; Lozano, 2003), a discussion that is later taken up by various international organizations like the IMF, the World Bank and the IDB, since they believe that remittances are a factor that needs to be considered for the public account, the balance of payments and the possibility of investing part of those resources in to development projects in the countries of origin.

The academic debate between “optimistic and pessimistic” views of the impact of remittances lasted longer than it should have and ended up at the starting point of the whole discussion, namely that remittances have both positive and negative impacts. Dichotomous views do not adjust to a reality that is always more complex than that presented in the simplistic, Manichean positions that characterize the discussion, such as the antagonistic positions of Marxists and functionalists.

The discussion finally shifted toward the possible connections between “migration and development,” which are actually not many, and face the impossibility of using the private funds of migrants and putting the burden of development on them.

Part of the problem lies in the lack of distinction among different levels of analysis. When the Banco de México submits its reports on “family remittances,” it is not really referring to the \$200 dollar remittance that the migrant usually sends, but to the \$20 billion dollars the country receives in foreign currency. The difference is crucial. The family remittance level cannot be compared to *migradollars*, which, like *petrodollars* and *narcodollars*, are exceptional sources of foreign currency that come into the country and obviously stimulate the economy. This is the level at which the World Bank and the various international organizations should work, in order to answer the question of what is happening with those billions of dollars that come in annually and what the countries are doing with that foreign currency and with the taxes paid by migrants. In the year 2006, migrants paid over a billion dollars of VAT (Lozano et al., 2010). It should be asked what banks are doing with those resources, how they are managing them and how they have or could have an impact on development (Durand, 2006).

Table 8. Annual Income due to “Family Remittances” 1999-2009

YEAR	AMOUNT OF REMITTANCES (millions of dollars)	ANNUAL INCREASE (percentage)
1999	5,910	+5.0%
2000	6,573	+11.2%
2001	8,895	+35.3%
2002	9,814	+10.3%
2003	15,041	+53.3%
2004	18,331	+21.9%
2005	21,689	+18.3%
2006	25,567	+17.9%
2007	26,076	+2.0%
2008	25,145	-3.6%
2009	21,244	-15.5%
2010	21,271	+0.12%

Source: Bank of Mexico, 2011.

Undoubtedly, remittances contribute significantly to the welfare of migrants and their families. Anyone can see that remittances allow families to have better food, clothing, housing and even education and health services. But the fact that this is not reflected in a national reduction of poverty indexes constitutes another level of analysis. According to various analysts, remittances have a minimal impact of close to 1 percent on poverty reduction (Escobar, 2007).

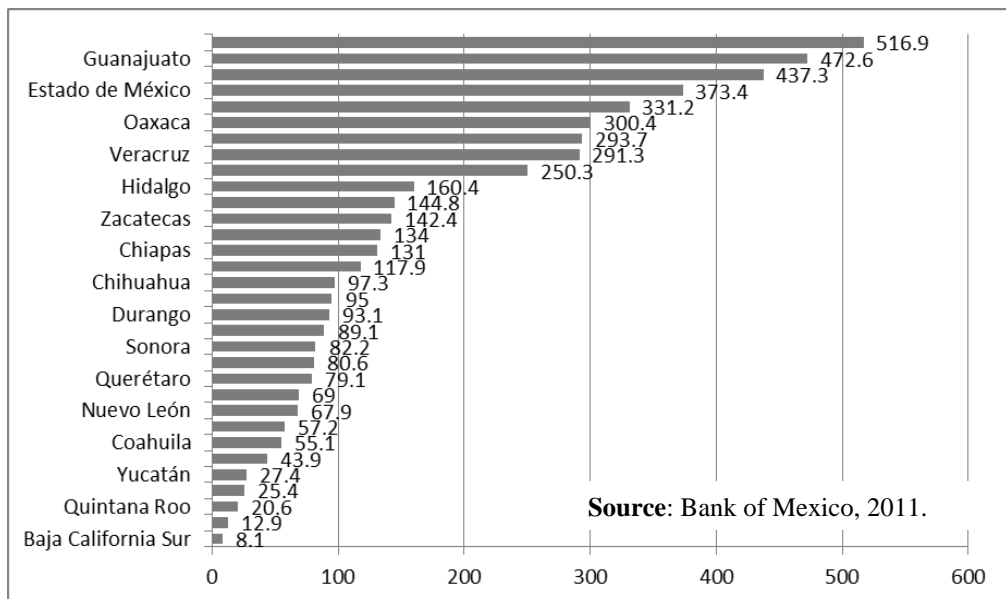
The children of migrants usually have more education, that is, more years of education, but this does not mean they have a better education, which would entail having better teachers, better programs, and access to better educational resources. This second level, having to do with development, corresponds to the State. That a family of migrants has a greater capacity to buy books or a computer does not necessarily indicate development in national terms.

On the other hand, remittances in the case of Mexico have always shown a markedly regional behavior. The states of Jalisco, Michoacán and Guanajuato, which make up the core of the historical migration region, have ranked at the top for over a century now, with respect to reception of remittances and migratory participation (Durand and Massey, 2004). But changes have begun to take place and new actors have appeared, such as the State of Mexico and Puebla in the central region, and Veracruz in the southeast.

The Banco de México provides a quarterly report on the annual amount of the remittances. This continues to be an issue that poses accounting difficulties and methodological problems, which might account for the constant increase in remittances

until 2006, and unexpected and inexplicable variations such as that of the period between 2002 and 2003, when remittances rose by 53 percent, although the migratory pattern had not changed significantly. It had increased but not in similar proportions. On the other hand, it is important to point out that in the last few years, starting in 2008, there has been a significant decrease in migration due mainly to the financial crisis in the United States, which affected important sectors of the job market, especially that of construction.

Graph 8. Distribution of Remittances by State during the January to March Quarter of 2011 (Millions of dollars)



9. Conclusions

Undocumented migration in the United States reached its highest point in 2007, when the Pew Hispanic Center estimated a total of 7 million irregular Mexican migrants. Subsequently, using the same methodology, a downward trend was observed: 6.8 million in 2008, 6.7 million in 2009 and 6.5 million in 2010. This trend coincided with the United States financial crisis and was initially interpreted as a direct consequence of said crisis. However, multiple factors need to be considered when analyzing migration; explanations may turn out to be partial and biased when using or magnifying one indicator.

The MMP surveys carried out in 2010 in the states of Guanajuato and San Luis Potosí, two states with an old and ample tradition of migration, showed for the first time in 25 years that no migrant had made his or her first trip in the year 2009. That is, the exit flow of migrants traveling to the United States for the first time had stopped.

This is why the statistic is said to be equivalent to zero with respect to those communities.

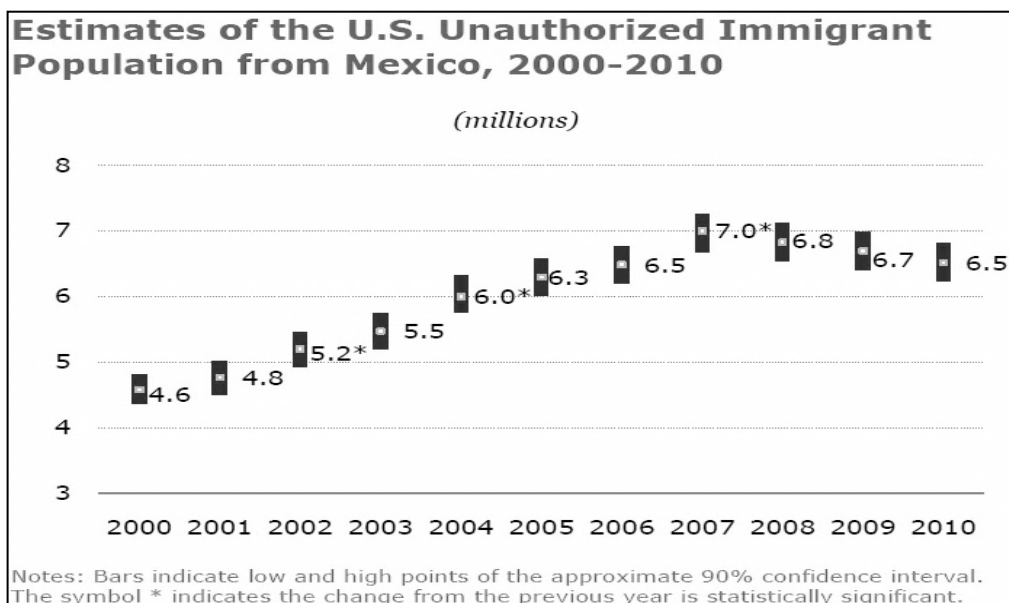
This trend can be observed in many other cases, such as in Epenche Chico, a village in the Sierra del Tigre, Jalisco, where inhabitants report that no one has been able to cross the border any longer. Even deportees, who know all the byways and different crossing paths, have returned to their hometowns. And, at the same time, they report that those who have been able to travel to the United States have done so with H2A and H2B visas for agricultural and services work.

In other words, undocumented migration has decreased while legal migration has increased significantly, which reveals a change of attitude and of migratory policy on the part of the United States. In the year 2004, for example, 109,000 H2 visas were granted to temporary workers and in 2009, in the midst of the financial crisis, 206,144 visas were issued, revealing an increase of 100 percent, due to political and not to economic causes. In fact, this change can also be observed in the visa accessibility index, a topic dealt with above (MMP, 2011).

The first and simple explanation of why irregular migration has decreased is that legal migration has risen. In 1999, 86,000 Mexicans were admitted with work contracts and different types of visas, and ten years later, in 2009, 301,558 were admitted.

On the other hand, the exit flow decreased considerably; in 2005 estimates showed 500,000 irregular Mexican migrants entering the United States, while now the figure is approximately 150,000 (Passel et al., 2011). Multiple causes account for this new trend.

Graph 9



Source: Passel, et. al., 2011.

Deportations, which rose to 973,000 in 2009, are another element that should be taken into account. Technically speaking, of that total 393,000 were deported and 580,000 were returned to Mexico. Formal deportations or removals have increased, either of migrants with legal problems or, in some cases, of naturalized migrants who lose their citizenship and are deported. The fundamental change that has occurred in the last few years is that deported migrants generally do not return to the United States since they could go to jail or face severe enforcement measures. The idea that “today I am deported and tomorrow I’ll go across again” is a thing of the past. To begin with, much more money is needed nowadays to cross.

The deterrent measures explicitly implemented by the United States included increasing the costs and risks of crossing the border. And they succeeded. Now it costs \$60,000 pesos, approximately \$5,000 dollars to cross the border, which is equivalent to 1,000 days of minimum wage salary. This makes the adventure of migration impossible for all those who earn the Mexican mini-salary of \$59 pesos per day, and even for those who earn two, three, or four minimum salaries. The cost-benefit calculation has changed, and in many cases it is not worth it.

The sources of financing for border crossings have also changed. Previously, it was the migrants themselves who financed the clandestine crossing, paid the coyote and even paid for the crossing of a relative. But the financial crisis caused a significant reduction of the remittances that are called systemic, because they kept the migratory system in operation. Now migrants have to support themselves in the United States, they have fewer work hours and they need to mind their money. They can no longer finance the migration adventure of their children, siblings, or godchildren. And if they do help, they risk having to support an unemployed relative who will be unable to pay the debt.

The risk is even greater because now it is no longer just a question of crossing the border but of getting to the border safely. The possibility that migrants may be victims of extortion by mafias, coyotes, and criminals has increased exponentially. Carrying the phone number or address of a relative living in the United States may jeopardize the life of the migrant and his or her family.

Finally, several structural factors need to be considered regarding the decrease in migration: the significant drop in birth rates and sustained economic growth. These two key factors directly affect the migratory flow, and they are not merely temporary situations.

In demographic terms, Mexico is no longer the same. The population growth rate has decreased significantly and large families are now an exception. In the 1970s, Mexican families had an average of seven children, whom they could not support. Therefore, migration was the perfect solution. Now, with an average of two children, migration is neither an evident option nor the perfect solution for families. Demographic pressure, which had an escape valve in international migration, has changed substantially. We still have a demographic bonus, but the pressure to migrate is totally different.

The other structural factor, economic growth, operates simultaneously with the decrease in birth rates. In the last few decades, Mexico has grown at an average rate of 2.7 percent while other Latin American countries like Chile, Peru and Brazil have grown twice that rate. General conditions have improved somewhat in Mexico but not at the expected rate. The fundamental problems continue to be the low capacity to generate employment and low salaries. It cannot be said that the economic variable has played a fundamental role in the decrease of undocumented migration. But when sustained economic growth is achieved, the impact on migratory flows will be decisive. It may take some years, perhaps a decade, to finally control the massive flow out of Mexico.

PART II

PUBLIC POLICIES ON MIGRATION IN MEXICO⁴²²

Cecilia Imaz

Apart from the Constitution, the legal framework for Mexican migratory policies has included the General Law on Population (LGP) since the 1970s, and as of 2011 the Migration Law and the Law on Refugees have existed. Their design and formulation is the responsibility of the office of the Deputy Minister for Population, Migration and Religious Affairs within the Office of the Ministry of the Interior, and their execution is the responsibility of the National Migration Institute (INM), which, since its creation in 1993, has been a decentralized administrative body⁴²³ and continues to have that same status under the current Migration Law (Art.19).

Mexican migratory policies have had different objectives over time: population selection in the early 20th century, political asylum for over a century, immigration control since the 1970s, protection of the emigrant population and incorporation of refugees since the 1980s. The strategies have varied according to specific situations and interests, such as the retention of emigrants in some states. More recently, there has been more emphasis on control and regulation while juggling the conflicting demands of respecting the human rights of migrants. There is also a climate of crime and violence in different parts of the country that has affected dozens of migrants in transit, who are impacted by organized crime and, on more than one occasion, the public officials involved in organized crime.

⁴²² The following were reviewed: The body of federal law; Ministry of Foreign Affairs database of international treaties ratified by Mexico; collection of United Nations treaties; database of Inter-American treaties of the Organization of American States and international labor standards of the International Labour Organization; constitutions of Chiapas and Zacatecas (the only states that include migrants' rights in their laws), immigration laws of Mexico City, Durango, Hidalgo, Michoacán and Sonora; electoral laws of the 31 states and Mexico City; websites of the governments of the 31 states and Mexico City, to locate information by their offices concerning services for migrants; actions to address human trafficking in the 31 states and Mexico City, statistical bulletins by the National Migration Institute (2005-2010); government and civil society organization reports on migration in Mexico (2010-2011); legislative work of the 61st Legislature: Commission on Population, Borders and Migration Affairs of the Chamber of Deputies; and the Commissions on Northern Zone Border Affairs, Southern Border Affairs, Foreign Affairs, North American Foreign Affairs, and Population and Development of the Senate of the Republic, (2009-05/2011); the IUS system of the Supreme Court of Justice of the Nation to search jurisprudence and individual theses; and the content of the 16 meetings of the Regional Conference on Migration. Also taken into account were the results of interviews with 15 civil society organizations that work on behalf of migrants; officials in charge of federal programs related to migration; and consular officials from Guatemala, Honduras, and El Salvador in Mexico City.

⁴²³ Mexico's federal public service is divided into the central and para-state. The Ministries are part of the centralized administration, with power to delegate technical and operational functions to organizations or institutions; the administrative terminology dubs these deconcentrated, i.e., having budgetary autonomy, but not independent assets. This is the case of the National Migration Institute, under the Ministry of the Interior.

The current legal framework on migration policy is outstanding for its respect for human rights and its close adherence to the International Convention on the Protection of the Rights of All Migrant Workers and Their Families. But an integrated perspective in public policies is still not a reality, and this is one of the biggest challenges that Mexico faces in its new legislation on migration, which aims to be comprehensive.

Despite the efforts to address emigration, immigration, transmigration, and return, much ground remains to be covered to incorporate all the interrelated fields in these processes, such as human rights, the economy, trade, security, the environment, considerations about integration and development, as well as ensuring interinstitutional coordination and the effectiveness of public policies to support these issues.

To better understand what is happening in Mexico in the field of migration, three variables should be considered:

1. The inclusion of migration on the national agenda, starting with the political transition that began in Mexico in 2000, when de facto single party power ended. Acknowledgement of being a country that is a source of emigration spurred state governments, the Federal Government and Congress to pay attention to migrants. Subsequently, some states incorporated aspects of transmigration and immigration into public policy
2. The hemispheric security strategy as of 2001 and the creation of the United States Department of Homeland Security (DHS) in 2003, with which the Mexican Government has operated in coordination. In 2004, the National Migration Institute introduced the Comprehensive Migration Operations System (SIOM), a computerized system that monitors entry and flow (as well as information on repatriation, residence, nationalization, and immigration procedures). In May 2005, the Institute joined the National Security System, and its databases and information systems became part of the National Network of Information, as set forth in the National Security Act. Later that year, the U.S. government put the Secure Border Initiative into operation, taking the fight against illegal migration to a new level of priority
3. The explosion of violence by national and international organized crime (robberies, kidnappings, murders) and the war that the government of Felipe Calderón (2006–2012) has waged against this, has seriously affected a substantial part of Mexican society, as well as migrants passing through remote regions where organized crime acts with great impunity.

Currently, crime affects half of the states in Mexico and the death toll has exceeded 40,000 over the past five years, of which 1,600 were members of the police and military and the rest were criminals and civilians.

1. National Legislation and its Relation to International Legislation

The legislation, programs, and policies related to migration, asylum and refugee status in Mexico have been linked, in turn, to international legal instruments, bilateral agreements, and regional processes for more than half a century. Most of these are linked to Latin American legal traditions that cite international law to uphold their principles and fight for their interests.

The current position of the country is increasingly in line with cutting edge international positions on immigration and transmigration, within the framework of a control policy.

During the last decade there have been numerous drafts for legislation and programs to address problems that seriously affect the mobility of people leaving and entering the national territory, such as massive flows of undocumented migration, human trafficking, refugee and asylum applications, which have resulted in legislation in concordance with the international instruments in this field. The most recent laws have been the Law on Refugees and the Migration Law, enacted in 2011.

The following table shows the international treaties on human rights and migration signed and ratified by Mexico:

Table 1. International and Regional Treaties Related to Human Rights and Migration Ratified by Mexico

International Treaties Ratified by Mexico	
Instrument	Ratification
Protocol against the Smuggling of Migrants by Land, Sea and Air that supplements the United Nations Convention Against Transnational Organized Crime	04/03/2003
Protocol to Prevent, Suppress, and Punish Human Trafficking Especially with Women and Children that supplements the United Nations Convention Against Transnational Organized Crime	04/03/2003
Optional Protocol of the Convention on the Rights of Children Concerning Child-Selling, Child Prostitution, and Child Pornography	15/03/2002
Convention on the Status of Refugees	07/06/2000
Convention on the Status of Stateless Persons	07/06/2000*
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	08/03/1999
Convention on the Rights of Children	21/09/1990
Convention against Torture and Other Forms of Cruel, Inhuman, or Degrading treatment	23/01/1986*
International Covenant on Civil and Political Rights	23/03/1981*
International Covenant on Economic, Social and Cultural Rights	23/03/1981
Convention on the Elimination of All forms of Discrimination against Women	23/03/1981
International Convention on the Elimination of All forms of Racial Discrimination	20/02/1975
Agreement for the Suppression of Human Trafficking and Exploitation of the Prostitution of Others, and Final Protocol	21/02/1956*
Regional Treaties Ratified by Mexico	
Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women	12/11/1998
Inter-American Convention to Prevent and Punish Torture	11/02/1987
American Convention on Human Rights	02/03/1981
Convention on Territorial Asylum	03/04/1982
Convention on Diplomatic Asylum	06/02/1957
Convention on Political Asylum	27/01/1936

*Refers to the date of accession.

Note: Mexico has not signed International Labour Organization Conventions 97 and 143, referring to migrant workers and migration under abusive conditions, and the promotion of equal opportunity and treatment of migrant workers, respectively. It has signed but not ratified the Inter-American Convention on International Traffic in Minors (11/27/1995).

Sources: Prepared by the author with information from:

- treaties.un.org/pages/ParticipationStatus.aspx,
- www.sre.gob.mx/tratados/index.php, www.oas.org/dil/esp/tratados_materia.htm,
- www.ilo.org/ilolex/spanish/convdisp1.htm, consulted on 08/06/11.

1.1. Federal Legislation Concerning Migration Issues

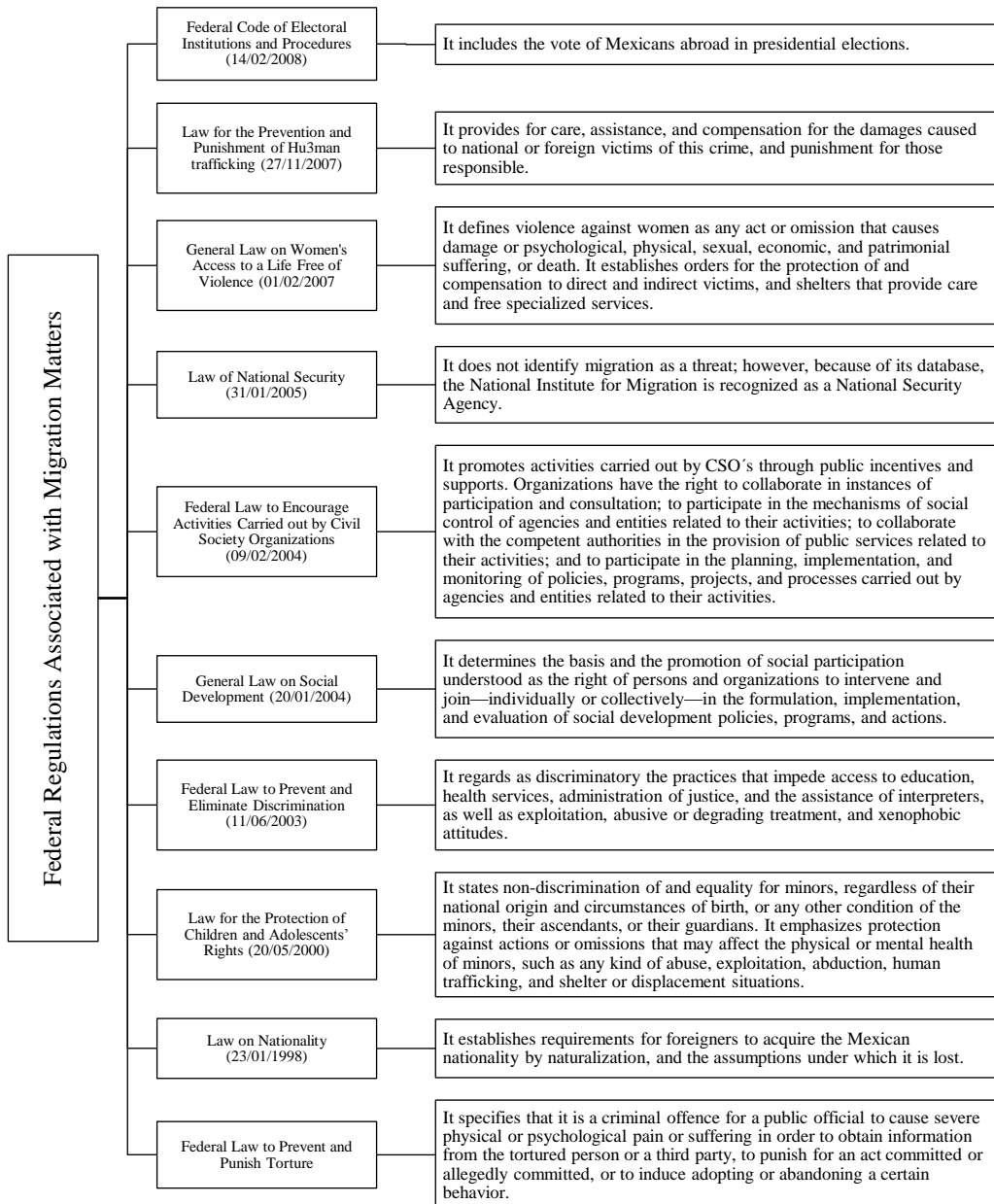
The fundamental laws on migration in Mexico are the Constitution, the General Law on Population, the Law on Refugees and Complementary Protection and the Migration Law. Additionally, 10 laws contain provisions that apply directly or indirectly to the field of migration (Chart 1).

1.1.1 Constitution of the United Mexican States (1917)

The Constitution of the United Mexican States sets forth the following provisions on migration and human rights: since 1934, Art. 133 has stated that "the Constitution, the laws issued by the Congress of the Union and all the Treaties in accordance with the same... shall be the Supreme Law of the Union." In 1998, reforms were made to Arts. 27, 30, 37, and 38 relating to property, nationality, and citizens' rights so that Mexicans who had naturalized to the United States of America could exercise their economic and social rights in their country of origin, (the law known as No Loss of Nationality). After raising the National Commission of Human Rights to constitutional status, Art.102, in 1992, seven years later it was granted full budgetary and management autonomy. In 2011 it was authorized to investigate serious human rights violations and present cases concerning unconstitutionality before the Supreme Court of Justice of the Nation (Official Journal of the Federation [DOF], 2011, May 10, p. 2–5). This amendment provides that when an issue is related to migrants, a legal ruling shall be made.

In 2011 an amendment was made to Chapter I of Title I on Individual Rights, now called "Of Human Rights and Their Guarantees" (10/06/2011). This represented a step forward by making people, and not individuals, the focus of constitutional provisions, recognizing rights and mechanisms for their protection. One outstanding aspect is the guarantee of the foreigner's right to a hearing prior to expulsion, enacted by modifying Art. 33 which denied this and forced the Mexican state to include provisos in various international conventions. The passage of secondary legislation to make this fully applicable is pending. Another important reform (Arts. 19, 20, and 73) makes human trafficking a crime (07/2011).⁴²⁴

⁴²⁴ Aguascalientes, Baja California, Baja California Sur, Campeche, Chiapas, Chihuahua, Colima, Durango, Guerrero, Hidalgo, México, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sonora, Tamaulipas, Yucatán, and Veracruz are the states that have endorsed the constitutional reform.

Chart 1. Federal Laws Related to Migration Issues

Source: Developed with information from Arts. 1, 3, 11 of the Federal Law to Prevent and Punish Torture; Art. 2, 19–20 of the Law on Nationality; Arts. 3, 7, 16, 21 of the Law for the Protection of the Rights of Girls, Boys, and Adolescents; Arts. 1, 4, 9, 16, 45, 58 of the Federal Law to Prevent and Eliminate Discrimination; Arts. 1, 3, 62–63 of the General Law on Social Development; Arts. 1, 5–6 of the Federal Law to Encourage Activities Done by Civil Society Organizations; Arts. 1, 5–6, 26–27, 56–57 of the General Law on Access for Women to a Life Free of Violence; Arts. 1, 6, 9 of the Law to Prevent and Punish Human Trafficking; Art. 313 of the Federal Code of Institutions and Electoral Procedures.

1.1.2 General Law on Population

The *Ley General de Población* (LGP—1974-General Law on Population) and its regulations in force (12/04/2000) have undergone several reforms (National Migration Institute [INM], 2002), including the following, which were enacted in the 1990s: Power given to the Ministry of the Interior to ensure respect for the human rights of migrants, as well as family protection, and to authorize the temporary admission of foreigners who experience political persecution or have fled from their home country, and the definition of refugee was added (17/07/1990); allowing children born to foreign parents to be registered in the country without asking for verification of the residence status, and outlining the procedures for admission, residence, and departure for foreigners (08/11/1996); and it was emphasized that the Preventive Federal Police would be the authority responsible for reviewing persons passing through the country (01/04/1999).

In recent years undocumented migration has been decriminalized (29/04/2008), meaning that persons discovered as being undocumented are considered to have committed a misdemeanor and not a crime; procedures were established to handle complaints on human rights and access to justice, in cases of disaster or when the foreigners' life is at risk, regardless of immigration status (22/11/2010). In May 2011, with the Migration Law, the General Law on Population underwent numerous reforms, including: repealing the chapters on migration and immigration and the articles on migration procedures, verification, and monitoring; the Federal Government was enjoined, in coordination with state and local governments, to promote development and establishment for immigrants in the country and create programs to address the impacts of emigration; and the Ministry of the Interior was given powers to: 1) protect countrymen who emigrate, 2) promote agreements with other countries on migration through legal, safe and orderly channels and for dignified repatriation, and 3) coordinate actions for reception, services, and reintegration of repatriated Mexicans.

1.1.3 Law on Refugees and Complementary Protection (27/01/2011)

The definitions of asylum and refugee had been included in the General Law on Population (Arts. 88 and 89, respectively), but in 2011 a specific law was passed that defines a refugee as any alien in Mexico who is afraid of persecution in his or her home country, who has fled internal conflict, general violence, or massive human rights violations. Complementary protection is understood to mean that which is granted to the alien who is not recognized as a refugee, so as not to return the person to a country where his or her life would be at risk or in danger of being subjected to torture, cruel, inhuman, or degrading treatment.

This law includes the guiding principles of non-refoulement, non-discrimination, the best interests of the child, family unity, no penalty for irregular entry and confidentiality, and the right of an alien to apply for recognition of refugee status, to receive support from public institutions, such as health services and education and the recognition of his or her studies, the right to work and to apply for family reunification.

1.1.4 The Migration Law (25/05/2011)

This law was designed and formulated, modeled after laws from other countries and the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, integrating said rights into the conditions of stay for migrants.

The purpose of the Migration Law is to regulate the entry and exit of Mexicans and foreigners into/out of the country, as well as foreigners' transit and stay, recognizing Mexico's status as a country of origin, transit, destination and return for migrants.⁴²⁵

The Migration Law expressly reiterates the decriminalizing of undocumented migration (set forth in the General Law on Population in 2008 but with few noticeable results) stating in Art. 2 that "under no circumstances shall irregular migratory status constitute in itself the commission of a crime, nor shall the migrant be prejudiced as having committed a crime by the fact of being undocumented."

Its guiding principles are: respect for human rights, regardless of the alien's immigration status,⁴²⁶ with special considerations for children, women, indigenous people, the disabled, the elderly, and victims of crime; consistent with the demands of respect for the human rights of Mexicans abroad; shared responsibility with governments involved in immigration matters; international hospitality and solidarity; facilitating people's mobility; complementarity of regional labor markets; equity between citizens and foreign nationals; recognition of rights acquired by immigrants; family unity and best interests of children; social and cultural integration; facilitation of return and reintegration into society for Mexican migrants and their families.

The positive aspects of the Migration Law include reducing discretionary power by identifying the authorities with powers over immigration matters, and obliging the officials responsible for implementing immigration policy to undergo certification in order to remain in their jobs.⁴²⁷ It also simplifies the procedures to enter the country normally, by reducing the conditions of stay for: visitors,⁴²⁸ temporary residents and permanent residents.⁴²⁹ The Migration Law recognizes the work by civil society organizations for migrants; it requires collaboration by the three levels of government to assist with humanitarian actions, relief, and protection for migrants undertaken by

⁴²⁵ Art. 1 of the Migration Law.

⁴²⁶ The right to personal safety, not to be discriminated, to have access to education and health services, to have access to the administration and enforcement of justice, respect for the right to due process and to make complaints about human rights, to receive the services of a translator or interpreter if necessary, the recognition of legal personality, to make modifications to one's civil status, to receive information about rights and obligations, the requirements for staying in the country and eligibility for refugee status, political asylum, or to receive supplementary protection, to purchase fixed income or equity securities and real estate, and to make bank deposits (Arts. 2–14, 60, 66–67 of the Migration Law).

⁴²⁷ Arts. 18–30 of the Migration Law.

⁴²⁸ With or without permission to engage in paid work, regional, or border work, or for adoption. This includes the possibility of granting the visitor status on humanitarian grounds for foreign victims or witnesses of crimes, unaccompanied minors, and asylum-seekers or refugees. Art. 52 of the Migration Law.

⁴²⁹ Contemplates the possibility of taking up permanent residence by means of a system of points. Art. 57 of the Migration Law.

civil society organizations; and it prevents the authorities from carrying out inspection visits at migrant shelters.⁴³⁰

The new law also brings the immigration procedures for the detention of foreigners without a visa (detention, immigrant lodgings, assisted return, and deportation) into compliance with human rights.⁴³¹ It establishes special procedures for unaccompanied minors.⁴³² It allows the legalization of immigration status for aliens who have stayed in the country illegally.⁴³³ It establishes punishments for officials from the National Migration Institute who violate migrants' human rights or public servants who deny migrants services or the exercise of rights that are contemplated by law.⁴³⁴ It punishes human trafficking, and it specifies that no punishment will be applied to persons who, on humanitarian grounds and not seeking profit, assist undocumented migrants, even if they receive donations or resources.⁴³⁵

Finally, it is worth mentioning that the Migration Law, together with the amendment to the Constitution that guarantees respect for human rights, strengthens human rights legislation for migrants.

⁴³⁰ Art. 72 and 76 of the Migration Law.

⁴³¹ During detention (arrest): To be informed about rights and how to legalize one's stay. At the lodging: To be informed of the location of the detention center where they are being held, the rules of the center and its services, to be informed of the reason for being sent to the detention center, the immigration proceedings, and the right to effectively oppose the resolutions of the National Migration Institute, to apply for refugee status, to legalize the stay or to apply for assisted return to the country of origin; to communicate with and receive protection from a consular representative, to receive written information about rights and obligations and the channels for filing reports or complaints, to receive legal counsel and have access to records, to have a translator or interpreter for those who do not speak or understand Spanish, to have access to a telephone, to receive proper accommodation, food, basic supplies for personal hygiene and medical care, to receive visits from family or a legal representative, to participate in recreational, educational, and cultural activities at the facility, not to be discriminated against, and to be treated with dignity and humanity. The migrant centers must have adequate facilities to prevent overcrowding, with designated areas for men, women, and children, while respecting the right to family unity. They must allow inspection by the CNDH and civil society organizations. Contemplating the possibility of handing the alien over into the custody of diplomatic or civil society human rights organizations, and establishing a deadline of no longer than 15 working days to resolve the alien's immigration status. For assisted return and deportation: To notify the relatives or a trusted person, to be transported with one's belongings, to receive food, and if rejected by the destination country, to be returned to Mexico and have the National Migration Institute determine one's immigration status (Arts. 102, 107, 109, 111, 119 of the Migration Law).

⁴³² Art. 112 of the Migration Law.

⁴³³ Arts. 132-136 of the Migration Law.

⁴³⁴ Arts. 140, 148 of the Migration Law.

⁴³⁵ The penalty is 8 to 16 years in prison and up to double if the offender is a public servant, minors are involved or persons who are not capable of understanding the meaning of the act, or if the incident has occurred under conditions that jeopardize health, safety, life or entail inhuman treatment. Articles 159 and 160 of the Migration Law.

1.2. Legislation by Federal Entities on Migration Issues

In the late 1980s, some of the federation's states that traditionally were departure points for emigrants, implemented programs to serve and connect its expatriates,⁴³⁶ which subsequently other states and the Federal Government copied. With the growing importance of remittances and the social impact of emigrants, some local laws have begun to take into account their political and human rights.

Voting: Three states have passed laws so that emigrants may exercise their right to vote for government: Mexico City, Michoacán, and Morelos. In the case of Zacatecas, the Migrant Law contemplates binational residence and therefore its emigrants may run for office in the state legislature and local councils.⁴³⁷

Currently five of the 32 national entities (31 states and Mexico City) have migration legislation: Sonora (06/12/07), Durango (11/09/08), Hidalgo (07/03/11), Mexico City (07/04/11), and Michoacán (24/05/11). In Michoacán this legislation refers to services and protection for its emigrants' human rights; in the case of Sonora it focuses on migrants in transit, without specifying whether these are citizens or foreigners; while Mexico City,⁴³⁸ Durango, and Hidalgo address emigrants, transmigrants, and immigrants.

Some states, through the Migrant Services Office and branch offices in the United States, have paid the most attention to emigrants. Currently there are 29 offices for migrants⁴³⁹ focused almost exclusively on emigrants and to a lesser degree on the families who are left behind. These offices provide various services, including provision of official documents, assistance and advising in cases of arrest, deportation, missing persons, medical transport or human remains, death, child support claims, compensation for accidents at work or abroad; instructions on how to join migrant

⁴³⁶ Zacatecas was a source of emigration, whose governor, in 1982, started rapprochement with emigrant associations.

⁴³⁷ Citizens from Mexico City, Michoacán and Morelos who live abroad may vote in elections for head of government and governor, respectively (Art. 12 of the Electoral Institutions and Procedures Code of Mexico City, Arts. 283 to 304 of the State of Michoacán Electoral Code, Art. 282 of the State of Morelos Electoral Code). In the case of Zacatecas, its Constitution and Electoral Law recognize binational residence ("condition of a person who simultaneously keeps a domicile abroad, and at the same time, a home and residence within national territory, sustaining there a home, family, and interests," Art. 5 of the Electoral Law and 12 of the Constitution) and allows migrants to run for deputy (Arts. 52-53 of the Constitution and Arts. 13, 119 of the Electoral Law) or for municipal office (Art. 115 of the Constitution and Art. 15 of the Electoral Law).

⁴³⁸ In Mexico City the Law on Intercultural Issues, Migrant Services and Human Mobility (Art. 2) makes the distinction between the guest category, defined as anyone coming from other states in the country or other countries, and migrants, defined as anyone who leaves Mexico City with the intent to reside in another state or abroad. Despite inconsistencies in the definition of these categories, which contradicts the federal law on the subject, this law provides a framework for reducing discriminatory practices, as it boosts tolerance and coexistence with foreigners.

⁴³⁹ Aguascalientes, Baja California, Chihuahua, Campeche, Chiapas, Coahuila, Colima, Distrito Federal, Durango, State of México, Guerrero, Guanajuato, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán, and Zacatecas. See the website of the National Coordination of Migrant Services Office (CONOFAM), Who Are We? www.conofam.org.mx/quienes.html, consulted on 01/04/11.

associations; and collecting donations. Not all offices operate at the same level in the government structure and not all have sufficient stability for institutional permanence (see Annex).

Three states are outstanding for expanding their field of action, as shown in Table 2.

Table 2

States representative for their actions in migration matters		
Chiapas	Guanajuato	Michoacán
<p>2011: Migrant human rights at constitutional level State Commission for the protection of the human rights of migrants - part of the State of Chiapas Human Rights Council. It receives and attends to complaints about violations of the human rights of migrants, and provides training to civil servants.</p> <p>2009: Secretariat for Development in the Southern Border and Liaison for International Cooperation. It serves both Foreign and Chiapas migrants.</p> <p>2008: Prosecutor's Office Specialized in Crimes against Migrants. It provides services without regard to the migration status of the complainant.</p>	<p>2009: "Special Program of Migration Vision 2012". It directs the State migration policy in 4 axes: comprehensive care for migrants and their families; remittances and savings; social capital; governmental work.</p> <p>2007: Council of the Migrant Entrepreneur in the State of Guanajuato. It plans and promotes policies, programs, and actions for migrants and their families.</p>	<p>To date: 69 Municipal Centers of attention to migrants. These ensure access to government services for migrants and their families; they also promote their organization in their communities of origin.</p> <p>2010: Guide to the Migrant from Michoacán. It contains information of interest to the migrants.</p> <p>2008: Secretariat of the Migrant. It designs and implements the policies of attention to the migrants and their families.</p>

Source: prepared by the author using information from the Presentation of the Secretariat for Development in the Southern Border, Mexico, 2011; web site of the Secretariat for Development in the Southern Border and Liaison for International Cooperation, Program Acércate, www.spdfs.chiapas.gob.mx/acercate, consulted on 29/06/11; Commission of Migrant Human Rights, 2011a, p. 3; Commission of Migrant Human Rights, 2011b, p. 2; web site of the Planning Institute of the State of Guanajuato, Citizenship, Councils and Commissions, Council of the Migrant Entrepreneur in the State of Guanajuato, www.iplaneg.guanajuato.gob.mx/web/guest/consejo_del_migrante_emprendedor_del_estado_de_guanajuato_comeeg, consulted on 22/06/2011; web site of the Council of the Migrant Entrepreneur in the State of Guanajuato, Inicio, Special Program of Migration Vision 2012,

www.iplaneg.net/c/document_library/get_file?p_1_id=22415&folderid=22697&name=DLFE=4393.pdf, consulted on 22/06/2011; web site of the Secretariat of the Migrant of Michoacán, Inicio, Atribuciones, www.migrantes.michoacan.gob.mx/index.php?option=com_content&task=view&id=203&Itemid=253, consulted on 23/06/2011; web site of the Government of Michoacán, Migrantes, Contenido de interés, Centros de Atención al Migrante, www.michoacan.gob.mx/Migrantes/Centros_de_Atencion_al_, consulted on 30/06/2011.

In terms of human trafficking, 16 states have laws to combat this: Mexico City (24/10/08), Chiapas (03/04/09), Tlaxcala (30/10/09), Tabasco (26/12/09), Nuevo León (30/07/10), Tamaulipas (19/10/10), Hidalgo (15/11/10), Puebla (03/12/10), Quintana Roo (10/12/10), Veracruz (05/11/10), San Luis Potosí (27/01/11), Sonora (10/03/11), Baja California (28/03/11), Yucatán (31/03/11), Nayarit (15/06/11), and Sinaloa (13/07/11).⁴⁴⁰

However, there is still a lack of information and indifference to the subject, in that both federal and state judges often handle trafficking crimes as rape and therefore prosecution and sentencing are minimal. In 2010 only four sentences were handed down.

Repercussions are also felt from the fact that the Attorney General's Office of the Republic investigates trafficking crimes through the Special Prosecutor for Violent Crime against Women and Trafficking (FEVIMTRA) when up to three suspects are involved, or the Deputy Prosecutor's Office on Organized Crime (SIEDO) when three or more suspects are involved. Having established a cut-off line of three people has caused some cases to be delayed while a decision is made about which agency has the authority and jurisdiction to handle the case. During 2010 FEVIMTRA investigated 76 cases, began 47 proceedings, and secured one ruling; SIEDO, in turn, secured no rulings.⁴⁴¹

Most Mexican trafficking victims come from Chiapas, Veracruz, Puebla, Oaxaca and Tlaxcala, locations considered to be the main source of trafficking for sexual exploitation. Child sex tourism has increased Guerrero, Quintana Roo, Baja California, and Chihuahua (in the respective resort towns of Acapulco and Cancún,⁴⁴² as well as Tijuana and Ciudad Juárez). Foreign victims hail mainly from Guatemala, Honduras, and El Salvador, although they may also come from South America, the Caribbean, Eastern Europe, Asia, and Africa.

The detection of persons affected by this crime is low because the mechanisms for doing so are inadequate. In 2010 only 259 victims were identified.

At the federal level, the government has allocated 8.33 million pesos to 64 emergency shelters and centers for women who are victims of domestic or sexual violence and trafficking. Services for men in these situations are scarce (Department of State, 2011, p. 47, 255–258). Meanwhile, the CNDH has set up 13 regional committees⁴⁴³ to ensure that the law is upheld, prevent this crime and provide care for the victims (National Human Rights Commission [CNDH], 2011, June 13).

⁴⁴⁰ The legislation may be viewed at www.ordenjuridico.gob.mx

⁴⁴¹ It was not until June 28, 2011 that SIEDO secured a ruling against four criminals (INFORMADOR, 2011, June 28).

⁴⁴² Civil society is making efforts to prevent sexual exploitation and child sex tourism in the city, for example through the Center for Comprehensive Care for Women and Children, founded by journalist Lydia Cacho who launched the campaign "I'm not for sale" (19/05/11), that involves academia (by including this issue in the academic curriculum), businesses (ethical hiring practices), and institutions (certification for popular travel destinations; investigating and bringing cases of trafficking to court). (MILENIO, 2011, May 19; Vargas, 2011, May 25).

⁴⁴³ The committees are in Aguascalientes, Baja California, Campeche, two in Chiapas, Chihuahua, State of México, Jalisco, Sonora, Tabasco, Tamaulipas, Veracruz, and Yucatán.

2. Institutional Framework for Migration Affairs and Interinstitutional Coordination

In accordance with the Migration Law, the institutions with authority over migration matters are the Ministry of the Interior, the National Migration Institute and the Ministry of Foreign Affairs. The three institutions are supported by auxiliary authorities: the Federal Police, the Attorney General's Office, the Ministry of Health, the National System for Integral Family Development, the Ministry of Tourism and the National Women's Institute. The following tables [Table 3 and onward] set forth their powers.

Additionally, 12 government institutions have specific programs to assist emigrants and to a lesser degree internal migrants and transmigrants. These are the Ministries of Education; Social Development; Labour and Social Welfare; Communications and Transport; Agriculture, Livestock, Rural Development, Fisheries, and Food; as well as the National Commission for the Development of Indigenous Peoples, the Bank of Mexico; the National Savings Bank and Financial Services, the Federal Consumer Protection; the National Commission for the Protection and Defense of Users of Financial Services; the Federal Electoral Institute and the Mexican Institute of Social Security (see Annex).

Table 3

Institutions responsible for migration matters	
Institution	Responsibilities
Ministry of the Interior	<ul style="list-style-type: none"> • Formulate and direct the migration policy of the country taking into account the demands and positions of the other powers of the Union, the governments of federal entities and civil society • Determine fees, requirements, or procedures for the issuance of visas and the authorization of conditions of stay for foreigners performing paid activities • Determine the municipalities or federal entities that conform border regions, or those which receive temporary workers, and the corresponding duration of stay authorizations issued in those regions, taking into account the opinion of the Ministry of Labor and Social Welfare and the other authorities stipulated in the regulation • Establish or abolish requirements for the entry of foreigners into national territory • Suspend or prohibit the entry of foreigners • Promote and sign international instruments for the assisted return of both Mexicans and foreigners, in coordination with the Ministry of Foreign Affairs • Set and eliminate places intended for the international transit of persons • Enact readmission agreements
National Migration Institute	<ul style="list-style-type: none"> • Implement the migration policy • Monitor entry into/exit from the national territory • Process and resolve matters relating to the entry into, stay in, and departure of foreigners from the country • Apply the penalties provided for in the Law on Migration • Keep a national register of foreigners and update it • Take foreigners to migrant holding centers when the circumstances so warrant in accordance with the provisions of the Migration Law, respecting their human rights • Coordinate the operations of groups of assistance to migrants in the national territory • Provide the information contained in the computer systems that it manages to the national security institutions that request it
Ministry of Foreign Affairs	<ul style="list-style-type: none"> • Promote the signing of international instruments for the assisted return of Mexican or foreign migrants • Promote the signing of bilateral agreements to regulate the migratory flow • Process and resolve matters relating to the issuance of visas • Provide protection for Mexicans through its consular network

Source: prepared by the author with information from Articles 18–21 of the Law on Migration and Article 8 of the Law on Federal Police

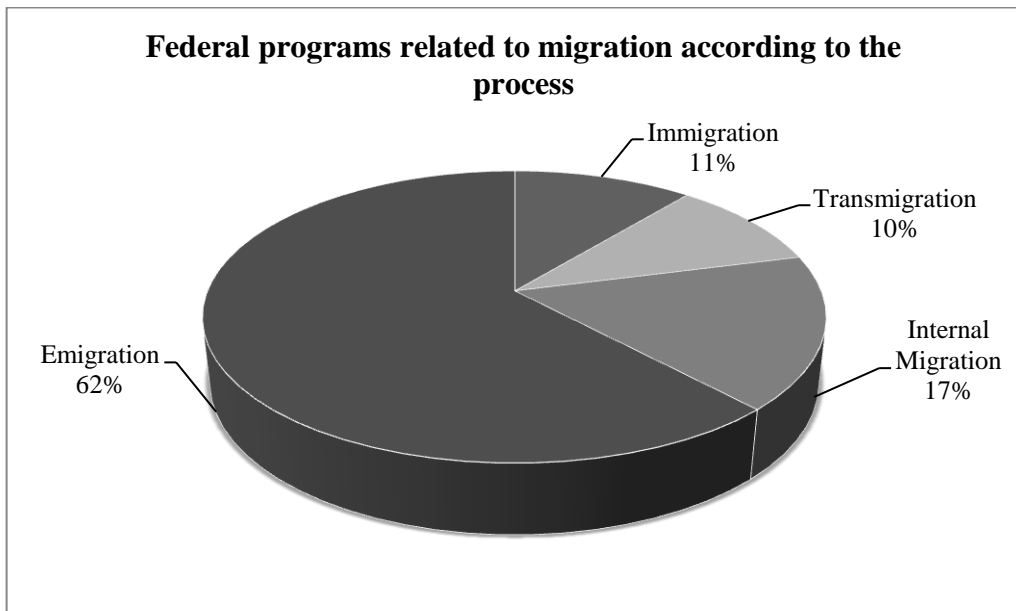
Table 3 (continued)

Auxiliary institutions for migration matters	
Institution	Responsibilities
Federal Police	<ul style="list-style-type: none"> • Help the National Institute of Migration review the documentation of persons seeking to enter or leave the country, and inspect means of transportation
Attorney General's Office	<ul style="list-style-type: none"> • Promote training and specialization of its personnel in the field of human rights • Provide guidance and assistance for migrants to find care and protection • Provide the agencies responsible for statistics with information on the number of preliminary inquiries and criminal proceedings in which the victims are migrants • Conclude agreements of cooperation and coordination to achieve effective investigation and prosecution of crimes against migrants • Know about human trafficking crimes
Ministry of Health	<ul style="list-style-type: none"> • Promote that health services be provided regardless of the migration status of foreigners • Establish health requirements for entry into the national territory • Monitor health services in places intended for the international passage of persons by national or foreign maritime, air, and land means of transportation • Design and disseminate campaigns for the prevention and control of diseases in places intended for the international passage of persons
National System for Integral Development of the Family	<ul style="list-style-type: none"> • Provide social assistance for the care of unaccompanied migrant children and adolescents who require protection • Grant stay facilities for and ensure the protection of unaccompanied migrant children and adolescents while the National Institute of Migration determines their immigration status
Secretariat of Tourism	<ul style="list-style-type: none"> • Disseminate official information concerning the formalities and requirements for entry, passage, regular stay, and departure from the country
National Women's Institute	<ul style="list-style-type: none"> • Promote actions aimed at improving the social status of the migrant female population and the eradication of all forms of discrimination against it • Provide training on gender equality for migration authorities, with emphasis on respecting and protecting the human rights of migrants

2.1. Federal Programs

Of the three kinds of migration, emigration is where most progress has been made in terms of interinstitutional coordination, and on which most federal and state programs have focused. It is worth mentioning that programs for transmigrants and immigrants are given almost the same importance and have been implemented more recently.

Graph 1



Source: Created with information from www.inm.gob.mx, www.comar.gob.mx, www.sre.gob.mx, www.ime.gob.mx, www.sep.gob.mx, www.sedesol.gob.mx, portal.salud.gob.mx, www.stps.gob.mx, www.sct.gob.mx, www.sagarpa.gob.mx, dif.sip.gob.mx, www.cndh.org.mx, www.cdi.gob.mx, www.directoamexico.com, www.bansefi.gob.mx, www.profeco.gob.mx, www.condusef.gob.mx, www.ife.org.mx, www.imss.gob.mx

The state ministries and departments that offer programs for emigrants address economic, social, and security issues. The Ministry of Foreign Affairs is the most active for its support through the consular network, especially in the United States,⁴⁴⁴ and for the programs implemented through the Institute of Mexicans Abroad (IME), which embraces cultural, educational, and sports issues; community organization, production projects and remittances; health and housing. These programs operate in coordination with different government ministries and agencies and with considerable freedom in the

⁴⁴⁴ The Ministry's General Directorate of Protection and Consular Affairs lists 145 consulates worldwide, 50 of which are located in the United States.

United States. The IME has been able to influence the government's previously negative attitude about people who had left, and it has implemented a strategy to coordinate emigrants by creating migrant associations (currently there are over 1,800). In 25 years, the IME has gained prestige and some Latin American countries are following its example.

Another program that was successful, although it came under harsh criticism, was the 3x1 by the Ministry of Social Development. This program combines, in local works, one dollar from migrants multiplied by the three levels of government (federal, state, and municipal). It operates primarily in states with relatively strong migrant organizations, leaving little room for new associations and it has not been exempt from the effects of the governors' powers. This program has been so promising that business organizations made up of migrants in California are promoting it in the Caribbean.

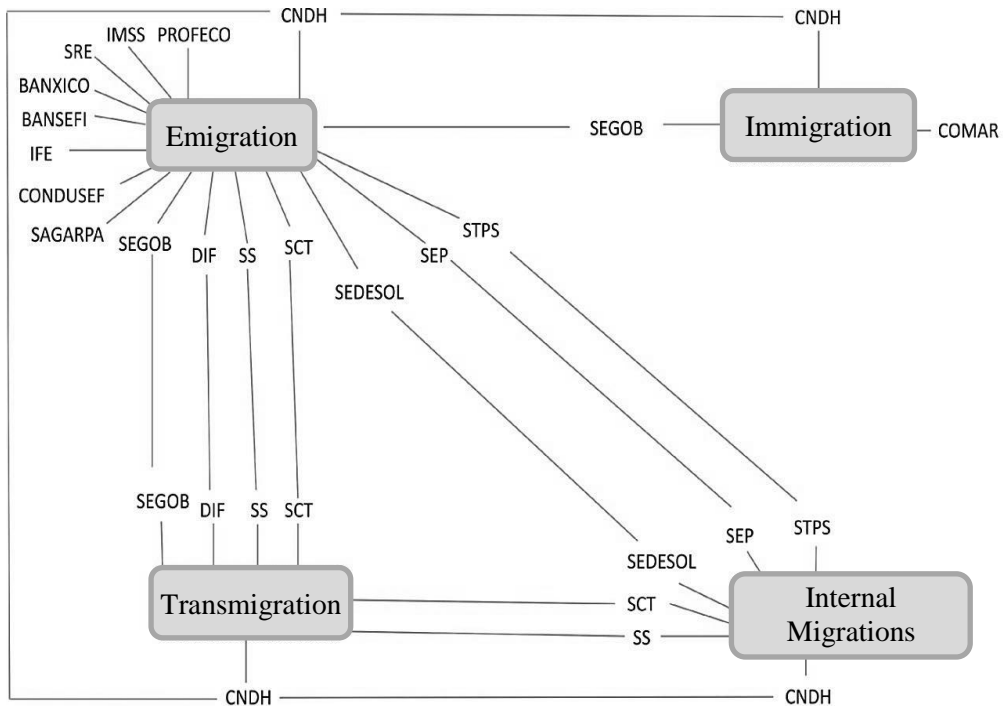
In contrast with services for emigrants to the United States, coordination of policies on immigrants and transmigrants is still insufficient, partly because these are smaller populations and, in the case of transmigrants, the situation is relatively new and one that is difficult to ascertain because of its clandestine nature.

The National Migration Institute and the Mexican Commission for Aid to Refugees, divisions of the SEGOB, handle immigration and transmigration. The Ministries of the Interior, Labor, and Health are involved with returning emigrants. The National System for Integral Family Development handles unaccompanied minors. It is worth mentioning that current First Lady Margarita Zavala has devoted part of her time to assisting unaccompanied migrant children, Mexicans and foreigners, during their repatriation and stay in shelters throughout the country. She has also been active during National Migration Week (in October each year) and in the fight against human trafficking.

The lack of involvement by the Ministry of Labor is notable, which has focused on internal labor mobility and practically has nothing to do with migration matters except, in recent years, the repatriation of Mexicans. The Ministry of Labor Upholds the legal provisions for labor contracts for migrant workers in Canada but not in the United States because it does not participate in the negotiations. Regarding immigrant workers in the southern border states, conciliation and arbitration boards do almost nothing.

The National Commission of Human Rights (CNDH) has been active in defending the rights of the different types of migrants.

Chart 2. Government Agencies Involved in Migration Affairs



SEGOB	Secretaría de Gobernación	Ministry of the Interior
SRE	Secretaría de Relaciones Exteriores	Ministry of Foreign Affairs
SEP	Secretaría de Educación Pública	Ministry of Education
SEDESOL	Secretaría de Desarrollo Social	Ministry of Social Development
SS	Secretaría de Salud	Ministry of Health
STPS	Secretaría del Trabajo y Previsión Social	Ministry of Labor and Social Welfare
SCT	Secretaría de Comunicaciones y Transportes	Ministry of Communications and Transportation
SAGARPA	Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación	Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food
DIF	Sistema Nacional para el Desarrollo Integral de la Familia	National System for the Comprehensive Development of the Family
COMAR	Comisión Mexicana de Ayuda a Refugiados	Mexican Commission for Assistance to Refugees
CNDH	Comisión Nacional de los Derechos Humanos	National Human Rights Commission
CDI	Comisión Nacional para el Desarrollo de los Pueblos Indígenas	National Commission for the Development of Indigenous Peoples
BANXICO	Banco de México	Bank of Mexico
BANSEFI	Banco del Ahorro Nacional y Servicios Financieros	National Savings and Financial Services Bank
PROFECO	Procuraduría Federal del Consumidor	Federal Consumer Bureau
CONDUSEF	Comisión Nacional para la Protección y la Defensa de los Usuarios de Servicios Financieros	National Commission for the Protection and Defense of Financial Services Users
IFE	Instituto Federal Electoral	Federal Electoral Institute
IMSS	Instituto Mexicano del Seguro Social	Mexican Social Security Institute

Source: Created with information from www.inm.gob.mx, www.comar.gob.mx, www.sre.gob.mx, www.ime.gob.mx, www.sep.gob.mx, www.sedesol.gob.mx, portal.salud.gob.mx, www.stps.gob.mx, www.sct.gob.mx, www.sagarpa.gob.mx, dif.sip.gob.mx, www.cndh.org.mx, www.cdi.gob.mx, www.directoamexico.com, www.bansefi.gob.mx, www.profeco.gob.mx, www.condusef.gob.mx, www.ife.org.mx, www.imss.gob.mx

Below are the general budgets allocated by Congress to government agencies and over 40 programs related to migrants. It should be noted that the budget only gives us a general idea of the importance of the work being performed. It is also worth mentioning that these allocations do not specify the budgets of the 48 programs, which are presented in Table 5, and that are supposed to be covered under the allocations to the institutions mentioned there. Aside from the amounts allocated to SEGOB and SRE that correspond to tasks related to control, regulation, and services for migrants, and the SEDESOL and IFE programs at the other agencies presented in Table 4, it is difficult to know how much of the budget is spent on migrants. Note the small amount allocated to the Fifth Inspectorate of the CNDH (see below), which is also responsible for defending journalists and human rights activists, when the budget for the Commission is more than 1 billion pesos.

Table 4

2011 Federation's Expenditure Budget (Mexican pesos)	
Institution	Quantity
Ministry of the Interior	
National Migration Institute	1.760.773.764
Mexican Commission for Assistance to Refugees	16.975.202
Ministry of Foreign Affairs	
Consular Assistance and Protection	231.951.534
Institute for Mexicans Living Abroad	36.557.324
Ministry of Education	
Basic Education Program for the Children of Migrant Day-laborer Farm Workers	204.006.554
General Directorate for International Relations (includes programs for migrants without specifying amounts)	357.412.590
Ministry of Social Development	
Program 3 x 1	107.735.989
Program of Assistance for Farm Day-Laborers	82.095.768
Ministry of Labor and Social Welfare	
General Coordination of the National Employment service (without specifying amounts for the programs of Internal Mobility and Working Migrants)	1.524.176.048
National System for the Comprehensive Development of the Family	
Programs for the Protection and Comprehensive Development of children (without specifying the amount allocated for the Prevention and Care Strategy for Unaccompanied Repatriated Migrant Children)	146.239.729
National Human Rights Commission	
Programs of the Fifth Investigative Visit	10.448.337
National Commission for the Development of Indigenous Peoples	
Project of Assistance to Displaced Indigenous Groups (open to the incorporation of indigenous migrants)	35.000.000
Program of Productive Organization for Indigenous Women	463.828.897
Program of Coordination of the Support to Indigenous Production	262.383.280
Program for the Promotion and Development of Indigenous Cultures	55.741.217
Federal Electoral Institute	
Strategic Plan for the participation of Mexicans living abroad in the 2011-2012 federal electoral process	96.000.000

Source: Created with information from the Chamber of Deputies, 2010, pp. 75-77, 141, 169, 201-202; IFE, 2010, p. 10; CNDH website, Transparency, Budget Allocated and Executed, First Quarter 2011, www.cndh.org.mx/normat/transp/presup/2011/pTrim11.pdf, consulted 25/07/11; Budget Transparency Requisites website, portaltransparencia.gob.mx/pot/presupuesto/beginAPF.do?method=beginAPF, consulted 22/07/11.

Table 5. Institutional Programs Related to Migration in Mexico

Programs per Institution	Emigration	Immigration	Transmigration	Internal Migration
Ministry of the Interior, SEGOB				
National Migration Institute, INM				
- Program of Humane Repatriation	x			
- "Programa Paisano"	x			
- Program of Migrant Regularization		x		
- Local Visitor Migratory Form		x		
- Cross-border Worker Migratory Form		x		
- Migrant Protection Groups, Beta Groups	x		x	
- Child Protection Officers, OPI's	x		x	
- Mexican Commission for Assistance to Refugees, COMAR				
- Assistance for Refugees		x		
Ministry of Foreign Affairs, SRE				
- Consular Assistance and Protection	x			
- Institute for Mexicans Living Abroad, IME				
- Program of Financial Education	x			
- Bi-national Program of Migrant Education	x			
- "Programa Plazas Comunitarias"	x			
- Program for Open and Distance Higher Education	x			
- IME-Scholarships	x			
- Network of Mexican Talent Abroad	x			
- Sports Promotion	x			
- Program "Tu Vivienda en México"	x			
- Health Window	x			
- Bi-national Health Week	x			
Ministry of Education, SEP				
- Program of Basic Education for the Children of Migrant Day-laborer Farm Workers				x
- Program of Mexico-USA Teacher Exchange	x			
- Program of Mexican Teachers Recruitment	x			
- Program of Book Donation for Mexican Children in the USA	x			
- Secondary Education Accreditation	x			
- Open and Distance Secondary Education	x			
Ministry of Social Development, SEDESOL				
- Program 3 x 1	x			
- Program of Assistance for Farm Day-Laborers				x
Ministry of Health				
- Program for Migrant Health	x		x	
- Repatriation of Sick Migrants	x			
- "Programa Vete Sano, Regresa Sano" (Go Safe, Come Back Safe Program)	x			X
Ministry of Labor and Social Welfare, STPS				
- Internal Mobility				x
- Working Repatriates				
Ministry of Communications and Transportation, SCT				
- TELECOMM-TELÉGRAFOS: "Giro Paisano"	x			
- Information and Communication Technologies in Favor of Migrant Women	x	x		x

Table 5 (continued)

Programs per Institution	Emigration	Immigration	Transmigration	Internal Migration
Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food, SAGARPA				
- Project to strengthen the economic potential of migrants and the productive use of remittances: "Paisano Invierte en tu Tierra"	x			
National System for the Comprehensive Development of the Family, DIF				
- Prevention and Care Strategy for Unaccompanied Repatriated Migrant Children and Adolescents	x		x	
National Human Rights Commission, CNDH				
- Programs of Assistance for Migrants	x	x	x	
- Program Against Human Trafficking	x	x	x	x
National Commission for the Development of Indigenous Peoples, CDI				
- Project of Assistance to Displaced - Indigenous Groups				x
- Program of Productive Organization for Indigenous Women				x
- Program of Coordination of the Support to Indigenous Production				x
- Program for the Promotion and Development of Indigenous Cultures				x
Bank of Mexico (Central Bank)				
- Program "Directo a México" (Remittance Transfers)	x			
National Savings and Financial Services Bank, BANSEFI				
- International Remittances	x			
Federal Consumer Bureau, PROFECO				
- "Who is Who" in money transfers (Remittance Transfers)	x			
National Commission for the Protection and Defense of Financial Services Users, CONDUSEF				
- Remittances Calculator	x			
Federal Electoral Institute, IFE				
- Strategic Plan for the participation of Mexicans living abroad in the 2011-2012 federal electoral process	x			
Mexican Social Security Institute, IMSS				
- Social Security for Mexicans living abroad	x			

Source: Created with information from www.inm.gob.mx, www.comar.gob.mx, www.sre.gob.mx, www.ime.gob.mx, www.sep.gob.mx, www.sedesol.gob.mx, portal.salud.gob.mx, www.stps.gob.mx, www.sct.gob.mx, www.sagarpa.gob.mx, dif.sip.gob.mx, www.cndh.org.mx, www.cdi.gob.mx, www.directoamexico.com, www.bansefi.gob.mx, www.profeco.gob.mx, www.condusef.gob.mx, www.ife.org.mx, www.imss.gob.mx

2.1.1. Actions by the National Migration Institute (INM)

As the institution in charge of migration affairs in the country, the National Migration Institute has implemented the following programs over the past 20 years:

Table 6

Programs of the National Migration Institute			
Program	Objectives	Starting date	Results
Child Protection Officers, OPI's	Safeguard the rights of migrant unaccompanied minors—Mexican or foreign; make consular notifications, identify victims of trafficking, evaluate the needs for international protection, channel relevant institutions to give adequate assistance to minors, and accompany minors to their localities of origin during repatriation	2010	368 officers It was well received and has been replicated in Central America and the Dominican Republic
Program of Humane Repatriation	Improve the repatriation conditions of Mexicans sent back by the United States Border Patrol, in terms of food, shelter, health care, communication with relatives, transportation to their communities of origin, information about temporary employment offers, training, and certification of working competence	2008	9 repatriation modules located in Baja California, Chihuahua, Sonora, Coahuila, and Tamaulipas 2010: 267,317 persons benefited from the Program
Local Visitor Migratory Form	Facilitate the entry of Guatemalans wishing to visit border localities in Chiapas, Tabasco, Campeche, and Quintana Roo up to 3 days	2008	2010: 92,482 forms distributed. There is a proposal to extend the program across the country. See Annexes.
Cross-border Worker Migratory Form	Facilitate entry to Chiapas, Tabasco, Campeche, and Quintana Roo to Guatemalans and Belizeans over 16 years of age, as temporary workers. Valid for 1 year	2008	2010: 28,544 forms distributed. See Annexes.
Program of Migrant Regularization	Facilitate and encourage the legal stay of foreigners living irregularly in the country, without arresting those who are interested in regularizing their situation	2002 Latest Version 11/2008-05/2011 ¹	09/2009–06/2010: 2,991 foreigners regularized, 61 percent from Guatemala, Honduras, and El Salvador
Migrant Protection Groups, Beta Groups	Protect and defend the human rights as well as the physical and patrimonial integrity of migrants, regardless of their nationality and migration status	1990	163 agents distributed into 21 groups in Baja California, Chihuahua, Sonora, Coahuila, Tamaulipas, Veracruz, Tabasco and Chiapas, 5 of which are undergoing the formalization process before the local authorities. See Annexes.
“Programa Paisano”	Improve the quality of the services provided to the Mexicans residing abroad who enter the country, travel in it, and leave again, and reduce the abuse they might be subject to during their stay in Mexico	1989	2010: 1,834,505 Mexicans assisted

[Source and Note, on following page]

[Note for Table 6]

¹ For foreigners who entered the country prior to January 1, 2007 and who provide proof of having: resided in the country for at least one and a half years, a legal job, a blood relation, a spouse or common-law partnership with a Mexican or a foreign person who is legally established.

Source: Created with information from the SRE, 2010 b, pp. 18, 24–25; Paisano Program, Background website, www.paisano.gob.mx/index.php?option=com_content&view=article&id=18&Itemid=3, consulted 14/03/11; SEGOB, 2010 a, pp. 106–107, 110; DOF, 2008, November 11, pp. 2–3, 7; Presidency of the Republic, 2010, p. 702; Art. 137 of the Regulations to the General Law on Population; INM website, Programs, Beta Groups, Beta Group Directories, Regional delegations, www.inami.gob.mx/index.php/page/Grupo_Beta, consulted 17/03/11; DOF, 2008, March 12, pp. 3–6.

The immigration control is done at traditional points of entry such as airports, ports and land borders. The Mexican government has limited infrastructure, resources, and mechanisms for migration inspection and control throughout the country. Most operations are performed at moveable checkpoints on roads and railways to stop and return the greatest number of migrants to their countries of origin. These spot-check operations that have secured certain routes have led large numbers of transmigrants to enter through remote areas that cross drug traffickers' territories, which has increased their involvement in kidnapping and human trafficking and has heightened the vulnerability of those who take their chances. Despite these dangers, illegal migration flows have not been deterred or eliminated.

Today, spot-check migration controls are still used throughout the country, given that the southern border, in addition to the close relations between the populations on both sides, is extremely porous along the rivers and through the jungle, which makes it almost impossible to keep up the work of monitoring and verification. At the same time, emphasis has been placed, in accordance with the preceding legal guidelines, to strengthen and increase the actions and regulations aimed at protecting the human rights of these migrants and improving the conditions for detention and return (Rodríguez et al., 2011).

Those migrants who are caught by immigration officials and the Federal Police are held in migration shelters. The INM has 47 migration shelters spread across 23 states and Mexico City, with the capacity to house approximately 4,000 people.

There are three types of facilities, classed by accommodation capacity. These facilities are located along what is known as the migrant route. Type "C" facilities can provide accommodation for 90 days or more. They are spacious, with water and sanitation, medical services, recreational areas, dining areas for children and families, and offices of the CNDH, the Mexican Commission for Aid to Refugees (COMAR) and consular authorities. There are five "C" type facilities located in Chiapas, Mexico City, Coahuila, Chihuahua, and Veracruz. The "B" type facilities are medium-sized; there are 35 of them and detainees may be held for up to 15 days, as defined by the Migration Law. The "A" type migration shelters are small and are meant for short stays; there are eight of these distributed in Chiapas and Tamaulipas (Calleros, 2009, p. 161).

Map 1. Distribution of Migration Shelters

Source: With information from the National Migration Institute, National Population Council (CONAPO), 2009, p. 247.

It is important to make three clarifications about the situation of detained migrants. The first is that in the case of services for unaccompanied minors, the policies have been proactive, but this is not the case with the elderly, people with special needs, or victims of crime, as civil society organizations have indicated. The second is that the problem of overcrowding in the migration shelters was resolved in response to demands by the CNDH, OSC, and international organizations.⁴⁴⁵ Third, challenges remain concerning the right to due process and access to health care, areas where serious deficiencies have been recorded.

2.1.2. Actions of the Mexican Commission for Aid to Refugees (COMAR)

A division of the Ministry of the Interior since 1980,⁴⁴⁶ COMAR has the objective of ruling on refugee status and assisting applicants and those persons recognized as refugees, in collaboration with other government agencies, international organizations, civil society organizations and academic institutions.⁴⁴⁷ Having evolved since its initial

⁴⁴⁵ Arts. 45 and 46 of the Regulations for the Functioning of Migration Shelters, by the National Migration Institute, issued 07/10/2009.

⁴⁴⁶ Article 1 of the Agreement establishing a permanent Interministerial Commission to study the needs of foreign refugees in the country, to be called the Mexican Commission for Aid to Refugees.

⁴⁴⁷ COMAR website, Who are we?, Mission and vision, www.comar.gob.mx/?page=mision-y-vision, consulted on 31/03/11.

task of meeting the basic needs of Guatemalan refugees in the eighties with the assistance of UNHCR, COMAR has gradually shifted to providing services to refugees from other countries. Between 2002 and 2011, a total of 4,861 refugee claims were made, of which 1,034 (21 percent) were accepted. The recognized refugees came mainly from Colombia, Haiti, and El Salvador (214, 136 and 116, respectively) (Mexican Commission for Aid to Refugees [COMAR], 2011).

According to information provided by the National Migration Institute, only 752 people currently have refugee status.⁴⁴⁸ Under the new law they will become permanent residents. The regulations on the subject are pending, which will facilitate the procedures in this area.

With regard to political or diplomatic asylum, Mexico upholds this Latin American legal provision whose *raison d'être*, up until the 20th century, was wars of independence. This mechanism is likely to be phased out, leaving only refugee claims as the universal figure. Currently there are only 18 people in the country under this provision.

Paradoxically, due to the situation of crime and violence that much of Mexican society experiences, the numbers of applications for refugee status or asylum by Mexicans (not always justified) have been increasing, especially in Canada, the United States, and in European countries to a lesser extent.

2.1.3. Actions by the National Commission of Human Rights (CNDH)

Since its creation in 1990, the CNDH has played a key role in the democratic development of the country. In order to address the urgent problem of illegal migration, in 2005 the CNDH established the Fifth Inspectorate, with the goal of providing the necessary defense to uphold the human rights of migrants, journalists, human rights activists and victims of human trafficking.⁴⁴⁹

From the start, the Commission has documented the situation of emigrants and immigrants in special reports on the country's northern and southern borders.⁴⁵⁰ Recently, the public has been shocked by its reports about kidnappings of migrants.

In the First Special Report on the Kidnapping of Migrants (06/2009), it reported 198 kidnapping cases between September 2008 and February 2009, with an average of 33 incidents per month, affecting 9,758 migrants, mostly Central Americans. The ransoms demanded were between \$1,500 and \$5,000.

⁴⁴⁸ This figure corresponds to those from 2009 plus the cumulative total as of May 2011, www.inm.gob.mx/index.php/page/Boletines_Estadisticos, consulted on 04/08/11.

⁴⁴⁹ See: www.cndh.org.mx/lacndh/estruct/estorg.htm, consulted on 18/04/11.

⁴⁵⁰ See CNDH (1991) *Informe sobre las violaciones a los derechos humanos de los trabajadores migratorios mexicanos en su tránsito hacia la frontera norte, al cruzarla y al internarse en la franja fronteriza sur norteamericana.*, Mexico: Author. 195 pp; CNDH (1996) *Informe sobre violaciones a los derechos humanos de los inmigrantes*, Mexico: Author. 185 pp; CNDH (1996) *Segundo Informe sobre las violaciones a los derechos humanos de los trabajadores migratorios mexicanos en su tránsito hacia la frontera norte, al cruzarla y al internarse en la franja fronteriza sur norteamericana.* Mexico: Author.

55 percent of the kidnappings took place in the southern part of the country, mainly in Veracruz and Tabasco; 11.8 percent in the north; 1.2 percent in the middle; and 32 percent are not specified. In 67.44 percent of the cases, a group of people were kidnapped.

Furthermore, the report reveals that death threats were made against 9 out of 10 victims, directed at them and/or their families; the victims were threatened with guns or knives; their limbs were tied, they were gagged, and blindfolded. Many were drugged or burned on parts of their bodies (CNDH, 2009).

Between January 2008 and August 2009, the Commission asked the state Attorney General's offices for preliminary figures on the prosecution of kidnappings of migrants. Suffice to say that only eight states were pursuing cases.⁴⁵¹

Table 7

Fifth General Visit – National Human Rights Commission		
Program	Objectives	Results
Program of Assistance for Migrants	Defend and disseminate the human rights of migrants through the reception and initiation of complaints for violation of human rights; conciliation between parties; preparation of recommendations; visits to migrant holding centers and points of high concentration or transit of migrants; information collection and detection of violations of human rights in collaboration with civil society organizations	2010: <ul style="list-style-type: none"> • 214 visits to transport terminals, border crossings, and checkpoints; 3,060 migrants served. • 394 visits to places of transit; 15,073 migrants served; 62 efforts in their favor. • 1,599 visits to migrant holding centers; 35,237 foreigners served, 6,666 efforts in their favor, 253 records of complaint. • 538 visits to houses or shelters for migrants; 14,725 migrants served, 148 representations before various authorities, 238 records of complaint
Program Against Human Trafficking	Protect the human rights of potential victims and actual victims in 3 areas: dissemination of information on the problem, assistance and monitoring of government actions, and monitoring of legislative processes in matter	2010: <ul style="list-style-type: none"> • 13 actions of accompaniment of victims

Source: Created with information from the CNDH website, www.cndh.org.mx/lacndh/estruct/estorg.htm, consulted 18/04/11; CNDH, 2011 b, pp. 124, 140.

⁴⁵¹ Baja California, Chiapas, Mexico City, State of México, Guerrero, Michoacán, Tabasco, and Veracruz.

In February 2011, the Commission issued its Second Special Report on the Kidnapping of Migrants, in which it reported that violence against migrants had not gone down and that criminal groups were becoming specialized.

Between April and September 2010, it collected 178 accounts of kidnappings of migrants, of which 15.7 percent were testimonies provided by women. Of all the accounts, 86 percent were firsthand statements by the victims and the remaining 14 percent were accounts given by eyewitnesses. A total of 214 kidnappings were documented, involving 11,333 victims, a significant increase over the results of the first report.

By nationality, the main victims were Hondurans (44.3 percent), Salvadorans (16.2 percent), Guatemalans (11.2 percent), and Mexicans (10.6 percent). Geographically, most kidnappings took place in the southeast (67.4 percent), north (29.2 percent) and center (2.2) of the country.

The report highlighted several elements, among these: that Central Americans were involved in the kidnapping of migrants; the kidnappers broke into shelters, looking for survivors or more victims; migrants were tortured into providing information about their relatives in their places of origin or the United States; the kidnappers charge guides to pass through their territories and those who did not pay were killed, and sometimes the migrants were taken hostage; in some cases the victims reported that the authorities as well as the private security services from the trains they used were involved in the kidnappings (NHRC, 2011 c).

2.2. Legislative Power

Gradually, Congress has started taking migration issues more seriously, initially focusing on the situation of emigrants and recently transmigrants. Through various committees, the Chamber of Deputies and Senate have addressed different migration issues in minutes, initiatives, and points of agreement (see Annex). The most recent achievement was the Migration Law, enacted on May 25, 2011.

During the 61st Legislature (09/2009–04/2011) the Chamber of Deputies' Commission on Population, Borders and Migration Affairs passed eight initiatives concerning migrants' human rights, legislation, programs for migrants, and recommendations for international forums. The same number of initiatives was rejected concerning powers for the authorities, categories of migrants, training, groups for protection, roots in the emigrants' communities of origin, and remittances. Fourteen issues remain pending, related to the human rights of migrants, legislation, services for migrant children, and interagency cooperation.⁴⁵²

⁴⁵² Created with information from the website of the Chamber of Deputies, Ordinary Commissions, Commission on Population, Borders and Migration Affairs, Issues Addressed, Minutes, Initiatives, Points of Agreement:

sitl.diputados.gob.mx/LXI_leg/minutaslxi.php?comt=28&edot=T,

sitl.diputados.gob.mx/LXI_leg/iniciativaslxi.php?comt=28&edot=T,

sitl.diputados.gob.mx/LXI_leg/proposicioneslxi.php?filite=&comt=28&edot=T, consulted on 27/05/11.

In addition, special commissions were created to address issues concerning the southern border, human trafficking, former temporary Mexican workers in the United States, and migration.⁴⁵³

In the Senate, the Commissions on Northern Zone Border Affairs, Southern Border Affairs, Foreign Affairs, North American Foreign Affairs, and Population and Development have approved 26 issues regarding the treatment of emigrants in the United States, migration shelters, surveillance at immigration checkpoints and along migration routes, care for migrant children, the work of the institutions responsible for migration issues, violence and kidnapping of migrants, as well as attacks on migrant rights activists. Four other issues concerning migrants' human rights, emigrant programs, anti-immigrant legislation in the United States and the death of transmigrants in Mexico have been sent to other commissions for consideration. Another 43 issues are pending: violence against transmigrants in Mexico, programs for emigrants and transmigrants, services for migrant children, procedures and migration characteristics, human trafficking, migrants' human rights, attacks on migrant shelters, international cooperation to combat crimes against migrants, legislation, training, interinstitutional collaboration, powers of the authorities responsible for migration issues, civil society participation, civil registration procedures, and participation in international forums.⁴⁵⁴

2.3. Judicial Power

Traditionally, the judiciary has not been involved in migration issues, because this was not considered to be within its realm. However, in the last decade the Supreme Court of Justice of the Nation and the Circuit Courts have issued some inalienable rulings to protect the rights of migrants, regardless of their immigration status, particularly in the workplace, and on issues such as acquired labor rights, unfair dismissal, workers' compensation, entitlement to remuneration and labor grievances (SRE, 2010 b, p. 12–13).

Also, both jurisdictions have made declarations about the authority of the National Migration Institute to present lawsuits concerning violations of the General Law on

⁴⁵³ Website of the Chamber of Deputies, Special Commission, sitl.diputados.gob.mx/LXI_leg/listado_de_comisioneslxi.php?tct=2, consulted on 20/04/11.

⁴⁵⁴ Website of the Senate, Ordinary Commissions, Northern Zone Border Affairs Commission, Points of Agreement and Migration; Southern Zone Border Affairs Commission, Issues Presented; Foreign Affairs, Legislative Work, Initiatives; North American Foreign Affairs, Legislative Work, Issues Addressed, Propositions with Points of Agreement, 61st Legislature First Year; Population and Development Commission, Legislative Agenda, Points of Agreement, Initiatives, Minutes, 61st Legislature www.senado.gob.mx/comisiones/LX/fronterizosnorte/content/pto_acuerdo/index_puntos.htm, www.senado.gob.mx/comisiones/LX/fronterizosnorte/content/migracion/index_migracion.htm, www.senado.gob.mx/comisiones/LX/fronterizossur/content/asuntos_presentados/index_asuntos_presentados.htm, www.senado.gob.mx/comisiones/LX/relext/content/iniciativas/iniciativas_index.htm, www.senado.gob.mx/comisiones/LX/relextamericanorte/content/trabajo/turnados/puntos/Registro_4.pdf, www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=9&sm=1001&t=PA&lg=61, www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=7&sm=1001&tp=I&lg=61, www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=8&sm=1001&tp=M&lg=61, consulted on 27/05/11.

Population and the crime of smuggling aliens, to distinguish between this crime and humanitarian actions, to provide assistance to illegal immigrants, reparation for violations of human rights and respect by the authorities for international treaties on human rights that the country has signed.⁴⁵⁵

In July 2011 the Supreme Court eliminated military court jurisdiction over cases of human rights violations, which had been a longstanding request by civil society organizations in Mexico. This was in compliance with the ruling by the Inter-American Court of Human Rights (IACHR) (23/11/2009) concerning a 1974 case of forced disappearance at the hands of the Army, which held the state responsible for the violation of the rights to personal freedom, personal safety, recognition of juridical personality and the life of the victim.⁴⁵⁶

In that ruling, the IACHR stated that under no circumstances shall the military courts handle cases of human rights violations of civilians, given that this is a matter for the ordinary courts. This principle would be applied until precedent had been established (five cases on this subject brought to fruition, Art. 192 of the Amparo Law) and the Legislature had passed the reform on this matter (Gonzalez, 2011, July 13).

Moreover, the Supreme Court ruled that judges must ensure that domestic law is consistent with the Constitution and international treaties on human rights, a decision that was also the result of the above-mentioned IACHR resolution.

These changes are relevant to the issue of migration in two aspects: first, so that when members of the armed forces violate the human rights of migrants, they may not circumvent the civilian justice system. As well, this strengthens legal protection by ordering that judicial decisions shall comply with the guidelines of the international instruments ratified by the country. However, in order for both changes to materialize, it is necessary to ensure that migrants may easily access mechanisms for law enforcement, an issue on which there are significant lags.

3. Bilateral, Regional and Global Agreements

3.1. Bilateral Agreements

A single migration agreement with the United States has existed for temporary agricultural workers known as the Bracero Program (1942–1964), which is also an agreement for railway workers in the 1950s. The rest of the programs, agreements and memoranda of understanding have been on consular affairs, border health, repatriation, labor issues and food aid (see Annex).

⁴⁵⁵ Website of the Supreme Court of Justice of the Nation, Legal search, Migration, Human Rights, www.scjn.gob.mx/ActividadJur/buscadorjuridico/Paginas1/Resultados_.aspx, consulted on 24/06/11.

⁴⁵⁶ Result of a lawsuit that the Inter-American Commission of Human Rights brought against the Mexican State (15/03/08) pursuant to a complaint by the Mexican Commission for the Defense and Promotion of Human Rights and the Association of Relatives of Detainees-Disappeared and the Victims of Human Rights Violations (15/11/01). (Radilla Pacheco vs. United Mexican States, Inter-American Court of Human Rights [IACHR], 2009, pp. 2, 47, 77, 92). Available at www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf

National security concerns since September 11, 2001 and the 2008 economic crisis had implications for border security. This resulted in challenges for both countries to design public policies that to date have been highly controversial and have not been able to address adequately the problems arising from coexistence along a border over 3,000 kilometers long.

Since then, agreements have been made on border security, while the Merida Initiative (03/2007—security with border development to the south) only touched on migration as an issue under technical assistance, i.e., provision of telecommunications equipment, search and rescue. In 2010 \$1 million was allocated to Beta Groups and \$22 million for information management and INM, PGR, and SSP systems (see Annex Chap. 2, Table 14).

A temporary agricultural worker program has been in place with Canada since June 1974, which has grown in numbers of participants and has stabilized in recent years at about 15,000 workers per year (15,809 workers in 2010,⁴⁵⁷ see Annex). This program has been upheld as a model, despite criticisms by civil society organizations concerning the working conditions of the laborers involved in the program.

With Central America and the Caribbean, because of the increase in the volume of the flow of illegal migrants in transit through Mexico, bilateral repatriation agreements were signed with El Salvador, Guatemala (2005), and Cuba (2008); consular protection with El Salvador and Honduras (2004); protection for victims of trafficking with Guatemala and El Salvador (2004 and 2005); and previously on human rights for migrants and health with Guatemala (2002 and 2003), as well as cooperation in the area of migration in 2011 (see Annex).

In consular relations, Mexico has signed bilateral agreements with Bulgaria, China, Poland, United Kingdom and Russia. It has signed agreements with France on the readmission of persons and it has been fighting organized crime with Poland (see Annex).

3.2. Regional Agreements

Regional agreements on human mobility at Mexico's southern border have existed only with Central America and are not focused on the labor market, but rather they aim to share best practices, technical training, and develop policies to defend the rights of migrants and refugees, as well as to combat human trafficking and the smuggling of undocumented persons.

To improve conditions for the repatriation of illegal Central American migrants and toward a policy of shared responsibility, in May 2006, Mexico signed a memorandum of understanding with El Salvador, Honduras, Guatemala, and Nicaragua for safe overland repatriation of Central American citizens (see Annex).⁴⁵⁸

⁴⁵⁷ Employment website, Labor Market Statistics, Administrative Records, National Employment Service, Hiring Services, Temporary Agricultural Workers Program, History, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_74C6FC3CBD87519B9CBB5F56EDB8BAA300920000/filename/Prog%20de%20Trab%20Agric%20Migr%20Temp%20MC%20desde%202001.xls, consulted on 29/03/11.

⁴⁵⁸ Document available at: www.gobernacion.gob.mx/work/models/SEGOB/Resource/689/1/images/MEMOR15.PDF

The issue of migration in the Central American region has been under discussion for the past 16 years through the Regional Conference on Migration, CRM (1996), a multilateral regional forum known as the Puebla Process made up of 11 countries: Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the Dominican Republic, and with Argentina, Colombia, Ecuador, Jamaica, and Peru as observers.

For additional information, technical advice, and specific recommendations, the CRM has the support of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Economic Commission for Latin America and the Caribbean (ECLAC), the Latin American and Caribbean Demographic Centre (CELADE), the Inter-American Commission on Human Rights (IACHR), the International Organization for Migration (IOM), the United Nations Special Rapporteur on the Human Rights of Migrants, the General Secretariat of the Ibero-American Conference (SEGIB), the Central American Integration System (SICA), and the United Nations Population Fund (UNFPA). The Regional Network of Civil Organizations for Migration (RROCM) also participates in the Conference.⁴⁵⁹

The CRM has met 16 times, with the latest time being in the Dominican Republic (06/11). As a result of these meetings, the documents listed in Table 8 have been approved [page 517].

On October 8, 2010, the CRM's Regional Consultation Group on Migration hosted in Mexico the Ministerial Meeting on Transnational Organized Crime and Security of Migrants, which was attended by officials responsible for public safety and migration policies from the member countries and observers. At that meeting a document comprising 21 points to be translated into lines of action was signed [see Table 9, page 518].

3.3. Global Agreements: International Convention on the Protection of the Rights of All Migrant Workers and Their Families

Mexico, as a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, in 2006 and 2011 presented reports to the Committee on the Protection of the Rights of All Migrant Workers and Their Families. On both occasions, civil society organizations⁴⁶⁰ pointed out shortcomings by the Mexican government in fulfilling its commitments deriving from the Convention and made suggestions to remedy this situation.

Table 8

⁴⁵⁹ Website of the Regional Conference on Migration, General Information, www.crmsv.org/Descripcion.htm, consulted on 27/04/11.

⁴⁶⁰ Migration Forum, *National Employment Law Project*, Amnesty International, Miguel Agustín Pro Juárez Human Rights Center, *International Catholic Migration Commission*, *Scalabrini International Migration Network*, Jesuit Service for Migrants Mexico, National Network of Civil Human Rights Organizations "Todos los Derechos para Todas y Todos," and *Global Workers Justice Alliance*. The documents of these organizations are available at: www2.ohchr.org/english/bodies/cmw/cmws05.htm, www2.ohchr.org/english/bodies/cmw/cmws14.htm

Documents signed in the framework of the Regional Conference on Migration		
Agreement	Date	Objectives
Regional Guidelines for Assistance to Unaccompanied Migrant Children and Adolescents in case of Repatriation	07/2009	Ensure the agile, dignified, and safe return of unaccompanied migrant minors to their places of origin or permanent residence, with emphasis on the best interests of the minors, family reunification, and respect for human rights, as well as on cooperation, assistance, and technical training among member countries
Regional Guidelines for Special Protection in cases of the Repatriation of Children and Adolescents who have been Victims of Human Trafficking	04/2007	Foster collaboration among member countries to identify trafficking victims under the age of 18, to take immediate assistance and protection actions, and to repatriate safely, as well as to combat trafficking and punish those responsible
Mexico's Action Plan to Strengthen International Protection for Refugees in Latin America	11/2004	Establish actions of protection and durable solutions for refugees, such as the design of integration projects and the creation of sources of employment in destination communities
Guidelines for the Establishment of Multilateral and/or bilateral Mechanisms among member countries of the RMC in matters related to the Return by Land of Regional Migrants	12/2003	Assist migrants and victims of trafficking of Central American origin, returned from Mexico or Central America, establishing the necessary conditions for their return: an up-to-date and reliable registration system; training for migration officials; food, medical and psychological care, schedules, notifications, transport, and reception at the place of destination
General Framework for the implementation of the Program of Multilateral Cooperation for the Assisted Return of Extra-regional ¹ Migrants stranded in member countries of the Regional Conference on Migration	05/2002	Assist extra-regional migrants in their return to their place of origin or residence. This involves notifications to the countries involved, means of transportation, and exchange of information

¹ Extra-regional migrants are native to or permanent residents of countries that do not belong to the RCM.

Source: prepared by the author with information from the web site of the Regional Conference on Migration, RCM Publications, General Framework for the implementation of the Program of Multilateral Cooperation for the Assisted Return of Extra-regional¹ Migrants stranded in member countries of the Regional Conference on Migration, Guidelines for the Establishment of Multilateral and/or bilateral Mechanisms among member countries of the RMC in matters related to the Return by Land of Regional Migrants (2004), Regional Guidelines for Special Protection in cases of Repatriation of Children and Adolescents who have been Victims of Human Trafficking., www.crmsv.org/Publicaciones/docs/Marco_General_Extra-regionales-esp_may18.pdf, consulted on 12/05/11; www.crmsv.org/Publicaciones/docs/Marco%20Migrantes%20Regionales%20_esp_.pdf, consulted on 06/05/11; www.crmsv.org/Publicaciones/docs/Lineamientos%20Regionales%20-%20Version%20Final%20Esp.pdf, consulted on 12/05/2011; web site of the UN High Commissioner for Refugees, ¿Qué hace?, Plan de Acción de México, Declaración y Plan de Acción de México (PAM), Recursos, Base de Datos Legal, Documentos y Conclusiones de reuniones regionales en América Latina y España, 2009, www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/3016, www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/7248, consulted on 12/05/11.

Table 9

Ministerial Meeting on Organized Transnational Crime and the Safety of Migrants

21 points

- Exchange information, coordinate actions to confront the threat of transnational organized crime, increase the security of migrants, and reduce their vulnerability
- Inform migrants about risks, their rights and obligations, as well as instances or civil society organizations that they may resort to for assistance
- Promote and facilitate the reporting of crimes against migrants
- Establish or strengthen operation and intelligence units dedicated to combating crimes against migrants and provide assistance to victims, as well as promote public policies aimed at raising greater awareness with respect to the human rights of migrants
- Promote the presence of public security authorities at formal and informal border crossings, main routes of transit and centers with vulnerable migrant populations
- Establish trust-control systems for the authorities responsible for managing and implementing immigration laws, to reduce corruption and improve the protection of the human rights of migrants
- Consider the recommendations of agencies or commissions for human rights, international human rights organizations and civil society organizations specialized in the protection of the human rights of migrants
- Reach higher levels of efficiency in judicial processes and reduce impunity
- Promote the training of judges and prosecutors through programs specialized in crimes against migrants
- Exchange information on capacity of action against transnational organized crime and crimes against migrants
- Increase the regional coordination for the prevention of crimes against migrants, encouraging the participation of civil society
- Strengthen the investigation and prosecution of crimes by taking advantage of regional computer systems platforms
- Prosecute and punish crimes against migrants
- Combat money laundering linked with crimes against migrants
- Establish or strengthen observatories and centers of studies on migration
- Take advantage of international forums to articulate the international cooperation in the fight against crimes against migrants and the exchange of best practices of protection
- Promote the ratification and implementation of the Convention of the United Nations against Transnational Organized Crime and its Protocols
- Request the International Organization for Migrations to develop a project including the features and trends of migration in transit from a regional perspective, as well as an analysis of the causes, impact and manifestations of crimes against migrants
- Entrust OAS with the implementation of the Hemispheric Plan of Action against Transnational Organized Crime
- Promote the Regional Strategy for the Promotion of Inter-American Cooperation in Dealing with Criminal Gangs, approved by the General Assembly of the OAS in June 2010
- Strengthen training for public security personnel and the cooperation of the national police forces with entities such as INTERPOL and AMERIPOL

Source: Creation with information from the website of the Mexican Embassy in Guatemala, Events 2010, October, Ministerial Meeting on Transnational Organized Crime and Security for Migrants, embamex.sre.gob.mx/guatemala/index.php?option=com_content&view=article&id=198:reunion-ministerial-sobre-delincuencia-organizada-transnacional-y-seguridad-de-los-migrantes&catid=29:octubre-2010&Itemid=117, consulted on 30/01/2011.

Both the civil society organizations and the Committee have acknowledged that progress has been made, particularly in legislation and specific government actions, but questions remain that the government should consider (see Annex): the ratification of ILO Conventions 97 and 143; the discrimination of migrants; non-authorized personnel who verify immigration status; living conditions in migration shelters; the vulnerability of women migrant workers in domestic service; seasonal agricultural workers and unaccompanied minors; regulations that prevent foreigners from holding union leadership positions; and violence and aggression against migrants (Committee on the Protection of the Rights of All Migrant Workers and Their Families, 2006, 2011).

One point that stands out in the Committee's observations is the increase in attacks against persons who uphold the human rights of migrants. The main risk is in connection with making reports about organized crime, coupled with hostility and a lack of support from their communities.

In connection with this, between 2006 and 2010, the Office of the United Nations High Commissioner for Human Rights recorded 165 cases of assault and obstruction of human rights defenders (most of these, 71 percent, were threats, arbitrary interference, harassment, and spurious use of the criminal justice system). Most of these cases took place in the states of Chihuahua, Chiapas, Oaxaca, Guerrero, Mexico City, and Jalisco; in 52 percent of cases the identity of the person behind the attack was not known, and the degree of impunity was 98.5 percent, because when criminal charges were brought in, only two cases were those responsible prosecuted.

Meanwhile, the CNDH and state human rights commissions, between 2005 and 2011, heard 523 complaints and issued 33 recommendations, without specifying the number corresponding defenders of migrants' rights. At the same time, the Human Mobility Pastoral Division of the Mexican Bishops Conference documented over seven years (2004–2011) and 62 attacks on the houses of migrants, including death threats, raids, robberies and wiretapping.

Given these incidents, the state's response has been weak. At the federal level there are no programs, policies, specialized personnel or mechanisms for direct contact with human rights defenders. At the local level there is no institutional policy, and what actions have been implemented were at the behest of the officials at the time. As a form of protection, human rights defenders may request cautionary measures from state human rights agencies or international organizations (Inter-American Commission and Court of Human Rights), but those affected have doubts about the effectiveness of these measures.

Between 2005 and first half of 2011, the state human rights organizations received 156 requests for cautionary measures, most of them from Mexico City, Chihuahua, Jalisco, and Guerrero. In 2010, the CNDH granted 18 of these measures, nine of them for defenders of migrants' rights (Office of the United Nations High Commissioner for Human Rights, 2010 a, 2010 b; CNDH, 2011 a; Jimenez 2011, July 5).

In this context, the Office of the United Nations High Commissioner for Human Rights in Mexico launched the campaign "I declare myself" (06/07/11) with the aim of raising consciousness about the vulnerability of human rights defenders and

recognizing their work. In response, the Federal Government decreed that the Ministry of the Interior, in coordination with the Attorney General's Office, civil society organizations, academics and experts, would determine the measures necessary for the protection of human rights defenders in situations of risk, threat, or vulnerability that prevent them from performing their jobs or who are the subjects of cautionary measures, including specific protection mechanisms (DOF, 2011, July 7, p. 3).

4. Cooperation Programs with International Agencies in the Field of Migration

Since Mexico has adopted migration as an important issue on its domestic agenda, it has been involved in more intense international activity, motivated by the desire to bring before the United Nations a concerted voice for better oversight of international migration. For this reason, it agreed to host the 4th Global Forum on Migration and Development (11/2010) where work was done on the issues and proposals raised and the conflict with civil society organizations was surmounted.

Since 2002 Mexico has been a full member of the IOM. Three years later, as well as working in Mexico City, IOM also began working in Tapachula, Chiapas, and in 2010 it branched out to Ciudad Juarez, Chihuahua.

The IOM works primarily with the SRE and the INM in assisting voluntary returns and services for the victims of trafficking, and it provides cooperation for training and consulting with other agencies, such as INMUJERES, DIF, PGR, CNDH, the Congress, and public, state, and municipal agencies.⁴⁶¹

The Mexican government has also been involved in programs of the UNHCR, ILO, UNICEF, UNESCO, UNODC, and UNDP, on issues related to migration, in the following activities (see Table 10):

⁴⁶¹ Website of the International Organization for Migration; about, www.oim.org.mx/about_us.htm, consulted on 25/01/11.

Table 10

Activities of Organizations of the United Nations System related to migration	
Organization	Activities
United Nations High Commissioner for Refugees (UNHCR) ¹	<ul style="list-style-type: none"> • Ensure attention to asylum seekers • Contribute to the integration of refugees into Mexican society • Give training in international law to people involved in the care of refugees • Provide a space for interaction between volunteers and refugees
United Nations Children's Fund (UNICEF).	<ul style="list-style-type: none"> • Participate in the training of Child Protection Officers (OFI) • Maintain alliances with farmers and public institutions to eliminate child labor and guarantee the rights of farm migrant-workers' children²
United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Office on Drugs and Crime (UNODC), United Nations Children's Fund (UNICEF), and United Nations Development Program (UNDP)	<p>Joint program for conflict prevention, development of agreements, and peace-building in communities with internally displaced persons in Chiapas (Culture of Peace Program in Chiapas)³</p> <ul style="list-style-type: none"> • Promote access to criminal justice • Reduce conflict through a culture of peace • Improve housing and income for displaced people
International Labor Organization (ILO)	<p>Project "Stop child labor in agriculture"⁴</p> <ul style="list-style-type: none"> • Eliminate the worst forms of child labor in the agricultural sector, giving special attention to indigenous children and to child labor generated by internal migration • Strengthen the legal, institutional, and public policy framework, as well as the capacities for the prevention and elimination of agricultural child labor • Analyze and disseminate information on the negative consequences of child labor to educate, raise awareness and facilitate decision-making in the matter • Create pilot models to remove or protect children or adolescents who are working in agricultural activities

¹ UNHCR has offices in the Federal District and in Tapachula, Chiapas.

² It takes place in Sinaloa, with cooperation from the State Secretariat of Education.

³ The project started in 2010 and will continue until 2012. It operates in 8 municipalities in the regions of Los Altos, Selva, and Selva Norte, serving 676 displaced families.

⁴ The project started in 2009 and will end in 2013. It is national in scope, with specific actions in Chiapas, Michoacán, Sinaloa and Veracruz.

Source: prepared by the author with information from the web site of the United Nations Center of Information in Mexico, Temas de interés, Refugiados, ACNUR en México, www.cinu.org.mx/onu/estructura/mexico/otr/acnur.htm, consulted on 31/03/11; web site of OIT México, Áreas de cooperación, Alto al trabajo infantil en la agricultura, www.cinu.org.mx/index.php?option=com_content&view=article&id=103&Itemid=58, consulted on 13/04/11; web site UNICEF México, ¿Qué hacemos?, Niñez migrante, Trabajo infantil, Jornaleros agrícolas, www.unicef.org/mexico/spanish/17043.htm, www.unicef.org/mexico/spanish/17044_1756.htm, consulted on 12/04/11; UNICEF, 2009, pp. 5, 10, 20.

5. Conclusions

Mexican migration law is largely in line with international standards in this area and corresponds to unstated immigration policy that upholds control and national security, with human rights as a counterweight.

Prior to the new legislation on migration, emphasis had been placed on programs and public policies that gave priority to emigration. Internal migration has been only recently considered, which has given rise to regulations and integration of immigrants and refugees.

Considerations have been made for returnees, especially minors; the crime of human trafficking has been addressed, but with little progress; and the inability of the three levels of government to fight crime against transmigrants and persons who are displaced internally because of widespread violence has become apparent.

Once migration policies have been formulated, their enforcement depends on a hierarchy of decisions, and it is in the public administration and its officials where most of the shortcomings are found.

Coordination and interaction between the agencies responsible for the administration of migration is scarce, except in the case of programs for Mexicans abroad; despite the budget and scope these are limited because of the overwhelming size and dispersion of the immigrant population in the United States.

Insufficient coordination between the agencies responsible for administering migration leaves much of the migrant population unprotected.

Regarding the various programs for the different migratory processes, there are no monitoring and evaluation mechanisms, therefore, their results are not clear. This lack of transparency hinders academia and civil society stakeholders in actively participating in the planning, formulation and monitoring of these programs.

Civil society organizations, international agencies, civil servants and academics have the task of proposing mechanisms for the creation of the regulations on actions to reduce the vulnerability of migrants, to involve the judiciary branch to oversee the shortcomings or negligence of public servants and to ensure the efficiency of public policies.

PART III

THE PARTICIPATION OF CIVIL SOCIETY IN PUBLIC POLICIES REGARDING MIGRATION

In Mexico, the work of civil society organizations (CSOs) aimed at the protection and defense of human rights is a central component of national and international policies. The help they provide to migrants is sometimes the only resort they have, especially undocumented migrants, in order to obtain justice and social assistance. This humanitarian work coordinates social demands and allows the government to diagnose and promptly address the social problems that arise.

The legal existence of CSOs is constitutionally grounded in the freedom of association (Art.9) and the right of petition (Art.8). The Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations (2004) grants them support and public incentives, as well as the right to act as participant and consulting bodies and to engage in the social control mechanisms of the agencies and entities related to their activities. The General Law on Social Development (2004) establishes the basis and promotion of social participation, understood as the right of persons and organizations to intervene and participate in, whether individually or collectively, in the formulation, execution and evaluation of social development policies, programs and actions.

Despite the existence of these legal tools, the humanitarian work of migrant shelters and houses is sometimes carried out in adverse environments due to the indifference, corruption and impunity of some authorities. These migrant houses are mostly Catholic, and for years they have been part of the Episcopal Commission on Human Mobility of the Mexican Episcopal Conference.

These distinctive features mark a difference with the solidarity practiced in other countries. For this reason, and taking into account the impossibility of carrying out an exhaustive analysis of citizen participation in the definition, implementation, and evaluation of public policies on migration in the context of this research project, this third chapter focuses on the humanitarian labor of migrant shelters and houses. It also analyzes, on the basis of a close reading, the Central American flows into Mexico and the cultural changes brought about in this migrant population by the formalization of different types of violence.

1. Humanitarian Labor and Civil Organizations: The Experience of Migrant Shelters and Houses, Realities and Challenges

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In memoriam Jan de Vos⁴⁶²*

One of the characteristics of migration is change, not only in the social profiles of migrants, but also in government policies on migration, academic conceptualizations and social perceptions. Thus, during the 19th century, it was a priority of the Mexican government to attract migrants, particularly Europeans, who enriched the country's economy and strengthened the national social fabric with their (expected) good customs. In a de facto manner, Mexican emigration started becoming a priority on the public agenda, until it became part of the government's constant dealings with the United States. Towards the end of the 20th century, international transit migration, especially from Central America, given its volume, became a permanent issue that affected social dynamics and government dealings involving Central America, Mexico, and the United States.

Two recent additional flows, whose importance is rising, need to be considered in addition to immigration, emigration and transit migration: 1) the flow of persons returning of their own free will, which make up the smaller group and those who are forced to return, which are the majority, and 2) the flow of Mexicans or residents in Mexico who are displaced from the national territory due to conflicts that have altered and continue to alter the country's public security.

All of these flows have encountered problematic situations since they began, such as the separation from the people and places they love, facing the dangers and risks of international transit and ultimately, dealing with the challenge of insertion and permanence on the place of destination. Migrants and their migrations are full of unforeseen situations, surprises of every kind, tensions, conflicts and contradictions. There are also happy moments, though fleeting ones, when they receive the solidarity of an unknown person who lends them a hand. Migrating as a last resort option for existence tests the human condition of migrants, of their families and of the societies of origin and destination.

In the last few years, Mexico has become an important setting for those who migrate to the North as a last resort, and it is also the scenario of diverse expressions, some more organized than others, of solidarity with those migrants who carry their history, culture, identity, religion and hopes on their backs. With this "baggage" they establish social relations throughout their trip and on that basis they interpret what they receive during their trip and upon arrival. In what follows, we carry out a general reflection on two unwritten histories that go hand in hand, but here we shall speak more of one than of the other: the expressions of solidarity with international migrants in Mexico (the other history is that of the migrants, seen from their logic or rather in their own voice).

⁴⁶² Flemish humanist scholar, chiapaneco by adoption. His intellectual work on the history of this portion of land and the societies of the Mexican southeast shall be fairly judged in time. Today, at the end of July 2011, his ashes have been scattered over the Lacandona rain forest, his home.

It is important to note that no matter how ample or well documented a narrative description is, it shall always be incomplete and subject to ambiguities, omissions or imprecision. It is a complicated task to assess fairly what all the social actors involved have done and continue to do, and it remains to be done, hopefully in the near future. This reflection presents general lines for analysis of organized solidarity, with special emphasis on that carried out by Catholic organizations in migrant shelters and houses.

1.1. Fundamental Premises

International migration constitutes a network of vast social and institutional relations that coordinate local and international actors, who do not necessarily know each other, in different ways. The specific characteristics of each participant determine the type, modality, duration, costs, risks and benefits of each participation activity. From this perspective, migrants are never alone: as persons, migrants are like drops of water that form a human river when they unite in a great migratory process, even though they might not see themselves as part of that whole.

This human river creates a clear and ever increasing connection among communities in the countries of origin, transit and destination. This connection is extremely varied, not only because of the migrants themselves, but also because of their use of technology during transit migration (Internet, mobile phones, sending remittances to pay for transit migration and extortions), a technology that is also used by the different social and institutional actors involved in the migration process, for different reasons, whether they find themselves in the countries of origin, transit, or destination, or in any other physical location in the world.

Though public insecurity is generalized in Mexico today, the country features a tradition of abuse toward the international migrant, simply because of his or her foreign status. There are cultural, ideological, and legal reasons for this, which we cannot deal with exhaustively here for reasons of space. This practice of abuse is the background and foundation for the formalization of different types of violence that affect Central American migrants in particular, as we shall see below, and it will also serve as an obstacle to humanitarian labor.

Among the different criminal organizations currently existing and acting in Mexican territory, those known by the generic name of Zetas stand out for their practice of kidnapping and massive assassinations of migrants (mainly Central Americans due to their number), which does not mean they do not engage in other types of illegal and criminal acts, or that other less widely known organizations do not commit the same crimes against migrants. It is simply that the latter's existence and territorial scope of action is smaller or less well known.⁴⁶³

Broadly speaking, there are migrants (mostly Central Americans) whose destination is the south-southeast of Mexico and others who are in transit. Migrants from both of these flows share migration routes and the social framework they entail, while others

⁴⁶³ Later on, we shall present arguments regarding the logic of risk and the dangers to which humanitarian labor and its participants are exposed.

have gradually generated or recently found new social networks that are necessary for their migration objective. This is another central element that must be taken into account: current social processes are partly the logical result of previous processes (such as that of refugee seekers in the 1980s), while others are partial evolutions or new developments that can only be explained on the basis of preexisting conditions, which does not mean a mechanical subordination to those conditions, since this would make it impossible to understand their new characteristics and the autonomy they manage to develop. These differences in flows are correlated with the type of social organizations that help them. In other words, just as there are different types of flows, so too, are there different types of civil organizations and solidarity actions.

Regional flows are not exempted from suffering aggression. They are exposed to other types of abuses and excesses on the part of those who hire them or provide illegal service at illegal costs. Given their long-standing presence and the existence of social relations built over time, these processes have slowly transformed themselves, without ceasing to be conflictive and many of them illegal; however, they are seen and assumed as “natural”, as tensions inherent to human interaction. As a result, in the incorporation of regional migrants into local events, their vulnerability, though acknowledged, is subsumed and fails to be assessed in its true dimension. Until now, these regional flows have not been *significantly* affected by second-level organized crime. This is another process of abuse that began developing locally, but has now extended to the national level, affecting not only regional but also transit migration flows, and not only a few migrant houses and shelters but also other humanitarian organizations.

On the other hand, there are other transit migration flows, smaller in volume than that from Central America, coming in from other continents like Asia and Africa, which can only carry out their journey throughout the country with the help of solidarity or trafficking networks. These groups are exposed to other types of aggressions, mainly perpetrated by traffickers, corrupt civil servants that facilitate transit, and recently second-level organized crime, which charges traffickers certain sums in order to allow their transit through the country. In order to exist and expand, these new crime organizations had to negotiate with local networks and actors linked to migrant trafficking in the Central American isthmus and in Mexico where, apart from some worthy exceptions, Mexican humanitarian networks have not yet penetrated.

On the one hand, there have been no significant changes in the national origin of Central American flows, which are the largest transit migration and regional migration flows. Over the last 25 years, Guatemalans, Salvadorans, Hondurans, and Nicaraguans have accounted for the largest flow of undocumented migrants. On the other hand, there have been changes regarding the territorial origin, social diversity, and to some extent, age groups of these migrants within those nations. There have also been changes with respect to the increasing long-term migration trend, although there has been a decrease in short-term migration due to the confluence of several factors (natural disasters, intervals between one migration group and another, new migration routes, etc.). In any case, it is necessary to acknowledge that there is a considerable migrant population volume that shows no signs of stopping. These socio-demographic characteristics are relevant insofar as assistance services will have to respond to them. A practical example

would be to answer the following questions: How much food is prepared daily? How many rooms are assigned to men and how many to women?

Some of the regional flows preserve family or social relationships over time, which provides them with a social network that facilitates their insertion in the job market and the development of social, religious and other types of relations. Historically, Guatemalans have the oldest links to Mexico, followed by Hondurans and Salvadorans, whose presence is more recent. These flows, together with that of refugees from the 1980s, make up a social fabric that is important in order to understand daily life along Mexico's southern border; without it, it would be difficult to understand the rapid development of Central American transit migration, which came later, and the social networks that help in the process, with different degrees of internal organization and intra-network shared work. These links among flows will make it possible for humanitarian labor to have an impact on regional and transit flows, though in a different way and a different type of work.

In view of regional undocumented Central American migration, Mexican migration authorities opted during a long time for facilitating their entry and permanence, even at a time when transit migration was not an attention-worthy issue since its volume was small. Such flexibility fostered cross-border social permeability and allowed for stability along the border, while providing cheap labor. However, it also promoted a work culture outside the legal framework and did little to counteract the abuses and excesses of those hiring undocumented migrant workers or of the local populations, who also took advantage of regional migration, though in different ways. These abuses and excesses continue and have extended to other locations and other social aspects of the relation, for example, the general attitude toward migrants and actions of solidarity toward them. As stated in the previous paragraph, humanitarian work, at least the one aimed at these regional flows, acquired a dimension of negotiation between employers and work, education and health authorities, as well as migration and human rights organizations.

In the 1980s, with the appearance of transit migration flows, the government initiated a process aimed at controlling international flows in general. On the one hand, though in a rather lax manner, progress was made toward a greater registration of regional flows through increased government intervention. This process has recently led to the issuance of a new regional and border migration document aimed at achieving improved work and social relations, as well as to the provision of assistance for undocumented migrants and their Mexican-born children, so that they may duly accredit their permanence or citizenship, whichever is the case. However, these government actions are impeded by the cultural inertia of the parties involved and the explicit interests of those who benefit from the vulnerability of undocumented migrants. The culture of corruption and impunity fostered and expanded by transit migration flow feeds on those practices.

On the other hand, the first measures aimed at restricting transit migration were put into practice by establishing a set of requirements for issuance of visas, measures which were followed by other measures at the end of the 20th and early 21st centuries, such as the Plan Sur and new detection and detention schemes. There was a certain

improvement in registration, number of migrants, and permanence conditions at the migration stations, as well as growing increases in the total number of detainees and returned migrants. The maximum number was reached in 2005, when close to four million undocumented transit migrants were detained. Nevertheless, there were also new socially far-reaching secondary effects, both with respect to territory and to time, that would require social work, particularly assistance services, in order to amend or repair damages caused by various types of events.

These references are important because without them it would be difficult to understand the contributing role of civil organizations working in favor of human rights enforcement and protection of the migrant population, or the tension and conflict caused by innovations in institutional control provisions and practices. The latter were not immune to excesses, limitations and misunderstandings regarding the undocumented population and the humanitarian organizations helping it.

Initially, the increased government control of the border gave rise to people dedicated to human trafficking, since transit migrants needed guides to accompany them on their journey through Mexico until they reached their destination in the United States. However, the restricted or closed access to legality also gave rise to increasing social solutions. For the first time, systematic social assistance processes are set in motion, ranging from family and community processes to others that with time, would turn into diverse forms of migratory marketing. It is important to make certain sociological distinctions from the beginning, because simplifications of social issues can lead to simplifying and often ambiguous perceptions that, instead of solving problems, worsen the situation merely due to errors in appreciation. In fact, as has repeatedly been the case, solidarity and humanitarian acts may be mistakenly interpreted as migrant trafficking practices, and those who carry out those acts may be seen as criminals.

One of the consequences of migration is that previous migrants have become counselors, guides or companions for new migrants with whom they share family or social links, thus creating networks that began including new migrants, whether acquaintances or those referred by others. Thus, sub groups start weaving an alternative social fabric in which they draw on the prior knowledge of some members, whose migration experience enriches the collective imaginary with their empirical knowledge. Thus, some migrants incidentally became migrant traffickers known as *polleros*⁴⁶⁴ in

⁴⁶⁴ In this text we shall use the terms *coyote* or *pollero* indistinctly to refer to the friendly and personal/community version, and “trafficker” to refer to the version that is more associated with the market and the impersonal laws that govern it. With this dichotomy, we do not intend to make a Manichean formulation in which the coyote is “good” and the trafficker is “bad.” It is not an ethical or moral distinction, but rather a sociological one referring to the belonging or not belonging to diverse social fabrics. See the following texts by David Spener: 1) 2004. Mexican Migrant Smuggling: A Cross-Border Cottage Industry. In *Journal of International Migration and Integration*, pp. 295-320; 2) 2008a. Cruces clandestinos: Migrantes, coyotes y capital social en la Frontera el noreste de México-sur de Texas. In Arzaluz, S. (ed.), *La migración a los Estados Unidos y la Frontera Noreste de México*. Tijuana, Baja California: El Colegio de la Frontera Norte; 3) 2008b. “El apartheid global, el coyotaje y el discurso de la migración clandestina: distinciones entre violencia personal, estructural y cultural”. In *Migración y Desarrollo*, 10, pp. 127-156; y 4) 2008c. “El eslabón perdido de la migración: El coyotaje en la Frontera del sur de Texas y el noreste de México”. In Escobar, A. (ed), *Pobreza y migración internacional. El caso*

Mexico and *coyotes* in Central America; this “friendly” version of trafficking refers to a social process in which migrants look for someone to help them achieve their migration goal. In this sense, the *coyote* is a supplier of transportation and lodging services, *actively* hired by the migrant or a third party, generally a relative. A distinctive fundamental feature of the social process of *coyotaje* is that it is a free agreement between the parties, in which the migrant (or a family member) states his or her will to hire the services of a specific *coyote* and operational agreements are reached regarding how and when to travel and at what cost, as well as the terms of payment of said cost. This activity uses the rules of the formal market and applies them to actors and matters located outside the range of the migration provisions of the States, a fact that does not contradict the formal market but is rather a logical expression of current free trade.

It is important to define the distinctions among the different types of *coyotes* and between these and migrant traffickers. In general, all of them are grouped under the concept of *coyote* or *pollero*, a figure that also serves to reduce a whole series of participations to a single visible link of the chain, which is another serious mistake. The simplification of a social process into a single figure can only lead to ambiguities that lead to the design and practice of equally ambiguous public and social policies. What is the pertinence of this reflection? It is necessary to know who gets access and is welcomed into migrant shelters and houses, and to be able to distinguish between a migrant and a false migrant, who could be a *coyote* or a migrant trafficker. That is to say, it is necessary to distinguish among migrants, *coyotes*, and traffickers.

As in all social processes, one thing is its origin and another, the practices that are later carried out by some of its actors, whether old or new. Thus, not all traffickers acted or continue to act independently: some acted and continue to act in connivance with corrupt civil servants (whether individuals or as part of larger networks). The number of coyotes and traffickers who work individually is decreasing steadily, given that their work object is essentially social, and to carry it out they need to interact with other social actors. Thus, the greater the development and the social complexities, the fewer individual and isolated actions there will be. Consequently, humanitarian work must deal with organizations that only show the visible part⁴⁶⁵ of their criminal structures, a fact that demands more positive elements to counteract the destructive action of the latter.

New criminal modalities appear in the 21st century, some of them already associated with organized crime and human trafficking. Criminals also evolve, innovate, and create new types of macro organizations. Traditional forms of trafficking have to evolve or run the risk of being absorbed by the new criminal organizations. Some of them, though not the majority, are a direct product of the practice of abuse toward migrants. Others that derive from or are linked to another type of criminal activity, such as the Zetas, are the most dangerous. They absorb or subordinate persons

de México. México: Casa Chata. See also Sánchez, G. (2011) *Border Crossings: Human Smuggling Operations in the Southwest. A Dissertation Presented in Partial Fulfillment of the Requirements of the Degree*, (Doctor of Philosophy), Arizona State University.

⁴⁶⁵ The one responsible for contacting migrants, guiding them, protecting them, providing some service to them, or collecting the payments agreed on.

and traditional migrant trafficking organizations and charge them for the right of way. Thus, traditional traffickers continue to victimize migrants, but they are in turn the victims of second-level criminal structures. Undocumented migrants or their families end up directly or indirectly paying both of them; therefore, the cost of undocumented migration rises.

To this must be added another unprecedented and recent practice associated with these illegal right of way charges: mass kidnapping of migrants and their subsequent assassination, which until now has been the final link in the criminal chain. These deeds and practices had immediate effects: on the one hand, the coyote and trafficking networks, in any of their modalities, enter into a period of crisis due to the appearance of the Zetas and similar groups, and on the other hand, humanitarian networks are also victims of aggression and use of their facilities to identify and select possible victims. This leads us to the following question: does humanitarian aid to migrants entail the sacrifice of those providing it? The times have changed. The former sanctuaries of humanitarian action have been altered by criminal actions and turned them into crime sanctuaries. Today, more than ever before, aggression to migrants has extended to migrant houses and shelters, reaching humanitarian aid personnel.⁴⁶⁶

There is no guarantee whatsoever that undocumented migrants, whether they have ample or few resources, will be able to transit through Mexico and arrive at their destination in the United States without damages to their possessions or without being exposed to diverse types of threats against their physical integrity. Undocumented migration is an experience that leaves an indelible mark. Migrating through Mexico today without documents is a matter of life or death and not merely one of pillaging or abuse of their vulnerability. And the same life or death dilemma must be faced by those who work protecting migrants. Kidnapping and death represent the most recent link in the criminal process that damages these individuals. This reflection, which takes into account processes and causes, analyzes what has happened to social organizations dedicated to protecting international migrants in Mexico, especially undocumented migrants. The assessment of humanitarian work necessarily implies referring to migrants, in the first place, as well as to the other social and institutional actors involved. Assessment of that work is only possible in relational terms.

1.2. The Humanitarian Mission and its Circumstances

In Mexico, the participation of authorities, churches, and lay organizations in philanthropic, assistance, humanitarian, or credit activities, among others, is long-standing and dates back to pre-Hispanic times. Starting in the colonial period, charitable activities were carried out by the Catholic Church. Since then, it is possible to observe that in the country's historical development, these types of activities have been *adjusted to the political dynamics of the moment*. In the colonial period, charity was practiced

⁴⁶⁶ The new Migration Law, approved in May 2011, does not prevent these risks. In fact, the only novelty it presents in that respect is an increase in the economic sanctions and punishments for those who are involved in criminal activity. This is clearly insufficient, given the complexity of the criminal processes involved, which are not even taken into account.

according to the provisions of the Royal Board. In the 19th century, welfare activities were carried out according to different models, though during the Juárez period, lay regulatory bases were established for the exercise of charity. During the prolonged administration of Porfirio Díaz, at the end of the 19th and the beginning of the 20th century, legislation on the issue was consolidated at the same time that the regime for Catholic action became more flexible. The term “philanthropy” was coined in the 20th century, and, in 1943, the corresponding administrative entities were modernized. The term “solidarity” was incorporated to the existing terms during the presidency of Carlos Salinas, while the participation of the private sector in social welfare activities increased and began dominating. A constitutional reform (of which we will speak later) regarding religion was also carried out during the Salinas administration, and the National Institute of Migration (INM) was created as the entity responsible for migration in Mexico and a mandatory reference in this text. The above allows us to state that there has been a long process of construction of diverse practices aimed at assisting vulnerable persons and sectors, with an unequal involvement, regarding time and form, of different social, organizational and institutional actors, from both the public and the private sectors. Humanitarian labor aimed at migrants is part of this long trajectory, under the legal modality of private assistance (the implications of this will be discussed later).

In itself, international migration could survive with the spontaneous expressions of assistance, guidance or service provided by the local population, expressions that speak of “natural” relations among equals, without reference to normative frameworks that distinguish, separate and make others better with respect to others who are perceived (and treated) as inferior because they lack official papers. In the “society of documents” of the modern State (i.e., identity card, passport, visa), whoever lacks them immediately becomes vulnerable to different sorts of appetites. Social and institutional practices of different types of abuse derive from this distinction that makes some inferior. And in a society as unequal as that of Mexico, these inequalities end up affecting domestic social segments, since the harm done to the foreigner is transferred to the unequal Mexican. In other words, from the serpent’s egg of inequality, there emerges the beast that ends up biting the most vulnerable part of the national social body.

Initially, humanitarian organizations emerge as a necessary social entity for the protection of the rights of migrants against the unacceptable mandates of state law, its distorted application or the ambiguous actions of civil servants. Although that objective persists today, another one has been added to it: the struggle against crime, which also harms migrants and their families at any time and in any social space. Sometimes this harm is inflicted independently by social actors and sometimes in complicity with State employees. For this reason, humanitarian work is carried out simultaneously, though not always in a coordinated manner, on different fronts, as we shall see later: 1) providing direct assistance to migrants who need it; 2) carrying out procedures before public entities; 3) obtaining resources to carry out their endeavor; 4) caring for migrants and humanitarian personnel, as well as protecting their facilities from the abuses and crimes perpetrated by the above-mentioned actors; and 5) insofar as it is possible, acting through wide regional, national, and international networks. How has it been possible to come this far?

In Mexico, organized solidarity with international migrants has an essentially Catholic identity, whether this is due to the number of civil and religious organizations practicing it or to the church or lay philosophy that prevails in most of those organizations (because almost all migrant shelters and houses are Catholic, this analysis focuses more on them). This Catholic nature of solidarity contrasts with the situation in the United States and Central America, where, especially in the former, it is more Christian, given the diversity of religious and lay participation. Such diversity of world views and pastoral work has different effects on all of the five fronts listed above, as we shall see later.

The majority of the Central American migrant population, the largest coming into and passing through Mexico, is Christian, in any of its tendencies, but fundamentally Catholic. Thus, Christianity is the common element that facilitates the encounter between migrants and humanitarian organizations. Apart from being places of prayer, church facilities have historically been sanctuaries for the protection of migrants, and their personnel have often been called on to provide humanitarian assistance as an essential part of the essential mission of the church. This old tradition has given rise to migrant shelters, which now, in modern times, can be located in lay spaces under lay leadership, and closer or farther from Episcopalian guidance. Thus, when the massive arrival of asylum seekers (mostly Guatemalans) took place in the 1980s,⁴⁶⁷ two great branches of assistance emerged, both initiated by the Catholic Church in Chiapas: 1) The Refugee Assistance Commission, and 2) the Committee on Aid to Border Immigrants (CODAIF) in the diocese of Tapachula, whose aseptic mission statement avoiding commitment with any cause in particular and did not give rise to tensions and conflicts with the Mexican State, as did that of San Cristóbal, headed by Bishop Samuel Ruiz.⁴⁶⁸

The immediate creation of committees in favor of the Zapatista movement in the Western world, especially after the indigenous Zapatista uprising of 1994 in Chiapas,⁴⁶⁹ would be impossible to explain without the social base and international support networks created for refugees in the 1980s. These efforts were funded to a great extent by Western Europe, which at the time was going through political changes due to Eurocommunism and the rise to power of Socialist and Social-democratic parties. Without these precedents, it would also be impossible to explain the emergence of new civilian organizations for the defense of transit migrants, or the conversion of preexisting organizations in view of the new migration flow that emerged beginning in the 1990s.⁴⁷⁰

⁴⁶⁷ See Rodríguez, G. (2003) "Una mirada urgente al sur: los refugiados guatemaltecos en Chiapas". In Guillén, Diana (Coord.) *Chiapas: rupturas y continuidades de una sociedad fragmentada*. México: Instituto Mora. pp. 223-270.

⁴⁶⁸ See de Casillas, R. (2003) "Los nexos de los rezos. Iglesia católica, líneas pastorales y sociales en el estado de Chiapas durante los noventa". In Guillén Diana (Coord.) *Chiapas: rupturas y continuidades de una sociedad fragmentada*, México: Instituto Mora, CONACYT.

⁴⁶⁹ Legorreta, M. C. (1998) *Religión, política y guerrilla en Las Cañadas de la Selva Lacandona*. Cal y Arena, México.

⁴⁷⁰ The emergence of civilian organizations dedicated to migration must be situated within a larger social, political, and cultural process, which some see as the result of the Mexican 1968, given that as of that year multiple civil organizations arise in defense of a wide variety of causes.

In the 1980s there was concern in Mexico regarding the territorial scope of the political-military conflicts in Central America. A popular theory at the time was that of the domino effect, which concluded mechanically, according to Cold War logic, that if Cuba had fallen, so would Nicaragua, followed by El Salvador and Guatemala, and then the south of Mexico, so similar to Central America in many ways. Therefore, it was necessary to secure the southern border. Previously, during the *echeverriato* (1970–76), the territorial statute for the southern border had been modified (Quintana Roo), which meant that the state authorities would be elected by vote rather than appointed directly and legally by the president as had been done until then. This gave rise to a new federal State with new electors: new as electors of their governors, but especially new because a significant segment was made up of internal migrant flows that had been taken, convinced and encouraged by the government to settle in the south of the country. Another important segment came from Guatemalan refugee flows that had recently been relocated. Demographic changes, together with changes in legal statutes, in a border setting adjoining conflict societies (Guatemala) or recently consolidated as nation-states (Belize) and subject to accelerated processes of human mobility and international migration, complicated the Mexican government's ability to handle the situation. This explains the federal executives' suspicious attitude toward emerging social forces, especially if they were behaving in an alternative manner.

The incorporation of the figure of the refugee into national laws in the 1990s expanded the legal spectrum to include Guatemalans (and other nationalities, though in smaller numbers), who, as refugees, had been relocated to different municipalities in Chiapas, Campeche and Quintana Roo. Over time, some but not all of these refugees became naturalized Mexicans and parents to Mexicans by birth (their children), that is, to a new Mexican population that would need State support in order to be Mexican in the cultural sense. In response to this, the Federal Government created the Border Cultural Program, since the issue was not just one of national political identity but also of governability.

Another innovation had taken place in the 1980s, which had a greater impact in southern and southeastern Mexico: a Christian pluralism that was most visible among poor, rural, and indigenous localities. Southeastern Mexico became the scenario for disputes among Christian worldviews regarding church and society projects, both present and future.⁴⁷¹ Migrants, whether documented or not, refugees or not, regional migrants or not, were present in these social and socio-religious processes. For example, the way people were grouped in Guatemalan refugee camps and even the spatial location of family groups and their organization within those camps responded partly to identity elements (such as language and religion), and not only to their moment and place of arrival, to government logistics or to the humanitarian labor of the participating civil or religious organizations.

Something else was at stake, since this growth of Christian, Evangelical, Basic Ecclesial Communities (BEC), and other Biblical tendencies was also being observed in Central America, the Andean region, and the Southern Cone. These tendencies

⁴⁷¹ See Casillas, R. (1989) "Emergencia protestante y disidencia religiosa en Chiapas". In *Estudios fronterizos* 17. pp. 105-130.

constituted a pastoral proposal that was different from that of the traditional Catholic Church and brought the members of those communities closer to leftist political organizations. How would it be possible to strengthen Catholic evangelism among indigenous peoples and poor Central American migrants without fostering intra-ecclesial dissidences and without provoking tensions between the Catholic Church and the Mexican Government? How would it be possible to provide assistance to the indigenous people who were members of the Zapatista movement without attributing to Catholic organizations proposals that, in a sense, are not those of the Catholic Church due to the presence of evangelicals and of leftist political interests? Would it be necessary to withdraw, leave the field open to these diverse organizations and restrict pastoral activity to within the Church? In case of withdrawal of the Catholic Church, would the possible loss of followers be limited to the region or would it have similar effects to the south of the Suchiate River, that is, in Central America and farther to the south?

The South-southeast, and more specifically Chiapas, was at that time the social scenario of various intertwined political, religious, and migratory issues that affected daily life, putting analytical frameworks to the test and even more so, the actions of the government leaders and institutional bodies of the time. Those were the times in which NGOs emphasized the fact that there was no relationship with the government, and that it was necessary to be anti- instead of pro-government, as a reactive response to the government's tendency to work preferably and, at times even exclusively, with pro-government institutions and corporations—they were the times of a more or less democratic confrontation with the vertical structures of public power. Therefore, the rise of pro-migrant organizations was more difficult, more costly from the social perspective and more plagued with errors on the part of the different participants, regardless of the sector or organization they belonged to.

Additionally, there was an ambiguous precedent. With the separation of the State and the Catholic Church and all churches in general, pursuant to the Constitution of 1917, churches lacked legal personhood in Mexico. They had no legal existence although they in fact existed and expanded socially. How could the State proceed in the case of what did not legally exist? How could the nonexistent religious sector be an interlocutor with the State? Through different types of legal status (civil associations, mainly, in the fields of private action or assistance), mediations were founded so that those institutions that were distanced and separated from the legal setting could meet, coexist, and provide attention to issues of common interest. That diversity of legal personalities made it possible for the group of churches, not just the Catholic Church, though its presence was the most salient, to act socially in the fields of culture, education, philanthropy, assistance, technical training, the development of productive projects and the assistance to displaced populations, among others.

The extremely complex set of relations that makes it difficult to generate a single, sufficiently coordinated action that is respected by all in a timely and similar manner is complicated even further by the existence of two different structures within the Catholic Church⁴⁷² (secular clergy and religious congregation clergy, also known as regular clergy), both acting directly in society in conformity with their specific mandates, in a

⁴⁷² See Casillas, R. (2003), *Op. Cit.*

Mexican territory divided according to two different logics (provinces and Episcopal jurisdictions), and answering to different authorities (bishops and provincials). This is a univocal expression of the absence of a monolithic structure in the Catholic Church, which has allowed it to be present, for better or for worse, in the diverse, heterogeneous, and contradictory field of worldly affairs.

That diversity of legal figures gave rise to the participation of laypersons with different socio-cultural backgrounds in the different social fronts and activities, through varying mechanisms and ways of relating to the bishops (who, according to Canonical Law, are the supreme authority in the jurisdiction assigned directly to them by the Pope, to whom they report exclusively), and the only one who can appoint them or remove them from their positions, and to the provincial authorities of the regular clergy or their appointees. In other words, those lay organizations, which were the necessary mediations between the parties, ended up acquiring relative autonomy from those parties, both those who gave rise to them and those they had to interact with.

This relative autonomy is reflected in the quantity and diversity of organizations providing aid to international migrants in Mexico.⁴⁷³ These organizations share their concern for the issue of migration, but no single logic guides them with respect to social or pastoral issues, or in the ways to structure their identities, carry out their duties, define the scope of their competence, relate to the different interlocutors or account for their achievements and results. In effect, a sort of double identity arose: 1) in the formal sense, some of them gave their organization a name that was “comprehensible” to both lay logic and institutional political culture, which facilitated and continues to facilitate communication with government sectors and officials, and 2) in the actual sense, collegiate forms of leadership were adopted in order to organize daily tasks and facilitate communication with peers and with the migrant population, by means of a horizontal dialogue.

The Pastoral Dimension of Human Mobility (DPMH, for its acronym in Spanish) is part of the Mexican Episcopal Conference (CEM, for its acronym in Spanish), which is a collegiate *instance* of the Catholic Church. Among the functions of the former is the coordination between the Episcopal Conference and the migrant houses and shelters. It is important to point out that houses and shelters do not necessarily depend economically, legally, organizationally, or politically on said Commission or on the CEM, since sometimes their directors are laypersons, appointed through lay mechanisms, with lay sponsorship, just as other houses and shelters do depend on ecclesial instances without, however, being subordinated to the Dimension. The background outlined above makes it possible to understand this diversity of relations and means of collaboration, in the best of cases, within that intra-religious world of relative autonomies.

⁴⁷³ As an example of this and as indicated in this text, there are migrant shelters and migrant houses, which in practical terms do not feature substantial differences. However, the people responsible for these humanitarian places may prefer one or the other name and correct interlocutors when they use a name other than the one they prefer. There are even cases in which both names are used. Consequently, out of respect for their decisions, we shall here refer to migrant houses and migrant shelters as if they were two different things. The substantial differences lie in their pastoral conception, their resources, the scope of their work, and their relation to other actors and migrants, as we shall duly see, differences which cut across one and the other.

There are also religious orders dedicated to providing aid to migrants. Given the nature of their mandate, the Scalabrinians stand out among them. But there are also different Jesuit, Dominican, and Franciscan organizations, to cite only a few, as well as the recent and significant encounters of Canadian, American, Mexican, Central American, and Caribbean bishops who, in *ad hoc* conferences, have reflected on the articulation of their pastoral labor regarding international migration. As an example of the importance that the issue of migration has acquired, we can cite the fact that the multi-Episcopal meeting held in June 2009 in Tecún Umán, Guatemala was attended by a very high ranking Vatican official, the President of the Pontifical Council for the Pastoral Care of Migrants and Itinerant people, a fact that, in a world of symbols such as the religious one, is highly indicative of the Church's commitment to this issue of migration worldwide.

The DPMH has a little over 50 migrant shelters and houses in Mexico, with approximately 500 actors involved among members of the clergy from different religious, missionary and lay congregations. It would be desirable to have a directory that specified the number, location, activities and other information of public relevance.⁴⁷⁴ This is impossible, partly because there is no unified structure to allow it, partly because it has been impossible to establish methodologies and agreements that make it possible to identify the actual type of relation that exists between migrant houses and shelters and the DPMH, and partly due to subjective positions that foster segmentation, atomization and lack of transparency. To say it in religious language, there are many chapels in the humanitarian aid environment, some of which consider and manage themselves as cathedrals since they have "their" migrants and refuse to share them or information about them. There is a great lack of Catholic ecumenism, of Christian ecumenism, and of practices aimed at social inclusion, since atomization and appropriation are likewise present in lay humanitarian organizations dedicated to assisting migrants, organizations that display similar problems to those outlined above for religious organizations. In view of the conflict, tension and disagreement also present in lay and humanist organizations without religious affiliation, fragmentation and the lack of willingness to overcome it are understandable though unjustifiable.

Notwithstanding this criticism, it is important to give a more detailed account of the great and significant humanitarian contributions. Because financing is perhaps the issue that raises the most questions, the following section outlines its great complexity.

1.3. Financing Sources, Legal Limits, and their Unknown Aspects

No civil organization dedicated to assisting migrants is self-sufficient and hardly any of them generate financial resources. As we shall see below, there are many legal limitations in this respect. Thus, organizations for migrant assistance are absolutely "social", not only because of their objective of providing service to migrants, but also

⁴⁷⁴ While preparing this paper and in order to make it more specific, we requested, in a timely manner, a list of migrant houses and shelters from Sister Leticia Gutiérrez, Scalabrinian missionary and Executive Secretary of DPMH, who abstained from satisfying our request, arguing that said information was privileged knowledge of the bishops and that it would be made public if they so authorized.

because of the sponsorship they receive, both in money and in kind, including the disinterested work of volunteers who work for free, or for a purely symbolic remuneration. Institutional financing sources are both international and domestic; some are public entities and others private, and still others are international agencies (whether religious or not). The contributions, in money and in kind, are for specific or general tasks, generally for a determined period of time; some are one-time donations and others are renewable, but most are subject to procedures that include the submittal of a project or agreement and of partial and final reports, which are generally private documents, while the financial reports are even more private (payroll and budget allocations are generally confidential, so that many times the details, even information regarding the donor, remains unknown).⁴⁷⁵ Besides institutional sources, some are social organizations, mostly local and a few national, which are particularly case-based and subject to multiple variables (which makes them less permanent than international sources).

This diversity of sources could cause the impression of abundance, but this is not the case; there are many financing sources because world problems are likewise numerous, and that ample world of donors (especially institutional and international donors) establishes its own agendas, priorities, times, management procedures, regions of interest and selection criteria, among other elements, which means that in order to participate, knowledge, contacts and experience in fundraising are necessary and the Catholic Church does not prepare its members for the financial world but to save souls (it is worth recalling that the “fixed” or lasting personnel in shelters have had a religious formation and are members of some congregation). On the other hand, the relatively short existence of civil society organizations,⁴⁷⁶ together with the abovementioned issues, create a situation that is limited overall by the management of resources; therefore, humanitarian organizations dedicated to migration issues and human rights in particular are characterized by the constant turnover of participants who nevertheless share a common feature: almost all of them are young. In fact, very few people can attest to a long trajectory in migrant advocacy, and most of this reduced group is made up of individuals with a religious formation or affiliation. Due to this combination of elements and in the light of the 1992 innovations in the Mexican constitutional framework regarding religious matters, which establish the basis for the granting of legal personhood to churches and define, through specific rules and regulations, their participation and that of their pastoral agents in private,⁴⁷⁷ but not public, assistance tasks, as well as the possible access to government financing sources, it is worthwhile to expand our reflection on this legal aspect and how it works in practice.

⁴⁷⁵ This is not the case of migrant houses and shelters, whose directors are generally regular members of the clergy and, as such, do not earn a salary for their humanitarian labor.

⁴⁷⁶ Their previous name, NGOs, was common in Mexico during the 20th century.

⁴⁷⁷ Article 9, Section V of the Law of Religious Associations and Public Worship states that Churches may “participate on their own or in association with physical or moral persons in the constitution, administration, maintenance, and operation of private assistance institutions, educational institutions, and health service institutions, provided that they do not seek profit and that they abide by the laws, additional to this one, governing the matter.” Law of Religious Associations and Public Worship (1993). México: Talleres Gráficos de la Nación. pp. 6-7.

Why do some churches develop social assistance work, outside the church environment and with activities not necessarily or directly related to religious practice, and others do not? The answer to this question is fundamental in order to understand that although there are over 6,000 churches in the country that, according to the government classification, can legally carry out private assistance activities, not all of them do so. And the actions of those who do or of their parishioners cannot be catalogued as converging in a single model of society, or in a single manner of interacting with other social actors, whether governmental or not.

Although all churches have a worldview, that is, a vision of society, not all of them carry out external social work or a type of work that can be considered as separate from their central labor focused on faith and prayer. This is due to their interpretation of the Biblical or sacred text, on the basis of which some consider that this type of work should be carried out by the State and the competent government agencies, and that it is necessary to resort to those agencies, even if they carry out their actions inefficiently, as is the case of public education. This is the view held by most Protestant and Evangelic churches, to cite an example. At another level, the problem is also due to the fact that some churches are not aware of the existence of programs and regulations, their lack of institutional experience in public management, their lack of trained personnel, their bad experiences, etc. Consequently, a distinction can be made between churches that do participate and act directly in that context, while promoting, sponsoring, leading, or supporting the creation, existence, and activity of lay organizations at the service of migrants, and another ecclesiastical or religious sector that does not share that conception and practice, leaving the possible participation of its parishioners in social processes to their personal initiative. In other words, part of the answer to this issue must be sought in the position of churches, religions, and their parishioners. This helps to understand the fact that those who work in assistance to migrants are Catholic organizations, especially certain religious orders, and that, among them, only some have access to certain types of financing sources.

There are considerable differences among the churches that carry out social work and foster the creation of lay organizations; therefore, it is impossible to envision the existence of a single social pastoral. It is more acceptable to speak of different social pastorals within one church. That of the Catholic Church is the most illustrative example of the intra-ecclesiastical pastoral diversity,⁴⁷⁸ with greater or less support from the religious cupolas, depending on the time and circumstances, which has allowed for the development of different conceptions regarding the social causes that need attention, what social activities need to be done, what social groups need assistance, how this must be done and who it must be done with. Thus, there are institutions⁴⁷⁹

⁴⁷⁸ This accounts for the actions of members of the congregations with different views of what needs to be done. In this sense, and with different doctrinal foundation, one finds many trends, from Liberation Theology to the Charismatic Movement, to name but two examples, within the Catholic Church. A more rigorous analysis could specify the relevant historical and geographical differences of the same position, could highlight the reformist aspects in some as well as the communist tendencies in others.

⁴⁷⁹ The diversity is much greater than it appears to be at first glance, or it is homogenized on the basis of ideological criteria. A careful analysis requires that one not confuse organizations such as the Legionnaires of Christ, the Knights of Columbus, the Opus Dei, and the Knights of Malta, despite their similarities.

dedicated to providing assistance to abandoned minors with congenital health problems, to old people, to migrants or other groups of people, while there are also others dedicated to providing training for employment or self-employment, or to sponsoring investment, production, or commercialization projects, and, therefore, the ways to do this and in association with whom may vary. In order to carry out these actions, ecclesiastical entities resort to donations, to government programs involving donations, tax exemptions, joint investment, or others that allow for achievement of their goals, or to expanding the social spectrum of beneficiaries due to the multiplying effect of the combination of public and private sponsorship. Some civil yet religious-oriented organizations prefer to seek international financing due to empathy among social, religious or other projects, and limit, as far as possible, any administrative procedures with the national public sector due to political, partisan, or even personal and religious differences. This reveals the existence of a wide array of forms of participation, which is as complex as the very reasons that give rise to their organizational existence at any given time.

Insofar as these differences, approaches, and reasons exist, the observable result in society is one of asymmetry in access to resources, activities carried out, social groups benefited, regions attended to, and horizon of social work, which could be attributable to external causes, specifically to migrant shelters and houses that are the topic of this paper. On the basis of what we have said thus far, inequality in access to public resources does not depend on a single cause; it cannot be attributed solely to the State, to one church in particular or several of them, or to a group of lay organizations. Inequality is more reasonably explained as the result of an *unequal set of participations*, which are attributable to legal, political and public administration factors, as well social and religious ones, as stated above.

This does not mean that we should ignore the fact that certain religious institutions, lay organizations, and believers have taken full advantage of the legal framework prior to and after the constitutional reform of 1992 regarding religious issues, for different purposes. Nevertheless, it would be wrong to think, for example, that all Catholic entrepreneurs allocate part of their assets to sponsoring social organizations and work because this entails tax deductions, even though the issue of tax exemptions is one that needs to be clarified by the country's fiscal authorities. The issue is of a different nature and is particularly complex: action may be the result of a religious worldview that motivates believers to distribute part of their income among vulnerable sectors, through the channels that are most in keeping with their model of society. At the same time, this makes it possible to disseminate among the beneficiaries of the charitable action that the social model desired by the promoters of such action, thus earning them followers or sympathizers for a specific cause. In other words, religious and social affiliations are encouraged through the practices, means and forms of organization that are desired and possible according to a religious view and the social resources, and abiding by the prevailing legal framework. In other words, it is a question of social forms of reproduction of a religious worldview with the collaboration of lay organizations, which, it should be recalled, are not always dependent on or unconditionally subordinated to religious hierarchies.

In fact, the Catholic Church in Mexico is a permissive religious institution, as is the case around the world with any organization that brings together millions of members dispersed in many countries and that has been in existence for a long time. Thus, it is possible to establish a two-way relationship between religious institution and parishioners, characterized not only by doctrinarian interactions but also by those related to social, economic, worldview and social production aspects. Therefore, diverse sectors of Catholic parishioners are able to shape their individual and social actions in conformity with their particular interests, despite the fact that they may differ from those of the ecclesiastical mandate, as is the case with sexuality, abortion and education issues, just to mention some examples that expand out reflection beyond the scope of migrant assistance and its practice, with greater or lesser adherence to the orientations of the episcopate transmitted through the DPMH.

On the other hand, there is another group of organizations and believers who have opted for not carrying out any social work that is not strictly linked to their specific notion of religion, or who finance what they do without resorting to the Mexican government's joint social investment funds, among others. Although the absence of public funding undoubtedly limits the scope of this type of work, it is no less necessary and important for both those who carry it out and those who benefit from it. However, it has diverse, not always positive effects: 1) at the social level, its scope with respect to space and time is smaller, 2) at the ecclesiastical and religious level, its presence and activity is increasingly asymmetrical, subject to the ups and downs typical of an irregular flow of financial resources, and 3) at the political level, it does not foster the mixed, multi-sector approach that strengthens day-to-day democratic participation.

Between these extreme modalities, there is a wide array of restricted participation situations, attributable to diverse causes, among which perhaps it would be more pertinent to talk about how inequality arises with respect to access to public resources, to private donations and to multi-sector funding. The diversity of situations makes any generalization impossible. Although their social presence is unquestionable, the organizations involved tend to have a short life and the commitment of their members is not long-lasting. This leads to a constant renewal in terms of participating organizations.

Assistance to migrants sponsored by religious institutions cannot be seen merely from the perspective of their logic; it is also necessary to examine it as part of a worldview that is disseminated and proposed to society as a whole and its institutions. Public advocacy of a certain model of society (regardless of how indeterminate that public expression may be) and the acceptance or rejection of specific programs and actions fostered by different administrations has been a common ecclesiastical practice, specifically on the part of the Catholic Church and its lay organizations. Thanks to the 1992 reform. However, this type of practice has become even more common since the legal personhood acquired facilitates it. From this point of view, that public and legal expression is understandable. The question is how much society and its institutions are strengthened, how much is contributed to equality, to democracy, to the respect for plurality and to tolerance. Perhaps it is from the perspective of these referents that church participation in processes of assistance to migrants should be analyzed as well as the conditions in which it takes place and its objectives.

Mexican society does not have sufficient knowledge about the issues at stake to fairly assess what the different churches do or not do in that respect, and the Mexican State has not taken it upon itself to gather judgment criteria in order to act in one way or another, despite the fact that such criteria are obtainable even if they are dispersed. This does not deny the fact that religious participation in migration issues should continue. In the light of history, it would not be advisable to try to prevent said participation, which is something that different government sectors have been tempted to do in the 1980s, the 1990s, and thus far in the 21st century. Attempts to prevent the participation of churches have only made them continue in a disguised, even conspiratorial, manner; and when conditions have allowed them to go public, they have done so with great resentment, immediate problems and long social adjustment processes.

Although there are doctrinarian elements that prevent, restrict, or encourage the social action of churches and their lay organizations, these entities must take into account a diverse set of elements if they wish to access government funding such as the complexity, the modalities of action of public administration and sector and office regulations. Insufficient knowledge about these, together with lack of human and material resources and management capability will make that access impossible. In this sense, beyond the doctrinarian aspect, it is important for churches and their organizations to have the necessary capability, which is the result of a historical learning process, or to acquire said competence by preparing their own people or resorting to the professional services of project managers. The Catholic Church has ample experience in fundraising in general, but it does not necessarily have experience with respect to international migration in Mexico. For this reason, the situation of migrant houses and shelters is very dissimilar.

Historically speaking, the Catholic Church and its lay organizations have vast expertise compared to the other religious organizations in the country, as is the case of those dedicated to attending migrants (although it must be noted that not all Catholic organizations have that knowledge). This applied expertise has been developing over 500 years and, therefore, it has provided the church with material, human, and financial resources, administrative structures, management methodologies, experience, and programs and projects defined according to differentiated work lines, which can be adjusted to the requirements of governmental lay regulations. This is obviously not a professional competence that has been totally perfected, but it is perfectible and can be shaped by that old structural knowledge. Thus, in terms of competition, the Catholic Church is in a better position than other religious organizations to adapt to political, legal and regulatory circumstances regarding access to public funding. Taking this into account and, especially, its greater presence in the field of service to migrants, it is understandable that its access and ability to obtain resources has been significantly greater than that of Protestant and Evangelic churches. The combination of doctrinarian elements, relationship with the State, and existence in the country of different church groups is counterproductive and widens the gap in access to public resources. This does not apply to the migration issue, but it could.

From another complementary perspective, the religious preference of the rulers of the Mexican lay State is another concurrent and even circumstantial, yet not explanatory, element of the whole historical process of access to public resources on the

part of the Catholic Church and some of its lay organizations. Thus, the political situations of each six-year administration or other period may facilitate or hinder the actions of socio-religious actors, but the stability of the legal framework and the successful use of it structure the continuity of the social projects of churches and social organizations. In this sense, whether people like it or not, the Catholic Church and its lay organizations have a considerable head start, which is impossible to catch up to in the short and medium terms if the current conditions prevail.⁴⁸⁰

Despite the comparative advantages that may exist, there is an inevitable administrative complexity. The main problem is that the country does not have an integrated legal framework regarding the different activities that make up social assistance, private assistance, charity, philanthropy and public social programs. There is no legal homologation of federal and state legislations, nor do all states have legislation in the matter.⁴⁸¹ Not to mention that the more than 2,400 municipalities in the country may have local regulations.⁴⁸² The legal voids, the regulatory heterogeneity and inconsistencies, the contradictions and lack of precision, among other aspects, do little to encourage, organize, and channel the different socio-religious efforts to participate in mixed public-private assistance.

What civil organizations attending migrants have access to government financing sources and how much do they receive? It would be impossible to analyze the budget allocation in this respect because “budget data and allocation are recorded in global terms, which makes it difficult to analyze chapters, items and allocations” (García, 2003, p. 13). Additionally, it is impossible to find “information regarding the organizations that benefit from programs subject to Rules of Operation”.⁴⁸³ Consequently, by using these sources it would be impossible to know what churches and which of their lay organizations have access to those funds, in what amount, which specific actions they carry out, etc.

Of the many complications that can be encountered, Sergio García points out that, in 2003, “another limitation was not being able to have state references, due partly to the fact that although the programs subject to Rules of Operation are executed by States and Municipalities, the transfer of resources is handled centrally, through the General Branches of Programmable Expenditures: Branch 33; Federal Contributions to Federal Entities and Municipalities and Branch 39; Support Program for the Strengthening of Federal Entities; or Non-programmable Expenditures, Branch 28; Participation to

⁴⁸⁰ As we shall see later, the two federal administrations of the beginning of the 21st century, both belonging to the PAN, have shown preference for the Catholic Church, at least with respect to migration.

⁴⁸¹ For example, very few federal entities have specific laws for Private Assistance Institutions (IAP) and their body, the Private Assistance Board (JAP). On the other hand, some studies state that they have found no reason why in some entities IAPs are granted the status of decentralized institutions and in others, that of an independent entity, with the implications that each modality has for the administration and transparency in the management of financial resources. For greater information regarding the legal heterogeneity of federal entities, see Murúa, S. y Meza, Y (2001) *Asistencia Privada ¿Caridad o Derecho?* Editorial Quinto Sol, México.

⁴⁸² There are municipalities with clear regulations regarding assistance and joint social investment programs, as evidenced by some INDESOL programs.

⁴⁸³ That is, the regulations according to which these programs operate.

Federal Entities and Municipalities, information that is not available.” García adds that although they are federal resources, “it is also necessary to analyze the agreements that each entity has signed with the federation and each office, as well as the state legislations, given that each State is sovereign” (García, 2003: pp. 13–14).

To conclude, besides the possible mediations deriving from the sacred texts, which inhibit, limit or condition the participation of churches and their lay organizations in public funding, there are serious diverse problems to access such funding. It is also extremely difficult to find out which organizations obtained such access and how they used the funds, or to get information regarding transparency, use, destination and assessment of the social scope of this joint investment in social assistance. Nevertheless, humanitarian organizations do manage to get funding to carry out their labor; the problem is that this issue is unclear. And this does not imply that obtaining such financing is not a permanent problem for migrant houses and shelters and that the funds obtained are insufficient. Otherwise, it would have been impossible for the shelters to assist over 23,000 migrants in 2009, according to a partial report (given that the accounting covered only 10 participants), which was also incomplete (because not all 10 participants recorded the total arrivals and permanence). This issue of assistance operation is precisely what we shall cover next.

1.4. Human and Material Resources for Humanitarian Labor: Some Examples

The constant thus far has been heterogeneity. In what follows, we present another dimension of that heterogeneity: the way it is reflected in day-to-day assistance to Mexican or foreign migrants.⁴⁸⁴ In fact, an examination of migrant houses and shelters, as well as of other humanitarian organizations that provide other types of services to migrants (legal counsel, medical, and educational assistance or training, among others) makes it possible to confirm that each one has different resources with respect to premises (houses or spaces adapted for offices, either loaned or rented, etc.), with a minimum of “permanent” staff and an ever greater number of young national or foreign volunteers for different periods of time (quarter, semester or annual, at the most), and with different regulations regarding the admission and permanence of migrants. As can be observed below through examples of the services offered by different shelters, each one has its own set-up and regulations. That heterogeneity of resources, background and location along the routes is partly the result of the set of heterogeneous circumstances described above, which force the migrant to develop a great ability to adapt, and makes it difficult for the external interlocutor to understand and explain that diversity from a single analytical perspective. In other words, migrant houses and shelters do not complement one another, nor do they respond to a plan that establishes what one of them does in one region of the territory and what another one does in another, although all of them, given the migrants’ needs, offer food and first aid. For this reason, it is pertinent to provide a sample of the services that migrant houses and

⁴⁸⁴ Specifically, migrant houses and shelters located near Mexico’s northern border are the most used by Mexican migrants, many of which are deported by United States immigration authorities.

shelters offer migrants, without identifying them, since the important thing is to highlight the humanitarian service provided and not to identify the provider.

- *Case 1*

Transit migrants enjoy the following benefits: lodging for three days and three nights, two meals a day, medical attention, information chats, and collection of remittances from abroad. The rules and regulations state that users have the right to spend at least three days and three nights in the shelter, although some stay only one or two nights and resume their trip when they receive a remittance from their relatives in the United States or their country of origin. However, this is not as common anymore since a good part of them do not have relatives in the United States, or their relatives have already sent them a sum that was lost in previous attempts because the person was assaulted or extorted by the authorities. In special cases, when the migrant has requested asylum to the Mexican Commission of Aid to Refugees (COMAR), and after having duly informed this entity, the house can offer shelter to those persons who have requested asylum while the process is resolved, which could take weeks or even months. This is mainly the case of non-Central American migrants (coming mostly from Cuba, Iraq and Africa). Even so, most of the guests stay in the shelter for the period of time stipulated in the rules and regulations.

- *Case 2*

Migrants are offered lodging for 24 hours; however, the majority has to stay longer due to the health conditions in which they arrive. They are offered three meals a day, as well as lodging during the day and night, plus the possibility of making and receiving phone calls in booths located inside the shelter. In case of need, migrants are given clothing, generally jackets, pants and shoes. The shelter has a laundry area, and there is a person available to help migrants with cash money transfers. All of the services are absolutely free.

- *Case 3*

The main service offered by the organization is support to migrants in obtaining or renewing migration form FM3, in such a way that those who request the service save themselves the cost of fees payable to the INM, through a communication sent by the humanitarian organization. Migrants agree to join the Migratory Regularization program offered by the INM. Additionally, the organization receives migrants who have been victims of a violation of their rights and decide to file a claim with the National or State Human Rights Commission. In this case, the organization acts as a mediator in the claim and also permanently monitors the locality's Migration Station to verify the situation of foreigners held there.

- *Case 4*

Migrants are offered a stay of three days and two nights with three meals, and when they are ill, they receive special care. Donations make it possible for these shelters to have access to medications, and when they admit persons who have been mutilated by moving trains and want to return home, the shelters contact the Beta group so they can be picked up. In many cases, the Beta group does not take these individuals directly to the INM, but it leaves them in the shelter so they can recover before transferring them to the INM. These shelters also offer English classes, human rights workshops and origami and knitting classes. Migrants are offered the opportunity to work with people known by the shelter, who will pay them well, feed them, and return them to the shelter at night. All of these services are free.

- *Case 5*

The shelter provides lodging, food, and medical assistance, help in the purchase of medications and prostheses, as well as training in sewing, computers and English. Service is not provided exclusively on the shelter premises, since staff can go to the General Hospital or the clinics of the locality are sick persons who need help to buy medications, or to have surgery or lab tests done. Time of permanence is not limited since these shelters deal with injured people; therefore, the length of their stay depends on their recovery, which could take months.

How is life in migrant houses and shelters regulated? It is regulated through rules and regulations that are posted in a visible place such as the entrance or the dining room, so that they are clear to occasional users. These rules and regulations are important in terms of what the house offers, as well as in terms of organizing communal life and of potential risks that could jeopardize that life. In what follows are a few examples:

Case 1: Rules⁴⁸⁵

1. Guests can remain in the house a maximum of 24 hours
2. Guests must commit to showing absolute respect for those in charge of the shelter and for their peers
3. We offer a totally free charity service and do not handle any type of migration procedures. For this reason and in view of everyone's safety, it is strictly forbidden to contact human traffickers while staying in this house and its surroundings
4. Guests must leave their bedding clean and in the condition they received it and help with the housecleaning, food preparation, and dishwashing
5. People who are under the influence of alcohol or drugs are not admitted. Violation of this rule will force us to request the help of Public Security in order to evict the violator, who shall, unfortunately, be turned in to the competent authorities

⁴⁸⁵ Textual transcription.

6. Consumption of alcohol or any other stimulant is forbidden in the house
7. In order to avoid problems with neighbors and authorities, guests must remain inside the Casa de la Caridad, act respectfully and refrain from making noise (at night)
8. Guests can use the external patio and the dormitories. The dining room and halls will only be used at meal times. Access to the second floor and kitchen is not allowed
9. House doors close at 21:00 hrs
10. Nobody in the house is authorized by Cáritas to ask for economic or any other type of compensation for the services rendered, and
11. Upon arrival, guests will undergo a body check to ensure they are not carrying drugs, alcohol, sharp objects or weapons into the house

Case 2: Rules⁴⁸⁶

1. All guests must register upon arrival
2. Guests may stay three days and three nights
3. Persons who are paying *polleros* are not admitted
4. Anyone under the effects of alcohol or drugs will be denied access
5. It is necessary to help keep the shelter clean
6. Smoking and not wearing a shirt are forbidden in the house
7. It is necessary to respect the washing and bath schedules
8. Nobody can come in or go out after 21:00 hours
9. Guests must get up at 07:00 hours
10. Guest cannot stay in their rooms during the day
11. Men are not allowed in women's rooms and women are not allowed in men's rooms
12. Couples are not allowed to fondle
13. No one is allowed into the kitchen without authorization
14. Guests are obliged to watch out for their things and respect those things of others
15. Be friendly and respectful to others
16. Turn off fans and lights when not in use, and
17. For any other issue, speak to the shelter manager

⁴⁸⁶ Textual transcription.

Case 3: Shelter regulations establish the following conditions for admission: being a migrant, regardless of nationality, respecting the rules of conduct regarding drugs and alcohol, respect for women and their dormitory areas, remaining inside the house most of the time for safety reasons, and not staying out after 9 p.m.

Migrant houses and shelters have different practices and relations with the authorities. Once again, the historical relation between Church and State, the pastoral worldview and, unquestionably, the interpersonal relationship between humanitarian agent and those who represent government authority must be taken into account. For this reason, there are cases in which good relations of collaboration are developed and others in which tension is the dominant characteristic. Some specific cases illustrating that diversity are provided below.

- *Case 1*

The relation between the shelter and the Beta group⁴⁸⁷ is distant yet collaborative, because this makes it possible to treat seriously ill persons through the Red Cross or to channel migrants through the Beta group when they voluntarily decide to go back. On the other hand, the Beta group also asks shelters to take care of sick migrants until they recover and can be transferred to the mutilated migrant shelters on the border of Tapachula. Although the shelters accept the migrants because they cannot deny humanitarian aid, they are concerned about the fact that the Beta group decides to take them to the shelter, given that migration stations cannot offer them adequate care.

- *Case 2*

The shelter has very good relations with diverse sectors of local society. It has close relationships with State entities in charge of migration issues, something that is seen as suspect by some local civil associations. For example, the profile of the person responsible for the shelter, as manager of local, regional, national and international resources, as well as his good public image allow him to enter into dialogue regarding migration issues with high levels of the State. This, however, does not prevent the person from maintaining a public discourse that is critical of Mexican authorities in their approach to migration, a discourse that is repeated in religious services, as well as in communiqués and press releases. Many migrants have even said that the word of such persons has an influence on whether a foreigner gets a benefit from the INM, such as obtaining the FM3 or being exempted from a payment. According to some members of local organizations, the person responsible for the shelter is an able man who knows how to move appropriately in all sorts of environments.

⁴⁸⁷ Government entity subordinate to the INM particularly created to orient and help undocumented migrants.

- *Case 3*

The shelter has a cordial relationship with other civil society organizations, but the situation is different in the case of government entities such as the INM, the CNDH, the State Commission for Human Rights and COMAR, to which it maintains a publicly critical position. The situation is complicated because while the INM recognizes the humanitarian organization due to its trajectory and is able to work jointly with it (for example, in the Migratory Regularization program), it does not hesitate to raise obstacles to the labor carried out by the shelter in the Migration Station, whenever it deems that the former is violating some internal regulation. In its public discourse, the humanitarian organization does not hesitate to point the finger at the INM as one of the main violators of migrants' human rights, but it always tries to maintain cordial communication with the INM delegate to the entity, as well as with the Ministry of the Interior (Secretaría de Gobernación) in the Federal District. To this effect, it resorts to its alliances with other civil organizations. On the other hand, the civil organization cultivates good relations with the local Beta Group. The organization's position regarding the CNDH is that said agency does not make a significant effort to diminish human rights violations in the case of migrants, since it abstains from issuing recommendations to the Ministry of National Defense (Secretaría de la Defensa Nacional) and to the INM in specific cases. The organization has no problem stating that "outside the boundaries of international human rights standards [the CNDH] fosters the impunity regarding human rights violations." It maintains a similar position with respect to other state and municipal agencies, such as the municipal police force.

Some migrant houses and shelters deem it pertinent to offer advice and recommendations to migrants regarding what to do and how to behave throughout their trip. These recommendations are particularly valuable for those who are traveling for the first time and do not know the routes, the risks, or the possible problems they may encounter along the way. They are also useful because Central Americans have never been in the desert and have never experienced winter in the Continental north or the abrupt temperature changes in desert zones.

The author of this paper has had the opportunity to attend some of the practical workshops for migrants in a shelter in northern Mexico, dealing with issues such as how to travel by train in winter, how to protect themselves from the bitter cold without losing mobility or carrying excess weight that would prevent them from running if they have to, how to identify reference points to orient themselves in deserts and mountains, how to identify the dangerous currents of the Río Bravo, how to ask for help, how to relate to the Border Patrol if necessary, and how to make their rights respected, etc. Given the proximity to the United States border, migrants pay a great deal of attention to the lessons of those who have been periodic migrants and have now become trainers for the last stage of the trip, prior to the actual border crossing. An example of these recommendations is included below; following recommendations could mean the difference between life and death, between taking the right path or not, between pushing ahead or being arrested by the police.

Recommendations for traveling from Río Blanco, Veracruz to the Northern border:

1. If you get into a wagon, don't close it completely
2. When crossing the 32 tunnels, stand on the footboards; there is more breathing air there
3. Get a windbreaker to keep warm and protect you from the rain
4. When you get off a moving train don't stop; keep running so the others don't fall on top of you
5. Don't try to get on the train if it is going too fast
6. Take care of the women and children; help them get on and off
7. The surface of the train gets slippery on rainy days
8. In tunnels or on cold days, wear gloves or cover your hands with pieces of cloth because the train's steel surface freezes
9. Get off in Huamantla in Tlaxcala, before the longest tunnel called El Mexicano in Apizaco, where there are checkpoints
10. When you get to Lechería, get off before the red lights in order to go around the station and avoid getting help from people riding in vans since they are usually policemen
11. Take the Ferromex line at the Lechería exit to avoid el Ahorcado in Querétaro
12. In San Luís Potosí and Saltillos get off at the station

Routes to follow:

- a) If you are going to Texas through Nuevo Laredo, Reynosa or Matamoros, after going around Lechería, take the Ferromex train on the far end and go through Querétaro
- b) If you are going to California through Mexicali and Tijuana, and if you are going to Nuevo Laredo, go in through Ciudad Juárez and to Arizona through Nogales. Take the route on the far left and go through Guanajuato, Zacatecas and Sinaloa
- c) In Sinaloa take the right route to reach Ciudad Juárez and the left route to reach Hermosillo; and in Hermosillo, take a right to get to Nogales and a left to get to Mexicali

As can be seen in these examples, there are different practices toward and with migrants, different ways of solving problems and ways of relating to civil and government entities, as well as with State agencies such as CNDH. And if more examples were given, the diversity would be even greater.

The operational problems of humanitarian organizations could be summarized and organized into the following groups:

1. Independently of whether they are migrant houses or shelters, they all differ with respect to infrastructure, movable property and access to public services
2. Also independently of whether they are migrant houses or shelters, they are different with respect to the number of participating staff and the work they carry out. Some of the houses and shelters work with the minimum people possible, while others have numerous volunteers, which makes it possible to provide daily attention to migrants and even to have occasional collaborators from local catechesis committees
3. Financial and resources management for the ordinary operation of each migrant house and shelter, depending on the objectives they wish to and are able to carry out, as explained in the previous section. To this must be added the extra work carried out to respond to the demand for assistance⁴⁸⁸ sudden rises in the migration flow or there are extraordinary requirements regarding medical attention⁴⁸⁹ in particular
4. Very different proceedings with public authorities
5. The relationship with the immediate social environment, which is not always one of acceptance, and sometimes causes shelters to face situations of conflict and tension
6. Connections with migrant and human rights networks in particular, which is another world that deserves separate study, given the diversity of origins, conceptions, practices, financing, interests, trajectories, geographic locations, and many others that make up networks of networks in which migrant houses and shelters are just a part of that complexity we have explained here

1.5. Conflictive Relations with Government Authorities and New Challenges

After the constitutional reform of 1992 regarding religious matters, it was no longer legally necessary to act in a disguised manner, but the negative political and cultural legacies persist in later periods. As far as public authorities go, they have been and continue to be distrustful of what goes on in migrant houses and shelters and concerned about which of the assistance tasks carried out could be legally considered migrant trafficking.⁴⁹⁰ The elementary way in which they decided to obtain judgment criteria was by *infiltrating* public security agents into the humanitarian institutions, often disguised as migrants or volunteers who would carry out some sort of assistance work that would allow them to acquire privileged information. This type of infiltration that was common before is still going on, although the ways of doing so have changed. Infiltration has gone hand in hand with different types of aggression, as denounced by

⁴⁸⁸ For example, more food, extra clothing, cots, sheets, and blankets.

⁴⁸⁹ People who suffer accidents on the railways and who require a blood transfusion, injured who need urgent attention to save their lives, getting prosthesis to replace an amputated limb, etc.

⁴⁹⁰ Mistrust is nurtured not only by the historical relation between Church and State, but also by the fact that legal guidelines regarding migrant trafficking is quite vague and insufficiently developed, so that in Mexico there are practically no migrant traffickers in jail due to that crime. Those who are in jail are there because they have also committed more serious crimes, which is the main reason for their imprisonment.

Archbishop Rafael Romo, responsible for the Mexican Episcopate's DPMH, in a press conference held at the Mexican Senate. As he said: "The lack of timely attention to violence and insecurity has made the number of attacks increase from 18 risk incidents in the five years between 2004 and 2009, to 46 in a year and a half, 29 in 2010 and 17 so far in 2011, with the State as the principal persecuting agent or aggressor, through civil servants from the three branches of government, who try to intimidate us so that we do not report the abuses and violations of human rights that they commit against migrants."⁴⁹¹

Another more common method has been to steal files and office materials, although thanks to the spread and lower prices of computer communications, it has been possible to preserve intangible files. However, the Archbishop's recent denunciation speaks of the persistence of illegal practices with impunity.

Protection of migrants requires shelters to constantly carry out proceedings before the authorities, especially migration and public security authorities, and preferably health and labor authorities. However, it is precisely with the latter that the following situations tend to arise: 1) collaboration, 2) tension, 3) conflict. Any of these may occur at any time and in any place. It could be that there is collaboration among the same institutional actors and the physical persons representing them with respect to a certain issue, but tension and conflict with respect to another. Reaching agreements and collaboration is a daily reality, as are tension and conflict. A sense of urgency often prevails in humanitarian work, while public servants act on the basis of provisions and regulations that oblige them to abide by specific procedures, times and instances that do not always translate into immediate and effective actions. This logically creates tension. In principle, legal norms are obligatory referents for the parties, for which reason the will to innovate in order to resolve is required, but without deviating from the law, which is something that not always happens. It is a relationship that involves a great emotional and personal weariness that tests the mettle of those involved more than it does the general law, which does not tend to change much.

The infiltrations and diverse damages caused reactions on the part of the migrant houses and shelters and led to changes in the relationship with the authorities. The defensive response, both in the past and now, has been to expel the infiltrated agent and denounce the fact before public opinion. But this has not been enough; when an authority is interested in knowing what goes on in migrant houses and shelters and one of its agents is discovered, it simply sends another one, perhaps more aware of what he or she must do or avoid doing, and the agent continues to obtain information under cover.

While at first sight INM agents might seem to be the main institutional obstacle to attention to migrants, given the nature of their duties, the Fox administration (2000–2006) established an extralegal agreement whereby employees of said institute could not carry out operations in migrant houses and shelters, which they had formerly been able to do according to the regulations in place. That measure, together with others aimed at removing public security authorities, such as the army and the navy, from joint activities with the INM, due to evidence that their members had committed abuses and violations of the human rights of migrants, made it reasonable to expect that there

⁴⁹¹ See de Brito, Omar. *Gobiernos, los agresores de activistas pro migrantes*. *Milenio*, México, p. 9.

would be a decrease in damages to migrants, at least in the sanctuaries of humanitarian labor, but exactly the opposite occurred.

The solution was not to remove the authorities but to perfect their presence and the mechanisms of collaboration between authorities and humanitarian organizations. Initiatives were adopted in good faith, even if they were illegal, in an environment in which the actions of organizations characterized by precisely the opposite prevailed. When migrant houses and shelters were deprived of the presence (even a distant one) of INM agents or of any other authority (even if it was occasional and sometimes illegal for any reason), they became privileged scenarios for any person or organization wishing to infiltrate them, in conformity with their diverse interests: from local security agents (physical persons) acting out of perverse motives, to human traffickers seeking to co-opt migrants or hoping to have “their” migrants get some rest at the expense of the organization sheltering them, before sending them to migrant kidnapers. Because shelter personnel can do no more than expel the ill-intentioned agent, impunity has been guaranteed since then. It is within this logic that the new migration law of May 2011, which establishes that legal protection on the part of agents who for criminal purposes for migrant houses and shelters, does not guarantee humanitarian labor and leaves room for the criminal purposes of such agents. In the last few years, the main danger for the physical integrity of migrants, pastoral agents, volunteers and members of migrant organizations is represented by those individuals sent by migrant kidnapers, in some cases directly the Zetas. In this sense, to the aggressions denounced by Archbishop Romo⁴⁹² one would have to add those that migrant houses and shelters are exposed to on a daily basis because of ordinary criminals. However, no statistical record is kept of such aggressions, nor is the evidence of them gathered, processed, and submitted to the competent authorities. It is urgent to reformulate the collaboration policy between the authorities and humanitarian organizations, but it is even more urgent to decrease the public insecurity that is damaging Mexico’s social fabric, including migrants.

In 2009, the efforts of the DPMH and of the CNDH were successfully combined to make visible a serious problem, the most serious that had been visible until then: the massive kidnapping of migrants (which would be followed by their massive assassination). In June 2009, the report published by the CNDH⁴⁹³ regarding the kidnapping of almost 10,000 migrants in one semester, with an estimated profit of 25 million dollars for the kidnapers, was a shameful milestone for both authorities and society, but it can also be considered the most valuable testimony of multi-sector collaboration, since in order to make its contribution, the DPMH, resorted to the collaboration of different shelters and other sources of information. Since its publication, this report has become a mandatory reference for those researching what is happening to undocumented migrants in Mexico, in addition to the subsequent heinous assassination of migrants. Both the written text and the presentation of the report publicly recognized the DPMH initiative to carry out a study (which became a report) of the contribution of migrant houses and shelters, as well as the DPMH, in obtaining

⁴⁹² See note 33.

⁴⁹³ National Human Rights Commission (2009). *Informe especial de la Comisión Nacional de los Derechos Humanos sobre el caso de secuestro en contra de migrantes*. México: Autor.

primary information, analyzing it and duly disseminating it, and, above all, in appealing urgently that the Federal Government take action in this regard.

Although the figures estimated in the report were not totally accepted, particularly by the Federal Government, the following aspects were irrefutably made evident: 1) the existence of a specific criminal behavior that damaged international migrants, although numerically the most affected were undocumented Central American migrants; 2) that this was not an isolated or circumstantial event, but rather a criminal process that was taking place in different parts of the country, although it is possible to point out those places where it is most common; 3) that in order to collect ransom, the kidnappers used the services of specialized international companies dedicated to sending remittances, that is, the very same services and even the very same companies used by migrants to send remittances to their families or to finance the cost of their transit migration; 4) that it seemed impossible that those massive kidnappings had not been detected by the public authorities, given the fact that in order to perpetrate them, it was necessary to make massive movements of a great number of persons and vehicles in numerous localities, use houses and properties to hold the victims while the ransom was negotiated, feed the victims and the members of the criminal organizations, carry out proceedings to collect the ransom, etc. This social deterioration was not and is not understandable without the internal disintegration of institutions, particularly those responsible for migration. Hence the emergence of a new level in which the combination of 1) collaboration, 2) tension, and 3) conflict between humanitarian organizations and government agencies must be situated and defined.

1.6. An (Endless?) History of Light and Darkness

The absence of migrant houses and shelters would reduce social assistance to migrants to a minimum. In the first place, it would undoubtedly be a severe blow to migrants, and second, to the noble trajectory of Catholic humanism. Third, it would also be a serious blow to the social fabric that weaves together places of origin, transit, and destination, and, finally, to the wider social fabric that connects us all. As long as the legal and social conditions that make some migrants less important than others and hence more vulnerable, there will be a social need to protect them. The role of migrant houses and shelters has been and continues to be fundamental, mainly for migrants, but also for the preservation, albeit fragile, of governability in countless Mexican localities. By protecting some, others are protected as well; by preventing injustice to some, there will be justice for all. Humanitarian action par excellence is that simple and significant.

However, humanitarian assistance, as it has been practiced to date, is already showing unequivocal signs of exhaustion, of insufficiency and of having been defeated by the dynamics of migration and especially of crime. The doors have been opened to vulnerable populations, but that opening has also made room for those who do harm and for damaging practices to remain. The persons change but the practices remain, and they are reproduced by the new persons coming in. Change must come from within. That is one of the main challenges faced by migrant houses and shelters. On the one hand, there are Central American criminals who have to be reckoned with and measures taken against them. On the other hand, we have the extreme danger posed by criminal networks run by Mexicans in Mexico, who infiltrate organizations when they so desire, since they are able to do so, and most of the time they find a Central American who is willing to collaborate with them.

In early July of 2011, a priest, responsible of a house for migrants, asked me: “Why haven’t the criminals that I have constantly denounced killed me? Why haven’t they done it yet if they have had many opportunities to do so?” There is no certain answer to this vital concern, but it is possible to formulate hypotheses on the basis of the criminal rationality that can be observed in the branch of organized crime involved in migration: if a strong and centralized entrepreneurial rationality prevailed in criminal networks, one could expect them to cynically protect migrant houses and shelters, since they are some of the few places where the concentration of migrants facilitate their business. Within this logic, they would also be an interested party in preserving the physical integrity of the leaders of those humanitarian spaces, since the greater the prestige of the house or shelter, the greater the affluence of migrants would be and, consequently, the greater the chances of obtaining more victims. But this is not the case. In those criminal networks, particularly among the Zetas, who are a network of criminal networks, local and regional affiliates preserve their own forms of organization, action and objectives, according to the rationale that they are subordinate to the so-called *jefe de plaza*, who are immersed in a larger criminal logic and can only require certain things of them. That is to say that the relative autonomy of the local Zeta affiliate might allow it to have a local and immediate objective, while the *jefe de plaza* might have a different, national, international or mediate objective with respect to migrant houses and shelters. Consequently, some might consider humanitarian centers as their immediate enemies, while others might see them as useful spaces for their greater criminal purposes. The absence of a centralized leadership and the probable contradiction among criminal leaders may result in a lethal aggression against the person responsible for a humanitarian center, something that has not happened to date although there have been many threats. In this scenario, martyrdom is highly possible, but we are still in time to prevent it. For this reason, it is necessary to make changes from within migrant houses and shelters, from the perspective of ecclesiastical social pastoral and from the ranks of humanitarianism. But even if these changes are fundamental, they will be insufficient, since there are also changes that must be made from the outside.

In fact, there is nothing that indicates economic, social, educational and political improvement in the horizon of the places of origin of the migration flows that arrive in or go through Mexico, at least not in the short term. Perhaps they will exist in the longer term (but in the long term, as Keynes would say, “we shall all be dead”). In the horizon of the place of destination of this migration flow, there does not seem to be any hope either for a legal reform that is open to migration in the near future. Perhaps we shall see it in the long term. There is a long way to go before Mexico ceases to be a graveyard marked with crosses (how many San Fernandos are yet to be discovered?)⁴⁹⁴ and becomes a country where respect for life and hope flourish. Perhaps in the long term we will see the difference, if we correct our path, our society and our institutions starting today. Is this too much to ask? Is this too much to do?

⁴⁹⁴ The assassination of 72 undocumented migrants was discovered on 24 August 2010 in the locality of San Fernando, Tamaulipas, about 100 kilometers from the Mexico-United States border. See Casillas, R. (2010) “Masacre de migrantes. Reflexiones e interrogantes sobre los significados del asesinato de 72 migrantes.” *Foreign Affairs Latinoamérica*, 10(4), pp. 52-59. Later, during the first semester of 2011, in the same locality of San Fernando, several graves were found with hundreds of corpses, among which there were also Mexican foreign migrants.

2. The Troubled Waters of Migration: A Sapiential Approach to Central American Migration Flows in Mexico

Fr. Flor Maria Rigoni

2.1. Conceiving Migration as a River

If we want to apprehend the migration phenomenon from Central America towards the North passing through Mexico at the beginning of the 20th century, an image that could provide an expression of it is that of a river.

The river is first and foremost a source of life and abundance thanks to nature, the people living along the river, the environment and because it links the two banks, whether through a bridge or not. At the same time, one can conceive of the river as a dividing border, which can be friendly or antagonistic, a political division and, therefore, a line marking territorial sovereignty. This is how we could define the river in its origins, as it first gushed from the earth. However, historical processes and demographic and industrial developments have been changing this river; it is still the same river, but now it carries refuse from felled trees, irregular settlements, industrial pollution: waste thrown into it as if it were the dumping site for the sense of death implied in all detritus. Metaphorically, if we apply the image of the river to the migration flows from Mexico to the North, we could say that it has gone through the same metamorphosis as the river.

At the beginning, it was a classical migration, as defined in the *corridos* (folk songs), and, in general, in the political, sociological and academic jargon: the migrant was male, a peasant from the lowlands or the mountains, a master builder and *chalan*,⁴⁹⁵ the “jack of all trades” you would find any time and everywhere. They were like the water that links the two banks of the river, nourishing nature, quenching the cattle’s thirst and linking the people from the riverbanks without the need of artificial bridges. The migrant moved as in a shared yard. That was at the beginning of the 20th century and up to the Bracero Program (1942–1964). He was well received wherever he went, celebrated when he came back. Then the first controls were introduced, and the two riverbanks gradually became the site of conflicts.

During that time, Central America was going through deep and violent structural changes, civil wars, and, in some cases, in the second half of the 20th century, transitioning to democracy and civil coexistence, still somewhat unstable. Until the 1990s, the migration related to the conflicts that consisted of people escaping from generalized violence and they were mostly refugees. Mexico opened its doors even before it ratified the Geneva Convention, allowing thousands of Guatemalans, Salvadorans, and to a lesser extent Nicaraguans to apply for refugee status in Mexico City’s embassies. As peace processes materialized and consolidated themselves, Central American migration turned into economic or labor migration, but in the first decade of our century it has metamorphosed into what I call, in my own sociological assessment, *erratic flows*. I take the meaning of erratic from geology, where it refers to glacier-transported rock fragments that show a different composition from that of the soil where they have been deposited.

⁴⁹⁵ Apprentice/peon.

2.1.1 Troubled Waters

If we take the geological meaning of erratics and apply it to recent migration flows, what I want to represent by using the term of *erratic flows* is the type of migration we see now of people who cannot be categorized with the classical definition of the migrant, that is, the person who migrated in search of improvement for his family and who planned his work and future in a country other than his birthplace. Migrants no longer fit that definition, as they no longer fit the notion of *mixed flows*, which has been the main focus of UN and UNHCR debates for several years now, defined as a mixture of economic migrants, people displaced due to natural disasters and persons displaced by violence who cannot be classified as refugees according to the Geneva Convention but still have good reasons to fear persecution and retaliation in their country of origin.

One of the consequences of civil wars, and in this sense Central America is no exception, has been the ever recurring difficulty of reinserting guerrillas and soldiers into civilian life, a constant challenge when you have to return to a position in life that seemed to have been left behind. A uniform and a weapon, whether illegal or revolutionary, confer a status, which the individual is only willing to give up if going on to a higher level. Unfortunately, the point of reference is the power of weapons and the sense of entitlement to kill anyone who opposes the ideology they are espousing or the authority of the State. They cling to their supremacy and power. And now, people who have led this kind of life have become part of the contingent of classic migrants and distorted the profile of the migrant. Former combatants, whether soldiers, guerrillas or gang members, suddenly become redundant and unnecessary, after having been protagonists and after being forced to leave that kind of life, they desperately look to recover that sense of power, their prima donna role, they grew accustomed to.⁴⁹⁶

Another category is that of the displaced due to ever more frequent natural disasters that throw thousands who never thought of leaving their home and land into the river of migration. This forced migration can be defined in a general sense as being displaced to another country. Usually, these migrants are left in a limbo, seeking to be as close as possible to the land they were forced to leave and falling into a sense of victimization that often paralyzes them. Psychologically they are different from the migrants who put everything on the line to reach their destination. The latter have made a choice, whereas the displaced due to natural disasters, or to internal war or conflict for that matter, feel overwhelmed by a situation they are unable to control, like an implacable destiny.

After the events of 9/11, the south border with Mexico became the only available door into the North, concretely the USA, with a significant rise in refugee status applications in Mexico, either to actually remain in the country or use it as an anteroom or springboard for the journey northwards. In this new branch of the river, refugees pose a new challenge for Mexico. Without going into much detail, when analyzing the

⁴⁹⁶ We could apply Zygmunt Bauman's concept of *wasted lives* to the members of this group, who, like the waste that the river carries, pollute a sector which had not faced a structural change that is at times violent, but mostly shifting and unstable. They are the remnants from a society that produces waste on a daily basis and can also produce human waste at different levels. Some people, and some values, suddenly become redundant. I shall discuss this term later in this paper.

number of people, their places of origin, the amount of money they bring, especially those from the Horn of Africa (Somalia, Ethiopia and Sudan), it is fair to ask how many of them can be authentic applicants for refugee status or whether they are economic migrants using the networks and routes of *human smuggling*.

However, pollution of the river reached a high peak when organized crime began occupying migration routes as their territory to make all kinds of business. The most obvious activities were to use migrants as drug mules or to smuggle weapons (although, this is more difficult), or to use the crossroads of migration as places to recruit people for human trafficking or simple and plain prostitution, which has indeed happened, but an unknown front has now been opened: *abduction for extortion* and the *industrialization of coyotism* (human smuggling over the border).

While the meaning of *abduction* is quite straightforward, *industrialization of coyotism* requires some explanation.⁴⁹⁷ In the last five years or so, since the cargo train that travelled from the Guatemala-Mexico frontier to Arriaga (an almost 300-kilometer-long line) was dismantled and migration controls intensified along the routes, the coyotes began to offer a full migration package, whereby one half of the cost is paid at the beginning of the journey and the other half after crossing the US border. Another package included transportation costs, lodging and food all the way to the Rio Bravo for a minimum of US\$4,500 (nowadays it costs around US\$7,000), and another one included three attempts to cross the border for US\$10,000.

These criminal activities have led, on the one hand, to the development of an articulated network of observers, labor contractors (*enganchadores*), custodians (*custodios*), connections, etc.,⁴⁹⁸ redefining the Mexican territory as a *graveyard without crosses, war path, mined field, Russian roulette...*⁴⁹⁹ On the other hand, industrialization pushes prices up and creates networks of migration officials, the federal preventive police and other forces and collaborators. Each person involved receives his or her cut and these networks are constantly monitored to detect possible weak links and eliminate them, replacing them by more trustworthy ones.

In this context, and to pick up the term of *erratic flows* again, a relevant change can be observed in the migration panorama. One of the first consequences of this change is that it has to be taken into account.

Geology teaches us that an erratic rock ends up in a different place from its origin and differs from the composition, origin and features of rocks native to the area in which it rests. Making an analogy with migration, sociological analysis used to be

⁴⁹⁷ In migrant jargon, and also for the general population as much as for migration authorities, the *coyote* or *pollero* is someone hired to help an undocumented person through checkpoints and illegal routes and to cross the border. The coyote is a human smuggler or a human trafficker.

⁴⁹⁸ It is not the intention of this study to provide full detail of these phenomena. Suffice it to say that in these organizations one can observe a high degree of technology and operative strategies, as was the case of Los Zetas, an elite group who deserted from the Mexican Army and combated criminal organizations such as Mara Salvatrucha who also employed high-level logistics and operative planning.

⁴⁹⁹ These are terms I have been gathering in my 13 years of service in Tapachula, Chiapas but which I had never heard before while working in the Northern border.

drawn from a certain substratum and political, social and economic theories would be developed on that basis, but nowadays we have to substitute *transient or settled foreigners* for *migrants*. If my analysis is correct, many debates on, recriminations and critiques to the terms used in the US, which have gone from *wet back* to *alien, undocumented, illegal* and *criminal*, could actually turn out to be accurate for some of the people who constitute those erratic flows in Mexico, whether transient or settled.

Additionally, if we use the definition of the southern border as provided by the Governor of Chiapas, according to which “there are doors, but there are no walls,”⁵⁰⁰ the Mexican government would definitely have to take into account these changes in its legislation and enforcement policies.

This is my reading of the problem after 26 years in Mexico and always accompanying or receiving migrants. This is to me the new challenge in the migration debate, which many have not even realized exists or they are ignoring. To defend all foreigners who cross the southern border as migrants in search of a dignified future is to be blind to the reality of migration, which has changed radically in the last five years. The situation now contrasts dramatically with the Mexican migration experience of the past and it is even considered a cultural element. There is a criminal labor force that is moving in the country as if they owned the place and are also affecting the classical migration, the flows of applicants for refugee status, the displaced due to natural disasters, etc. The figures published by the Attorney’s Office for Migrants, created in Chiapas in 2008, have been altered by the criminal networks. There are cases in which members of these networks simulate rapes, statutory rapes, robberies and assaults in order to file a formal complaint and thus obtain a permit to stay with a FM3 visa.⁵⁰¹

2.2. The Distorted Mirage of Migration

2.2.1. From the Periphery and into the Spotlight

Since it took off in the 1920s until the end of the 20th century, the subject of migration has been marginal to Mexico's political, economic and social reality.

During the 70 years of successive mandates of the Institutional Revolutionary Party (PRI), migration was mostly considered a relief valve, the way to the American dream, and/or a private solution for poor rural households and communities that saw migration mainly as a way to cope with economic distress. For many years, the way of dealing with migration was not to deal with it at all, the classic *laissez faire*. Since the passing of the Immigration Reform and Control Act (also known as “Simpson-Rodino”), and later because of the events of 9/11, the global economic crisis, and a dramatic

⁵⁰⁰ To explain this expression, which resonates with those of us living in the South, it must be noted that the Guatemala-Mexico border is 956 kilometers long, most of which are covered by a dense jungle. Also, historically and culturally, this has always been considered common territory and control is almost impossible. Juan Sabines says that there are *doors* (Immigration and Customs border controls) but no *walls*, because the Suchiate or the Usumacinta River and the rainforest cannot be patrolled, and for this reason people can go through those walls, which are just virtual. In addition, the INM has 100 officers covering the whole border strip, with 24 hour shifts, which renders the whole idea of border patrol a chimera.

⁵⁰¹ A type of temporary immigrant visa.

downsizing of the American job market, the migration debate gradually acquired political, economic and diplomatic importance in México. It is not my task to review here the stages or the legal contents of the sometimes bitter struggle between the different actors involved. In the last decade, there has been greater social awareness about migration and its protagonists in their different manifestations, and the topic has been thrust into the spotlight of political discussions, both on the mass media and in some sectors of the population. However, in my view, there is something twisted and tacitly accepted, which leaves the core of migration marginalized and shrouded. Yes, it is true that nowadays there are forums, conferences, and national, regional and international surveys that focus on the topic of migration. But it is equally true that these efforts move around peripheral issues and avoid approaching the core problems, their ramifications, the opportunities and the pain involved. The discussion is always limited to statistical analysis of routes and variants, of gender or place of origin, or to the repetition of superficial stereotypes.

I will discuss some elements in an attempt to justify and explain this affirmation.

2.2.2. Migration as an Exotic Subject

Let us start with a daring and, at the same time, light comparison. Migration can be compared in politics and on the media with the African women who are portrayed on the cover of *National Geographic* or shown on *Discovery Channel*, or their white counterparts as displayed on *Playboy* or *Elle*. For politicians, migration is always a peripheral topic: other priorities keep pushing it aside on the congressional agenda it seems to be a Cinderella, ignoring the fact that in Mexico 400,000 citizens per year look for a chance to cross the northern border, and that in the United States some 7 million illegal immigrants are of Mexican origin.

For civil society, this is a problem that only concerns those involved; there is no solidarity towards them, not even in their places of origin. Those who have migrated are soon forgotten, almost erased from memory. They are expected to send remittances and are welcome to come back only if they bring dollars and return soon to their place of destination. If it is true that the United States need us, but does not want us, the same applies on this side of the border: Remain a migrant, keep the money flowing like an ATM, and the phenomenon of *absent children* continues to grow relentlessly.⁵⁰² At a linguistic level, the word “absent” closely relates to being lost, being part of a past that will not come back. Migrants are the sons and daughters who are being left out of the collective construction of memory, of government planning, of cultural or economic realities, etc. They appear only, without a face or a name, in statistics. Migrants are remembered for their monthly money transfers. Inadvertently, we make the same mistake of those parents who try to please their children by letting them play their video games or watch TV, so they stay quiet and happy. In these remittance-based relationships, the sender considers himself and is also viewed as a living ATM,

⁵⁰² *Absent children* is an expression used by the Catholic Church to refer to migrants. When the migrants return to spend their Christmas, Easter or summer holidays with the family, there are celebrations. However, the term also suggests that *they are not here...and only God knows if they will ever return*.

providing money every time a pin number is typed. The gratefulness with which these remittances are met in the first few months turns into a request and gradually into a demand with interest.

For most of the press, too—and this is something I have verified on numerous occasions through the interviews I have given—migration is an exotic situation which is dealt with in a sensationalist manner. They want to show audiences, especially in foreign countries, the spectacle of people jumping on trains, trying to cross the US border like adventurers, like Indians defying the American cavalry like in a western movie. I was telling a French photographer once that, in all these years of working at the “Casas del Migrante,” every time a journalist or a cameraman arrived I felt like an animal in a zoo. They take our picture, listen to our complaints and to the stories of our lives, and then they go back to their press rooms to present a story of a very weird and far away corner of the world to their audiences. Reportages on migration are used to create an impact on the political debates, to produce an effect in a country or on some people. The migrants they are presented broadens the gap between rich and poor, developed and developing countries.⁵⁰³

This image relates also to everyone who gets close to the reality of migration in Mexico as if going on a safari.

2.2.3. Migration as Safari

This image may seem bold and disrespectful. That may be so. From what I saw in Africa, I understand a *safari* as an adventure in which amateurs venture into what used to be a foreign and dangerous territory to get trophies.

For politicians, migration is a topic they cannot ignore, and many venture into the field in a populist and even charlatan manner, regurgitating common phrases, displaying a superficial eclecticism that, once again, only touches the periphery of the problem without approaching the core. I think it is fair to define them as classic adventurers in the migration safari, with some honorable exceptions in government, people in charge of migration who, and I want to say this publicly, are honest and committed but more often than not left to their own devices.

In the United States, since the demonstrations of 2006, the subject has also been addressed in all campaigns; but the commitments of senators never go beyond sound bites on talk shows. Suffice it to say that the migration reform proposed by Bush and forcefully taken up by Obama did not even manage to get the Dream Act passed, a first step towards a comprehensive legislation and a possible bi-partisan point of convergence. Candidates are after votes, and promises fade away when the electoral spotlights are turned out. Migration is still a favorite topic on talk shows. In the US, it is approached in the same superficial and light manner as family feuds or the victories and

⁵⁰³ A typical example of this is an interview of over an hour I granted to *The Economist*, and when the article was published the title read “Mexico, a cemetery without crosses for migrants,” the only thing I said during the whole interview that they actually included. The rest of the article stated the journalist’s opinions. And here I am mentioning a weekly paper of international renown.

defeats of NBA or football teams, appealing to the emotions of a small audience in a TV studio, who behaves as cruelly as gladiators and the audience in a colosseum. These shows do, however, have a national impact.

Many more hunters, extremely bloodthirsty, have emerged now that organized crime has taken over migration routes. In the different operational zones we find different organizations, such as the Zetas⁵⁰⁴ or the Familia Michoacana or the many other cartels that control the territories where migrants move. The criminal activities have escalated dramatically and have turned the routes of undocumented migrants into war zones where all ranks of criminality are to be found. Paying kickbacks, bribery and corruption were already part of the landscape of migration.

A question has been occupying my mind which could be formulated thus: *To what extent has organized crime taken over migration routes and turned them into an additional target of its business, or is it maybe that the cartels see migration flows invading their territory and make it more prone to police controls, which has led them to take over the routes and profit from the migrants' predicament?* This question makes sense if we look at how these criminal organizations try to keep a very low profile. Migration is massive, it attracts attention, it challenges patterns. After a period of high profits, now they have become highly visible and the tragic events we all know have led to government intervention. However, could we not interpret some assaults and murders as indications that these bands want to force migrants out of certain routes and territories?

This question about the emergence of this new front is perhaps too theoretical, but maybe it can help to design some prevention actions in the future, taking into account that routes change frequently and crossing paths with a criminal organization entails high risks. We have the experience of how the routes shifted from Tijuana to Juárez and then to Tamaulipas, invading a *territory that was already controlled*.

On our first conversations with migrants at the Albergues we noticed that they would take for granted paying a sum to police officers or officials from the National Institute of Migration (INM). Nowadays, the kickbacks are not important. The starting point is at a much higher level, which involves as a first step “paying one’s due” (*derecho de piso*) so as not to be kidnapped in restricted territories, to be able to sleep at a hostel or not be separated from their partner. Next in rank are kidnapping, extortion, and detention for a ransom that, to my knowledge, ranges from 1,000 to 3,500 US dollars. For women, kidnapping can turn into human trafficking involving long-term enslavement. In this context, torture, murder, and cruel dismemberment of the bodies of those who refuse to pay, as a warning to others, are common practices, which become a nightmare for survivors.

⁵⁰⁴ As for the Zetas, it is worth noting that there is a tendency, which can be observed time and again, to attribute a particular political or social group or an ideology with all the blame or credit for whatever is happening. This has been so during civil wars, where the army or the guerrilla are the only protagonists, under dictatorships, where, for instance, the *reds* are the embodiment of evil; it worked like that in Italy with the Red Brigades’ terrorist attacks in Italy, as it does now with Al Qaeda, los Maras Salvatruchas in Central America, or for a brief period in the South of Mexico.

The National Human Rights Commission (CNDH) produced a video in 2009 called *Bienvenidos al infierno del secuestro* (*Welcome to the Hell of Abduction*) which reveals an insight into this plight. Some testimonies, which I had the opportunity to hear first-hand and were confirmed by the (CNDH), pose some socio-psychological questions due to the brutality and cruelty against the victim. To dismember migrants who cannot or will not pay as a warning to others and feed them to the survivors goes beyond the logic of war. To decapitate people and make heads roll (literally) like in a bowling alley is the act of a deranged mind. There is no rationale to this, as the migrant is not an enemy and there is no need to take revenge against him or her. The migrant is just a stranger who happened to walk into the territory of one of the gangs or cartels. I have attempted to interpret these practices. Maybe they involve some magic or are related to an esoteric initiation rite that can bring greater power against rivals or protection against dangers, make them invincible or invisible when attacked by an adversary. In any case they go beyond anything that can be explained. I have often asked myself: *Have we reached a point of ethnic cannibalism in which I want to eat the other person's conscience?*

Another category of people venturing into the territory of organized crime are the *polleros* or *coyotes*,⁵⁰⁵ who are becoming *chalanés* (assistants/peons) of organized crime, to the point that the traditional low-key coyote or pollero has become a thing of the past. They have become *observers* and *snoops* (observadores-fisgones), *labor contractors* (enganchadores), *links in a migrant hunting chain*. Many of them are women due to their power of seduction and persuasion.⁵⁰⁶

Organized crime has invaded migration in the form of globalized technology. The networks operate beyond national and in some cases continental borders for abduction, and consequently people trafficking, to function rapidly, efficiently and safely. The former coyotes now use cell phones and detect the possible clients or victims, they drive the latest model cars, pay a hotel for a couple of days and food at restaurants for the potential victim and then close in on him or her, hand the victim over to the other links of a chain that does not allow any weak links.

A UN study reached the conclusion that *uncivil society* is much better organized than *civil society* and that the former has broken up geography. *Uncivil society*, according to this study, refers to sectors of society where main activities are illegal, are criminals and have no respect for territorial frontiers, and are extensive and virtual at the same time. This is a very apt definition and provides an insight into this parallel, underground world that coexists with our society, politics, economy and culture.

⁵⁰⁵ This jargon emerged in the 1960s in the Northern US-Mexico border. The *pollero* was the guide who helped people cross over, usually at night and through the Zapata Canyon. The *coyote* would take the migrant all the way to Los Angeles or beyond the San Clemente INS controls (45 miles on the San Diego-LA route).

⁵⁰⁶ When a society or a community show a change in the language and new terms appear, glottology tells us that we are approaching a generation leap. In the field of migration, the following new terms have cropped up in recent times: *pájaros* (birds), *halcones* (falcons), *enganchadores* (labor contractors), *custodios* (custodians), *carniceros* (butchers), terms that were unknown to Mexican migration in the past years and clearly define a new reality.

Significant and important links of this criminal chain include elements of the police forces and the INM, although it must be pointed out that there are many honest and committed officials who are fulfilling their duty as public servants, just as there are many trustworthy elements in the Mexican Army and Navy. One again, it is worth remembering the Italian proverb that says: “The fish begins to stink at the head.” Whether subalterns are honest or corrupt depends to a large extent on how higher ranks and their superiors behave.

Crime has been able to count on two unshakeable powers: *the power of corruption* and *the power of elimination*. Criminals have a lot of money and they do not hesitate to eliminate the weak or broken links. Many of them have died, just as in our society ethical values are dying. The culture of corruption, in my reading, is not recent. It dates from colonial times, when there was no rule of law, but the power of influences and recommendations.

Talking about the rights of migrant workers in Mexico, we cannot forget the frame of reference on which the full development of the law as a common anthropological, social and communal foundation rests. After my last 26 years in Mexico, working always with migrants, some irregular, others looking just for another opportunity in the United States, I can affirm that the migrant is just one more link of the many ruined links in the history of Mexico, together with indigenous people, women, children, and even the common citizen. *The country is lacking a culture of dignity and thus a culture of rights*. This is a common element in our experience in Central America and Mexico. Some people are not taken into account, they are invisible to institutions and they seem to be tied to social patterns of the past, still represented by zombies who perform secondary roles or are tolerated like some kind of harmless folklore. In this sense, migrants, their suffering, achievements or failures, represent another layer of this society in terms of the people whom it includes and the institutional structure. In other words, despising and taking advantage of migrants just because they are vulnerable constitutes a precedent of how we can behave towards anyone who is in a vulnerable situation, today or in the future, because it removes the common ground of dignity and respect. The inability to coexist with transmigrants or with migrants who settle in our civil, religious or cultural communities manifestly shows a conflictive attitude against migrants simply for being “other.”

Migration was for many years a field that had become wild, marked by abuses, deceit, violations by governmental institutions, from INM⁵⁰⁷ officials to the municipal police, at times collaborating with organized crime. Humiliation of foreign migrants and even of Mexican migrants has led to coining terms such as *buitres uniformados* (*uniformed vultures*: uniformed police and migration officials) and *cemetery without crosses/mined field* (the Mexican territory from the southern border with Guatemala to the Río Bravo).

Due to a set of historical, social and political legacies, which we shall not discuss here as it is not the venue, but also because they lie beyond my competence, we can nonetheless affirm that there is, on the one hand, *an institutional and structural lack of*

⁵⁰⁷ National Institute of Migration.

collective awareness and respect for the dignity of others and, on the other hand, lack of law enforcement.

There is another historical element that may explain these lacks in the area of migration. Mexico did not have in the past, nor has it had in recent times, defined legislation and policies regarding migration. The phenomenon of migration was left to market forces and the initiative of citizens, and it was usually considered that the free and often unreflecting decision of people to leave the country worked as an *escape valve* while much of the focus went to the benefit of remittances. Migration regulations were governed by the General Population Law. This vacuum in legislation led to a long tradition of resolutions, decrees and ordinances that have been issued to cover up for these lacks and keep the pace of change in this field, but to no avail.

A consequence of this has been the use of government officials' *discretion in interpreting and enforcing* migration regulations, which are sometimes vague or undefined. Naturally this can easily lead to abuse of legal instruments against irregular migrants.

Another category of people venturing in the particular safari of migration are *women*. Not the classic migrant woman who left home and family for survival or who left the country to be reunited with her family, but another kind of woman. It is important to address a taboo topic in the migration world or rather among those who are normally considered migrants: a new generation of young women who turn the migration route into a substitute for Hollywood and dream of being a feature on Facebook, YouTube, cheap nightclubs or—why not?—on the cover of a magazine.

In my analysis of this phenomenon I have noted the formation of a new jargon among migrant women, a language of signs, tattoos, fashion and defiant public attitudes, smoking and drinking. Certainly, this could be a general description of Central American and Mexican youth, but it is an exception among migrant women. This transformation can be summarized with a word that was coined some four years ago: *body card*.

The *body card* turns the body of the woman or the child into a visa; it is a kind of credit card, passport and kickback. They have no schooling, no money, no profession or craft, but they have their *body as an investment*. I have seen many people react in horror and dismay when they learn about this new linguistic and behavioral manifestation. But if we take into account the very frequent statement that *it is my body and I do with it what I want*, then the notion of *body card* is but a corollary.

This phenomenon of claiming property over the body leads to people using themselves and others, to reducing lives to their utility and in consequence valuing only the body as a source of pleasure and material gain. When the body loses value, due to aging, an entire life becomes worthless because only utility and pleasure count. In this sense, as we shall see below, migration becomes, once again, a *control gauge* of a mentality that justifies a certain degree of violence in order to become someone and own something, to experience something intensely although it eludes the individual, although it will only last for a brief moment, a couple of years.

And I would like to add something else. The supremacy of the financial order, the sense that money grants absolute power, has ingrained in the subconscious the mind-set that everything is allowed in order to win, climb up the social ladder, and have fun, because, after all, *you only live once*... Within this logic, the radical conclusion that there is no dirty money is easy to reach, and the Machiavellian principle that *the end justifies the means* is readily applied.

Finally, another group of people who have ventured into the world of migration are NGOs. Some of them do a great job and are highly committed, but I cannot help perceiving the economic interest and the desire to figure in others, when I see them in national and international forums, governmental panels, etc.

They have sprung up like mushrooms: some of them are merely window-dressing, others have economic interests in mind; others are halfway between academic, sociological, and cultural organizations, without a defined profile regarding the service they provide or how they contribute to migrants. Additionally, I would like to say that I fear a kind of populist attitude in some people who go so far as to intimidate the authorities enforcing the law. This ambition to be protagonists can lead individuals and institutions to become corporations and have influence and acceptance in the media and even in government. I hope this is only a nightmare I have been having.

2.3. Contradictions in Human Tech-Marketing

At the other side of the border, crossing over from Mexico to the United States, we witness the opposite: the migrant is an unwanted commodity, rejected, hunted down at the border, in factories and malls, when the migrant stands in front of the school waiting for his or her children. NAFTA, the North American Free Trade Agreement between Canada, the US, and Mexico has provided for the free circulation and transference of capital and commodities, but not of labor. If, on the one hand, this contradiction goes against the logic and common sense of justice, on the other hand, it clearly reveals the added value of the migrant. Once again, the blindness of many politicians, sociologists, academics and public opinion disseminators must be stressed.

In the 1960s, Max Frisch sarcastically summarized the situation for his own country, Switzerland: “we wanted workforce, but humans arrived.” This is the underlying perception of migrants and the basis of their exclusion as a people who can move freely in the labor market and consequently as part of the social, economic and political order.

Max Frisch was touching the deep and holistic core of migration: emigrants are a whole people moving, they are history in movement. History can move borders and change the establishment. Any immigrant can create a new social and national identity, even if he or she is illiterate. The migrant carries on his or her shoulders the past and present of his or her culture and history, a *Weltanschauung*. Migration is not a simple *import-export* matter in the political or economic agenda. When migration knocks at the door, it challenges globalization to create a common field where all plan and project a common future. From a sociological point of view, the societies that receive migrants have an accurate perception of these newcomers. They are not machines that can just be

used to work the fields according to people's needs. They are not the wheels or the cogs of a *maquila*. They are people.

Facing this human river that is marching along the way, I can only say: *sow people, and an idea will be born*. However, nowadays most migration legislation ignores or makes family reunification more difficult, and for several reasons:

- Politics is about getting votes, and the migrant is always a stranger, the other, *different*
- The economy does not know value, only number and profits.; mathematics has no ethics or morality
- There are no laws for the family, because it is an endangered species, the object of lobbying by religious organizations and a handful of NGOs

2.3.1. Progressive Neglect of Social Ties

From a social point of view and regarding the relationships with the community, the migrant is perceived as an intruder in our world. We are afraid of his or her otherness and our subconscious perception is that the migrant is betting on the future, a future that seems uncertain, dark and unknown to us. We unleash against the migrant our own fears, failures and anxiety, and make him or her a scapegoat of our emptiness. This attitude subtly changes the migrant's psychology; to the migrant camouflages him or herself as much as possible in the surroundings, to the point of assuming artificial behaviors to go unnoticed.

If we add how communication technologies are available even for the poorest nowadays, we can understand how in this situation the first cracks in the relationships of migrant families appear, with parents or their very own family left behind. The traditional ways of communication, such as letters or spoken messages delivered personally by a returning *paisano* or "a relative," are now replaced by digital technology in such a way that they become virtual relationships. At the beginning, people call home frequently, but then they leave longer intervals between calls, all asking the same questions and getting the same response. They send e-mail pictures taken with the cell phone, the same picture and at the same time to several girlfriends. They chat with the family over the computer while talking to other people. Gradually, without even noticing it, the relationship has evolved into superficial gestures lacking true commitment.

The restrictive measures against illegal immigration, calculated around 11 million Mexican and Central Americans, which were enforced by the Bush administration and are still in effect under Obama, have led to a decline in *circular migration*. Circular migration means the possibility of a migrant returning to the home country, remaining there for a while and being able to go back to the host country, a pattern that can be repeated regularly. This tradition that was very common in the past is coming to an end, and the periods of family gathering and reencountering cultural roots are gradually disappearing. Both ends of the family drift apart, as time and space come between them. Each one creates a life apart from the other, they build new relationships; a

double standard is adopted, and they all live in a state of permanent deceit. To overcome loneliness and nostalgia, which, in the words of Giovanni Battista Scalabrini, constitute the “subtle malady” (TB) that quietly invades and kills migrants, they search for alternatives. Remittances grow smaller over time, because they have to be divided. They end up being a demand that has to be permissive so that the dollars flow. In that view, the remittance as an expression of Providence, whereby migration is seen as the way to provide for our daily bread, as the duty of the parents to look after their offspring and as a source of love for the family is reduced to a bank transfer in order to hush one’s conscience.

This neglect of the family ties comes together with, or just before, another important tie, although we boast the opposite: the loss of patriotic feelings. After years away from their own country, the deported migrants who return home perceive the coming back process as meeting an early grave that has been set up for them since they left. Migrants’ mentality is different from that of their countrymen, their views on work, justice and politics have drastically changed. The illusion that singing corridos watching soccer games or celebrating Mexico’s Independence Day will perpetuate in their hearts the allegiance to the country they left behind is just a way of deceiving themselves. The migrant is now a migrant for life, a foreigner both here and there.

Migration is lived and perceived by the migrant, man or woman, as an emergency situation, in which economic gain justifies the sacrifice as much as the apparent need to give up the values one has professed and believed in until then. What do I mean by this? The crossing is considered a war situation, in which all patterns of behavior change because the individual has to face extreme circumstances, albeit temporarily, and conducts him or herself in ways that were forbidden or morally rejected and now become acceptable. Sex with several partners, homosexual relationships, lies and cheating to get out of a tight spot, petty theft, even when it affects their own travelling companions, are actions that can be justified by loneliness, need, stress or sleep deprivation, all of which are seen as psychological pressures that must be overcome to succeed. Once the journey comes to an end, this emergency mind-set unfortunately remains. The wife, the parents, the children can wait; even the husband, if he stayed behind, can wait. The psychological pressures have many faces, from the desire to send home as much money as possible to bets made with oneself or with others; the greed of fulfilling dreams that had been out of reach so far enslaves the migrant. Thus, people fall into situations that are gradually seen as normal, the conscience is appeased, and the individual is open for a new stage in life. The children who were left behind with their mother or grandmother or with a sister-in-law are like a thing of the past, put aside in the conscience of their father or mother. And when they want to be reunited with their parents, they are handed over like an object, like a commodity, to an unknown *pollero*, to take them over the border.

This is just another link of a chain that has been losing links along the way. Rape by police officers or common criminals throughout the Mexican territory is much more common than ever reported. Trading sex for a passport or a visa is, also, much more common than what is thought.

The culture clash of moving from a rural or a small village mentality, where there is a strong social control and an open air environment, to a situation in which everything seems to be permitted and where the individual is shrouded in anonymity becomes a dangerous transit: migrants leave behind the traditional morals and religion they were raised on, their ideas of family and parenthood. This is how the border becomes a turnstile where old values are left behind, buried, never to be recovered.

2.3.2. The Decline of the Tradition of Hospitality in the United States

The economic crisis in the United States, with the uncertainty and the situation created by the housing bubble and the deterioration of the labor market, has revealed the discriminatory and somewhat racist character of that country, which was born and grew on two fundamental principles: individual liberties and its openness to migration.

Owing to national and patriotic feelings, but also a good deal of psychological laziness with regards to *others*, all countries tend to discriminate, to a lesser or greater degree, against strangers. All through history, and everywhere, we find this kind of discrimination, and conflict situations usually reveal that behind an apparently open attitude more hostile feelings are hiding. However, racism is a very distinctive American trait due to the role of slavery and discrimination against Afro-descendants in its historical process, to the point of fighting a civil war when President Lincoln wanted emancipation of slaves. There is more than plain discrimination; it is more daring and aggressive, involving racial, religious, cultural and ethnic elements.

An analysis of current US immigration policies and their enforcement must go beyond the human and technological display of force along the US-Mexico border. One must also look into the increasing and ever more aggressive roundup policy. We can compare these roundups with a hunting expedition, in which the prey are potentially undocumented workers who are trapped and then deported, still wearing their work clothes, dirty with paint or chicken feathers, without even being allowed to say goodbye to their families. These actions are no longer part of the American tradition and we can venture some hypothesis as to why it is occurring.

This brutality reveals that, behind law enforcement, there is a more violent rejection. It stems from the fear of losing jobs, which Anglo-Saxon people find extremely distressing, and the need to find a scapegoat close to home. Police statistics in Louisiana counties during the Gulf of Mexico oil spill in 2010 and its aftermath, which caused many job losses and the decline of tourism, indicate that domestic violence and violence against neighbors increased by 300 percent during the most critical period. The Hispanic population became a direct target, much more than, say, Asians, of these roundups, for fear of losing a certain religious and ethnic identity (one can sense that the WASP⁵⁰⁸ is disappearing).

The United States has abandoned the open-door policy of which Ellis Island was a symbol. With these roundups, the human right to dignity and the family bonds, so

⁵⁰⁸ *White Anglo-SaxonProtestant* refers to the white establishment, of Anglo-Saxon origin and Protestant background. It excludes Catholics, Jews, Afro-descendants, and, of course, Latinos.

strongly defended in this society, are being trodden underfoot. On the grounds of the illegality of their presence, administrative measures are adopted that throw overboard the rights a person has, regardless of the side of the border he or she was born on, and take no account of what this person may have contributed to the host country.

An analysis of the most recent statistics for Central America, where an average of 28,000 have been deported from the United States directly to the three countries with the highest migration numbers (Honduras, Guatemala and El Salvador), poses several questions regarding current immigration policies and in general about the relationships with this region.

Deportations usually affect a portion of immigrants who have already settled in the United States for a while, have jobs, and probably have been reunited with their families; they have school-age children, may be planning to buy a house, and keep stable relationships with the family they have left back home. The promises of the Plan Puebla Panamá as an investment project that would stop violence and promote sustainable development remained on paper. Massive deportations of this kind strongly hit the family and the social fabric of communities who cannot absorb the return of frustrated and defeated fellow people; also, we must keep in mind that this also represents a loss in remittances. The relationship between the United States and Latin America, which since the second half of the 20th century was never very friendly,⁵⁰⁹ shows that today there is a tendency towards *repetitive and enraged betrayals*.

2.4. Escalation of Discrimination from Language Usage

In an attempt in recent years to apply the cinematic technique of *close-up* to migration, the changes in the language that is being used cannot be overlooked. I am referring to the evolution of language beyond the terms mentioned above, from the *wet backs* and *undocumented* who crossed the Rio Bravo, in the past as they do nowadays, to *aliens* and *criminals*; from *polleros* and *coyotes* to *enganchadores* (contractors), *custodios* (custodians) and *carniceros* (butchers). Now we encounter a new affluent to this troubled river, which has joined in to become the main protagonist: the human rights of the migrant. It appeared to be the common ground for dialogue and to approach the migration phenomenon and its actors. But now this terminology has been used and abused, to the point that it appears everywhere in denunciations, projects, conferences and forums. To put it boldly, it is like the rocket that falls over the launch platform: it has boomeranged. Let me clarify this. At first, the idea was to invoke for migrants the rights of the Helsinki Accords, as human beings who had rights although they lacked a regular stay permit in the country where they had settled or as transit migrants. The idea was to rescue people who were working in a foreign country from a second-class condition. They were working there because their work was needed, had undergone great difficulties to get there and were enduring rejection, isolation and suspicious attitudes.

⁵⁰⁹ The affirmation attributed to John Foster Dulles according to which “the United States of America does not have friends, just interests” clearly sums up US policies towards Latin America.

At first, a fair salary, decent housing and work conditions that did not resemble slavery were claimed. Then the range of demands increased to family reunification, schooling for children, access to health care, etc. Then migrants became the victims of assaults, extortions, abductions and murders, especially in Mexico. Everybody, from the National Human Rights Commission, academics and activists to NGOs, and I must include myself, we all kept denouncing the violation of the human rights of the migrants and demanding respect and the intervention of the relevant authorities. Without realizing it, we fell into a trap similar to that of someone who holds a torch in the dark and does not see the holes right ahead of him. Any injustice was denounced indiscriminately as a human rights violation, from the impossibility of reaching a consular official or the lack of medical care at a migration station to the massacre of Tamaulipas. I have been asking myself for some time now: *why do we have to invoke human rights for events that in everyday life are defined, plain and simple, as crimes or misdemeanors?*

A historical comparison came to my mind: What would happen if in a history lesson a student asked me who was Adolf Hitler and I answered: *Well, he was a German Chancellor from the first half of the 20th century who violated the human rights of the Jewish people in Germany.* The answer is accurate, but we all consider Hitler to be a criminal who committed crimes against humanity. Some crimes were against the common foundation of humanity, of being human. When we have to appeal to the law to recognize someone's dignity, the right to life and to survival, then, in my view, we have reached rock bottom. Subconsciously—and it is not my intention to judge or condemn anyone, because I also fell for it—we still believe the migrant to be a second class citizen, and that he or she is not comparable to the citizen who we would acknowledge as a victim of crimes or misdemeanors. The migrant is a victim of human rights violations, especially if undocumented.

This has become a one way road and has blinded some NGOs, activists and politicians, as well as people in Congress, to a reality that evolves constantly and requires a calm analysis, a reading which I would like to call *sapiential*. This is a term used mostly in religious or spiritual analysis, which calls for a deep penetrating gaze capable of seeing beyond appearances and superficial stereotypes.

As I mentioned at the beginning, the typology of the Central American and Mexican migrant is changing, and, accordingly, the language, the strategies to denounce what is happening to migrants or to defend and accompany them must also change. Now that criminals and bandits have walked into the troubled waters of this river, human rights and respect apply in a certain way to an honest worker who is in transit or a foreigner who wants to settle down, and very differently than a foreigner who has infringed on the laws of civil coexistence. Therefore, and so as to complete the syllogism, if a foreigner or a citizen commits a crime, the lawsuit and the prosecution against this person have to do strictly with the crime.

2.5. The Human Waste of Central American and Mexican Migration

I am approaching the end of my considerations and would only like to briefly refer to a topic that is usually the object of academic, social or political analysis. I am referring to migration as *waste*. In this sense, it refers to people who are redundant, who do not fit anymore, whether in the society of the present or in historical tableaux of different periods of time. This is a notion that has to be discussed and debated publicly.

At present, the globalized world produces on a daily basis gigantic mountains of waste and generates a constant need for new landfills to deposit it, to hide it from our sight. The *human waste* I am referring to is produced by industry, by the movement of the different layers of society, by the growth of criminal organizations, by the labor market, etc. In past centuries, Europe sorted out its *overpopulation* through colonization; this phenomenon is even more dramatic nowadays, with large masses of people looking for a *dump*. The conflicts in Central America, the instability of its democracies, the vulnerability of its economies, together with natural disasters that are becoming more and more frequent, as well as the generalized violence, which also affects Mexico, and in general the considerations included in the Cartagena Convention, turn thousands of people into undesirables. A collective unconscious wishes the other would leave and is quietly grateful when someone withdraws, because the pie is too small to divide among so many. We can openly say that many who have become human waste are undesirable. This is the price we have to pay for modernization, novelty, and technology. There are places and societies where the jack of all trades fits in really well, provided he is flexible, becomes a moving wild card. Zygmunt Bauman calls these persons *collateral victims*.⁵¹⁰ Latin America, including Mexico and its economy, will have to consider the consequences of this human earthquake and what has to be adjusted in order to create democracies in peace.

In this paper, I have provided a quick overview shifting the axis of the analysis from just the economic and political aspects of the problem to include the structure of our society and our mentality. We are facing a situation for which we are all to blame, and the only ones who can be redeemed are those who withdraw voluntarily, who go into the technological exile of the present.

2.6. Conclusion

Since 24 of May 2011, Mexico had its first Migration Law, signed by the President of the Republic. Without going into detail, we can say that this constitutes an important milestone in the long way of Central American and Mexican migration. The Regulations and their enforcement shall be judged by history in the short and mid-term. The horizon, however, is still quite dark, especially if we take into account that there is hardly any collective awareness about this phenomenon in society at large. This is a topic that is usually marginalized in public opinion, but immigrants suffer sudden outbursts of rejection and discrimination in most countries due to fears around employment, crime or terrorism.

⁵¹⁰ Bauman, Z. (2004). *Wasted Lives. Modernity and Its Outcasts*. Cambridge: Polity Press.

Consequently, migration is embedded in three fundamental issues: policies, the market and external causes.⁵¹¹ To pretend to figure out what will happen in the mid and long term is, in my view, utopic, as is the attempt to predict how the typology of the migrant, the routes and the destinations will change.

However, an aspect that has not emerged so far, and which is definitely the factor that would contribute to dissolve or solve the problem of migration, is the question of the *visibility of migration* itself. Most of all, NGOs and many activists are still using the same vocabulary that they were using before the preparation and approval of the Migration Law. They refer to migrants without distinction between regular and irregular, documented and undocumented migration. The term *migration* is being used for all, ignoring the differences that have emerged in these erratic flows, the main topic of my presentation. I would like to see migration as an issue that is considered and taken on as a historical challenge, just as humanity has been facing great transformations that have become cultural revolutions and new ways of coexistence.

3. Concluding Remarks and Recommendations

At present, all possible variations of migration processes in Mexico can be observed. From traditional migration, which became an escape valve for the lack of opportunities in Mexico, followed by a massive emigration in the mid-70s until 2010, when it started to decrease. As an always restricted and selective process, immigration into Mexico has not had great impact because the labor market is not attractive; however, it serves as a retirement destination for US and Canadian pensioners. Transmigration, especially Central American transmigration, has been massive as a result of the economic, political and social crisis of some of those neighboring countries. More than 60 other nationalities from other parts of the world have joined this migration flow, looking for a way to enter the United States. Internal migration has always been present, mainly for employment purposes, although its importance has decreased with the decline of the urban-rural exodus. Nowadays, the victims of forced migration from approximately 3 percent of the country municipalities controlled by organized crime have to be added to these internal population flows. Return migration has persisted, but with interruptions due to restrictive North American policies that had an opposite effect from the one desired: the number of undocumented migrants increased and circular border crossing was blocked. Currently, voluntary return of Mexicans is less frequent, since most of them are deported by the North American migration authorities. Refugees and the asylum-seekers must also be included, a group of people who the government continues to accept for humanitarian reasons, but in fewer numbers.

A positive aspect that has been noted is that in the current administration consular assistance has increased, and repatriated Mexicans, especially minors, have been looked after. Also, there is more knowledge about human trafficking, although there are no encouraging results. Concerning migrant unaccompanied foreign minors, it is of note

⁵¹¹ By these, I understand situations such as coups, dictatorships, natural disasters, stigmatization of the migrant by the media, etc.

that this matter is being relatively well assisted by the Sistema Nacional para el Desarrollo Integral de la Familia, the INM and UNICEF.

To manage these processes and the challenges and opportunities they represent, on the one hand, the Mexican migration law has been adjusted to international legislation regarding this issue, and the government, aware that global challenges require global solutions, has played an active role in the bilateral, regional and intraregional fronts. On the other hand, a migration policy of control has been adopted that gives priority to national security backed by human rights. The Migration Law Regulations are still to be issued and only then will it be possible to determine if we are progressing in treating migrants with dignity, because, after all, that is what the respect for human rights is about.

The Migration Law has been strengthened by the inclusion of human rights in the National Constitution (2011). However, both jurisdictional bodies are threatened by the Security Law initiative, almost ready to be approved, but still a matter of discussion as much in Congress as in the public opinion because it gives priority to national security and institutions over the people.

In this context, the suitability of keeping the armed forces performing public security duties is being discussed, a function that is not established in the Constitution, due to the inefficiency of the police forces. If this trend continues, there would be more human rights violations by the military. In the current administration, there have been 5,371 complaints filed (until 04/19/11), with just 86 recommendations issued and no sentences or penalties ordered by the military justice.

The Supreme Court has given a restrictive interpretation of the military jurisdiction, but such interpretation is still far from being implemented since it still requires the corresponding jurisprudence and regulations. Although the contact between transmigrants and the army and navy is occasional, it continues to be a matter of concern that they act as the guardians of law and order and take over migration surveillance functions that are not part of their duty.

The dilemma of remaining vigilant on the war against organized crime and at the same time continuing to look for alternative strategies will persist until the next administration, at the expense of citizens and foreigners' rights, which according to the Constitution must be protected.

The current situation of the country is critical: there have been 50,000 deaths because of the war against organized crime. Impunity levels are among the highest in the world, and, caught in the crossfire, local population and transmigrants find themselves in a highly vulnerable situation. This is compounded by the centuries of social inequality, which not only thwarts the advancement of democracy but also makes it almost impossible to break the vicious circles of underdevelopment.

Current migration legislation finally eliminates discretion from its management. However, we know that there can be a distance between the law and its application. There is still a tendency to apply discretionary enforcement of the law, discrimination persists, and there is resistance against some aspects, especially those relating to human

rights. There is still little understanding of this legislation in Mexican society and its enforcement is weak.

The lack of legitimacy of these rules is not new in Mexico. The tradition of paying lip service to the law dates back to colonial times, and this is today part of a culture that has little respect for the law. Additionally, bureaucracy is inefficient, and minor public officials lack proper education and are poorly paid. Moreover, violence and insecurity have permeated society and politics in most parts of the country. The situation of violence and insecurity is even more brutal in Central America, where most transit migrants come from. Accordingly, the humanitarian emergencies involving migrants are a constant situation in the southern border and along the migration routes.

Enforcement of public policies on migration depends on a chain of decisions made in the dependencies and institutions involved in their management, which is often affected by the corruption public officials. Some examples of this are arbitrary detentions conducted by unauthorized officers, withholding of identity papers, lack of information and prevention, insecurity on the roads and rail routes due to insufficient vigilance and protection, to mention but a few.

The different dependencies in charge of the migration management are not sufficiently coordinated, which leaves most of the migrant population in a vulnerable situation. Also, due process and damage reparation are not provided for.

Regarding the programs resulting from public policies, monitoring and evaluation mechanisms are lacking. Thus, there is uncertainty about the results of such policies. Due to this lack of transparency, academic institutions and civil society organizations are deterred from participating in any active way in planning, formulating or following up on such programs.

By law, migrants are not criminals; they enjoy human rights. However, the implementation of actions on their behalf has failed because the Secretaría de Gobernación (Ministry of the Interior) has not created a permanent protection mechanism for migrants and their defenders. Furthermore, attacks to migrants by criminals and officers at the three levels, have not ceased.

The most severe problems affecting migrants, especially transmigrants, are abduction, forced recruitment and murder. INM data indicate that approximately 10 percent of migrants are affected by violence, a problem that not only has spread across the country but also permeates the attitude of police officers and authorities, who take advantage of the most vulnerable people, in an environment of alarming impunity.

Migration cannot continue to be seen as a business. Not only criminals but also corrupt public officials have sought to gain from the vulnerable condition of migrants, as shown in Chapter Three of this study. The work carried out by shelters and defenders of migrants' rights face major risks derived from the situation of insecurity we have described. At the same time, these shelters and defenders face emerging cultural and behavioral changes of the population, which are still not fully understood, due to the moral degradation that accompanies poverty in an environment threatened by delinquency.

The responses of Central American transmigrants and of defenders of migrants to the challenges they face have attracted the attention of the media, and this issue has reached greater visibility and significance with the national indignation raised against the massacres of migrants in Tamaulipas and Durango. This media visibility, beyond the sensationalism that frequently surrounds these events, has been possible thanks to a greater democratic openness in Mexico, despite the war against drugs, and because migrants now have access and use electronic media to vindicate the rights of undocumented people.

A social crisis like the one Mexico is going through forces people to become more aware of the degradation of their social environment and of the need to take common action and seek faith. An example, which also had an impact on the public, was the caravan of Central American migrants during Lent, in April of 2011, in which migrants demanded the adoption of the Migration Law. This group of Guatemalan migrants marched successfully from Guatemala to Mexico City, crossing through every single formal check point. This small action was at the same time huge, as it was taken into account, along with other voices, by the Legislative branch, and influenced the adoption of the Migration Law.

A second demonstration at the end of July 2011 was another march, the “Paso a Paso hacia la Paz” (Step by Step towards Peace) caravan of the Movimiento Migrante Mesoamericano (Mesoamerican Migrant Movement), conformed by activists, victims and relatives of abducted, murdered or missing migrants in Mexico. This caravan was demanding that the Mexican authorities stop the violence against undocumented transmigrants on their way to the United States. Their claims were presented to Felipe Gonzalez, the Special Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights (Organization of American States), during his visit to Mexico in July of 2011. These actions have an impact beyond the national borders and are also an example of the regional interconnection of migrant populations, who claim a dignified treatment on their route towards the ambitioned regeneration at their place of destination.

Recommendations

a) *General Recommendations:*

- Advocate for a migration policy, which should be explicitly defined by the Secretary of State, in accordance with the new migration responsibilities of the Mexican state and the existing international commitments
- Integrate, coordinate and enforce public policies and programs designed to provide assistance to migrants within the budgetary limits
- Reformulate the cooperation between humanitarian organizations and the State, especially the executive branch, in light of the highly restrictive immigration control practices, inequality of access to public funding, lack of consideration for humanitarian work from the government, as well as the lack of a comprehensive framework to practice this humanitarian assistance

- Ensure that migrant persons have access to justice through measures such as free legal counsel and the establishment of effective identification, protection and assistance programs and mechanisms for witnesses to or victims of crimes against migrants
- Create legislation on the use of force by public officials
- Periodically train federal and state officials in the migration legal framework, the rights of migrants, refugee status, human trafficking, crime prevention and investigation, and identification of victims
- Make CNDH investigations more efficient
- Carry out awareness and information campaigns for public officers, the media and the general population
- Strengthen bilateral and regional cooperation to protect migrant rights and fight criminal gangs who are taking advantage of their vulnerability
- Obtain from foundations that they donate training courses on fund raising, execution of these funds and accountability for international migration issues

b) Specific Recommendations:

- Immediately undertake a far-reaching, transparent consultation with civil society and all areas of the federal and state government that are involved in immigration-related matters, with a view to drafting the Regulations to govern the Migration Law
- Promote the use of a common language between the CSOs and decision makers in order to achieve a productive dialogue
- Lobby before Congress to obtain a larger budget for urgent actions to assist migrants
- Create a joint mechanism with the United States so that Mexican immigrants can file legal complaints against employers in the US
- Increase the budget for the Fifth Inspectorate of the CNDH
- Increase surveillance in migration routes
- Disseminate at the border entry points, shelters, and chain stores most used by undocumented immigrants so that entering the country is NOT a crime, only an administrative offense prosecuted by the INM and the federal police. This advice would contribute to reduce migrants moving clandestinely, encourage them to use safer transport and reduce the risk of extortion
- Ensure security at all transport terminals and migrant shelters
- Extend the mandate, resources and surveillance of the Migrant Protection Groups, also known as Beta Groups
- Ensure that only authorized officers carry out migration verification procedures
- Make provisions for alternatives to detention for migrants who are victims of a crime
- Guarantee migrants detained at immigration stations the right to due process

- Give civil society organizations access to immigration stations to check the condition of the immigrants detained there
- Ensure the security of defenders of migrants' human rights
- Move forward in the process of deputation, beyond job rotation, of officials who have infringed INM regulations. In order to do this, salaries must improve and ways must be found to reduce extortion of and discrimination against foreigners
- Devise mechanisms to differentiate migrants from those who are not among the erratic flows crossing the southern border
- Replicate the creation of the Special Prosecutors for Crimes against Migrants of Chiapas in all other states on the migration routes
- Collect and publish centralized and disaggregated data on abuses against migrants and sanctions to those responsible
- Create a registration system for deaths and disappearances of migrants
- Immigrant shelters and houses should generate homogeneous and complementary socio-demographic data on the migrant population who they assist and the problems they face. This information can feed intra-sectorial, multi-institutional and international management of specific health, education, legal aid, work and migration programs, as well as the provision of security measures and sanctions to criminals. This data can contribute also to the creation of shared databases to help locate migrants that their relatives and the competent authorities have not been able to locate. Preferably, they should be public access databases, with the due provisions to preserve the individual identity of those who have received assistance, not only for the sake of transparency but also to encourage citizens, academic institutions, international agencies and public entities to engage in building knowledge, understanding and civil coexistence
- Coordinate with authorities and legislators to carry out workshops with the media in order to sensitize them to the real problems migrants have to confront and avoid sensationalism in news contents
- Replicate good practices in humanitarian work with migrants. International forums on this subject have issued good practices, which must be looked into, such as the SMS emergency service used by Filipino immigrants. This service consists of an emergency telephone number and the creation of the necessary networks to send warnings and provide assistance to those in need. This could be coordinated with state authorities, such as the State of Chiapas. CSOs could distribute (donated) cell phones and migrants would be encouraged to voice their complaints and send warnings on imminent dangers via Twitter and Hi Fi, as through these media they can easily identify and recognize what is going on along the route they are traversing. This service can also reach people who can influence the design of public policies, as these instant networks are large spaces of encounter, timely warning and recommendation
- Arrange with universities the formalization of community service for undergraduate students doing internships as a graduation requirement, which is compulsory in Mexico, to have them work at the shelters for immigrants helping out covering some of their many needs

ANNEXES (to the SECOND PART)

Table 1

Migrant Service Offices	
State	Services Offered
Aguascalientes	<ul style="list-style-type: none"> • Procedure for the CURP [Unique Population Registry Code] • Support and guidance in case of arrests, deaths, missing persons, alimonies, and dual citizenship procedures • Temporary employment guidance • Information related to establishing clubs for migrants
Chihuahua	<ul style="list-style-type: none"> • Locating individuals • Legal assistance for persons under arrest • Recovery of compensations for occupational accidents or car accidents • Consultancy services for obtaining tourist and humanitarian visas • Apostille for birth certificates • Transferring sick people • Support in case of deportation • Repatriation of human remains
Coahuila	<ul style="list-style-type: none"> • Locating individuals • Processing official documents • Consultancy services for obtaining tourist, humanitarian and temporary employment visas • Legal assistance for persons under arrest • Support for alimony recovery • Collection of donations • Support for deported persons • Transferring of human remains
Colima	<ul style="list-style-type: none"> • Recovery of retirement pensions and compensations for occupational accidents or death • Intervention and coordination in cases of individuals arrested at the border and/or individuals in prison subject to processes • Locating individuals • Repatriation of dead bodies • Consultancy services for obtaining tourist, humanitarian and working visas • Procedures for the Program 3x1
Distrito Federal	<ul style="list-style-type: none"> • Processing of the migrant card for sending money • Information and telephone guidance on procedures and services through a line for migrants • Repatriation of human remains, apostille for documents, locating relatives, cases of individuals under arrest, access to social programs, obtaining official documents, dual citizenship, driver's license • Support in emergency situations • Productive projects
Durango	<ul style="list-style-type: none"> • Consultancy services for obtaining humanitarian visas • Transferring of human remains • Social Security procedures • Legal assistance for prisoners • Applications for and processing of official documents • Locating individuals • Transportation support for deported individuals • Information on former migrant laborers
Estado de México	<ul style="list-style-type: none"> • Migrant Channel • Program "Compromiso con los Migrantes Mexiquenses" • Program "Identidad Mexiquense" • Support, guidance and assistance • Programs for investment, sending of remittances, and creation of clubs • Campaigns for safe migrations • Procedures within the Program 3x1

Table 1 (continued)

Migrant Service Offices	
State	Services Offered
Guerrero	<ul style="list-style-type: none"> • Procedures within the Program 3x1 • Legal assistance for detainees • Repatriation of human remains • Locating individuals • Consultancy services for obtaining humanitarian visas • Repatriation of individuals • Micro-credits for productive projects through Caja Solidaria Guerrerenses Unidos S.C.
Guanajuato	<ul style="list-style-type: none"> • Food aid • Alimony recovery • Consultancy services for obtaining humanitarian visas • Legal assistance for detainees • Procedures for obtaining documents from the Civil Registry • Repatriation of individuals • Transferring of human remains • Occupational risk insurance and/or pensions • Support for sending money • Guanajuato Houses
Hidalgo	<ul style="list-style-type: none"> • Certificate of registration of birth for persons born abroad • Legal assistance for detainees • Locating individuals • Alimony recovery • Repatriation of sick individuals • Transferring of human remains • Consultancy services for obtaining humanitarian visas • Program Bienvenido Hidalguense • Program Ya soy Hidalguense • Program REUNHE • Program Invierte en Hidalgo • Procedures within the Program 3x1
Michoacán	<ul style="list-style-type: none"> • Consultancy services for claiming accident compensations, transferring of prisoners, and pension payments • Consultancy services for obtaining tourist and humanitarian visas, and permanent residency • Locating missing individuals and absent parents • Follow up on individuals sentenced to the death penalty • Procedures for obtaining documents from the Civil Registry • Transferring of human remains • Monitoring and updating of support programs for migrants' families • Consultancy and training for municipal migrant service centers • Translation of documents
Morelos	<ul style="list-style-type: none"> • Consultancy services for requesting pensions and compensation in the event of death • Locating individuals • Support for child custody claims • Repatriation of individuals • Legal assistance for detainees • Procedures for obtaining documents from the Civil Registry • Transferring of human remains • Consultancy services for visa procedures
Nayarit	<ul style="list-style-type: none"> • Consultancy services for social, educational, and cultural development and for the promotion of identity • Legal assistance • Transferring of human remains • Consultancy services for procedures to obtain tourist, work, and humanitarian visas

Table 1 (continued)

Migrant Service Offices	
State	Services Offered
Nuevo León	<ul style="list-style-type: none"> • Migrant club membership • Assistance at the Monterrey Migrant House • Locating individuals • Guidance for the registration of Mexicans born abroad • Fraud prevention • Teleconference Program Reconéctate con Nuevo León • Transferring of human remains • Program Pásala bien por Nuevo León • Consultancy services for visa procedures
Puebla	<ul style="list-style-type: none"> • Locating individuals • Legal assistance for detainees • Consultancy services for visa procedures
San Luis Potosí	<ul style="list-style-type: none"> • Transferring of human remains • Repatriation of individuals • Locating individuals • Legal assistance for detainees
Sonora	<ul style="list-style-type: none"> • Procedures for obtaining documents from the Civil Registry • Support and attention for deported individuals or transmigrants (temporary shelter, food, clothes, medical assistance, legal guidance, referrals to other authorities, procurement of tickets, temporary employment) • Support in cases of detention, death, or people getting lost • Repatriation of human remains • Transferring of sick individuals • Procurement of official documents • Locating individuals • Counseling through a toll-free telephone line • Collecting donations • Fraud prevention • Border surveillance to verify compliance with deportation schedules
Tlaxcala	<ul style="list-style-type: none"> • Transferring of human remains • Restitution of minors • Repatriation of sick individuals • Legal assistance for detainees • Consultancy services for procedures involving government agencies and access to the Social Security system • Locating individuals • Alimony recovery • Consultancy services for procedures to obtain humanitarian visas • Procurement of Civil Registry documents
Veracruz	<ul style="list-style-type: none"> • Legal assistance • Information about detainees • Creation of migrant clubs • Locating individuals • Transferring of human remains • Repatriation of minors, sick individuals, and the destitute • Consultancy services for procedures to obtain humanitarian visas • Apostille for documents • Procurement of Civil Registry documents
Zacatecas	<ul style="list-style-type: none"> • Assistance to migrants' clubs • Support for the creation of investment funds • Temporary employment program • Alimony recovery • Transferring of human remains • Repatriation of children and sick individuals

Map 1

Source: Prepared by the author with information from the National Coordination of Offices for Assistance to migrants (CONOFAM), Who are we? www.conofam.org.mx/quienes.html, retrieved on 01/04/11.

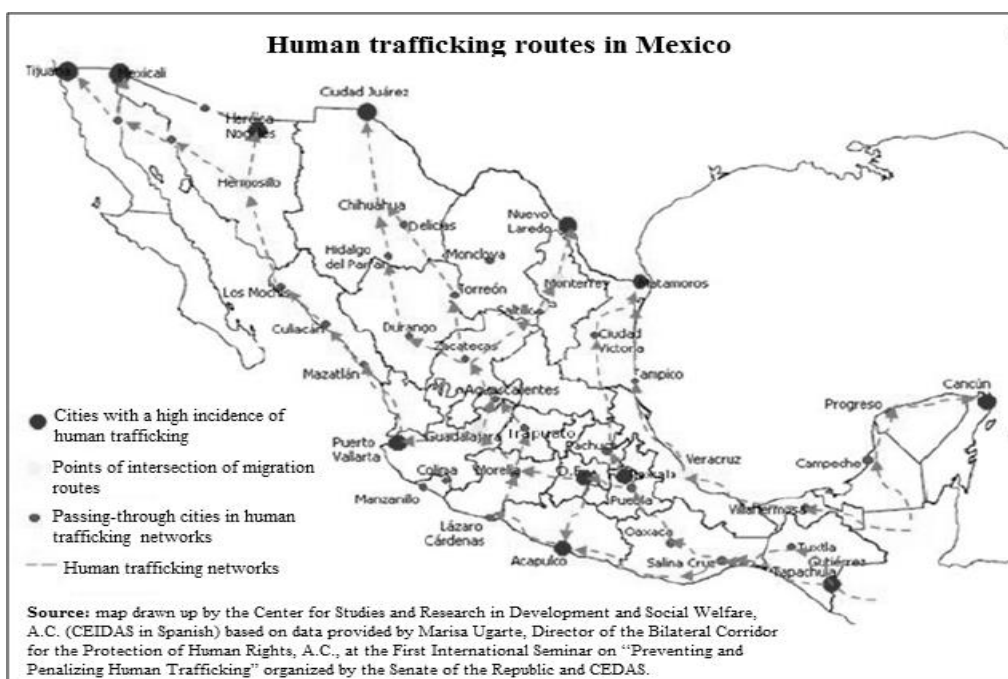
Table 2

Fighting the Crime of Human Trafficking at State Level	
State	Measures
Aguascalientes	Criminalizing the publication of advertisements for sexual services (05/2011)
Chiapas	Search warrant operations (as of 2010) First sentence passed against a woman (02/2011) Proposal for a Mesoamerican Pact with Honduras, Salvador and Guatemala
Coahuila	Legislative initiative on the matter (12/2010)
Colima	Training for taxi drivers to detect human trafficking (03/2011) Legislative initiative on the matter (05/2010)
Distrito Federal	Website to report cases of trafficking: www.unidoshacemosladiferencia.org (10/2010)
Durango	Draft legislation on the matter (04/2011)
Estado de México	Specialized public prosecutor for intentional crimes against women and human trafficking (09/2010) Legislative initiative on the matter (04/2011)
Guerrero	Legislative initiative on the matter (04/2010)
Hidalgo	Prohibition of publishing advertisements for sexual services in the media (06/2011)
Michoacán	Legislative initiative on the matter (09/2010)
Tlaxcala	Program "Tlaxcala dice no a la trata de Personas" (04/2011)

Note: There is no information available for the other states.

Source: Prepared by the author with information from the Congress of Coahuila and the newspapers *Plataforma de Aguascalientes*, *NSS Chiapas*, *Zócalo*, *El Arsenal*, *Evolución R*, *Durango al día*, *Portal La Policiaca*, *Excélsior*, *Jornada*, *Ajuua*, *Ultra Noticias*.

Map 2



Taken from: CNDH [National Human Rights Commission] and CEIDAS, 2009, page 65.

Table 3

■	CASES OF PROTECTION AND ASSISTANCE ATTENDED TO BY MEXICO'S WORLD CONSULAR NETWORK ^a													
	2004 ^a		2005 ^a		2006 ^a		2007 ^a		2008 ^a		2009 ^a		2010 ^a	
AREAS ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a	UNITED-STATES ^a	REST-OF-THE-WORLD ^a
HUMAN RIGHTS ^a	292 ^a	29 ^a	264 ^a	13 ^a	195 ^a	10 ^a	239 ^a	9 ^a	422 ^a	7 ^a	479 ^a	7 ^a	456 ^a	9 ^a
CRIMINAL ^a	18,269 ^a	228 ^a	14,622 ^a	296 ^a	16,397 ^a	268 ^a	16,824 ^a	255 ^a	19,782 ^a	247 ^a	19,090 ^a	319 ^a	18,645 ^a	1,026 ^a
MIGRATIONS ^a	49,413 ^a	245 ^a	42,959 ^a	165 ^a	51,103 ^a	181 ^a	63,345 ^a	159 ^a	58,389 ^a	141 ^a	56,900 ^a	285 ^a	67,972 ^a	582 ^a
LABOURAL ^a	2,378 ^a	12 ^a	2,963 ^a	10 ^a	2,264 ^a	9 ^a	2,117 ^a	10 ^a	2,140 ^a	7 ^a	2,058 ^a	37 ^a	2,299 ^a	510 ^a
CIVIL ^a	5,367 ^a	148 ^a	6,481 ^a	130 ^a	6,412 ^a	108 ^a	6,709 ^a	44 ^a	7,992 ^a	66 ^a	7,395 ^a	92 ^a	11,468 ^a	187 ^a
ADMINISTRATIVE ^a	27,993 ^a	446 ^a	32,510 ^a	453 ^a	28,574 ^a	400 ^a	29,352 ^a	232 ^a	28,486 ^a	369 ^a	24,163 ^a	658 ^a	22,652 ^a	3,013 ^a
TOTAL^a	103,717^a	1,108^a	99,799^a	1,067^a	104,945^a	976^a	118,586^a	709^a	117,2117^a	837^a	110,085^a	1,298^a	123,492^a	5,327^a

Source: SRE, Dirección General Adjunta de Protección-DGPME.

Cited from: SER Website, Trámites y Servicios, Asistencia y Protección Consular, Documentos y Acciones de la DGPME, Estadísticas, Casos de Protección atendidos por la Red Consular de México en el Mundo, 2004-2010, www.sre.gov.mx/images/stories/dgpme/estadisticas/sip_2010ambito.pdf, consultado 19/03/11.

Table 4

Modules and Shelters for Assisting Repatriated Unaccompanied Migrant Minors and Adolescents				
Northern Border				
State	Municipality	Module	Shelter DIF	Shelter OSC
Baja California	Mexicali Tijuana	1	1	2
		1	2	2
Chihuahua	Ciudad Juárez Ojinaga	1	2	2
		-	1	-
Coahuila	Acuña PiedrasNegras	1	1	-
		1	-	2
Nuevo León	Monterrey	-	1	-
Sonora	Agua Prieta	1	1	1
	Nogales	1	1	-
	San Luis Río Colorado	1	-	-
Tamaulipas	Matamoros	-	1	-
	Nuevo Laredo	1	1	-
	Reynosa	1	1	-
Northern Border Total		10	13	9
Southern Border				
Chiapas	Tapachula	1	1	2
Tabasco	Tenosique	1	-	-
Southern Border Total		2	1	2
Transit Places				
Oaxaca	Juchitán	1	-	-
Veracruz	Acayucan	1	-	-
Transit Places Total		2	-	-

Source: Website of the National DIF, Programs, Protection of Children, Prevention Strategies and Assistance to Repatriated Unaccompanied Migrant Minors and Adolescents, dif.sip.gob.mx/?page_id=510, accessed on 15/02/11.

Table 5

Assistance for Repatriated Unaccompanied Migrant Minors and Adolescents Detailed by State Entity 2007-2010				
State/Municipality	2007	2008	2009	2010
Baja California	5,216	4,690	3,691	2,199
Mexicali	1,027	877	699	604
Tijuana	4,189	3,813	2,992	1,595
Chihuahua	3,226	1,683	1,268	1,222
Ciudad Juárez	3,153	1,571	1,153	1,075
Ojinaga	73	112	115	347
Coahuila	1,253	1,224	963	829
Acuña	326	284	241	126
Piedras Negras	927	940	722	703
Nuevo León	110	145	132	105
Monterrey	110	145	132	105
Sonora	7,352	7,270	7,622	6,385
Agua Prieta	847	1,142	1,312	943
Nogales	5,565	5,826	6,024	5,213
San Luis Río Colorado	940	302	286	229
Tamaulipas	3,721	4,165	3,275	2,828
Matamoros	701	650	488	471
Nuevo Laredo	1,624	1,938	1,418	1,042
Reynosa	1,396	1,577	1,370	1,315
Chiapas	488	467	272	3,022
Tapachula	488	467	272	3,022
Oaxaca				46
Juchitán	-	-	-	46
Tabasco				4
Tenosique	-	-	-	4
Veracruz				8
Acayucan	-	-	-	8
Total	21,366	19,644	17,224	16,648

Source: SRE, 2011, pp. 4-5.

Table 6 (A)

Institutions with Migration-related Programs		
Secretariat of Public Education		
Program	Objectives	Results
Basic Education for Girls and Boys from Migrant Families of Agricultural Day Laborers	To strengthen educational assistance for the children of agricultural day laborers at the preschool, elementary and secondary levels	Operational in 25 federal institutions In 2009, 26,722 students were served
Mexico-United States Teacher Exchange	To meet the summer demand for bilingual teachers in the US school districts that receive students of Mexican origin	
Mexican teachers Recruitment ¹	To place Mexican teachers in US educational institutions with high numbers of Mexican/Mexican-origin children for teaching during the regular academic periods	
Book donation for Mexican Children in the United States	To donate textbooks to schools, school districts, libraries, and institutions that take care of Mexican/Mexican-origin children in the US	
Accreditation of Secondary Education ²	To assess and certify knowledge equivalent to that of the high school level—self-taught or acquired through working experience—possessed by Mexicans over 21 years of age	
Open and Distance Secondary School	To offer open and distance high-school level study courses	
Secretariat of Social Development		
Program 3x1	To support the initiatives of Mexicans living abroad in order to provide funds for social impact projects. It operates with contributions from migrant clubs or federations, the federal, state, and municipal governments, which triple the amounts contributed by the migrants	In 2009, operational in 567 municipalities of 28 states In 2010, 2,488 projects were approved and 890 migrant clubs participated
Assistance for Agricultural Day Laborers	To contribute directly to improving the living conditions of agricultural day laborers by providing food, education, training, and access to basic services and housing	In 2009, 525,492 persons benefited from the program in 410 municipalities of 24 states.

[Notes and sources on page 543]

Table 6 (B)

Institutions with Migration-related Programs		
Secretariat of Labor and Social Security		
Program	Objectives	Results
Internal Occupational Mobility ¹	To provide information about working opportunities, economic support for mobility and training	In 2010, 76,540 persons benefitted from this program
Working Repatriated Migrants ²	To support migrants repatriated from the US in their search for jobs in bordering states or in their place of residence	In 2010, 776 repatriated migrants received support
Secretariat of Communications and Transports		
Telecomm-Telégrafos: Giro Paisano (fellow countryman remittances)	To facilitate sending money from the United States to Mexico through contracts between the most important operators of remittances in the US and Telecomm-Telégrafos	
Information and Communication Technologies in favor of Migrant Women	To bring the information and communication technologies closer to migrant women and their migrant families, basically through Internet (www.muermigrante.gob.mx)	
Secretariat of Agriculture, Cattle Farming, Rural Development, Fisheries, and Food		
Shared-Risk Trust Fund: project for strengthening the economic potential of Migrants and the Productive Use of the Remittances “Fellow Countryman Invest in your Land”	To stimulate productive remittance growth among migrants or their families in their communities of origin, by encouraging the creation of enterprises in the sectors of agro-industry, protected agriculture, organic production and renewable energy	

[Notes and sources on page 543]

[Notes to Table 6(A)]

¹Educational Institutions located in school districts in California, New Mexico, Utah, Illinois and Oregon in the United States.

²The accreditation process is carried out in the cities of Atlanta, Chicago, Dallas, Denver, Los Angeles, McAllen, Miami, Minneapolis, New York, Phoenix, Seattle and Tucson in the United States.

Source: prepared by the author using DOF information, 2009, December 29, pp. 50-51; CONEVAL, 2010 b, p. 12; website for Educational Assistance to Mexicans Abroad, Mexico-United States Teacher Exchange Program, Mexican Teachers Recruitment Program, Book Donation Program for Mexican Children in the United States, Accreditation of Secondary Education Program, www.mexterior.sep.gob.mx/2_pimmeu.htm, www.mexterior.sep.gob.mx/2_pcmm.htm, www.mexterior.sep.gob.mx/2_pdlm.htm, www.mexterior.sep.gob.mx/2_ap.htm, www.mexterior.sep.gob.mx/2_pd.htm, retrieved 30/03/11; website of Micro-regions, Programs, Program 3 x 1, Description, www.microrregiones.gob.mx/p3x1.php?func=0, retrieved 23/03/11; CONEVAL, 2010 c, p. 14; Secretariat of Social Development, 2011, pp. 59-60; DOF, 2010, December 31, pp. 3-8.; National Commission of Evaluation of the Policy for Social Development, CONEVAL, 2010 a, p. 15.

[Notes to Table 6 (B)]

¹Aimed at agricultural day workers over 16 years of age or people with skills to perform in the industrial or services sector.

²Aimed at returnees listed on the events of repatriation list of the INM [National Institute of Migration] or the consulates.

Source: Prepared by the author with information from the website of the Ministry of Labor and Social Welfare, Conoce la STPS, Areas of assistance, General Coordination of the National Service of Employment, Internal Labor Mobility, Working returnees www.stps.gob.mx/bp/secciones/conoce/areas_atencion/areas_atencion/servicio_empleo/movilidad_laboral.html, www.stps.gob.mx/bp/secciones/conoce/areas_atencion/areas_atencion/servicio_empleo/repatriados_trabajando.html, retrieved on 29/03/11; Portal of Employment, Statistics of the labor market, Information by State, Basic information, Federal entity, National, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_4E94D72A93F3AC63FA2121C7BDEAAFAA00720000/filename/302_0162.xls, retrieved on 29/03/11; Telecomm-Telégrafos website, Who we are, Telegraph services, Telegraph money order 2010, Giro Paisano and Alterna network, www.telecomm.net.mx/index.php?option=com_content&=article&id=80&Itemid=2 retrieved on 14/04/11; SRE, 2010 b, p. 20; FIRCO website, Projects Project to Strengthen the Economic Potential of Migrants and the Productive Use of the Remittances Paisano Invest in your Land!, www.firco.gob.mx/proyectos/migrantes/Paginas/migrantes_01.aspx, retrieved on 04/04/11.

Table 6 (C)

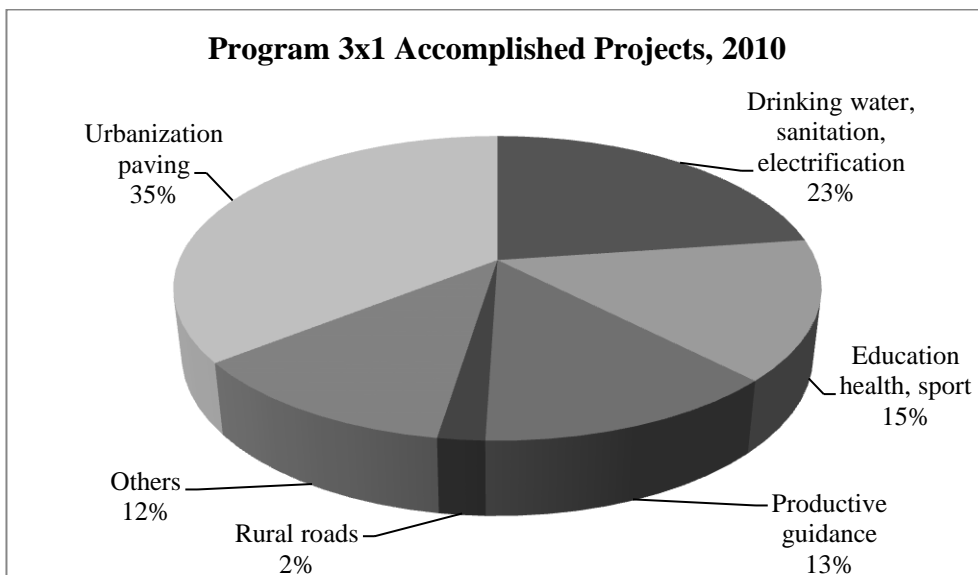
Institutions with Migration-related Programs		
National Commission for the Development of Indigenous Peoples		
Program	Objectives	Results
Project for Assistance to Displaced Indigenous People	To provide resources for the relocation or return of indigenous populations displaced by violent actions, armed conflicts, human rights violations, and religious, political, cultural or ethnical intolerance	In 2009, 1,094 families, settled in 54 municipalities, were served by several different entities
Program of Productive Organization for Indigenous Women	To improve the living conditions of indigenous women through the development of productive projects. This program supports migrant indigenous women with at least 3 years of residence in the community	
Program of Coordination for the Support to Indigenous Production	To improve the income of organized indigenous producers, including migrants, through the generation of sustainable productive projects	
Program for the Promotion and Development of the Indigenous Cultures	To rescue and strengthen the cultural heritage of indigenous peoples and communities through the projects and initiatives of traditional, cultural or migrant organizations	
Banco de México (Central Bank)		
“Straight to Mexico” (Directo a México)	To transfer money from bank accounts in the US to accounts in Mexico, or by cash pickup in the telegraph offices at TELECOMM-TELEGRAPH	
Banco del Ahorro Nacional y Servicios Financieros (National Savings Bank and Financial Services)		
International Remittances	To pay money transfers in Mexico, in cash or by depositing the money in a savings account	In 2010, over 500 million dollars were transferred
Federal Attorney’s Office for Consumer Protection		
Who is who in remittances	To provide guidance for the users of money transfer servicers, by publishing weekly information about commissions, delivery time, amounts in pesos, and payment offices in Mexico for 28 offices located in 9 North American cities	

Table 6 (C) (continued)

National Commission for the Protection and Defense Of Financial Services Users		
Remittance Calculator	To provide comparative information on the cost of remittances at different banking institutions or money transfer agencies, as well as the location of the offices nearer both the sender and the receiver, through the service online: portalif.condusef.gob.mx:8060/Remesamex/home.jsp	
Federal Electoral Institute		
Strategic Plan for the Vote of Mexicans Residing Abroad in the 2011–2012 Federal Electoral Process	To augment the number of Mexicans voting abroad by promoting electoral participation and the simplification of procedures to register as voters living abroad	
Mexican Institute of Social Security		
Social Security for Mexicans Abroad	To allow annual inscription for the services offered by the Institute to Mexican citizens living in the United States	

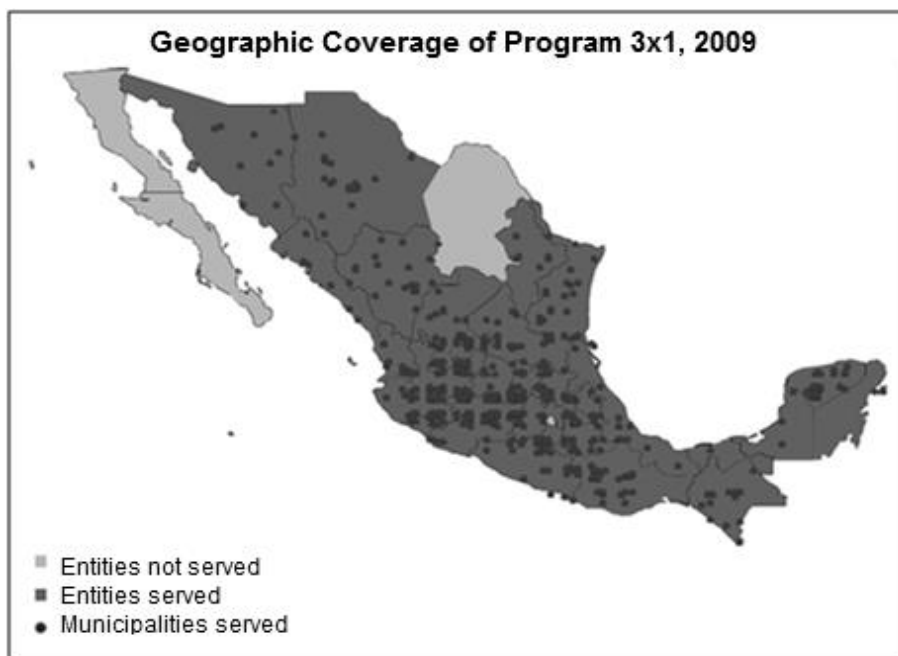
Source: prepared by the author with DOF [Official Journal of the Federation] information, 2006 June 15, p. 83; National Commission of Evaluation of the Policy for Social Development, CONEVAL, 2010 d, pp. 14-15; DOF, 2011, February 4, pp. 63-64, 72, 93; Federal Electoral Institute, 2010, pp. 1, 4-5; website of the Mexican Institute of Social Security, procedures and services, services, Mexicans abroad, www.imss.gob.mx/servicios/mexicanos/index.htm, accessed 18/04/11, website direct to Mexico, about direct Mexico, www.directoamexico.com/quees.html, retrieved 23/03/11; website of BANSEFI, products and services, people, services, remittances, international remittances, www.bansefi.gob.mx/prodyserv/personas/servicios/remesas/Paginas/Remesasinternacionales.aspx, consulted on 14/04/11; Federal Attorney's Office for the Consumer, 2008, pp. 4-5; Website of IME [Institute of Mexicans Abroad], Our Programs, Remittances, Remittance Calculator, www.ime.gob.mx/index.php?option=com_content&view=article&id=48Itemid=382&lang=es, consulted on 23/03/11.

Chart 1



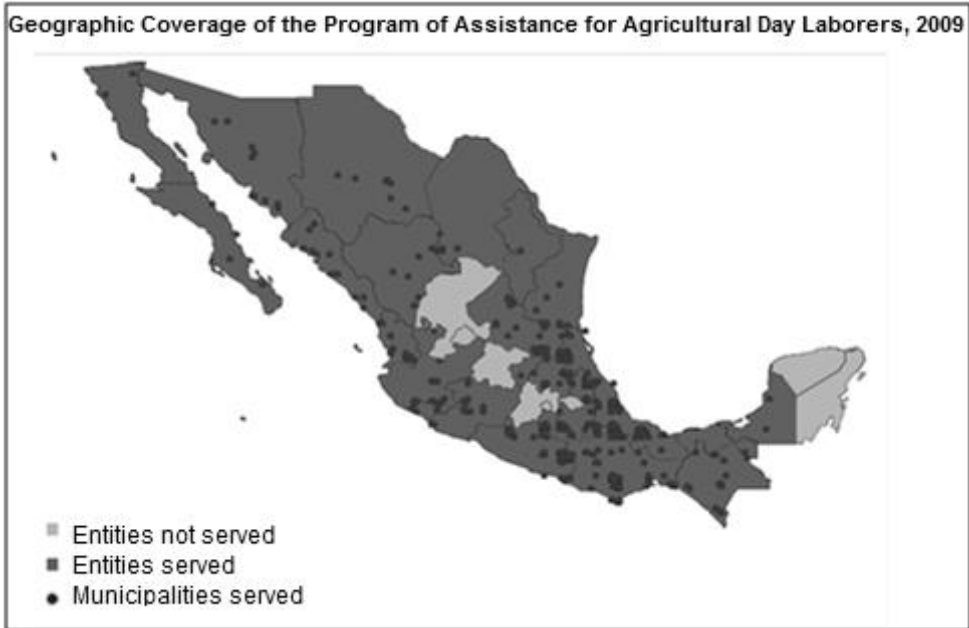
Source: prepared by the author with data from the Secretariat of Social Development, 2011, pp. 569-60

Map 3



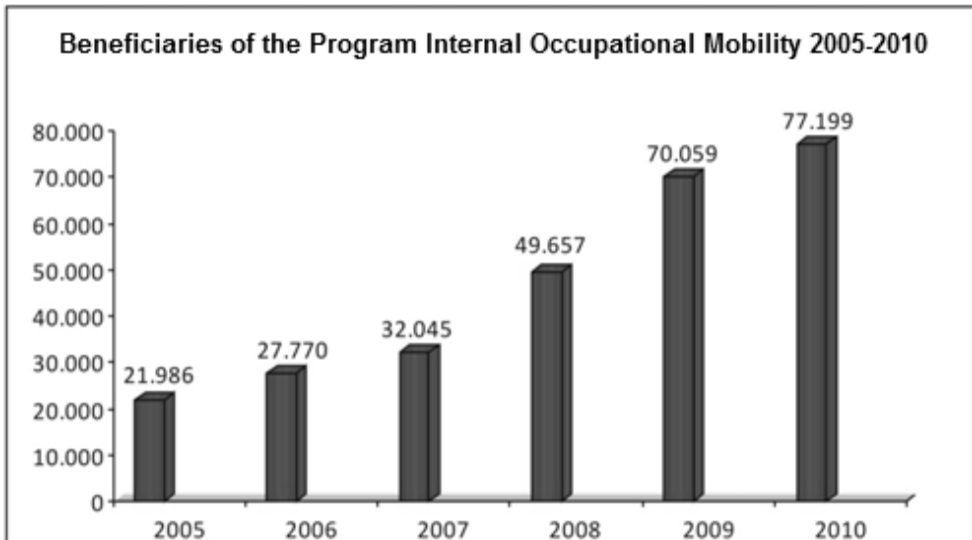
Source: CONEVAL, 2010 c, p. 15.

Map 4



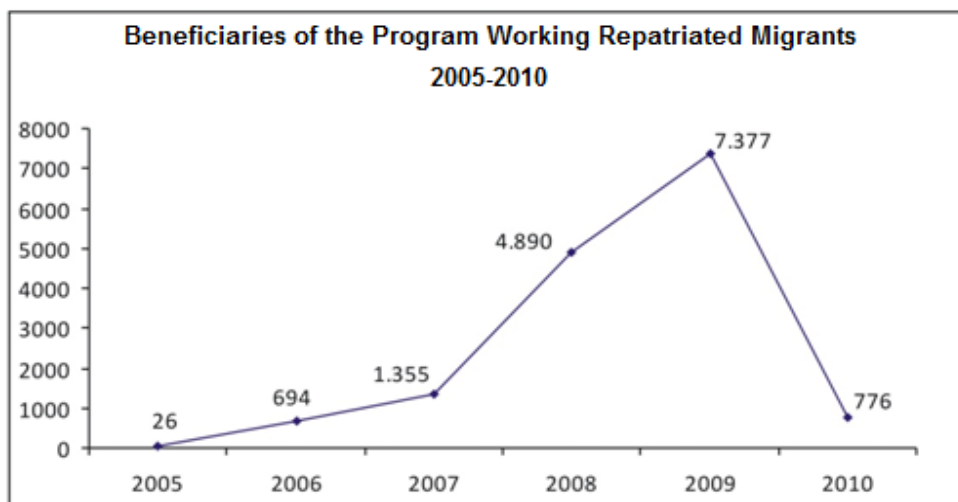
Source: CONEVAL, 2010 a, p. 16.

Chart 2



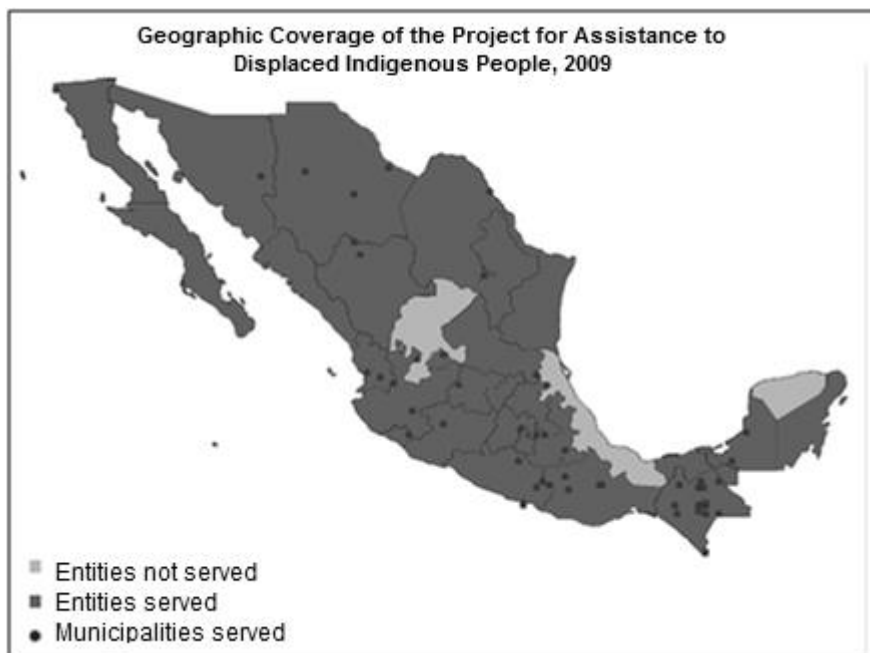
Source: Prepared by the author with data from Portal of Employment, Statistics of the Labor Market, information by Federal Entity, Historical, National, National Employment Service, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_31957946283D8894C62568243C0EF7F3008A0000/filename/302_0736.xls, accessed on 03/29/11.

Chart 3



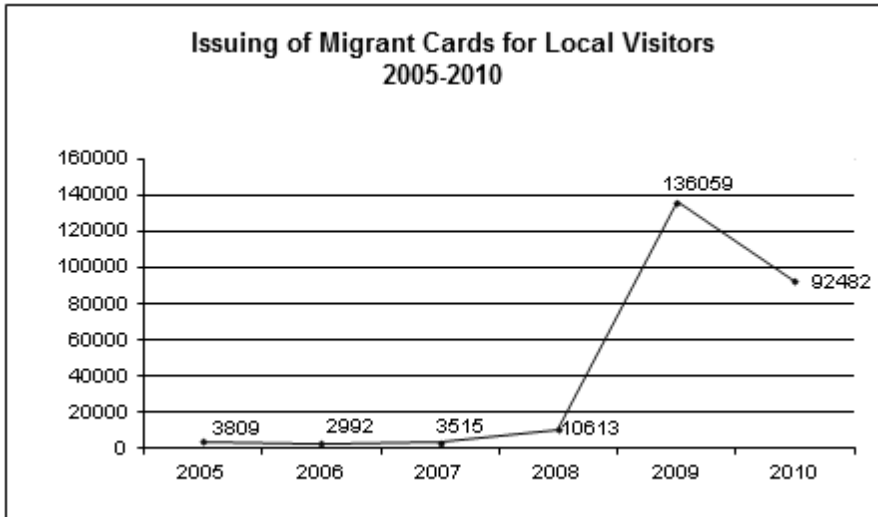
Source: Prepared by the author with data from Portal of Employment Statistics of the labor market, Information by federal entity, historical, National, National Employment Service, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_31957946283D8894C62568243C0EF7F3008A0000/filename/302_0736.xls, accessed ON 03/29/11.

Map 5



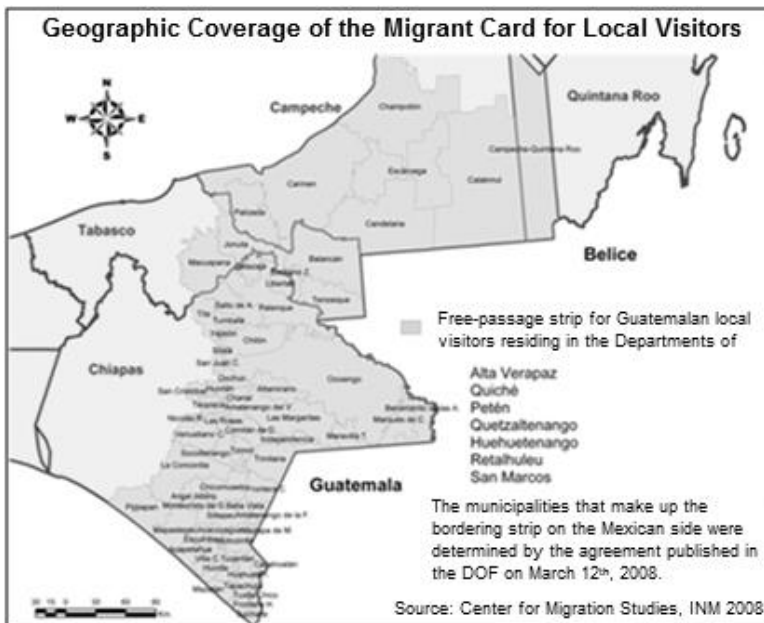
Source: CONEVAL, 2010 d, p. 15.

Chart 4



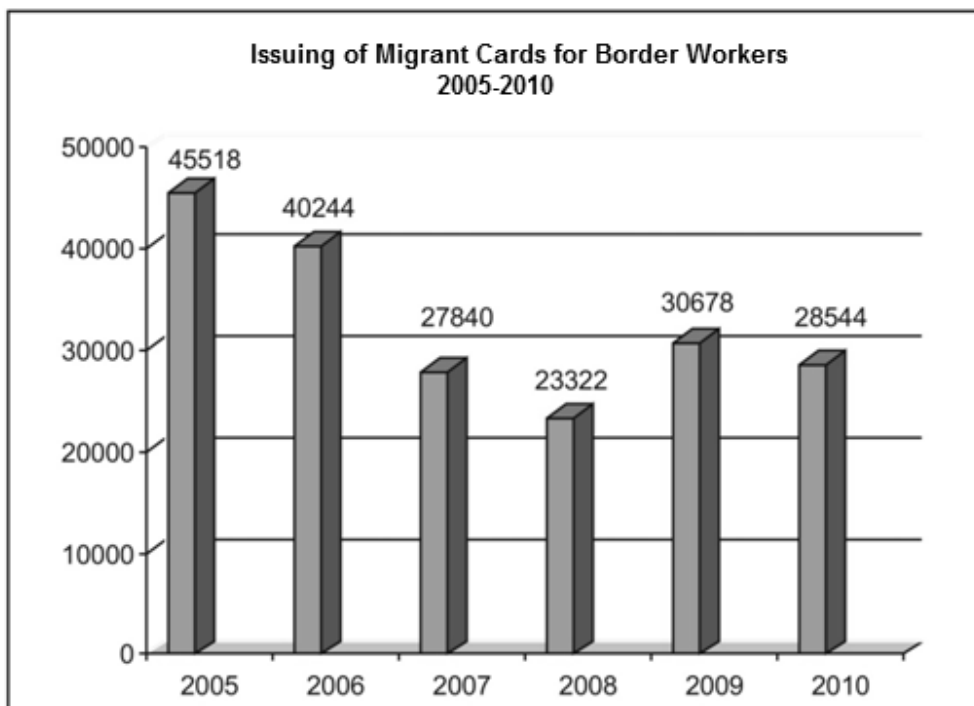
Source: Prepared by the author with INM data, 2006, p. 36; 2007, p. 36; 2008, p. 23; 2009a, p. 23; 2009b, p. 61; 2010, p. 168.

Map 6



Taken from the website of the INM, Migratory Forms, Agreement published in the Official Journal of the Federation FMVL, www.inami.gob.mx/static/Formas_Migratorias/pdf/FMVL.pdf, consulted on 24/03/11.

Chart 5



Note: From 2005 to 2007 the Migrant Card was called Agricultural Visitor Migrant Card.

Source: Prepared by the author with INM data, 2006, p. 36; 2007, p. 36; 2008, p. 23; 2009a, p. 23; 2009b, p. 73; 2010, p. 171

Table 7

Protection Actions Carried Out by Migrant Protection Groups (Beta Groups) 2005-2010						
Concept	2005	2006	2007	2008	2009	2010
Migrants rescued	5,839	7,945	6,231	3,166	3,753	4,163
Migrants injured or wounded and mutilated	1,626	813	577	611	737	794
Localized lost Migrants	140	149	158	123	168	190
Social Welfare Services for Migrants ¹	143,563	109,720	107,032	144,119	213,693	186,587
Assistance and legal consultancy for migrants	320	236	111	144	306	302
Migrants protected from criminal behavior	132	112	138	35	N/A	N/A
Migrants counseled ²	769,056	630,112	301,063	204,846	230,621	226,150
Repatriated Migrants Assisted ³	120,002	112,288	74,906	82,913	127,916	125 949

¹ Includes one or more of the following supports: food, shelter, minor medical care, transfers to hospitals for major medical attention and/or advice on various administrative procedures.

² This includes migrants who received verbal guidance about the physical risks they were exposed to and about their human rights. In addition, a booklet or leaflet with this information might have been handed to them.

³ The figures include Mexican migrants returned from the United States who received medical, social and/or legal assistance. N/A means not available).

Source: prepared by the author with INM data, 2006, p. 60; 2007, p. 60; 2008, p. 52; 2009 a, p. 94; INM, Monthly Bulletin of Migration Statistics 2009, Mexico, 2009 b, p. 73; 2010, p. 192

**Diagram 1. Legislative Power Committees (61st Legislature)
dealing with migration issues**

Congress of the Union	House of Representatives	<ul style="list-style-type: none"> - Committee of Population, Borders and Migration Matters (27 Representatives) 2 minutes, 14 initiatives and 12 points of agreement - Special Committees: - Attention to Southern border affairs Fight against human trafficking Tracking of funds contributed by former Mexican Migration
	Senate	<ul style="list-style-type: none"> - Committee of Bordering Affairs-Northern Zone (3 senators) 26 agreement points - Committee of Bordering Affairs-South (4 senators) 5 initiatives and 9 agreement points - Committee of Foreign Affairs (14 senators) 1 initiative Committee of Foreign Affairs-North America (9 senators) 6 agreement points - Committee of Population and Development (4 senators) 5 minutes, 17 initiatives and 4 agreement points

Source: prepared by the author with information from the House of Representatives website, Ordinary Committees; Special, sitl.diputados.gob.mx/LXI_leg/listado_de_comisioneslxi.php?tct=1, consulted on 27/05/11, sitl.diputados.gob.mx/LXI_leg/listado_de_comisioneslxi.php?tct=2, consulted on 20/04/11 House of Representatives website, Committees, Senate website, Committees, Ordinary, www.senado.gob.mx/index.php?ver=int&mn-41, consulted on 27/05/11

Table 8

Migration Issues Referred to the Committee of Population, Borders, and Migration Matters, House of Representatives, 61st Legislature (2009–2012)	
Minutes	
Issues	Status
Obligation of the government to address complaints from migrants in the field of human rights, ensure access to the administration of justice, help in cases of disaster and provide medical care when life is at risk, regardless of migration status	Approved
Migration Law	Approved
Initiatives	
Issues	Status
Law on Refugees and Complementary Protection	Approved
Incorporating the definition of migrant worker to the General Law of Population	Rejected
Creating groups for the protection of migrants and trans-migrants from Central and South America	Rejected
Powers of the Secretary of Government with regard to the migration of Mexicans	Rejected
Training all public servants who work with migrants	Rejected
Creating groups for the protection of migrant and trans-migrants	Rejected
Law for the Protection of the Rights of Migrant Workers and their Families	Pending
Respecting and protecting the human rights of foreigners held in migrant centers, as well as in cases of expulsion, repatriation, arrest, transfer and accommodation	Pending
Adding a chapter on the rights of migrant and undocumented transmigrants	Pending
Guaranteeing rights to foreign nationals detained in migrant holding centers	Pending
Protecting and guaranteeing a dignified, humane treatment for all migrants and transmigrants regardless of their migration status	Pending
Law of Protection and Support for Migrants and their Families	Pending
Transmigrant visa	Pending
Prohibiting migration verification and surveillance actions on the part of non-authorized institutions	Pending
Creating specific groups for the protection of migrant children	Pending
Creating a National Commission for Migrants	Pending
Points of Agreement	
Issues	Status
Strengthening state agencies for assisting migrants	Approved
Respecting the human rights of Mexican migrants who return for holiday seasons	Approved
Strengthening public policies of integral assistance for Mexican migrants deported to bordering cities	Approved
Coordinating the actions of states and competent agencies to achieve the objectives of the human repatriation program	Approved
To abide by and follow the recommendations issued by the World Forum on Migration and Development	Approved

Source: Prepared by the author with data from the Committee on Population, Borders and Migration Matters of the House of Representatives, House of Representatives, Committees, Ordinary, Committee on Population, Borders and Migration Matters, Returned Matters, sitl.diputados.gob.mx/LXI_leg/cuadro_asuntos_por_comisionlxi.php?comt=33, consulted on 27/05/11.

Table 9

Points of agreement on migration issues referred to the Committee on Border Affairs, North Zone, Senate, 61st Legislature (2009–2012)	
Issues	Status
Protesting before U.S. migration authorities for the events resulting in the path of a Mexican national	Approved
Exhorting the State of Arizona to veto initiative SB1070	Approved
Rejecting the announcement of the Sheriff in Maricopa County, Arizona, about creating a platoon for operations against irregular migration	Approved
Redoubling efforts to ensure the protection of fellow citizens in the United States	Approved
Fulfilling the agreement that sets forth the rules for the functioning of the National Institute of Migration holding centers	Approved
Increasing surveillance actions at security checkpoints and immigration controls	Approved
Holding a forum of discussion on migration	Approved
Investigating the attack to Casa del Migrante in Saltillo, Coahuila	Approved
Increasing surveillance actions on migrant routes	Approved
Ensuring that public agencies and civil society organizations work in the promotion and defense of migrant human rights	Approved
Condemning the murder of 72 migrants in San Fernando, Tamaulipas	Approved
Appearance in court of the Commissioner of the National Institute of Migration in the case of acts against migrants in Chautites, Oaxaca	Approved
Strengthening monitoring and enforcement of the rights of repatriated children	Approved
Spreading the program Mi Casa en México	Sent to another committee
Requesting advisory opinion from the Inter-American Court of Human Rights with regard to violations of human rights resulting from the SB1070 law approved in Arizona, United States	Sent to another committee
Reporting on the investigation of those responsible for the massacre of 72 migrants in San Fernando, Tamaulipas	Pending
Reporting on the disappearances of Central American migrants in Mexican territory	Pending
Program Legislador al Cuidado del Paisano 2010	Pending
Appearance in court of the Commissioner of the National Institute of Migration	Pending
Sufficient resources for migrant protection Beta Groups	Pending
Fourth Meeting of the World Forum on Migration and Development	Pending
Strengthening criteria for the migration of minors	Pending
Reporting on the status of unaccompanied repatriated migrant minors	Pending
Reporting assistance given to undocumented minors in Mexico's southern border	Pending
Explaining migrant facilitating measures to foreigners with US visas	Pending

Source: Prepared by the author with data from the Committee on Border Affairs-North Zone-of the Senate, Senate of the Republic, Committees, Ordinary, Committee on border Affairs North zone, points of agreement and migration, www.senado.gob.mx/comisiones/LX/fronterizosnorte/content/pto_acuerdo/index_puntos.htm, www.senado.gob.mx/comisiones/LX/fronterizosnorte/content/migracion/index_migracion.htm, consulted 27/05/11.

Table 10

**Migration issues presented by the Foreign Affairs Committee -Senate-
61st Legislature (2009-2012)**

Issues	Initiatives	Status
Law for the Protection of Mexicans Abroad		Pending

Source: Prepared by the authors with data from the Foreign Affairs Committee of the Senate, Senate of the Republic, Committees, Ordinary, Foreign Affairs, Legislative Work, Initiatives, www.senado.gob.mx/comisiones/LX/relext/content/iniciativas/iniciativas_index.htm, consulted on 27/05/11

Table 11
**Points of agreement on migration issues referred to the Committee on Border
Affairs, North Zone, Senate, 61st Legislature (2009–2012)**

Issues	Status
Protesting before U.S. migration authorities for the events resulting in the path of a Mexican national	Approved
Exhorting the State of Arizona to veto initiative SB1070	Approved
Rejecting the announcement of the Sheriff in Maricopa County, Arizona, about creating a platoon for operations against irregular migration	Approved
Redoubling efforts to ensure the protection of fellow citizens in the United States	Approved
Fulfilling the agreement that sets forth the rules for the functioning of the National Institute of Migration holding centers	Approved
Increasing surveillance actions at security checkpoints and immigration controls	Approved
Holding a forum of discussion on migration	Approved
Investigating the attack to Casa del Migrante in Saltillo, Coahuila	Approved
Increasing surveillance actions on migrant routes	Approved
Ensuring that public agencies and civil society organizations work in the promotion and defense of migrant human rights	Approved
Condemning the murder of 72 migrants in San Fernando, Tamaulipas	Approved
Appearance in court of the Commissioner of the National Institute of Migration in the case of acts against migrants in Chauites, Oaxaca	Approved
Strengthening monitoring and enforcement of the rights of repatriated children	Approved
Spreading the program Mi Casa en México	Sent to another committee
Requesting advisory opinion from the Inter-American Court of Human Rights with regard to violations of human rights resulting from the SB1070 law approved in Arizona, United States	Sent to another committee
Reporting on the investigation of those responsible for the massacre of 72 migrants in San Fernando, Tamaulipas	Pending
Reporting on the disappearances of Central American migrants in Mexican territory	Pending
Program Legislador al Cuidado del Paisano 2010	Pending
Appearance in court of the Commissioner of the National Institute of Migration	Pending
Sufficient resources for migrant protection Beta Groups	Pending
Fourth Meeting of the World Forum on Migration and Development	Pending
Strengthening criteria for the migration of minors	Pending
Reporting on the status of unaccompanied repatriated migrant minors	Pending
Reporting assistance given to undocumented minors in Mexico's southern border	Pending
Explaining migrant facilitating measures to foreigners with US visas	Pending

Source: Prepared by the authors with data from the Committee of Border Affairs-South of the Senate, Senate of the Republic, Committees, Ordinary, Committee of South border Affairs, Issues submitted, www.senado.gob.mx/comisiones/LX/fronterizossur/content/asuntos_presentados/index_asuntos_presentados.htm, consulted on 27/05/11.

Table 12

Points of agreement on immigration issues referred to the Committee of North Zone Border Affairs Senate, 61st Legislature (2009–2012)	
Issues	Status
Expressing the rejection of the government of Mexico to the implementation of the migration laws under the program 287 (g) by the local and state United States authorities responsible for the enforcement of justice	Approved
Extending the mechanisms of consular support to the Middle East region of United States	Approved
Establishing communication with representatives of U.S. enterprises in Mexico to find out what they think about the negative effects of the construction of a border wall	Approved
Rejecting practices and behaviors demeaning for migrants	Approved
Rejecting the presentation in United States of initiatives that threaten individual migrant rights and the rights of their families	Approved
Urging the Governor of Arizona, USA, to veto the SB1070 initiative	Approved

Source: Prepared by the author with data from the Committee of North Zone Border Affairs of the Senate, Senate of the Republic, Committees, Ordinary, North America Foreign Relations, Legislative Work, Issues referred, Propositions with Points of Agreement, First Year 61st Legislature, www.senado.gob.mx/comisiones/LX/relextamericanoorte/content/trabajo/turnados/puntos/Registro_4.pdf, consulted on 27/05/11

Table 13

Migration issues referred to the Committee of Population and Development, Senate, 61st Legislature (2009–2012)	
Minutes	
Issues	Status
Law on Refugees and Complementary Protection	Approved
Promoting human rights training programs for migration personnel	Pending
Considering the view of the Secretariats of Health and Agriculture regarding the establishment of checkpoints in places of people in transit	Pending
Stating that the detention, transport, and accommodation of foreigners expelled or repatriated be carried out with respect to human rights	Pending
Law of Protection for Migrants and their Families	Pending
Addressing complaints in the field of human rights, ensuring access to the administration of Justice, assistance in case of disasters, and medical care when lives are at risk, regardless of the immigration status of foreigners	Sent to another committee
Initiatives	
Migration Law	
Providing specialized medical care for pregnant women, older adults, and children	
Assisting repatriated minors involved in illegal conducts abroad	
General Law for the Protection of the Rights of Minors	
Establishing the detention of foreigners as an exclusive power of the migration personnel and the federal police	
Incorporating the category of migrant worker	
Giving the migration category of local visitor to the nationals of neighboring countries regardless of their place of residence	
Guaranteeing that migration authorities receive information about international passengers before they enter or leave the country	
Guaranteeing the right to due process for foreigners detained in migration holding centers	
Giving foreigners who are economically-dependent relatives of migrants the opportunity to change their migrant status	
Establishing that foreigners with an irregular status are entitled to a dignified and fair treatment	
Encouraging the organization and participation of civil society in the provision of assistance to undocumented migrants	
Acknowledging the status of irregular migrants to foreigners that go deep into the country without documents	
Guaranteeing that Civil Registry authorities	
Ensuring that civil registration authorities do not refuse birth certificates to the children of undocumented foreigners	
Establishing that foreigners linked to a process for having been victims or witnesses of an illicit will have non-migrant status temporarily	
Not applying administrative fines to migrants who advance irregularly into the country	
Allowing undocumented foreigners to register their children under 18 years of age	
Pointing out that the purpose of human trafficking is to make profit, to distinguish it from the humanitarian work done by civil society organizations	
Points of Agreement	
Promoting the approval of the Migration Law	
Appearance in court of the Commissioner of the National Institute of Migration to explain this work strategy	
Explaining the country's position at the 4 th World Forum on Migration and Development	
Statement against various provisions of the rules for the functioning of migrant holding centers that are considered violations of human rights	

Source: Prepared by the author with information from the Senate website, Committees, Ordinary, Committee of Population and Development, Legislative Agenda, Points of Agreement, Initiatives, Minutes, 61st Legislature, www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=9&sm=1001&tp=PA&lg=61; www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=7&sm=1001&tp=I&lg=61, www.senado.gob.mx/content/sp/com/content/estatico/content/minisitios/PD/index.php?ver=8&sm=1001&tp=M&lg=61, consulted on 27/05/11.

Table 14

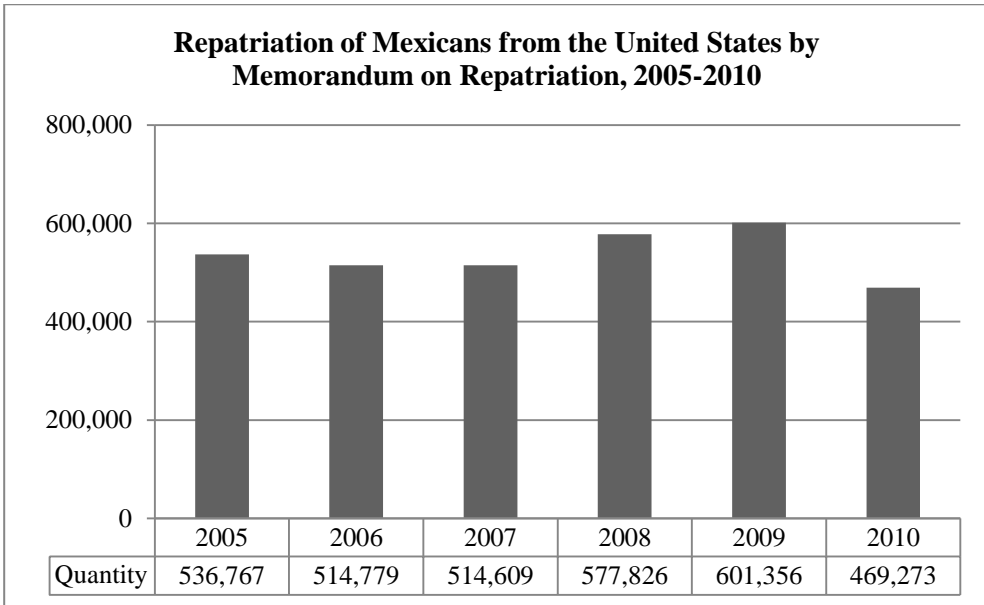
Migration Bilateral Agreements Signed By Mexico			
United States			
Agreement	Signing Date	Objectives	Results
Mérida Initiative	03/2007	To provide technical assistance for preventing and prosecuting human trafficking and for rescuing migrants at risk in the Mexican southern border, through the provision of equipment for telecommunications, search and rescue	In 2010, one million dollars was allocated to migrant protection groups (Grupos Beta) and 22 million dollars to information and systems management
Initiative of the Society for Nutritional Assistance	22/07/2004	To increase the access of Mexicans working in the United States to the nutritional programs of the Food and Nutrition Service (USDA)	
Agreement regarding occupational safety and health protection applicable to Mexican workers in the United States	21/07/2004	To promote the rights and well-being of Mexican workers regarding occupational safety and health at their places of work	
Agreement regarding laws and rules on salaries and working hours applicable to Mexican workers in the United States	21/07/2004	To promote the rights and well-being of Mexican workers regarding regulations on wages and working hours	
Memorandum of understanding on the safe, well-organized, dignified and humane repatriation of Mexicans	20/02/2004	To establish basic guidelines for the procedure of repatriation of Mexicans, respecting human rights and individual dignity	In 2010, 469,273 Mexicans were repatriated
Program of Voluntary Repatriation to the Interior ¹	2004	To reduce the number of Mexicans who die trying to enter United States territory through high risk areas, especially the Sonora-Arizona route	In 2010, 23,383 Mexicans joined the program
Committee for Border Health/Mexico-United States	07/2000	To learn about and tend to health problems at the border through information exchange, fundraising activities, and the promotion of programs in this field	
Consular Convention between the United States of Mexico and the United States of America	12/08/1942	To protect the nationals of the respective State	

¹ This applies in the summer season; transfer to the city of Mexico by air and to the communities of origin by land. The U.S. Government assumes the cost of repatriation.

Source: prepared by the author with information from Mexico's Government, 2007; website of the Merida Initiative, Documents of interest, Initiative Merida-Principal programs; www.iniciativamerida.gob.mx/work/models/IniciativaMerida/Resource/4/1/images/PDF/principales-programas-ant.pdf, consulted on 04/27/11; website of the Merida initiative, documents of interest, initiative Merida-Principal Programs 2010, www.iniciativamerida.gob.mx/work/models/IniciativaMerida/Resource/4/1/images/PDF/principales-programas.pdf, consulted on 02/06/11;

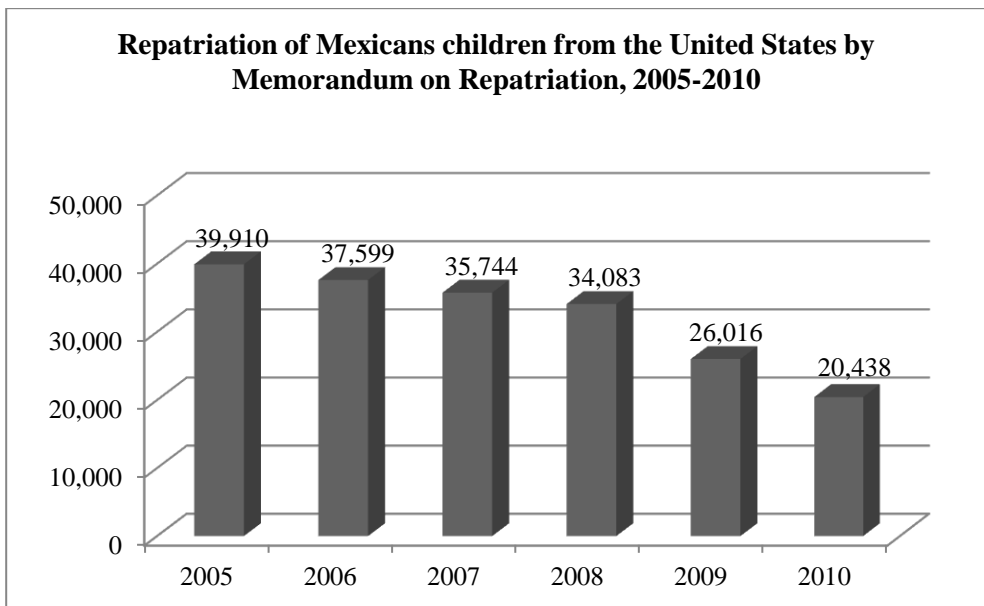
Initiative of the Society for nutrition assistance Mexico-USA (2004, July 22); Agreement between the Secretariat of Foreign Affairs of the United States of México and the Administration of Occupational Safety and Health of the Department of Labor of the United States of America regarding the occupational safety and health protection applicable to Mexican workers in the United States (2004, July 21); Letter of Understanding between the Secretariat of Foreign Affairs of the United States of Mexico and the Administration of Labor Standards of the Department of Labor of the United States of America concerning laws and regulations on wages and working hours applicable to Mexican workers in United States (2004, July 21); Memorandum of understanding on safe, orderly, dignified and humane repatriation of Mexican nationals (2004, February 20); Presidency of the Republic, 2010, p. 701; SRE, 2005; website of SRE, Procedures and Services, Assistance and Consular Protection, Documents and Actions of the DGPME, Statistics, Repatriations, Program of Voluntary Repatriation to the Interior 2004–2010, www.sre.gob.mx/images/stories/dgpme/estadisticas/prvi2004_2010.pdf, consulted on 19/03/11; website of the Committee for Border Health Mexico-United States, www.saludfronteriza.org.mx, consulted on 25/03/11; Consular Convention between the United States of Mexico and the United States of America (1942, 12 August).

Chart 6



Source: Prepared by the author with INM data, 2006, p. 64; 2007, p. 64; 2008, p. 56; 2009 a, p. 68; 2009 b, p. 108; 2010, p. 205

Chart 7



Source: Prepared by the author with INM data, 2006, p. 64; 2007, p. 64; 2008, p. 56; 2009 a, p. 68; 2009 b, p. 108; 2010, p. 205

Table 15

Program of Voluntary Repatriation to the Interior 2004 - 2010							
Sex	2004	2005	2006	2007	2008	2009	2010
Male	11,154	17,100	12,624	11,318	13,590	8,327	19,739
Female	2,917	3,492	2,724	2,546	4,874	2,234	3,644
Total	14,071	20,592	15,348	13,864	18,464	10,561	23,383

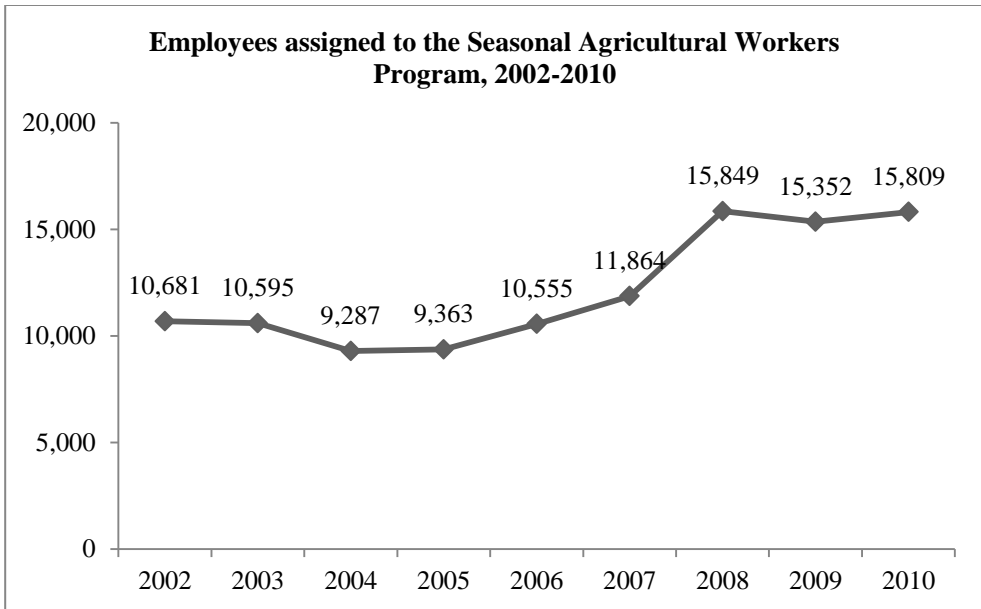
Source: Website of SRE, Procedures and Services, Assistance and Consular Protection, Documents and Actions of the DGPME, Statistics, Repatriations, Program of Voluntary Repatriation to the Interior 2004-2010. www.sre.gob.mx/images/stories/dgpme/estadisticas/prvi2004_2010.pdf, consulted on 19/03/11.

Table 16

Migration Bilateral Agreements signed by Mexico			
Canada			
Agreement	Signing Date	Objectives	Results
Program of Temporary Agricultural Workers	06/1974	To offer safe work in agricultural activities, together with adequate accommodation and wages as well as a fair, equitable treatment, to Mexican day-workers	2010, 15,809 Mexican participants, highlighting those from the State of Mexico, Tlaxcala, Puebla, Veracruz y Guanajuato

Source: Prepared by the author with information from the web site Migrant Health, Information, Program of Temporary Agricultural Workers, www.saludmigrante.salud.gob.mx/interior1/ptat.html, consulted on 29/03/11; Portal of Employment, Labor Market Statistics, Administrative Records, National Service of Employment, Employment Services, Program of Temporary Agricultural Workers, Historic, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_74C6FC3CBD87519B9CBB5F56EDB8BAA300920000/filename/Prog%20de%20Agricultic%20Migr%20Temp%20MC%desde%202001.xls, consulted on 03/29/11

Chart 8



Source: Prepared by the author with data from Portal of Employment, Statistics of the Labor Market, Information by State Entity, Historical, National, National Employment Service, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_31957946283D8894C62568243C0EF7F3008A0000/filename/302_0736.xls, Consulted on 03/29/11

Table 17

Participation of the States in the Program of Temporary Agricultural Workers, 2010	
State	Number of workers placed
Aguascalientes	30
Baja California	66
Baja California Sur	40
Campeche	199
Coahuila	129
Colima	149
Chiapas	474
Chihuahua	105
Distrito Federal	304
Durango	379
Guanajuato	988
Guerrero	372
Hidalgo	759
Jalisco	338
Estado de México	2,858
Michoacán	937
Morelos	783
Nayarit	286
Nuevo León	28
Oaxaca	708
Puebla	1,067
Querétaro	159
Quintana Roo	83
San Luis Potosí	408
Sinaloa	288
Sonora	164
Tabasco	229
Tamaulipas	129
Tlaxcala	1,877
Veracruz	1,005
Yucatán	241
Zacatecas	227
Total	15,809

Source: Direction of Labor Mobility-General Coordination of the National Service of Employment, STPS. Taken from Portal of Employment, Labor Market Statistics, Administrative Records, National Employment, Labor Linking Services, Program of Temporary Agricultural Workers, Historical, www.empleo.gob.mx/pv_obj_cache/pv_obj_id_74C6FC3CBD87519B9CBB5F56EDB8BAA300920000/filename/Prog%20de%20Trab%20Agric%20Migr%20Tem%20MC%202001.xlsxservicee, consulted on 03/29/11.

Table 18

Migration Bilateral Agreements Signed By Mexico		
Agreement	Signing Date	Objectives
Cuba		
Memorandum of understanding between the Government of the republic of Cuba and the Government of the United States of Mexico to Guarantee a Legal, Orderly and Safe migration Flow between the two countries	20/10/2008	Facilitate the regular transit of persons; strengthen mechanisms to prevent and combat illegal migration, human trafficking and associated crimes; protect the victims and punish the perpetrators of such crimes; establish the criteria for the return of migrants
El Salvador		
Memorandum of understanding between the Government of the United States of Mexico and the Government of the Republic of El Salvador to protect persons, especially women and minors who are victims of human trafficking	17/05/2005	Promote collaborative actions to protect women and minors victims of human trafficking, among them the training of civil servants, the analysis of the situation of victims, and the dissemination of information on the subject
Agreement between the Secretariat of Government of the United States of Mexico and the Ministry of Interior of the Republic of El Salvador for the Safe, Agile, and Orderly Repatriation of Salvadorian Migrants from Mexico	17/05/2005	Establish guidelines for the repatriation, respecting their human rights, of Salvadorians detained in Mexican territory
Plan of Action for the Cooperation between Mexico and El Salvador in Migration and Consular Protection Matters	09/01/2004	Maintain a more effective communication and collaboration between migration authorities and consular representations to search for people, assisting located and detained individuals, assisting injured migrants, victims of trafficking or vulnerable individuals, and informing potential migrants about the risks of irregular migration
Guatemala		
Letter of Commitment to Strengthen Cooperation in Migration Matters	2011	Develop a platform for information exchange to facilitate the reorganization of migration flows
Agreement between the Secretariat of Government of the United States of Mexico and the Ministry of Interior of the Republic of Guatemala for the Safe and Orderly Repatriation of Guatemalans, Salvadorians, and Hondurans on the Mexican-Guatemalan border	28/06/2005	Set elements to ensure the safe and orderly return of Guatemalans, Salvadorians, and Hondurans who have been arrested in Mexican territory. Repatriations are carried out every day of the week, notifying the Guatemalan authorities about places, time, bus numbers and list of passengers including names and nationalities
Agreement between the Secretariat of Government of the United States of Mexico and the Ministry of Interior of the Republic of Guatemala to Establish a Mexican-Guatemalan Border Committee of Health	12/05/2003	Identify, assess, and tend to the health problems of the population of the border area
Memorandum of understanding between Mexico and Guatemala regarding the human rights of Migrants	11/10/2002	Promote the training in human rights protection of the migration personnel through courses, seminars, workshops, information exchange, and spreading campaigns
Honduras		
Plan of Action for the Cooperation between Mexico and Honduras in Migration and Consular Protection Matters	24/01/2004	

[Source and footnotes on the next page.]

Note to Table 18 (see previous page)

Source: prepared by the author with information from *the Memorandum of Understanding between the Government of the Republic of Cuba and the Government of the United States of Mexico to Ensure, Safe, Orderly Legal Migration Flows between the two countries* (2008, October 20); *Memorandum of Understanding between the Government of the United States of Mexico and the Government of the Republic of El Salvador for the protection of persons, especially women and minors victims of trafficking* (2005, May 17); *Agreement between the Secretariat of Government of the United States of Mexico and the Ministry of the Interior of the Republic of El Salvador for the Safe, Agile and Orderly Repatriation of Salvadorian Migrants from Mexico* (2005, May 17); *Plan of Action for Cooperation in Migration Matters and Consular Protection between Mexico and El Salvador* (2004, March 9); *Letter of Commitment to Strengthen Cooperation in Migration Matters* (2011); *Agreement between the Secretariat of Government of the United States of Mexico and the Interior Ministry of the Republic of Guatemala for the Safe and Orderly Repatriation of Guatemalans, Salvadorans and Hondurans in the borders of Mexico and Guatemala* (2005, June 28); *Agreement between the Government of the United States of Mexico and the Government of the Republic of Guatemala to establish a Mexico-Guatemala Border Health Committee* (2003, May 12); *Memorandum of Understanding regarding the Human Rights of Migrants, between Mexico and Guatemala* (2002, October 11); *Plan of action between Mexico and Honduras for cooperation in Migration Matters and Consular protection* (2004, March 24).

Note to Table 19 [see next page]

¹ Through note 11/ugp, 13/01/1992, the Federation of Russia reported that it would continue with the exercise of the rights and obligations arising from the international agreements signed by the USSR.

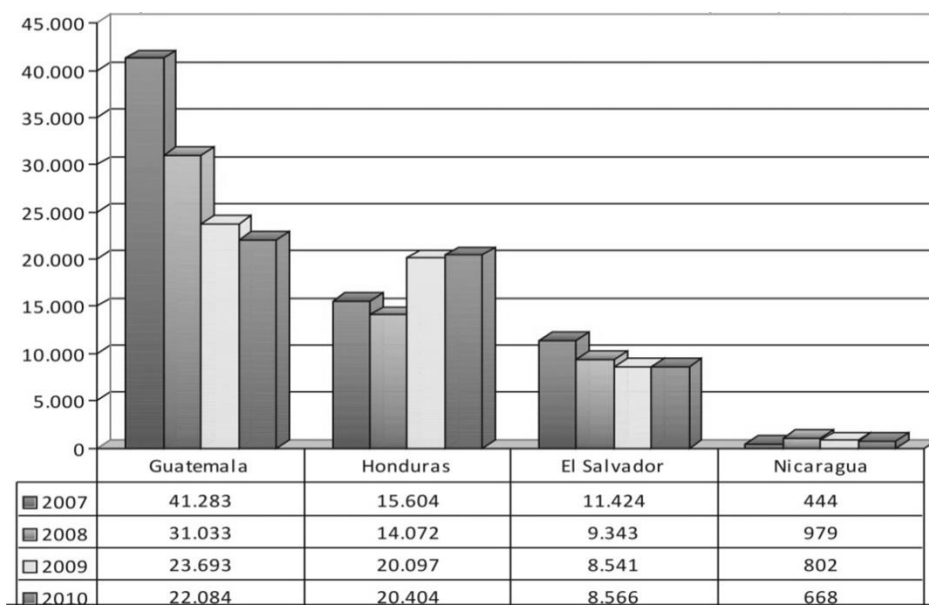
Source: Prepared by the authors with information from *the Consular Convention between the United States of Mexico and the People's Republic of Bulgaria* (1984, October 1); *Consular Convention between the United States of Mexico and the People's Republic of China* (1986, December 7); *Cooperation Agreement between the Government of the United States of Mexico and the Government of the Republic of France on the readmission of persons* (1997, October 6); *Agreement between the Government of the United States of Mexico and the Government of the Republic of Poland on Cooperation to fight organized crime and other types of crimes* (2002, November 25); *Consular Convention between the United States of Mexico and the Popular Republic of Poland* (1985, June 14); *Consular Convention between the United States of Mexico and the United Kingdom of Great Britain and Northern Ireland* (1954, March 20); *Consular Convention between the United States of Mexico and the Union of Soviet Socialist Republics* (1978, May 18).

Table 19**Bilateral Agreements on Migration Signed By Mexico**

Agreement	Signing Date	Objectives
	Bulgaria	
Consular Convention between the United States of Mexico and the Popular Republic of Bulgaria	01/10/1984	Protect the interests of the two States and their nationals, providing them with every kind of help, including legal assistance
	China	
Consular Convention between the United States of Mexico and the Popular Republic of China	07/12/1986	Protect the rights and interests of the two States and their nationals
	France	
Agreement of Cooperation between the Government of the United States of Mexico and the Government of the Republic of France regarding readmission of persons	06/10/1987	Facilitate de readmission of nationals who do not meet or have ceased to meet the requirements for entering or staying in the respective territory
	Poland	
Agreement between the Government of the United States of Mexico and the Government of the Republic of Poland on Cooperation to fight organized crime and other kinds of crimes	25/11/2002	Guarantee cooperation for preventing and fighting organized crime, paying special attention to undocumented people trafficking
		Protect the interests of the two States and their nationals
	United Kingdom	
Consular Convention between the United States of Mexico and the United Kingdom of Great Britain and Northern Ireland	20/01/1954	Protect the nationals of the State represented
	Russia	
Consular Convention between the United States of Mexico and the Union of Soviet Socialist Republics (Federation of Russia) ¹	18/05/1978	Protect the interests of the two States and their nationals, providing them with every kind of help, including legal assistance

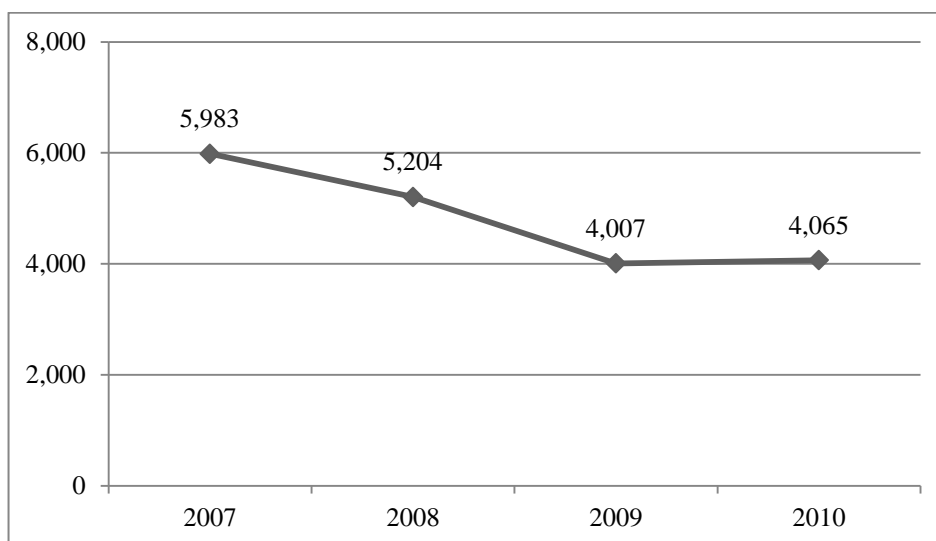
[Source and footnotes on the previous page.]

Chart 9. Voluntary Repatriation of Central Americans from Mexico through the Memorandum for Repatriation, 2007-2010



Source: Prepared by the author with INM data, 2008, p. 47; 2009 a, p. 55; 2009 b, p. 90; 2010, p. 189.

Chart 10. Repatriation of Central Americans children from Mexico through the Memorandum for Repatriation, 2007-2010



Source: Prepared by the author with INM data, 2008, p. 51; 2009 a, p. 63; 2009 b, p. 91; 2010, p. 190.

Table 20

Regional Agreements on Migration Signed By Mexico		
Agreement	Signing Date	Objectives
Central America		
Memorandum of understanding between the Government of the United States of Mexico and the Governments of the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua for the Dignified, Orderly, Agile, and Safe Repatriation by land of Central American Migrant Nationals	05/05/2006	Carry out repatriation adhering to human rights and attending to people's needs for food, hygiene, communication with family members or consular representatives, and family unity, as well as medical and psychological care

Source: prepared by the author with information from *the Memorandum of Understanding between the Governments of the United States of Mexico and the Governments of the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua for the Dignified, Orderly, Agile, and Safe Repatriation by land of Central American Migrant Nationals (2006, May 5)*.

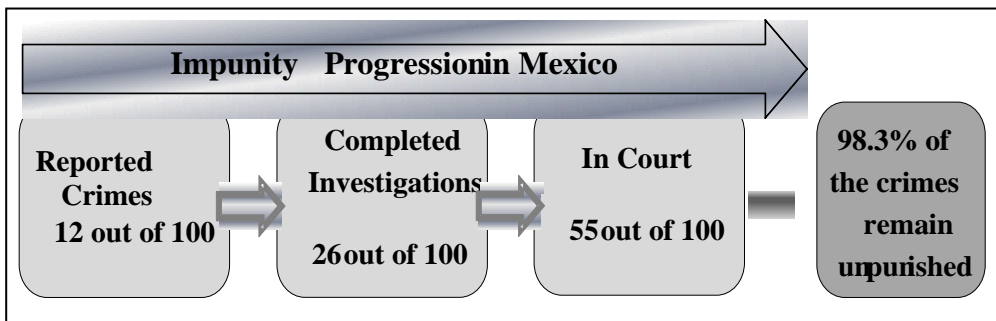
Table 21

Observations of the Committee for the Protection of Migrant Workers and their Families Regarding Mexican Reports			
First Report (2006)		Second Report (2011)	
Progress	Points of Concern	Progress	Points of Concern
<ul style="list-style-type: none"> • Acknowledgement of the migration issue as a priority in the political agenda • Migrant Protection Groups • Migration Regularization • Voting rights for Mexicans abroad 	<ul style="list-style-type: none"> • Reservation to paragraph 4 in Article 22 of the Convention • Lack of recognition of the competence of the Committee to receive communications • Criminalization of irregular migration • Lack of ratification of the conventions 97 and 143 of the ILO • Discrimination and stigmatization of migrants • Prohibition for foreigners to occupy management positions in unions • Inadequate detention conditions at migration holding centers • Violence and attacks against migrants • Migrant checks and detentions performed by officials without the authority to do so • Vulnerability of undocumented women working in the domestic service, of temporary agricultural workers, and of unaccompanied migrant minors • Increasing human trafficking and illicit migrant trafficking 	<ul style="list-style-type: none"> • Acknowledgement of the competence of the Committee to receive individual communications • Legalization of undocumented migration • Law to prevent and punish the trafficking in persons • General Law of Women's Access to a Life Free of Violence • Regulations for the functioning of Migrant Holding Centers • Law on Refugees and Complementary to prevent and punish the trafficking in persons. Law General access for women to a life free of violence. Protection • Criminalization of human trafficking as an offence under the Federal Criminal Code • Recognition of the attention to complaints on human rights and the administration of Justice to foreigners • Integral Strategy for Preventing and Fighting the Kidnapping of Migrants. Southern Border Program • Program of Migration Regularization 2008–2011 • Prevention and Care Strategy for Unaccompanied Migrant Children and Adolescents • Program of Humane Repatriation • Program of Voluntary Repatriation to the Interior 	<ul style="list-style-type: none"> • Lack of recognition of the competence of the Committee to receive communications from States • Lack of ratification of the conventions 97 and 143 of the ILO • Discrimination and stigmatization of migrants • Migrant checks and detentions performed by officials without the authority to do so • Inadequate detention conditions at migration holding centers • Vulnerability of undocumented women working in the domestic service, of temporary agricultural workers, and of unaccompanied migrant minors • Violence and attacks against migrants • Prohibition for foreigners to occupy management positions in unions • Absence of systematic collection of disaggregated data on migrants, effective coordination between the three levels of Government, and effective redress for human rights violations • Failure to acknowledge the provisions of the Convention on the part of members of the judiciary • Extension of violence to transit routes and increase in migrant kidnappings • Excessive use of force in migration checks and monitoring • Corruption and impunity among the authorities • Little progress in combating human trafficking • Attacks against defenders of the rights of migrants

Source: Prepared by the author with information from the Committee for the Protection of the Rights of Migrant Workers and their Families, 2006, 2011



Source: SEGOB, 2010, p. 15.



Source: Survey of victimization, Instituto Ciudadano de Estudios sobre Seguridad, ICESI; 2008, Statistical Yearbooks; Database of the Center of Research for Development, CIDAC; Notebooks of Judicial Statistics from INEGI.

Taken from: Zepeda, 2009, p. 9.

**25 red spots that have been detected in the four rail routes
of the Gulf of Mexico and the gateways in Chiapas**

Arriga, Chiapas, to Lechería, Mexico State		Tenosique, Tabasco, to Lechería, México State	
PLACE	STATE	PLACE	STATE
7. HUIXTLA	CHIAPAS	20. TENOSIQUE	TABASCO
8. HUEHETÁN	CHIAPAS	21. COATZACOALCOS □	VERACRUZ
9. TONALÁ	CHIAPAS	Lechería, Mexico State, to Nuevo Laredo, Tamulipas	
10. ARRIAGA	CHIAPAS	PLACE	STATE
11. CHAUITES	OAXACA	22. SAN LUIS POTOSÍ □	SAN LUIS POTOSÍ
		23. SALTILLO □	COAGUILA
12. JUCHITÁN DE ZARAGOZA	OAXACA	24. NUEVO LAREDO □	TAMULIPAS
13. CD. IXTEPEC	OAXACA	Entry Gateways in Chiapas towards the train route	
14. MATÍAS ROMERO	OAXACA	<ol style="list-style-type: none"> 1. Unión Juárez 2. Cacahoatán 3. Tuxtla Chico 4. Frontera Hidalgo 5. Suchiate 6. Tapachula □ 	
15. SAYULA DE ALEMÁN (MEDIAS AGUAS)	VERACRUZ		
16. JOSUÉ AZUETA	VERACRUZ		
17. TIERRA BLANCA	VERACRUZ		
18. ORIZABA	VERACRUZ		
19. TULTITLÁN (LECHERÍA) □	VERACRUZ		
Lechería, Mexico State, to Reynosa, Tamaulipas		□ SUBSEMUN Municipality	
PLACE	STATE		
25. REYNOSA □	TAMAULIPAS		

Note: SUBSEMUN is a Municipal Public Security Subsidy created in 2008 to strengthen the municipalities and the territorial demarcation of the Federal District in the performance of their functions in public security matters, by means of professionalization of the police forces, better equipment and infrastructure.

Taken from: Executive Secretariat of the National Public Security System, January 2011

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