

# REDEFINING FORCED MIGRATION USING HUMAN RIGHTS



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ABSTRACT: Do sending and receiving states have an obligation to address the fundamental causes of unauthorized migration? Inherent in the concept of forced migration is an obligation on sending and receiving states to assist people displaced by factors beyond their control. An expanded definition of forced migration would allow the inclusion of economic migrants, supplying the moral and legal justification for international cooperation on the reduction of the need to migrate. An assessment of the causes of economic migration as human rights violations could serve as the basis for the new definition. Mexico-U.S. migration, one of the largest binational streams of migration in the world, serves as the case study.

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## INTRODUCTION

*Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*

## Article 22, Universal Declaration of Human Rights, 1948

*...we might realize a world that is just as a whole, in which accidents of birth and nationality do not warp people's life chances pervasively and from the start. Because all major Western theories of social justice begin from the nation-state as their basic unit, it is likely that new theoretical structures will also be required to think well about this problem.*

Martha Nussbaum, in *Frontiers of Justice: Disability, Nationality, Species Membership*, 2007

Millions of people live in irregular migration status, forced to leave their countries of citizenship to assure their basic needs and those of their families. The case of Mexican migration to the U.S. provides a striking example. Of an estimated 12 million undocumented immigrants living in the U.S. in 2007, approximately 56% come from Mexico. Some 14% of Mexico's labor force is presently working in the U.S.<sup>2</sup> While economic and social conditions in Mexico force migrants to leave, U.S. law does not allow legal visas for Mexicans working in the U.S. economy. Mexican migrants face increased costs and danger crossing the border illegally, and human rights abuses in the interior of the U.S. have risen as well.<sup>3</sup>

Which state is responsible for the human rights of Mexican unauthorized migrants? Do sending and receiving states have an obligation to address the fundamental causes of unauthorized migration? The concept of "forced migration" may contain answers to these questions, through the understanding that there is a moral and legal obligation on sending and receiving states to assist people displaced by factors beyond their control.<sup>4</sup> An expanded definition of forced migration to include so-called "economic migrants" would provide the justification for international cooperation on the reduction of the need to migrate. An assessment of the causes of economic migration as human rights violations could be the basis for the new definition. As the largest binational labor migration in the world, the Mexico-US case can provide an important example.<sup>5</sup>

<sup>2</sup> According to the 2005 Current Population Survey, there were 7 million Mexican-born workers in the U.S. There are 43 million workers in Mexico. Jeanne Balatova, "Mexican-Born Persons in the US Civilian Labor Force," Migration Policy Institute, November 2006, [http://www.migrationpolicy.org/pubs/FS14\\_MexicanWorkers2006.pdf](http://www.migrationpolicy.org/pubs/FS14_MexicanWorkers2006.pdf)

<sup>3</sup> Stephen Castles in "The factors that make and unmake migration policies," *International Migration Review*, Vol. 38, No. 3, 2004 p. 863, "Because northern countries are doing their best to stop migration – with the exception of the highly skilled – movement can often only take place through means classified as illegal by receiving countries."

<sup>4</sup> Guy Goodwin-Gill, "International Law and Human Rights: Trends Concerning International Migrants and Refugees" *International Migration Review*, vol. 23, No. 3 p. 526 also "locates migrants and refugees squarely within the human rights context."

<sup>5</sup> Raul Delgado-Wise & Humberto Marquez-Covarrubias, "The Reshaping of Mexican Labor Exports Under NAFTA: Paradoxes and Challenges," *International Migration Review*, Vol. 41 No. 3, 6565-659, Center for Migration Studies, Fall 2007.



The author realizes that an argument to expand the definition of forced migration and extend state accountability may be anathema to refugees, asylum-seekers, and their advocates, who struggle to maintain even minimal standards of protection for persons whose rights are within the parameters of long-established norms.<sup>6</sup>

This essay is meant not as a formula for new human rights norms, but to provoke discussion about the blurring of the lines between traditional refugees and economic migrants and about international responsibility for the welfare of all migrants whose situation of vulnerability has been created within an increasingly globalized economy. At a time when “unauthorized migrants” or “illegal aliens” face increased exclusion, persecution, and danger, an analysis which places their fundamental humanity at the forefront is a necessity.

### HUMAN RIGHTS ARE UNIVERSAL

The modern human rights regime is based on the principle that human rights transcend national citizenship. Before the Nazi regime denationalized and expelled Jews from their home countries, they were human beings. But having lost the protection of a nation-state, they became stateless people for whom no state would accept responsibility.<sup>7</sup> The international human rights regime was created in response to war crimes committed against civilian populations and the plight of refugees during and after World War 2, when national systems of rights protections failed millions of people. The core principle of the system is that human rights are universal, indivisible, inalienable, and transportable. As set forth in the Universal Declaration of Human Rights (UDHR), above, migrants are first and foremost human beings, included in the “everyone” of Article 2.<sup>8</sup>

Universality was also a fundamental principle of the American Declaration of the Rights and Duties of Man, passed by the Organization of American States just before the passage of the UDHR by the United Nations. The American Declaration highlights universality in its opening paragraphs “[T]he essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality” and at Article 17, “Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights”<sup>9</sup>

<sup>6</sup> Stephen Castles & Mark Miller, *The Age of Migration*, 3d edition, Guilford Press, 2003, pp. 102-109.

<sup>7</sup> “[T]he incredible plight of an ever-growing group of innocent people [Jews expelled from their countries by Nazi decrees] was like a practical demonstration of the totalitarian movements’ cynical claims that no such thing as inalienable human rights existed... the very phrase “human rights” became for all concerned – victims, persecutors, and onlookers alike – the evidence of hopeless idealism or fumbling feeble-minded hypocrisy.” Hannah Arendt, *The Origins of Totalitarianism*, 1951.

<sup>8</sup> Universal Declaration of Human Rights, Article 2, G.A. Resolution 217A, 10 December 1948.

<sup>9</sup> The few clauses in the American Declaration which distinguish between citizen and non-citizen are those which: grant the free movement and choice of residence within a state (limited to “na-



The principle of universality implies that states of origin, transit, and residence are all responsible for the protection of migrants' human rights, including those that they possessed before they crossed a border and became migrants. The obligation of all states to cooperate towards the realization of the rights to economic and social development of "everyone" is clearly enunciated in the UDHR,

Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.  
– Article 22, UDHR

#### SECURITY AND THE FREE MARKET ARE THE WRONG PARADIGMS FOR HUMANE MIGRATION POLICY

In the North American migration corridor,<sup>10</sup> national security and the interests of the free market are the dominant paradigms for policy analysis and planning. In the U.S., the discussion is about "control" - border fortifications, fraud-proof identity documents, raids on workplaces, detention as a deterrent, etc. In the at the expense of labor market needs according to the most extreme restrictionists.<sup>11</sup>

In fact the security paradigm yields migration policies which have not been successful (even on their own terms) and generate new human rights violations. Security-driven solutions to unauthorized migration increase criminalization of smuggling, violate the due process rights of migrants, drive unauthorized migrants "underground" thus limiting their labor rights at the workplace and their human rights of access to education and basic human services.

When public policy design is dominated by the notion that barriers, surveillance, and arrests will end unauthorized migration – without any attention to home country conditions – migration continues. The "solutions" become more expensive and violent, the quest of the border-crossers more expensive and dangerous, putting the most fundamental human right to life at risk. No country has ever fortified a border or built a fence so high, so wide, or so deep, that it could not be crossed by at least some lucky people with time, resources, and determina-

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tionals") (Art. 8); and bar non-citizens from participating in "political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien." (Article 38).

<sup>10</sup> For the purposes of this paper, the "North American corridor" is defined as the land mass that stretches from Panama to Canada.

<sup>11</sup> Mark Krikorian, "Keeping Terror Out Immigration Policy and Asymmetric Warfare" Center for Immigration Studies, available online <http://www.cis.org/articles/2004/mskoped050104.html>



tion.<sup>12</sup> But many die in the attempt, not only in the desert of Sonora, but in the straits of Gibraltar and in containers in the hold of ships crossing the Pacific.

Other analysts and policy makers frame the migration discussion in terms of market forces. As the argument generally goes, trade regimes which liberalize the flow of money, goods, and services across borders ought to include the liberalization of the flow of workers, as well. But instead of open borders, labor market analysts promote controlled guest-worker programs to satisfy labor needs in developed countries with aging populations. In the U.S. the recent (2007) immigration reform legislation was built around guest-worker programs accompanied by increased enforcement against unauthorized migrants in workplace and on the street.

Even where successful in producing a regulated, dependable source of low-wage labor, the history of guest-worker programs shows that they do not replace undocumented migration. Guest-worker programs tend to stimulate an accompanying stream of unauthorized migration because the home-country conditions which make guest-worker programs attractive also spur others to migrate outside of the limited legal opportunities.<sup>13</sup> Furthermore, the conditions of guest worker programs violate the human rights of participants, by limiting participants' labor rights, causing permanent structural separation of families, and often negatively impacting the labor rights of native workers. Guest-worker programs are not the "magic bullet" for the satisfaction of destination country labor needs and home-country economic needs. As one ILO official has stated, "Temporary worker programs and restrictions are not only morally offensive but politically less and less tenable in Western plural societies."<sup>14</sup>

If the current debate leads to solutions that cost lives or create new violations of human rights, how might the terms of the discourse be changed? As noted by Stephen Castles, "Migration policies may fail because they are based on short-term and narrow views of the migratory process. It is important to look at the entire migratory process, starting from the initial movement right through to settlement, community formation and emergence of new generations in the immigration country."<sup>15</sup>

What are the ideals underlying a humane approach to "solving" the problem of unauthorized migration? That inquiry assumes that respect for human dignity requires an end to deaths of unauthorized border crossers and that all persons

<sup>12</sup> As one U.S. border state governor recently remarked, "Show me a 50 foot fence, and I will show you a 51 foot ladder," (Hon. Janet Napolitano, Governor of Arizona) quoted in "Barriers have failed before" by Brady McCombs, Arizona Daily Star available online at: <http://www.azstarnet.com/sn/border/147884>

<sup>13</sup> Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*, New York: Russell Sage Foundation, 2002.

<sup>14</sup> W.R.Bohning, *Studies in International Labor Migration*, Macmillan Press, 1984, cited in Castles & Miller, p.102; see also Stephen Castles, "Guestworkers in Europe: A Resurrection?" *International Migration Review*, Vol. 40, No. 4, 2006, p. 741.

<sup>15</sup> Castles, 2004. at p. 853.



should be able to live with dignity without having to leave home involuntarily. Migration policy discussions which fail to include an examination of the fundamental causes of emigration remain incomplete and doomed to failure.

Models of economic development which create structural inequality promote unauthorized migration and place the human rights of millions of people at risk. B.S. Chimni points to the conceptual connections made between migration and development in the 1994 Cairo Declaration on Population and Development and the 1999 Bangkok Declaration on Irregular Migration, both of which urge countries which receive irregular (unauthorized) migration to aid developing countries and “countries with economies in transition” to reduce irregular migration through programs which address poverty reduction, social development, and the achievement of sustained economic growth.<sup>16</sup> The need to treat migration and development policies together has now been given global prominence by Global Forum on Migration and Development, convened by the United Nations as the successor to the High Level Dialogue on Migration and Development.<sup>17</sup>

The necessity to integrate the analysis of migration and development policies is supported by the indivisible, universal character of human rights – all human beings have human rights everywhere – for migrants, in both their countries of origin and countries of destination. As more fully developed in the work of philosopher Martha Nussbaum and economist Amartya Sen, the human rights to civil and political participation are integral to the democratic development of public policies which protects economic, social, and cultural rights.<sup>18</sup>

This concept was explicitly applied to the relationship between migration and development in the North American corridor in a 1998 report prepared for the International Organization for Migration and the Economic Commission for Latin America and the Caribbean by Agustin Escobar Latapi,

The forms of political organization and participation in decision-making processes that exist in different societies are closely linked with the degree of equity obtaining there. If socio-economic inequalities are acute, vast sectors of the population will find that the aspiration of exercising their rights as citizens is a virtually unattainable one... Exacerbation of tensions resulting from socio-political exclusion tends to lead to various forms of instability and violence, which generally result in forced movements of population.<sup>19</sup>

<sup>16</sup> B.S. Chimni, “Development and Migration” in *Migration and International Legal Norms* Aleinikoff and Chetail, eds. 2003.

<sup>17</sup> *International Migration and Development: Report of the Secretary General, United Nations General Assembly*, 18 May 2006, [www.un.org/esa/population/migration/hld/Text/Report%20of%20the%20SG\(June%2006\)\\_English.pdf](http://www.un.org/esa/population/migration/hld/Text/Report%20of%20the%20SG(June%2006)_English.pdf)

<sup>18</sup> See, for example, Martha Nussbaum, *Women and Human Development: the Capabilities Approach*, Cambridge University Press, 2000; Amartya Sen, *Inequality Reexamined*, Russell Sage Foundation and Harvard University Press, 1992.

<sup>19</sup> Agustin Escobar Latapi, “Migration and Development in North and Central America: a Synthetic View,” IOM/ECFLAC/CELADE, 2003, <http://www.rcmvs.org/investigacion/synthetic.htm>



Democratically-created development policies can reduce the need to migrate. Human rights can guide the development of linked migration and development policy initiatives at the national, regional, and international level.

There will never be a “solution” to unauthorized migration unless and until the major receiving countries begin to acknowledge that there are root causes (human rights violations) which compel migrants to leave – and that both sending and receiving countries have a shared responsibility. The improvement of those conditions must have the same resources as does the construction of barriers. Migration does not begin at the U.S.-Mexico border. However, in an age of security, international cooperation beyond securing borders is not an easy position to advocate. Its necessity, however, is beyond doubt. As Martha Nussbaum has stated, “Because all major Western theories of social justice begin from the nation-state as their basic unit, it is likely that new theoretical structures will also be required to think well about this problem [of inequality based on nationality at birth].”<sup>20</sup>

#### HUMAN RIGHTS SHOULD BE THE GUIDING PARADIGM OF MIGRATION POLICY

In the post-9/11 era, migrant-receiving states regard the control and management of unauthorized migration as a security issue. However, states will not be able to control unauthorized migration unless they cooperate with migrants’ states of origin to address its root causes.<sup>21</sup> Acting only on narrowly-defined national interests, migrant-receiving states enact increasingly cruel and restrictive measures which fail to end unauthorized migration and harm the fabric of their societies.

Even in the most democratic and wealthy states of North America and Europe, the human rights of non-citizens and particularly unauthorized migrants are not respected. Some advocates claim that the precarious condition of undocumented migrants is part of an implicit economic policy which relies on the super-exploitation of vulnerable workers to maintain low labor costs in the service sector, marginal industries, and agriculture.<sup>22</sup> A security paradigm for migration policy offers nothing to address such a situation.

<sup>20</sup> Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 2006, Harvard University Press, see Chapter 4 “Mutual Advantage and Global Inequality” for Nussbaum’s critique of John Rawls’ approach which is based primarily on solutions to economic inequalities within individual nation-states.

<sup>21</sup> Demetrios Papademetriou and Gregory Maniatis, eds. *Gaining from Migration: Towards a New Mobility System*, OECD Report, [http://www.migrationpolicy.org/pubs/European\\_Resources.php](http://www.migrationpolicy.org/pubs/European_Resources.php), 2007.

<sup>22</sup> See, for example, the “Action Plan for Undocumented Workers” by the Platform for International Cooperation on Undocumented Migrants (PICUM), <http://www.picum.org/>



As well as placing accountability on receiving states, a human rights paradigm can illuminate the responsibility of sending states. In states with high levels of emigration, official rhetoric expresses regret for the “brain drain,” skills exodus, and for the exploitation of its nationals abroad. However, some sending states actually consider that large-scale emigration is a positive factor which promotes national security. Migrant remittances alleviate the impact of underemployment and lack of development which might otherwise destabilize states. The late Myron Weiner analyzed economic emigration as the product of factors including increased global information flows, lower transportation costs, differential population growth rates, and differences in national labor markets and wage structures. Finding those factors alone an insufficient explanation, Weiner concluded that states actually “encourage, entice, or force” their own citizens to leave for a variety of political, economic, or foreign policy reasons.<sup>23</sup>

The incentive for state cooperation to slow or end emigration would depend on development of an economic model that would help sending states wean off their addition to remittances. According to Stephen Castles,

Many less-developed countries have identified labor export as important in reducing unemployment, improving the balance of payments, securing skills and investment capital, and stimulating development. In some cases, the export of discontent and reduction of political tension also become goals. Migration can become a substitute for development rather than a contribution to it.<sup>24</sup>

A human rights approach which emphasizes state responsibility for the promotion of economic, social, and cultural rights may recast development policies in a way that would limit emigration. More work is needed to implement the goals of the 1986 United Nations Declaration of the Right to Development, “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals...”<sup>25</sup> Certainly not all residents of developing countries suffering from economic, social, or cultural human rights deprivations choose to leave. Many stay and participate in political opposition movements and advocate for respect for rights; others may resign themselves to difficult situations, while still more may sink into poverty and despair.

In North America, the wage gap between Mexico and the U.S. is one of the chief motivations for emigration of Mexican workers to the U.S. Were Mexico to better protect the fundamental human rights of its workers, allowing Mexican workers to organize effective union representation, one leading advocate argues

<sup>23</sup> Weiner, Myron. 1995. *The Global Migration Crisis: Challenge to States and to Human Rights*. New York: HarperCollins College Publishers. 25.

<sup>24</sup> Castles, 2004; at p. 860.

<sup>25</sup> Art. 2, Declaration on the Right to Development, U.N. G.A. Res. 41/128, Dec. 14, 1986.





that enhanced workers' rights would lead to a rise in wages which might slow emigration.<sup>26</sup>

The decision to leave one's home and country to travel to a new land is one of the most difficult facing human beings in the world today. However, the cultural, social, and economic integration of certain regions of the world brought about by globalization has certainly opened migration as a path to family and individual survival for many.

## HUMAN RIGHTS IN COUNTRIES OF TRANSIT AND DESTINATION

Human rights principles have been used to advocate for the human rights of unauthorized migrants with respect to the deplorable conditions in transit and in migrant-receiving states. There is an extensive literature in both the academy and policy circles regarding the marginalization and exclusion of migrants in migrant-receiving countries and in transit, some of it from a human rights perspective.<sup>27</sup> The state which is held accountable, in all of these works, is the state where the migrants are present; no accountability on the part of sending states is discussed.

The United Nations Human Rights Commission, the Inter-American Commission on Human Rights and other national and regional bodies have focused their human rights protection efforts for migrants exclusively on conditions of transit and in destination countries, in accord with the focus of the international human rights agreements. Product of a decades-long process of development, but with only limited ratifications by migrant-receiving countries, the International Convention for the Protection of the Rights of All Migrant Workers and their Families (the "Migratory Workers Convention" – MWC) contains detailed provision on labor rights, family unity, access to social services, and other conditions in migrants' countries of employment and residence.<sup>28</sup> Similarly,

<sup>26</sup> Benjamin Davis, "The Low Road North," unpublished paper in possession of the author, presented at the University of Chicago Roundtable on Human Rights and Migration, October 2007; Davis directs the AFL-CIO Solidarity Center in Mexico.

<sup>27</sup> Joan Fitzpatrick, "The Human Rights of Migrants," in T. Alexander Aleinikoff & Vincent Chetail, eds, *Migration and International Legal Norms*, TMC Asser Press, 2003; Bimal Ghosh, 2003. *Elusive Protection, Uncertain Land: Migrants' Access to Human Rights*. Geneva: International Organization for Migration; Hill-Maher, Kristen. 2001. "Who has a Right to Rights? Citizenship's exclusions in an age of migration" in *Globalization and Human Rights*, ed. Alison Brysk, 19-43. Berkeley: University of California Press; United Nations Intergovernmental Working Group on the Human Rights of Migrants, Report E/CN.4/AC.46/1998/5, para. 28; United Nations, Human Rights of Migrants, Report, E/CN.4/2000/82; Taran, Patrick. 2000. "Human Rights of Migrants: Challenges of a New Decade", *International Migration* 38 (6): 7-51.

<sup>28</sup> International Convention for the Protection of the Rights of All Migrant Workers and their Families, entered into force July 1, 2003; as of October 2006, only 34 nations (almost all migrant-sending countries) had ratified the MWC.



several conventions of the International Labor Organization detail the labor rights of migrants.<sup>29</sup>

The United Nations Human Rights Commission and the Inter-American Commission on Human Rights have appointed Special Rapporteurs to deal with the rights of migrants. The U.N. Commission also had a Special Rapporteur on Discrimination Against Non-citizens.<sup>30</sup> In 1998 the United Nations Human Rights Commission began a study regarding discrimination against non-citizens, and organizing the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa in 2001. However, the primary focus of all these efforts have been the human rights violations against unauthorized migrants in transit and the discrimination and exclusion they suffer in countries of destination, not the human rights violations which initially forced them into the situation of vulnerability they face as “migrants”.

There is little in the human rights literature about the responsibility of migrant-sending states for the human rights violations which force their citizens to make the decision to become unauthorized migrants and become vulnerable to the human rights violations perpetrated against them in other states.<sup>31</sup> The Migratory Workers Convention places only two obligations on migrants’ countries of origin: the right to return and provisions calling for the avoidance of double taxation.<sup>32</sup>

Scholars and advocates should turn the light of human rights onto the root causes of economic migration, in order to develop a new paradigm for migration policy. In order to stop ongoing massive human rights violations suffered by unauthorized migrants, the international human rights community and immigrant rights’ advocates must find ways to address the human rights violations which create the need to migrate in the first instance. A brief overview of the situation of Mexico, the source country of the largest migration in the region, appears below.

<sup>29</sup> International Labor Organization Conventions # 97 (“Migration for Employment Convention of 1949) and # 143 (“Migrant Workers Convention of 1975) available online at: <http://www.ilo.org/ilolex/english/convdisp1.htm>

<sup>30</sup> The mandate of the U.N. Special Rapporteur on the Human Rights of Migrants was created in 1999 by the U.N. Commission on Human Rights (Res. 1999/44) and extended until 2008 (Res. 2005/47). The mandate of the Special Rapporteur on the Rights of Non-Citizens was created by the Sub-Commission on the Promotion and Protection of the Rights of Non-Citizens, E/CN.4/Sub.2/Res.21 (2003). The mandate of the Special Rapporteur on the Rights of Migrant Workers and the Members of their Families was created by the Inter-American Commission on Human Rights in 1997, (AG/RES. 1404 XXVI-O/96 and AG/RES 1480 XXVII-O/97). See, for example, the 2001 report to the intergovernmental Regional Conference on Migration by the Regional Network of Civil Organizations for Migration: [http://www.rcmvs.org/RROCM\\_Puebla\\_VI\\_eng.htm](http://www.rcmvs.org/RROCM_Puebla_VI_eng.htm)

<sup>31</sup> The government of Mexico maintains 48 consular offices in the U.S. and spends millions of dollars on protection services under the Secretaria de Relaciones Exteriores, <http://portal.sre.gob.mx>

<sup>32</sup> Bosniak, Linda. 1991. “Human Rights, State Sovereignty, and the Protection of Undocumented Migrants under the International Migrant Workers Convention,” *International Migration Review*, vol. xxv, No. 4.; “Action Plan for Undocumented Workers” Platform for International Cooperation on Undocumented Migrants (PICUM), <http://www.picum.org/>



## USING HUMAN RIGHTS TO ANALYZE THE CAUSES OF ECONOMIC MIGRATION

Migration policies based exclusively in security or labor-market paradigms fail to account for the fundamental dignity of human beings. Migration management should be understood as a cooperative process in which all participants have a voice, including the governments and civil societies of the sending countries, the receiving populations, and above all the migrants themselves.<sup>33</sup> A human rights paradigm casts the causes of unauthorized migration in a different light.

Before “migrants” become “migrants,” they are human beings. They possess human rights. Lack of employment or “just and favorable conditions of work”, an inadequate standard of living, and lack of access to basic educational and healthcare services are often cited as fundamental reasons underlying unauthorized migration. All those conditions constitute violations of human rights.<sup>34</sup> As set forth in the Declaration on the Right to Development, “The right to development is an inalienable human right.”<sup>35</sup>

A focus on the human rights of migrants before they become “migrants” may serve as a basis to argue that bilateral or multi-lateral migration security agreements must include development assistance as well as control measures.<sup>36</sup> Characterization of migration caused by human rights violations as “forced migration” assigns accountability to states of origin to protect the rights of their citizens in situ and ameliorate the conditions which force them to emigrate. Policies which support the human rights of persons before, during, and after the decision to migrate may result in the improvement of living conditions for thousands of persons who simply wish to remain in their communities and not endure the risks entailed in unauthorized migration.

In placing the obligations on states, the author does not mean to ignore the substantial work by migrants themselves and their compatriots in their countries of origin to change the conditions which forced them to emigrate in the first place, through political organizing at home and pressures brought to bear from abroad.<sup>37</sup> Migrants, through their remittances, make up for what their home states cannot or will not do with respect to family welfare and local community survival. Lauding remittance-sending migrants as “heroes”, however, does not let states

<sup>33</sup> Castles, 2004, p. 874.

<sup>34</sup> International Covenant on Economic, Social, and Cultural Rights,” U.N. G.A. Res. 22000A(XXI), Dec. 16, 1966, entered into force, Jan. 3, 1976; Articles 6,7, 11, 12, and 13; Alston, Philip. 1997. “Making Economic and Social Rights Count: A Strategy for the Future.” *Political Quarterly* 68: (2): 188-196;

<sup>35</sup> Declaration on the Right to Development, U.N. G.A. Res. 41/128, Dec. 14, 1986.

<sup>36</sup> Lorenzo Meyer, “Nuestra Norteamérica?” in *Desafíos de la Migración: Saldo de la Relación México-Estados Unidos*, Enriqueta Cabrera, ed. Planeta Mexicana, 2007, 23 – 40; see also Carnegie Endowment for International Peace and Instituto Tecnológico Autónoma de México, Mexico-U.S. Migration: A Shared Responsibility, at 29 - <http://www.migrationpolicy.org/files/MexicoReport2001.pdf>

<sup>37</sup> For an overview of advocacy efforts by Mexican and Central American migrants in the U.S. with their home country governments, see the website of the National Association of Latin American and Caribbean communities: [www.nalacc.org](http://www.nalacc.org)



escape accountability for their failure to promote or protect the human rights of their own citizens.<sup>38</sup> A description of the root causes of unauthorized migration as human rights violations can provide a new definition of forced migration. Such a concept would be an advocacy tool for migrants and their allies for the improvement of economic, social, and political conditions in migrant-sending states. It places on states (both receiving and sending) a moral as well as a legal obligation to address those violations cooperatively.<sup>39</sup>

### REDEFINING FORCED MIGRATION

Refugees are forced to flee. Immigrants are supposed have a degree of choice, but when their livelihood is so miserable, I don't know what the level of choice is. It may be that they too should then be looked at as people forced to flee by poverty, but then it becomes very difficult. What kinds of freedom do you allow? What kinds of regulations do you put in place? – Sadaka Ogata, United Nations High Commissioner for Refugees, in a speech to the Trilateral Commission, 1992.<sup>40</sup>

Using human rights violations as the basis for an expanded definition of “forced migration” to include economic migrants could place on both sending and receiving states the obligation to protect migrants’ human rights, analogous to their obligations with respect to refugee flows. Human rights conventions already require international cooperation to improve economic conditions, a concept which can reinforce notions of responsibility for “forced migration.” Mandates for cooperation can be found in Article 22 of the UDHR (above) and Article 2 of the International Covenant on Economic, Social, and Cultural Rights to engage in “international assistance and cooperation.”<sup>41</sup>

Characterizing economic migration as “forced migration” may imply that it is only the economic and political circumstances in countries of origin which “push” migration. That is not the entire picture. Structural changes in the economies of the principal receiving countries are another important part of the dynamic, (i.e. “pull” factors.) Such changes include demographic changes in the native workforce, an aging population, the need for workers in the developing service

<sup>38</sup> Ruben Navarette, Jr. “Calderon stumping for his people in the U.S.” San Diego Union-Tribune, Feb.13, 2008

<sup>39</sup> “Each State Party...undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.” Art.2.1 International Covenant on Economic, Social, and Cultural Rights (ICESCR), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 Jan 1976.

<sup>40</sup> Cited in William Wood, “Forced Migration: Local Conflicts and International Dilemmas,” *Annals of the Association of American Geographers*, 84(4), 1994, pp. 607-634.

<sup>41</sup> ICESCR, cited above.



sector, and the transfer of former household work to the market as middle-class women enter the labor force. Those factors are important, but will not be addressed in this article. Similarly, the actions and responsibility of global non-state actors (such as international financial institutions and multi-national corporations) contribute to conditions which cause migration in sending states.<sup>42</sup> The legal and moral responsibility of global non-state actors and receiving states for policies which force undocumented migration, can be integrated into the argument at a later point.<sup>43</sup>

Stephen Castles argues that since weak economies are generally found in weak states, people leave to escape both impoverishment and human rights abuse. As a result, he observes that “such ‘multiple motivations’ lead to a ‘migration-asylum nexus,’ which makes it hard to distinguish clearly between economic migrants and refugees. Thus the perceived migration crisis is really a crisis in North-South relations, caused by uneven development.”<sup>44</sup> This paper will focus as a first step in a larger argument on the human rights situation in countries of origin which give rise a priori to the need to emigrate for basic family survival.

This argument does not ignore migrant agency. In fact, it promotes a view of migrants as autonomous beings. As more fully set forth below, the conventional distinction between “forced” migration and “voluntary” migration finds worthy of protection only those migrants perceived as victims without the capacity to act (“forced migrants”) while other migrants (the “voluntary” ones) are punished for their exercise of agency – they are unworthy of state protection because they voluntarily got themselves into this mess – the vulnerable status of undocumented migration.

The reality is that, of course, a man or woman’s individual decision to leave his or her home community is partly a personal choice i.e. “voluntary”. However, tens of thousands of such individual choices are made within a set of structural factors which offer men and women only a restricted range of options for personal and family survival. Clearly, not all Mexicans in the same economic and social situation decide to emigrate. In fact, as noted by Jorge Durand and Douglas Massey, many migrants make their decision to leave in conjunction with a family resolution to diversify family sources of income in order to allow at least some family members to remain at home.<sup>45</sup>

The North American corridor makes an excellent case study to test this hypothesis as the U.S. (the primary receiving state) has had a major influence over

<sup>42</sup> The accountability of such non-state actors for human rights violations is currently a topic of discussion within the United Nations human rights system. Andrew Clapham, *Human Rights Obligation of Non-State Actors*, Oxford University Press, 2006.

<sup>43</sup> There is also the question of accountability inherent in the legislative history of U.S. immigration law which has always kept the vast majority of Mexican and Central American immigrants from obtaining legal status – with the exceptional periodic “amnesties;” Ngai, *Mae Impossible Subjects: Illegal Aliens and the Making of Modern America*, Princeton University Press 2004.

<sup>44</sup> Castles, 2004, p. 862.

<sup>45</sup> Massey, Durand, and Malone, 2002.



economic and political conditions which have led to high levels of unauthorized migration from the primary sending states (Mexico and the Central American countries).

#### A SUGGESTION FOR AN EXPANDED DEFINITION OF "FORCED MIGRATION"

There is no standard legal definition of "forced migration." The lack of a standard definition in international law leaves room for creative approaches. Human rights concepts could be brought into the discussion to produce a definition which provides broader protection norms. Could one argue that any migrant whose human rights have been violated in his/her home country is therefore a "forced migrant"? According to two leading scholars, Guy Goodwin-Gill and Kathleen Newman,

Notwithstanding its attraction as an encompassing shorthand, "forced migration" is not yet a term of art in international law. There is no category of "forced migrant" known to international law, whose status determines rights and obligations, or engages the protection responsibilities of an international agency.

Goodwin Gill & Newland note that international law as presently constituted draws a distinction between persons who "are failed by the state" (i.e. refugees) and those who are "victims of circumstance, no matter how dire... people who flee their countries owing to desperate poverty, natural disasters, or severe environmental degradation are not protected against involuntary return to their country." (i.e. other persons in flight). One could argue that persons leaving situations of desperate poverty and severe environmental degradation have also been "failed by the state," as it is state policies (sometimes at the behest of international organizations or other non-state actors) which are at fault for those situations. While not supporting any particular redefinition of forced migration beyond the legally recognized categories of refugees, those threatened by torture, and internally-displaced persons, Goodwin-Gill and Newland argue that fundamental human rights calls for a protection regime for an as-yet-undefined, but broader class of "forced migrants."

Among social scientists, there is a consensual working definition of "forced migration".

The International Association for the Study of Forced Migration (IASFM) defines forced migration as "a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts), as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects."<sup>46</sup> The need for an expanded definition of forced

<sup>46</sup> Forced Migration Online website, which quotes the definition given by IASFM. <http://www.forcedmigration.org/whatisfm.htm>,



migration has been made by several analysts over the past decade. The geographer William Wood in a 1994 article set forth standards for defining forced migration, “Forced eco-migration may be defined as a type of migration that is propelled by economic decline and environmental degradation. Groups unable to sustain themselves at a minimal level face a crisis that is both ecological and economic. Forced eco-migrations result when those conditions become immediately life threatening.”<sup>47</sup> A decade earlier, Huyck and Bouvier suggested that, “to qualify as an economically motivated refugee one would be totally unable in one’s own country to locate any kind of employment or to grow sufficient agricultural products to feed and house oneself and our immediate family. Starvation in this case becomes the only likely alternative to emigration.”<sup>48</sup>

More recently, Stephen Castles and David Turton suggest a definition derived from their analysis of the prior literature, “What all these definitions have in common is that they embody an expectation of shared state responsibility... Understanding that forced migration is not the result of a string of unconnected emergencies but rather an integral part of North-South relationships makes it necessary to theorize forced migration and link it to economic migration. They are closely related (and indeed often indistinguishable) forms of expression of global inequalities and societal crises, which have gained in volume and importance since the superseding of the bipolar world order<sup>49</sup> However, “economic migrants” are not given even token recognition as “forced migrants” with a right to state protection or a right to request intervention by the international community to improve the situation from which they flee. Where to draw the line is a problem which continues to bedevil scholars. Classification of certain groups of “economic migrants” as forced migrants may advance the acknowledgment by receiving states of their claims for protection.

Castles suggests directions for discussion and theorizing about the issue,

...globalization provides a context for understanding forced economic migration because it is a system of inequitable participation in which the exclusion of specific areas and groups is exacerbated. The North–South divide is the most glaring instance of this transnational economic process which leads to conflict and forced migration. This has also resulted in the blurring of distinction between forced migration and economic migration. Failed economies and poor human rights conditions often go together because of which migrants and asylum seekers have multiple reasons for mobility making it impossible to completely separate economic and human rights motivations.<sup>50</sup>

<sup>47</sup> William B. Wood, “Forced Migration: Local Conflicts and International Dilemmas,” *Annals of the Association of American Geographers*, 84(4), 1994, p. 617.

<sup>48</sup> Earl Huyck and Leon Bouvier, “The Demography of Refugees,” in *The Annals of the American Academy of Political and Social Science* 1983, 467, 39 p. 41.

<sup>49</sup> Stephen Castles, “Towards a Sociology of Forced Migration and Social Transformation,” *Sociology*, 2003, p. 17.

<sup>50</sup> Castles 2003.



Castles points the way to a new definition. If it is there is acceptance that people displaced by development projects (like large-scale dams) are “forced migrants” with a right to protection, then a human rights paradigm can support the claim of persons who are displaced from their communities, not by the submerision of their farmland by a new dam, but by national-level development policies that displace them from their traditional livelihoods and offer no viable alternatives.

The most readily identifiable groups recognized as “forced migrants” are refugees, a population with clear normative recognition in international human rights law.<sup>51</sup> In 1951, the Convention for the Protection of Refugees established the responsibility of receiving states to protect persons who had suffered persecution in their country of nationality. Persons with a “well founded fear of persecution on account of race, national origin, religion, or membership in a particular social group,” must not be returned to a situation in which their life or freedom may be threatened.<sup>52</sup> Similarly migrants who may face torture in their country of origin may not be returned under provisions of the Convention Against Torture (CAT).<sup>53</sup>

It is with respect to refugees, but not economic migrants, that we find normative structures and an on-going policy discussion which includes the obligations of receiving states to protect (non-refoulement) and of the international community to find “durable solutions” to refugee crises (i.e. to address the situations which gave rise to refugee flows). Refugees are to be protected from being involuntarily returned to their states of origin. Even in the well-established refugee regime, however, no mechanisms exist under the Convention for holding states accountable for their failures to protect. Currently advocates and refugees despair over state conduct, even with clear guidelines and a UN agency to monitor and encourage compliance (the UNHCR).<sup>54</sup> However deficient, the Refugee Convention, the CAT and the mechanisms established under those treaties do lay out categories of protected persons, providing “principles, institutions, and mecha-

<sup>51</sup> Convention Relating to the Status of Refugees 189 U.N.T.S. 150, entered into force April 22, 1954. [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm); Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967. <http://www1.umn.edu/humanrts/instree/v2prsr.htm>

<sup>52</sup> Convention Relating to the Status of Refugees, July 28, 1951, Entered into force April 22, 1954, Art. 1 (definition of “refugee”), Art. 33 (Prohibition of Expulsion or Return); Protocol Relating to the Status of Refugees, Entered into force October 4, 1967, Art. 1 (definition of “refugee”).

<sup>53</sup> Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, December 1984, Entered into force June 26, 1987, Art. 3.

<sup>54</sup> The Organization of American States expanded the refugee definition to include “persons 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 on Refugees, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85), <http://www.unhcr.org/cgi-bin/texis/vtx/research/opedoc.htm?tbl=RSDLEGAL&id=3ae6b36ec>





nisms.”<sup>55</sup> However, such discussion is almost entirely absent in the literature and public policy discussions of economic migration.

While not a conceptually difficult argument to make – that all migrations produced by human rights violations ought to be protected – both quantitative and qualitative obstacles may defeat an expanded definition of forced migration. States will be reluctant to expand categories of persons towards whom they may have protection obligations if millions more may come within the scope of eligibility. . “While the UNHCR strongly disapproves of *refoulement*, that is, the forced return of refugees, there are no similar U.N. protocols for economic migrants because it is widely accepted that a sovereign state has the right to enforce its immigration policies.”<sup>56</sup> Jacqueline Bhabha makes a persuasive case that it is the recognition of refugees as a special, narrowly-defined, relatively privileged class of unauthorized migrants which helps to justify states’ exclusion of any other unauthorized migrants.<sup>57</sup>

However, the categorization of rights at risk also place refugees in a position of advantage compared to economic migrants. The established norms of the Refugee Convention place obligations on states to protect those who flee violations of fundamental rights (the right to life, the right to be free from genocide) and of civil and political (“first tier”) human rights. The definition of persecution, as harm or threat of harm inflicted on account of “race, national origin, religion, political opinion, or membership in a particular social group” was originally understood as accounting for persecution directed at persons exercising their civil and political rights or who were members of disfavored groups targeted by authorities.<sup>58</sup>

In contrast, “economic migrants” are fleeing situations in which the human rights which have been violated are economic, social, and cultural rights (“ESC rights”) and labor rights. For decades ESC rights were largely regarded as “second tier” rights, of less importance to the international human rights regime. However, one would hope that recent advocacy for the equal primacy of ESC rights can influence the discussion of migration and form a basis for state responsibility towards persons fleeing violations of their ESC rights. One possible mechanism is an expanded definition of “forced migration.”

The work of scholars to analyze how violations of economic, social, and cultural rights produce unauthorized migration is just in the initial stages, but the argument is fairly straightforward.<sup>59</sup> Like refugees “economic migrants” are also

<sup>55</sup> Guy S. Goodwin-Gill and Kathleen Newland, chapter 7 “Forced Migration and International Law,” in *Migration and international legal norms* / edited by T. Alexander Aleinikoff & Vincent Chetail.

<sup>56</sup> William B. Wood, “Forced Migration: Local Conflicts and International Dilemmas,” *Annals of the Association of American Geographers*, 84(4), 1994, p. 626.

<sup>57</sup> Jacqueline Bhabha, “Internationalist Gatekeepers?: The Tension Between Asylum Advocacy and Human Rights,” *Harvard Human Rights Journal*, Vol. 15, Spring 2002.

<sup>58</sup> Aristide Zolberg, Astrid Suhkre, Sergio Aguayo, “Who is a Refugee?” from *Escape from Violence*, Oxford University Press, 1989, pp. 3-33.

<sup>59</sup> See, for example, B.S. Chimni, “Development and Migration,” in Aleinikoff and Chetail, eds. *Migration and International Legal Norms*, TMC Asser, 2003, and Patrick Taran, “Human Rights



fleeing situations in which states have failed to protect their human rights. As solutions for refugee crises are found in ameliorating the situations in their home countries, the solution to the problem of unauthorized migration may be found in the obligations of sending countries to respect and promote the human rights of the sector of their population that is “at risk” of unauthorized migration.

THE CASE OF UNAUTHORIZED MIGRATION FROM MEXICO TO THE U.S.:  
HUMAN RIGHTS VIOLATIONS AS AN UNDERLYING FACTOR

A complete review of the literature on the underlying causes of emigration from Mexico to the United States in the last two decades is beyond the scope of this paper. However, for purposes of testing a human rights paradigm, several cases will serve as an example of how an analysis can be developed which matches social science findings about the causes of emigration from Mexico with possible violations of human rights norms.

On the international stage, Mexico has always officially promoted the development of international human rights treaties.<sup>60</sup> After several decades of resistance, Mexico since the Vicente Fox administration has been more open to visits and critiques of its practices by international human rights officials and non-governmental organizations. Mexico has ratified all the principal international and regional agreements on the protection of human rights and labor rights, a fact which may provide advocates with significant leverage. However, in Mexico (as in many other countries) there is a significant gap between treaty ratification and fulfillment of obligations.<sup>61</sup>

In brief, social scientists generally agree on a set of factors that have promoted unauthorized migration of Mexicans to the U.S. since the early 1980s.<sup>62</sup> Those factors include the failure of the economy to supply jobs for new labor market entrants, wage stagnation, the lack of access to credit, lack of access to health care and education – particularly for families suffering from the collapse of the rural agricultural economy.

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of Migrants: Challenges of the New Decade,” in IOM/UN International Migration; Quarterly Review Vol. 38 No. 6 Special Issue 2/2000.

<sup>60</sup> Paolo Wright-Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, Human Rights Quarterly - Volume 25, Number 2, May 2003, pp. 281-313.

<sup>61</sup> Human Rights Watch, “Lost in Transition: Bold Ambitions, Limited Results in Human Rights Under Fox,” 2006, <http://hrw.org/reports/2006/mexico0506/>

<sup>62</sup> The fact that this migration is “unauthorized,” i.e. outside the legal framework for authorized migration is due to a series of reforms enacted by the U.S. Congress in the past four decades which put increased restrictions and quotas on legal migration from Mexico. Similarly, the dramatic increase in migrant deaths on the U.S.-Mexico border is directly related to increased border fortifications put in place by the U.S. government beginning in the Clinton Administration in the mid-1990s, Massey, Durand, & Malone, 2002.



The structural transformations of the Mexican economy since the peso collapse of 1982 and in particular since the implementation of the North American Free Trade Agreement in 1994 have created conditions which have increased the motivations of Mexicans to migrate north.<sup>63</sup> As analyzed by U.S. human rights expert Lance Compa, “The government ignored warnings from domestic critics that NAFTA’s commercial terms, with maximum protection for companies and investors, but minimum concern for human rights, worker rights, the environment and other social needs would have devastating consequences.”<sup>64</sup> Among those consequences has been a steady and dramatic increase in Mexican migration to the U.S.<sup>65</sup> Whether improvement in Mexico’s human rights situation of civil and political rights would lead to broader participation in public policy formation which, in turn, might reduce the need to migrate is important to consider.

Two recent studies by international non-governmental organizations of Mexico contribute to an analysis of how human rights violations contribute to the need to emigrate. In *Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox* (2006), Human Rights Watch illustrates the mixed progress made by the Mexican government in ending human rights abuses of the civil and political rights of Mexicans which directly impact the ability of ordinary citizens to influence public policy. While citing some gains in openness and transparency, HRW concludes that “What Mexico has yet to do, however, is effectively address the human rights problems that this openness and transparency have helped to expose.” The capacity of citizens to participate in government decision-making (i.e. the exercise of their civil and political rights) can have a direct impact on how government economic and social policy improves or impoverishes their lives.<sup>66</sup>

In a 2006 study, the International Federation for Human Rights (FIDH) examined the deterioration in the quality of life for ordinary Mexicans since the implementation of NAFTA. The FIDH study documents some of the violations of human rights under the current economic regime. FIDH cites the rise in the price of Mexico’s most basic food, tortillas, due to the collapse of local corn production and the increase in U.S. imports. Mexico is obligated, as a State Party to the International Covenant for Economic, Social, and Cultural Rights (ICESCR), to ensure the realization of the right to “an adequate standard of living... including adequate food, clothing, and housing” and recognizing the “fundamental right of

<sup>63</sup> See, for example, Massey, Durand, & Malone, 2002.; Jeff Faux, “How NAFTA Failed Mexico,” American Prospect, July/August 2003, [www.prospect.org/cs/articles?article=how\\_nafta\\_failed\\_mexico](http://www.prospect.org/cs/articles?article=how_nafta_failed_mexico)

<sup>64</sup> Lance Compa, *Justice for All: the Struggle for Worker Rights in Mexico*, Solidarity Center, American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), 2003 <http://www.solidaritycenter.org/files/SolidarityMexicofinalpdf111703.pdf>

<sup>65</sup> Delgado Wise, Raul & Humberto Marquez Covarrubias. 2007; Massey, Durand, Malone, 2002.

<sup>66</sup> Sen, Amartya. 1992. *Inequality Reexamined*, New York: Russell Sage Foundation; Cambridge, Mass.: Harvard University Press.



everyone to be free from hunger” (Article 11.1, 11.2). Government policy decisions to cut price subsidies for tortillas and lift tariff barriers to imported grains may be viewed as violations of a sector of its population’s rights to adequate food and freedom from hunger.

Both the FIDH and HRW studies make recommendations for the improvement of human rights and labor rights conditions in Mexico. Improvement of human rights conditions would not entirely stop unauthorized migration, as other factors also influence the decision to migrate, at least such improvement might allow Mexicans the enjoy “the right not to migrate.”

In 2003, a leading Mexican human rights non-governmental organization, Centro de Derechos Humanos Miguel Agustín Pro, published a collectively-authored report which analyzes the economic crisis in rural Mexico in human rights terms. In *Pensar el campo desde los derechos humanos*<sup>67</sup> the advocates cite government policies which have resulted in hardship for Mexico’s campesino population and a continued out-migration from the countryside, a significant percentage of whom become international migrants.<sup>68</sup>

The study cites the elimination of subsidies, of price supports for agricultural products, and of government credit programs, as well as the closure of government agencies which provided technical support for small farmers. Citing the national campaign of civil society organizations under the banner “El campo no aguanta mas” (the countryside can’t stand it anymore), the authors of the report make a claim for the “right to keep being a peasant,” (“el derecho a seguir siendo campesinos”) compromised by the above-cited state policies. This right is based on norms which assure every person the right to work at a job of his or her choice which enables him or her to live a dignified life. The authors cite Article 6 of the Additional Protocol on Economic, Social, and Cultural Rights to the American Convention on Human Rights which binds Mexico, as a signatory nation, for support, as well as Article 14 of the American Declaration of the Rights and Duties of Man.<sup>69</sup>

<sup>67</sup> Unpublished report, in possession of the author; a revised version published in 2005 by the Centro de Derechos Humanos Miguel Agustín Pro Juárez, is available for purchase in hard copy at: [http://www.centroprodh.org.mx/Publicaciones/Publicac/index\\_publicaciones.htm](http://www.centroprodh.org.mx/Publicaciones/Publicac/index_publicaciones.htm)

<sup>68</sup> This phenomenon was anticipated in an official binational report produced by the Mexican and U.S. governments which predicted accurately that structural changes in the Mexican rural economy would result in a drastic depopulation of the Mexican campo in the early 21<sup>st</sup> century, Binational Study: Migration between Mexico and the United States, 1997, p. 39, <http://www.utexas.edu/lbj/uscir/binational/full-report.pdf>

<sup>69</sup> “Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.” Article 6 and “The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation...” Article 7, “San Salvador Protocol,” the Additional Protocol to the American Convention on Human Rights, <http://www.oas.org/juridico/English/sigs/a-52.html> “Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing



Additionally, the authors of the Centro Pro study, in a chapter dedicated to “The right to the land, territory, and natural resources,”<sup>70</sup> find support in international human rights documents (admittedly in a somewhat indirect way) for the right to land which has been compromised in the past decades by state economic development policies which make small scale rural subsistence agriculture unsustainable.<sup>71</sup> Among the provisions cited are Article 25 of the Universal Declaration of Human Rights, which guarantees the right to “a standard of living adequate to the health and well-being of himself and his family...”<sup>72</sup> This right was given a more detailed articulation in the International Covenant on Economic Social and Cultural Rights (ICESCR) at Article 11, with the added promise to engage in international cooperation to ensure the realization of this right.<sup>73</sup>

The Centro Pro study also finds that government economic policies have restricted the enjoyment by many Mexicans of the right to nutrition, particularly those in rural areas. Several instruments supporting the right to adequate nutrition are cited, including the Universal Declaration of Human Rights, the ICESCR, and the San Salvador Protocol of the American Convention on Human Rights. The most complete provision on the right is the one found in the San Salvador Protocol, Article 12,

Right to Food: 1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. 2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

In addition, the Centro Pro report agrees with the previously-cited report from the FIDH, that the Mexican government has failed to protect the labor rights

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conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and his family,” Article 14, American Declaration of the Rights and Duties of Man, <http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm>

<sup>70</sup> “El derecho humano a la tierra y las obligaciones del Estado,” in *Pensar el campo desde los derechos humanos*, cited above.

<sup>71</sup> “Retrososos en la proteccion del derecho humano a la tierra” in which the authors cite the 1992 revision of Article 27 of the Mexican Constitution (which protected the right to land) under President Carlos Salinas de Gortari. *Pensar el campo*, at 16-22.

<sup>72</sup> Universal Declaration of Human Rights, United Nations, G.A. Resolution 217A, 10 December 1948, <http://www.unhchr.ch/udhr/lang/eng.htm>

<sup>73</sup> “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” Article 11.1 ICESCR.



of Mexican campesinos and industrial and service workers.<sup>74</sup> FIDH examines the situation of Mexican workers with regard to inadequate pay, inferior conditions of work, and lack of labor rights: Mexico is obligated under the ICESCR to guarantee the “right of everyone to the enjoyment of just and favorable conditions of work,” (Art. 7) including the right to a “decent living” (Art. 7 (a) (ii) and “safe and healthy working conditions” (Art. 7 (b)), as well as the “right of everyone to form trade unions and join the trade unions of his choice.” The FIDH study cites the well-documented deterioration of workers’ rights and stagnation of wages in the manufacturing sector, as well as the limitations on labor rights.

Finally, a definitive study of labor conditions in Mexico, commissioned in 2003 by the Solidarity Center of the AFL-CIO, demonstrates the repeated violations of labor rights established in international human rights and labor rights norms by the government of Mexico.<sup>75</sup> Most Mexicans who migrate to the United States are previously employed in Mexico; the poorest and completely unemployed simply do not have the resources to emigrate.<sup>76</sup> It is not the lack of jobs in Mexico which pushes migration, but rather the failure of those jobs to supply adequate income and security to enable workers to support their families’ basic human needs.

International bodies including the ILO, the UN High Commission for Human Rights, and the National Administrative Offices of Canada and the U.S.,<sup>77</sup> as well as international trade union organizations, have repeatedly drawn attention to systematic deficiencies in Mexican labor law that impede workers’ freedom of association, and have proposed measures to remedy these defects. Among the most serious of these problems are the lack of a public registry of union, lack of access by workers to their own collective bargaining agreements, conflicts of interest in the Conciliation and Arbitration Boards, systematic denial of union recognition on frivolous grounds, use of the “exclusion clause” to compel the dismissal of workers who seek a change in union representation or who advocate democratic reforms in their unions, and the requirement that workers declare publicly to the board their intention to support an independent union when they file a petition for a recuento election.

In December 2003, the Office of the United Nations High Commission for Human Rights in Mexico published a Diagnostic of the Situation of Human Rights in Mexico. Chapter 4.3.4 of this study includes extensive and specific recommendations to improve respect for labor rights, including the establish-

<sup>74</sup> See also, Octavio Canton, “Los Derechos Laborales Fundamentales,” in Octavio Canton and Santiago Corcuera, eds., *Derechos Economicos, Sociales y Culturales: Ensayos y materiales*, Editorial Porrúa, 2004, citing violations by the Mexican government of Convention No. 87 of the International Labor Organization.

<sup>75</sup> Lance Compa, 2003.

<sup>76</sup> Pew Hispanic Center. Survey of Mexican Migrants, part 3: the Economic Transition to America. December 6, 2005, available online at: <http://pewhispanic.org/reports/report.php?ReportID=58>

<sup>77</sup> The NAOS are the official bodies established in Canada, the U.S. and Mexico under the Labor Side Agreement to NAFTA to monitor labor law compliance in the other NAFTA countries.



ment of public registries of unions and collective bargaining agreements, transparency in the management of union dues and finances, elimination of Apartado B for public employees, and shifting the responsibility for labor justice from the executive to the judicial branch. However, the Government has never adequately addressed the UNHCHR recommendations. Government failures to protect the rights of workers prevent Mexican workers from improving their wage rates and other conditions of employment.

While no study explicitly connects poor labor conditions with migration, it is notable that in 2008, some 14% of the Mexican labor force is now working in the U.S. With improved labor conditions and higher wages, perhaps some Mexican workers could take advantage of “the right not to migrate.”

## CONCLUSION

The October 2007 Roundtable on Migration and Human Rights at the University of Chicago began a dialogue between social scientists, human rights experts, labor leaders, and leaders of migrant organizations to explore new perspectives, develop and answer new questions, and create new paradigms for discussion which will have as their priority, the rights and dignity of all human beings in the region, regardless of the country of their citizenship. It is hoped that the suggestion here of a preliminary new definition of forced migration, based in a human rights framework, will inspire more scholars and activists to contribute to developing a human rights framework for the ongoing discussion of migration and development in the North American corridor – for the sake of the countries and peoples of the region.

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