



CANAMID
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Migration Dialogue

PB#07

➤ OCTOBER 2015

Consular Protection as State Policy to Protect Mexican and Central American Migrants

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Policy Brief Series

GOVERNANCE AND SECURITY



Consular protection as state policy to protect Mexican and Central American migrants



JORGE A. SCHIAVON ^A

SUMMARY

Following the implementation of more stringent immigration policies, there has been an increase in the violation of the rights of migrants—many of whom are minors—who lack the necessary migratory documentation in Mexico and Central America, whether that be in their country of origin, while in transit, at their destination or on their return. As such, consular protection should be positioned, institutionalized and consolidated as a state policy, being a responsibility shared by all countries within the region.

There are several challenges involved in achieving this, such as professionally training officials and systematizing good practices, protocols and information systems, as well as guaranteeing diplomatic immunity for Central American consular authorities in Mexico. It also requires that the region's governments coordinate and cooperate with civil society organizations in addition to removing obstacles that restrict access to information regarding the rights of migrants.

To meet these challenges, urgent action is needed to create concrete public policies that start by acknowledging migrants as subjects with rights. Fortunately, in the last decade, Central American governments, following Mexico's example, have begun to place consular protection as a priority public policy; however, they continue to favor diplomatic work over consular responsibilities.

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Despite the fact that Mexico and Central America form one of the world's main migration corridors, migrants face a number of risks as well as the systematic violation of their human rights, particularly when they are in transit or returning. Among other factors, the situation has worsened in recent years due to the increase of organized crime, which has brought about an escalation in violence and insecurity in the region.

The irregular nature of migration without official documentation makes people seek unsafe routes and transport. Restrictive immigration policies in Mexico contribute even further to this tendency towards less visible ways to travel.

Migrants cannot fully exercise their rights, since they are not protected effectively by the Mexican authorities or by their countries of origin, and significant shortcomings in the administration of justice have been observed.

Besides the hardships that result from the geography and climate, as well as high travel costs, migrants suffer from multiple forms of violence: beatings, torture, rape, kidnapping, extortion and trafficking. Some of the abuse and crimes happen with the complicity or acquiescence of authorities at different levels. Nevertheless, the number of complaints and allegations from abuse victims is very low.



The vulnerability of migrants in the region and the violation of their human rights not only occur while they are in transit, but also during the processes related to their detention and deportation, conditions that have been compounded by the establishment of more check points and detention centers throughout Mexico in response to tightened immigration policies. In this way, because migrants do not receive complete explanations about the procedures they face nor are they told fully why they are being detained, their rights to information are violated. Likewise, migrants are not informed of their rights to legal representation and consular assistance or protection, which also violates their rights to physical and emotional integrity, since they do not receive proper treatment.²

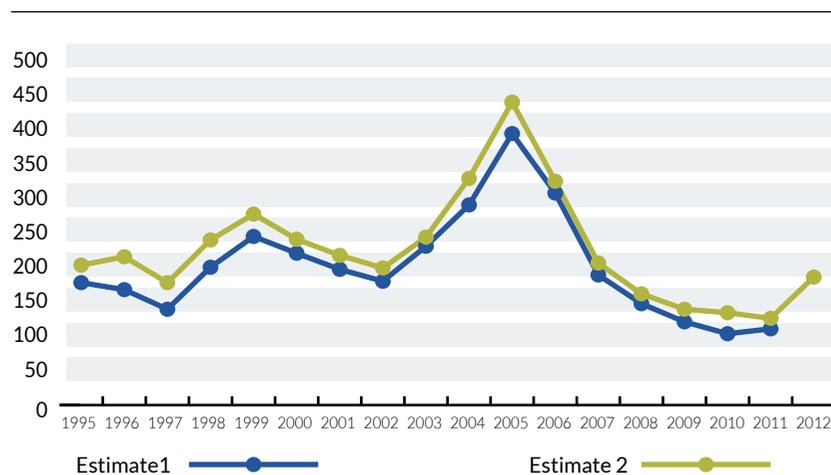
ACCORDING TO THE NATIONAL HUMAN RIGHTS COMMISSION OF MEXICO (CNDH), SOME OF THE REASONS THAT MIGRANTS DO NOT REPORT ABUSE AND CRIMES INCLUDE:

- Unfamiliarity with the procedures for doing so
- Scarcity of information about the mechanisms and entitlement of human rights protection
- Lack of time for filing complaints and allegations
- Fear of deportation or reprisals

The region in humanitarian crisis

The movement of Guatemalans, Salvadorans and Hondurans passing through Mexico to get to the U.S. has become more significant over the last decade, not only because of the magnitude of flows, but also because of the risks involved and constant violations of migrants' human rights during their journeys. In addition, this phenomenon has become more notable in recent years due to the increase (in absolute and relative terms) of unaccompanied children and adolescents within this migratory flow.

Figure 1. Estimate of Central American migrants in irregular transit to the U.S. via Mexico (1995 to 2012)

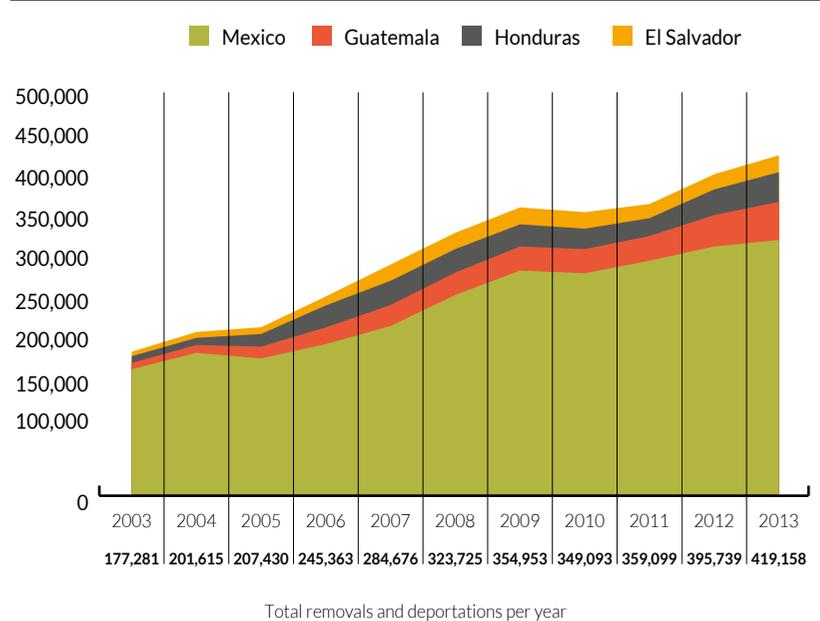


Source: Rodríguez 2014³

The behavior of this flow of Central American migrants shown in Figure 1 is affected by multiple causes, which include: the migration policies of the countries in the region—particularly the U.S.—, economic conditions, security in the places of origin, the level of risk and cost involved in moving, and labor opportunities in the U.S.

Meanwhile, in the U.S., the detention of undocumented migrants at the border as well as in their destinations has increased significantly, rising to levels not seen since the deportation of migrants in 1930. As shown in Figure 2, deportations from the U.S. have increased over the last decade, particularly Mexican migrants and those from Central America’s Northern Triangle (TNCA) composed of El Salvador, Guatemala and Honduras. In just 10 years, the deportation of nationals from these four countries exceeds 3.3 million events, showing an increase of over 130% between 2003 and 2013.

Figure 1. Estimate of Central American Migrants in Irregular Transit to the U.S. Via Mexico (1995 to 2012)



Source: Based on data from the Department of Homeland Security⁴

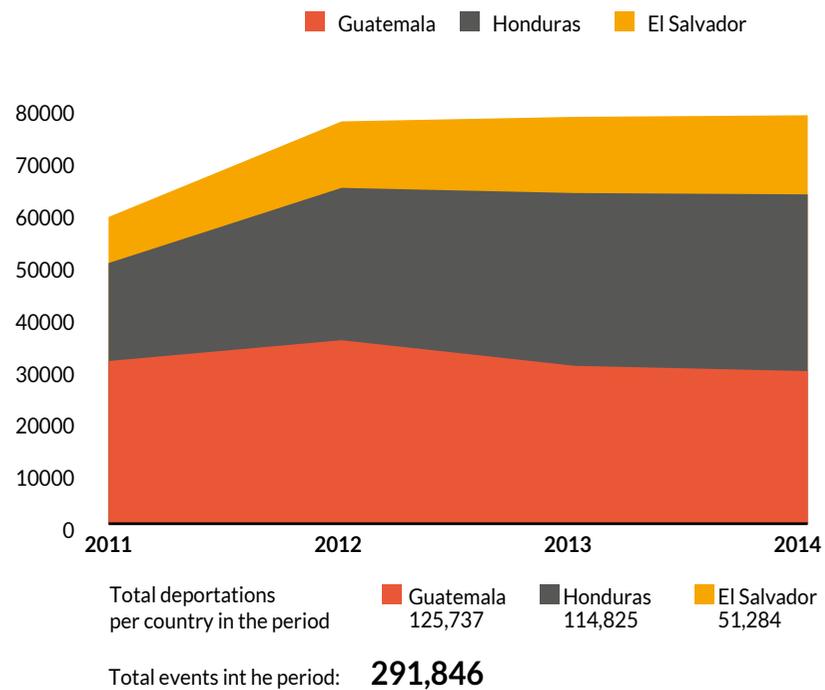
Since 2013, the region has become engulfed in a humanitarian crisis resulting from an increase in the arrival of children and adolescents from Mexico and, in particular, Central America. From October 2013 to September 2014, 68,541 children and unaccompanied teenagers were detained by the U.S. Border Patrol, most of whom were from Central America: 18,244 Hondurans, 17,057 Guatemalans, 16,404 Salvadorans and 15,634 Mexicans.⁵ In most cases, these individuals were repatriated expeditiously to their countries of origin by the U.S. government.



Following the same pattern, Mexico has also increased its restrictions on immigration. As shown in Figure 2, one consequence is that the detention of Central Americans in Mexican territory and their deportation has risen. In just four years, from 2011-2014, the number of detained migrants from TNCA countries reached almost 300 thousand events and, in recent years, has increased by over 33%. In Mexico, there are currently 32 migrant detention centers, 15 “Type A” temporary stay centers (maximum 48 hours) and 12 “Type B” temporary stay centers (up to 7 days), where undocumented migrants are detained by immigration authorities. Several of these centers were created in recent years to meet the growing numbers of detainees. In addition, there are other places that have been set up to take temporary detainees who for some reason cannot be transferred to a detention center.⁶

Since 2013, the region has become engulfed in a humanitarian crisis resulting from an increase in the arrival of children and adolescents from Mexico and, in particular, Central America

Figure 2: Central Americans returned by Mexican immigration authorities (2011-2014)



Source: Based on data from the Mexican Interior Ministry's Migration Policy Unit⁷

Consular protection and assistance as state policy

Faced with these challenges, the urgent need to protect migrants' human rights has been imposed on the regional agenda, from civil society organizations, academia, international organizations and the governments of the countries within the region. To this end, the phenomenon has been the subject of much debate, research and analysis, including the proposal of various mechanisms.⁸

Consular protection is, therefore, presented as a response to irregularities, misconduct or violations of human rights towards migrants by individuals or the authorities of the transit or destination country. More precisely, it involves an official complaint from a consular representative of the migrant's country of origin to an authority based in the consular district in the country of transit or destination, in the event of any harm suffered by one of its nationals.¹⁰

In this vein, consular protection becomes an essential safeguard to fully exercise migrants' human rights. However, it needs to become a priority state policy in all of the governments in the region. Fortunately, in the last decade—and even more rapidly in the last five years—Central American countries have done just that, particularly El Salvador and Guatemala, and more recently but to a lesser extent, Honduras. This is largely due to increased pressures from their communities abroad, which have increased their power of influence over public life in their countries through familial links and remittances.

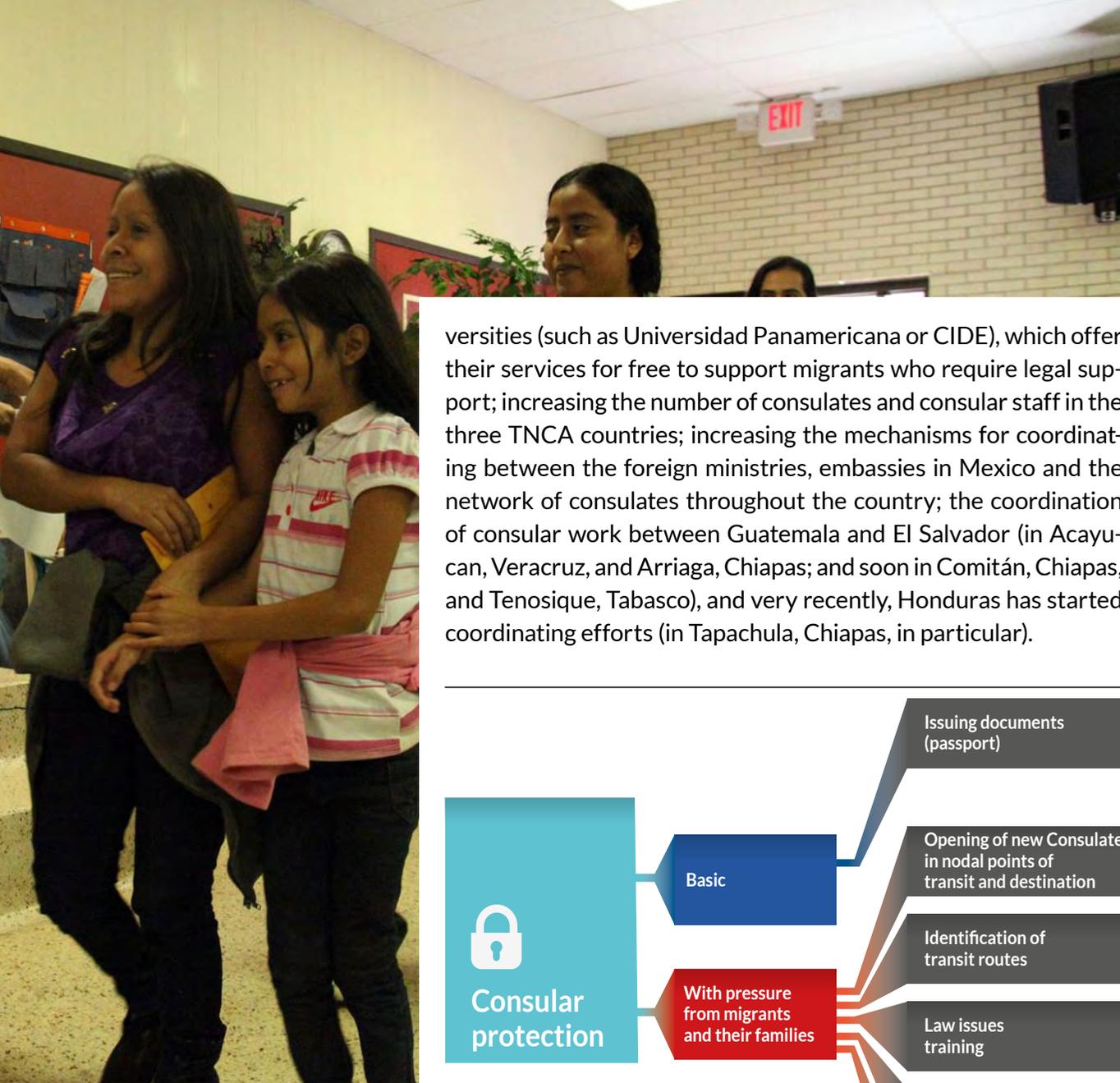
In turn, consulate work, previously limited to the documentation of nationals and the issuance of visas or permits for foreigners, is taking a turn towards opening new consulates along the routes that migrants take through Mexico, and in the cities of greater migratory concentration in the U.S.

Some of the positive actions that have thus far been carried out include: identifying transit routes and locating consular offices in strategic points in order to provide better protection; training on consular protection issues, human rights and Mexican legal and immigration systems; links with the Civil Society Organizations (CSOs), academia, and pro-bono lawyers (in private firms or uni-

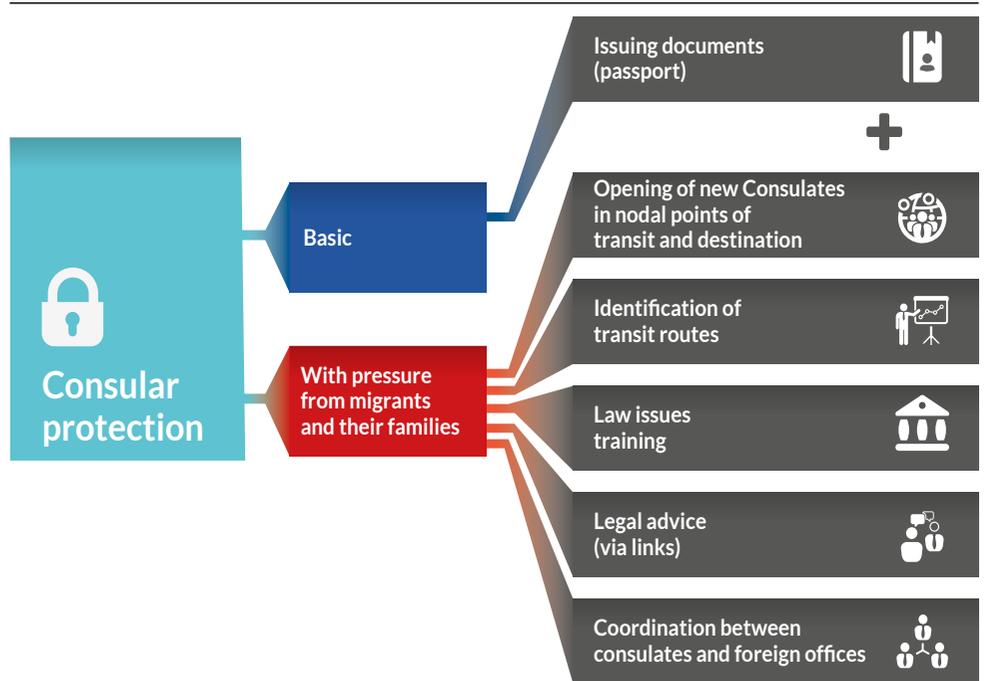
THE VIENNA CONVENTION ON CONSULAR RELATIONS SETS OUT IN ARTICLES 5 AND 36 THAT CONSULAR PROTECTION CONSTITUTES:

A set of actions, procedures, good practices and interventions made by consular and diplomatic staff in one country to other states as a means of safeguarding the rights of individuals and avoiding undue harm to the person, property and interests of its nationals abroad. This work is carried out in accordance with the principals and norms of international law in line with the laws and regulations of the country where protection is sought.⁹





versities (such as Universidad Panamericana or CIDE), which offer their services for free to support migrants who require legal support; increasing the number of consulates and consular staff in the three TNCA countries; increasing the mechanisms for coordinating between the foreign ministries, embassies in Mexico and the network of consulates throughout the country; the coordination of consular work between Guatemala and El Salvador (in Acayucan, Veracruz, and Arriaga, Chiapas; and soon in Comitán, Chiapas, and Tenosique, Tabasco), and very recently, Honduras has started coordinating efforts (in Tapachula, Chiapas, in particular).



While it is undeniable that this is important progress, there are several reasons why the foreign ministries, embassies and consulates of Central America are in a precarious situation to fully protect the human rights of its citizens in Mexico. Firstly, they do not have the human and material resources to meet the increasing volume of migrants in transit through Mexico and their cases of human rights violations. They also do not have well-developed standardized administrative procedures or fully operative computer systems to document cases of human rights violations suffered by mi-

grants, so they do not have accurate, consistent, comparable and reportable documented information on the situation of migrants in transit who are based in Mexico and the U.S. Furthermore, the Central American diplomatic and consular officers require more training about immigration, legal, economic and political processes in Mexico, as well as training about consular protection and the defense of human rights in accordance with international law.

Another reason why the Central American consulates cannot perform the task of protecting the human rights of their citizens is because Mexico does not comply strictly with the Vienna Convention on Consular Relations to provide immunity for Central American consuls and consular authorities, giving

them the right to put in place consular protection and assistance for their nationals.

The urgent need to protect migrant's human rights has been imposed on the regional agenda, from civil society organizations, academia, international organizations and the governments of the countries within the region

In Mexico, the main problem hindering the full implementation of the Vienna Convention is that, with the exception of the Secretariat of Foreign Affairs (SRE), various agencies involved in providing services to migrants—such as the National Migration Institute (INM) and the Secretariat of Public Education (SEP) and the Secretariat of Health (SS)—do not know the content of the convention, which establishes obligations like consular notification and the right to consular protection, as well as respect for diplomatic immunity for consular staff. Issues resulting from unfamiliarity with this information are exacerbated amongst the

Mexican state and municipal authorities where the consulates are located, particularly those departments responsible for policing and the administration and enforcement of justice. In this regard, it is essential to raise awareness among these authorities, especially about consular protection and the immunity of consular officials; there have been cases where consular representatives have been direct victims of threats, extortion and sometimes persecution, raids and kidnapping by organized crime, like the cases in recent years in states such as Chiapas, Oaxaca and Veracruz.¹¹

Finally, Central American foreign ministries do not give full and unconditional support for the consular protection of migrants; rather, diplomatic work is prioritized over consular responsibilities. It is feared that pursuing consular protection may pollute or damage the economic or political issues involved in their bilateral relationships with Mexico.





MAIN CHALLENGES TODAY FOR CENTRAL AMERICAN FOREIGN MINISTRIES, EMBASSIES AND CONSULATES, PARTICULARLY THOSE OF TNCA:

- Institutionalize consular protection as a state policy in Central America and consolidate a culture of consular protection among decision makers in the countries of origin, transit and destination, as well as among the migrant population.
- Consolidate the professionalization of diplomatic officials in consular matters, avoiding as far as possible that diplomatic work is prioritized over consular responsibilities or that the political appointments of diplomatic and consular officials take precedence over personnel providing services abroad.
- Document and systematize good practices, action protocols and information systems, as well as share and replicate success stories at the regional level.
- Ensure the immunity of Central American consuls and consular authorities in Mexico.
- Strengthen coordination, cooperation and ties between Mexico and Central American countries, particularly those of the TNCA, as well as those civil society organizations that support and defend the human rights of migrants.
- Expand and democratize access to useful information for the defense of migrants' human rights in the region.

Conclusion

- We have a unique opportunity to consolidate and institutionalize consular protection and assistance as a priority state policy in the region. Changes in the perceptions of the governments within Central America's Northern Triangle (tnca) towards the problem of migration show it is possible.
- In 2011, El Salvador published the Special Law for the Protection and Development of Salvadoran Migrants and their Families. Having a comprehensive legal framework to regulate the support received by migrants and their families is good practice that can be replicated in Guatemala and Honduras, in the first instance under the guidance of the Foreign Minister and in the latter under its first lady, both of whom have taken on the issue of protecting migrants abroad as a priority for national policy.
- Mexico, meanwhile, has relevant experience in the consular protection of its nationals abroad, and for more than two decades has prioritized consular work within its foreign policy, devoting about half the budget of the SRE to consular responsibilities, emphasizing the protection of Mexicans in the U.S., where it currently has a network of 50 consulates.

Policy recommendations

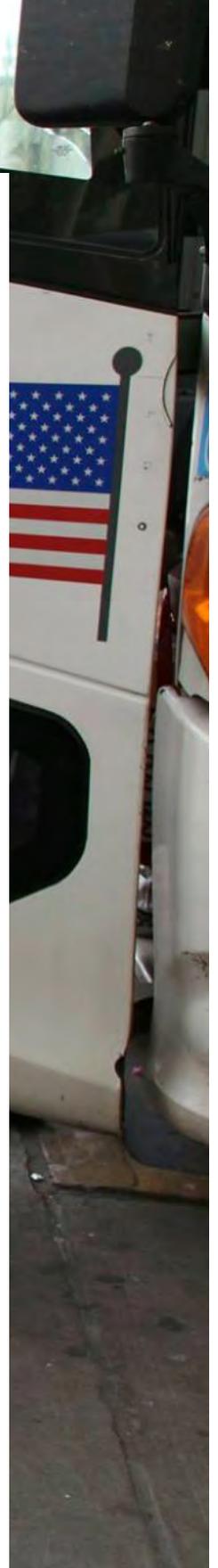
To ensure that consular protection becomes a fundamental tool in the defense of migrants' human rights, the following recommendations are proposed:

- **1)** Strengthen the institutionalization of migrant policies, making the protection of migrants a regional responsibility (in the countries of origin, transit and destination) and one of the pillars of national and foreign policy in all Central American countries.
- **2)** Regard migrants as subjects who have rights (notably human rights, but also all those established by national and international law) within immigration laws and migratory regulations and not as mere objects of public policy implementation.
- **3)** Create a culture of consular protection among decision makers in Central America and, in particular, at the level of Central American foreign ministries, embassies and consulates.
- **4)** Design and implement a policy of widespread consular assistance and protection within the TNCA countries, drawing on lessons learned internationally and best practices, including programs covering the six areas of law: civil, criminal, labor, human rights, immigration and administration.
- **5)** Replicate and adapt some of the existing programs in Mexico that have been successful (legal advice, legal assistance for those facing death penalty, repatriation of vulnerable people—such as unaccompanied children and adolescents, women facing situations of violence or trafficking, vulnerable or sick people—, consular protection and assistance in criminal matters, employment and immigration, and repatriation of remains).
- **6)** Encourage diplomatic coordination between Mexico and Central America to establish more coherent migration policies at regional levels, particularly with regard to respecting the rights of nationals abroad, and to make progress towards migrants receiving the same rights as other foreign nationals in the country, regardless of their immigration status.
- **7)** Establish mechanisms to assess the progress made during recent years within the Central American foreign ministries, to





- ensure that consular protection becomes institutionalized, without the possibility of retraction, as a state policy, thereby preventing that the issue of protecting human rights is subject to the preferences of the current administrators or the political parties in power.
- **8)** Increase the budget and resources needed to carry out activities related to consular protection in the different Central American countries. Laws, programs, and good practices must be shared between Mexico and Central American countries. The Regional Conference on Migration is the ideal platform for meeting, exchanging information, raising awareness, negotiating and establishing agreements.
 - **9)** Strengthen and expand the Central American consular network in Mexico and the U.S., in particular, by establishing joint consulates and consular agencies. In this regard, the *Memorandum of Understanding for the Establishment of a Network of Central American Consular Protection and Humanitarian Assistance and the Dominican Republic in the United Mexican States* could serve as the starting point for joint consular protection for TNCA countries in Mexico, and eventually in the U.S.
 - **10)** Strengthen the capacities of foreign ministries, embassies and consulates accredited in Mexico and the U.S. to document, systematize and analyze information on the human rights violations of migrants, sharing methodologies, databases and software tools among the Central American countries.
 - **11)** Deepen the dialogue between academics, government officials, diplomats, consuls and international organizations, such as civil society organizations, on the defense of migrants' human rights in general and migrants in transit in particular to create and strengthen networks that facilitate the exchange of information, support and resources, defining concrete actions that promote the protection of migrants.
 - **12)** Disseminate easily and freely useful information about the defense of migrants' human rights. To this end, governments, international organizations, academic institutions, foundations and CSOs must offer all the materials generated by them in the field for free to the public, using all available media for dissemination.



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CIESAS, Guadalajara: México

First Edition, 2015

Author: *Jorge A. Schiavon*

Translator: *Deborah Buley*

Key words: Migrant human rights; Undocumented migrants; Consular protection; Detention and deportation; Mexico and Central America

CANAMID, *Policy Brief Series*

Directors: Agustín Escobar Latapí and Pablo Mateos

Editorial design: Puntoasterisco®

Editorial assistance: Laura Pedraza and Jessica Coyotecatl

CANAMID Project is funded by *The John and Catherine MacArthur Foundation*

This publication has passed a relevance-reading approved by CIESAS Editorial Committee, who guarantees its quality and relevance.



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ISBN: 978-607-486-324-6

Impreso en México. Printed in Mexico.

Suggested citation:

Schiavon, Jorge A. (2015) "Consular protection as state policy to protect Mexican and Central American migrants", *CANAMID Policy Brief Series*, PB07, CIESAS: Guadalajara, Mexico. Available at: www.canamid.org



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CANAMID is directed by Pablo Mateos and Agustín Escobar, at the Center for Research and Higher Studies in Social Anthropology (CIESAS, Mexico), and is funded by the MacArthur Foundation (Chicago). The participant institutions are:

- Institute for the Study of International Migration (ISIM), Georgetown University (U.S.)
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