

MEXICO'S MISSED OPPORTUNITIES TO PROTECT IRREGULAR WOMEN TRANSMIGRANTS: APPLYING A GENDER LENS TO MIGRATION LAW REFORM

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Abstract: Mexico is a transit country for hundreds of thousands of migrants traveling north. Due to economic liberalization, women increasingly migrate in search of employment opportunities, a phenomenon called the “feminization of migration.” As women migrate, they face high risks of sexual and gender-based violence, including sexual assault, rape, kidnapping, and trafficking. During transit, the impunity of organized criminal groups and corrupt state officials facilitate rampant abuse of women. Mexico’s former migration policy exacerbated women’s vulnerability to abuse by criminal organizations by pushing women into dangerous illicit migration channels. In response to the abuse of transmigrants, Mexico passed a sweeping migration reform bill in May of 2011, effective as of November 2012. While the law’s rhetoric recognizes women as a vulnerable group, applying a gender lens to the law reveals that it fails to create structures that will adequately mitigate or prevent abuses of women migrants. True protection of women migrants requires a regional solution that responds to the gendered economic factors propelling migration, creating legal migration channels for women labor migrants in order to alter vulnerable patterns of transit.

I. INTRODUCTION

On April 13, 2009, Nancy, a twenty-four-year-old Salvadoran migrant heading north to the United States, stayed at a shelter in Veracruz, a state in southern Mexico.¹ While there, members of the criminal group the Zetas arrived at the shelter in large trucks and abducted her and 83 other migrants.² The trucks took them to Reynosa, Tamaulipas on the United States.-Mexico border.³ Mexican immigration authorities and Federal Police they passed along the way accepted bribe money to waive them along.⁴ During the journey, the kidnapers sexually abused Nancy and the other kidnapped

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¹ Nancy’s story was collected by a human rights organization through an interview with a migrant victim. Maureen Meyer & Stephanie Brewer, *A Dangerous Journey Through Mexico: Human Rights Violations Against Migrants in Transit*, WASH. OFF. ON LATIN AM., 4, 8 (2010), available at <http://www.wola.org/sites/default/files/downloadable/Mexico/2010/DangerousJourney.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

women; when a male migrant attempted to defend the women, he was raped by the kidnappers and beaten to death.⁵

In Reynosa, two of the women with Nancy paid the ransom asked by the kidnappers and were released.⁶ Unwilling to continue their journey, they turned themselves in to Mexican immigration authorities.⁷ These officials then sold the women back to the Zetas.⁸ The kidnappers brought the women back to the house, killed them, and displayed their bodies in front of Nancy and the other hostages.⁹

The kidnapper “bosses,” three Mexican men, sexually abused Nancy and the other women regularly.¹⁰ The “bosses” raped Nancy several times.¹¹ The Zetas proposed that Nancy work for them, smuggling people from El Salvador; she agreed at first, hoping to escape, but then became afraid and declined their offer.¹² She waited fifteen days for her aunt to gather the money required for her ransom before she was set free.¹³

Many women who migrate from Mexico to the United States can tell a story similar to Nancy’s. Mexico to the United States is the principal migration corridor in the world,¹⁴ hosting the transmigration¹⁵ of hundreds of thousands of Latin American migrants on their journey to the United States.¹⁶ The term “feminization of migration” reflects the shift in migration patterns as women increasingly join migration flows as labor migrants.¹⁷ In

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Meyer & Brewer, *supra* note 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS MEXICO (CNDH), INFORME ESPECIAL SOBRE SECUESTRO DE MIGRANTES EN MÉXICO [SPECIAL REPORT ON THE KIDNAPPING OF MIGRANTS IN MEXICO] 5 (Feb. 2011) [hereinafter CNDH 2011].

¹⁵ “Transmigration” refers to the journey through a country only as part of the route from origin country to destination country. In this case, Mexico is the overland route for migrants coming from the south as they move north to the United States and Canada.

¹⁶ Patricia Cortés Castellanos, CELADE UNFPA, *Mujeres migrantes de América Latina y el Caribe: derechos humanos, mitos y duras realidades* [Women Migrants of Latin America and the Caribbean: Human Rights, Myths and Harsh Realities], at 34, U.N. Doc. LC/L.2426-P/1680-9009, U.N. Sales No. S.05.II.G.173 (Nov. 2005); Amnesty Int’l, *Invisible Victims: Migrants on the Move in Mexico*, at 3, AI Index No. AMR 41/014/2010 (2010), available at <http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf> [hereinafter Amnesty 2010]; HUMAN RIGHTS COUNCIL (HRC), REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS, JORGE BUSTAMANTE: MISSION TO MEXICO, INTER-AM. COMM’N H.R., Report No. A/HRC/11/7/Add.224 (Mar. 24, 2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/125/76/PDF/G0912576.pdf?OpenElement>.

¹⁷ Gloria Moreno Fontes Chammartin, International Labour Organization, *The feminization of international migration*, in MIGRANT WORKERS, LABOUR EDUCATION No. 129, 39 (2002), available at

Latin America, gender shapes migration processes as women make the difficult choice to migrate in response to the lack of employment opportunities due to economic and trade liberalization in Central America and the increased demand for female migrant labor in destination countries.¹⁸ The majority of women transmigrating Mexico are Central Americans destined for the United States.¹⁹ Women account for 10% to 30% of the northward migration flow of Central Americans in Mexico, and up to half of the migrant population in the United States.²⁰

Irregular migrants²¹ who traverse Mexico (who are mostly Central Americans without legal status in Mexico) undertake one of the most dangerous migration journeys in the world.²² Organized criminal groups kidnap more than 20,000 migrants in situations similar to Nancy's each year.²³ In 2011, the Inter-American Commission on Human Rights Special Rapporteur received many reports of migrants held in Mexico with hundreds of other captives and subjected to beatings, rape, gang rape, extortion, sexual

http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/publication/wcms_111462.pdf; Donato et al., *A Glass Half Full? Gender in Migration Studies*, 40 INT'L MIGRATION REV. 3, 5 (2006). See also UN International Research and Training Institute for the Advancement of Women (INSTRAW), *The Feminization of International Labor Migration, Gender, Remittances, and Development Working Paper 1* (2007), available at http://www.renate-europe.net/downloads/Documents/Feminization_of_Migration-INSTRAW2007.pdf [hereinafter INSTRAW].

¹⁸ INSTRAW, *supra* note 17, at 1-2.

¹⁹ Patricia R. Pessar, *Women, Gender, and International Migration Across and Beyond the Americas: Inequalities and Limited Empowerment*, 2, UN/POP/EGM-MIG/2005/08 (Nov. 28, 2005), available at http://www.un.org/esa/population/meetings/IttMigLAC/P08_PPessar.pdf; Saskia Sassen, *Women's Burden: Counter-Geographies of Globalization and the Feminization of Survival*, 53 J. OF INTL. AFFAIRS 504, 511-12 (2000).

²⁰ The discrepancy is likely to be due to less circular migration. Gabriela Diaz & Gretchen Kuhner, *Women Migrants in Transit and Detention in Mexico*, Migration Information Source, March 2007, available at <http://www.migrationinformation.org/Feature/display.cfm?id=586>. Circular migration refers to repetitive migration to the destination country, return to the home country, and migration again. Studies suggest that women do less circular migration because of maternity, the danger of the journey, and economic reasons. Gretchen Kuhner, *La Violencia Contra Las Mujeres Migrantes en Tránsito por México* [The Violence against Women Migrants in Transition for Mexico], DFESNOR, 20 (June 2011), available at http://www.imumi.org/attachments/DFensor_Junio_2011_Migracion_Asilo_y_Refugio.pdf. Women tend to pay larger sums of money to traffickers to avoid detention, making it more difficult to discern their presence in the migration flow. Gabriela Díaz Prieto y Grechen Kuhner, *Globalización y Migración Femenina: Experiencias en México* [Globalization and Feminine Migration: Experiences in Mexico], CEPI WORKING PAPER NO. 12, Sec. V.1. (Dec. 2007), available at http://interamericanos.itam.mx/working_papers/12KUHNER.pdf.

²¹ This comment uses "irregular migrants" to identify migrants whose entry or presence in a country has not been legally sanctioned.

²² Amnesty 2010, *supra* note 16, at 5.

²³ COMISION NACIONAL DE LOS DERECHOS HUMAN MEXICO (CNDH), INFORME ESPECIAL SOBRE SECUESTRO DE MIGRANTES EN MÉXICO [SPECIAL REPORT ON THE KIDNAPPING OF MIGRANTS IN MEXICO], at 12 (June 2009) [hereinafter CNDH 2009] (English translation available at http://www.cndh.org.mx/Informes_Especiales) (estimating 18,000 per year); CNDH 2011, *supra* note 14, at 26 (estimating 22,000 per year).

exploitation, and human trafficking.²⁴ While criminal organizations target men and women migrants, women's experience of exploitation includes a unique and extremely high risk of sexual and gender-based violence.²⁵ While all transmigrants in Mexico face a high risk of violence during transit, women irregular migrants are the "vulnerable among the vulnerable."²⁶

Until 2011, the 1974 Ley General de Población ("General Population Law" ("LGP")) and its regulations issued in 2000 governed the rights of migrants traveling into or through Mexico.²⁷ The LGP did not provide legal migration channels for transmigrants, while increased enforcement efforts during the last ten years sought to stem migration from Central America.²⁸ This restrictive migration regime pushed migrants, especially women, into illicit migration channels and human smuggling situations that made them more vulnerable to kidnapping, sexual violence, and human trafficking.²⁹ The gendered impact of Mexican migration policy included rampant impunity for abuses of migrants, increasing women migrants' vulnerability to violence by organized criminal groups.³⁰

Mexico finally responded to longstanding calls for migration policy reform³¹ and growing international attention on the abuses of migrants in

²⁴ Annex to Press Release, Inter-American Commission on Human Rights (IACHR), Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrants Workers on Its Visit to Mexico, IACHR Press Release 82/11, 8 (Aug. 2, 2011) [hereinafter IACHR Rapporteur 2011].

²⁵ Jorge Martínez Pizarro, CELADE UNFPA, *El Mapa Migratorio de América Latina y el Caribe, las mujeres y el género* [The Migration Map of Latin America and the Caribbean, Women and Gender], at 8, U.N. Doc. LC/L.1974-P/E/WP.44, U.N. Sales No. S:03.II.G.133 (2003), available at http://www.eclac.cl/publicaciones/xml/2/13732/lc1974_P.pdf; Amnesty Int'l, *Briefing to the UN Committee on the Elimination of Discrimination Against Women for its 52nd Sess.*, at 15, AI Index No. AMR 41/041/2012 (July 2012), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AmnestyInternationalForTheSessionMexico_CEDAW52.pdf.

²⁶ Martínez Pizarro, *supra* note 25, at 58.

²⁷ Ley General de Población [LGP] [General Population Law], Diario Oficial de la Federación [DO], 1 de Enero de 1974 (the LGP cited herein, unless otherwise noted, refers to the version of the law prior to 2011 revisions); Reglamento de la Ley General de Población [RLGP] [Regulations for the General Population Law], Diario Oficial, 14 de abril de 2000.

²⁸ See, e.g., LGP art. 119, 122, 123; Francisco Alba & Manuel Ángel Castillo, *New Approaches to Migration Management in Mexico and Central America*, MIGRATION POL'Y INST. 6 (2012), available at <http://www.migrationpolicy.org/pubs/RMSG-MexCentAm-Migration.pdf>.

²⁹ Alba & Castillo, *supra* note 28, at 5; Olivia Ruiz, *Migration and Borders: Present and Future Challenges*, 33 LATIN AM. PERSP. 46, 50 (2006).

³⁰ Both migrants in transit as well as Mexican citizens are victims of abuses. CNDH 2011, *supra* note 14, at 27 (more than 10% of kidnapping victims were Mexican). This comment will focus on non-Mexican migrants with irregular status, as the rights of Mexican nationals in their own nation are not governed by the Migration Law, except briefly. See Reglamento de la Ley de Migración [RLM] [Regulations for the Migration Law], Diario Oficial de la Federación [DO], ch.9 art. 215, 28 de Septiembre de 2012 (Mex.) [hereinafter RLM] (providing that the INM should contribute to making sure the entrance, stay and exit of Mexican emigrants from Mexico respects their rights and security). See also Ley de Migración [LM] [Migration Law], art. 2, Diario Oficial de la Federación [DO], 25 de Mayo de 2011 (Mex.) [hereinafter LM]; RLM, ch. 10 (supporting repatriation of returning Mexican emigrants).

³¹ Alba & Castillo, *supra* note 28, at 13-14.

Mexico.³² On May 25, 2011, Mexico passed the Ley de Migración (“Migration Law”), repealing the LGP entirely as it pertained to migration.³³ The former Mexican president Felipe Calderón called the law the most sweeping change to Mexican immigration policy since the LGP was enacted.³⁴ The law went into effect in November 2012, after Mexico issued regulations on September 24, 2012 (the Reglamento de la Ley de Migración (“RLM”)).³⁵

The Migration Law regulates immigration to Mexico, emigration and return of Mexican citizens, and migrants during transit through Mexico.³⁶ The law acknowledges the human rights of migrants and explicitly recognizes women as a vulnerable group of migrants.³⁷ However, this comment concludes that the Migration Law fails to actually adjust or create structures that would change the primary factors contributing to women’s vulnerability to abuse. By failing to provide migrants in transit with legal migration channels, maintaining enforcement powers of immigration and other state officials, and continuing punitive enforcement structures, the policy will continue to place women migrants in positions vulnerable to sexual and gender-based violence.

This comment applies a gender lens to the migration experience in order to evaluate how the Migration Law responds to the feminization of migration and the abuse of women migrants. Part II of this comment considers the experience of irregular women transmigrants in Mexico³⁸ and their risk of sexual and gender-based violence. This analysis addresses two of the factors perpetuating women migrants’ vulnerable position: increased female migration due to regional economic liberalization and the symbiotic

³² This attention includes the report and hearing before the Inter-American Commission on Human Rights on March 22, 2010, the Amnesty International Report in 2010, and the sixth report on the situation of human rights of migrant by civil society groups. CNDH 2011, *supra* note 14, at 32-38.

³³ LM art. 1.

³⁴ Migration Policy Institute (MPI), *Top 10 of 2011 Issue #10: Caught Between Two Migration Realities, Mexico Passes New Immigration Legislation*, MIGRATION INFO. SOURCE (Dec. 2011), available at <http://www.migrationinformation.org/Feature/display.cfm?ID=871>.

³⁵ RLM preamble.

³⁶ LM art. 1.

³⁷ *See, e.g.*, LM art. 2, 133.

³⁸ This comment addresses only abuses occurring in Mexican territory. They occur throughout the national territory, with 67% of kidnapping events having happened in southeast Mexico and 29% in northern Mexico. CNDH 2011, *supra* note 14, at 27. Crossing the northern border also includes high risks of sexual and gender-based violence against women migrants, which, though beyond the scope of this comment, are necessarily aspects of women’s experiences. *See* Sylvana Falcón, *Rape as a Weapon of War: Militarized Rape at the United States-Mexico Border*, in *WOMEN AND MIGRATION IN THE UNITED STATES-MEXICO BORDERLANDS: A READER* 202-223 (Denise Segura & Patricia Zavella, eds. 2007); IACHR, SPECIAL RAPPORTEUR ON THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES, ON SITE VISIT TO MEXICO, in *ANNUAL REPORT*, ¶¶ 208-212 (2003), available at <http://www.cidh.org/Migrantes/2003.eng.cap5c.htm> [hereinafter IACHR RAPPORTEUR 2003].

corruption of state officials and impunity of organized criminal groups. Part III considers the role of Mexico's prior migration law regime in pushing women migrants into migration channels with high risks of sexual and gender-based violence. Part IV then analyzes the probable ability of the new Migration Law to reduce women's vulnerable position during migration. Part V proposes that ultimately, prevention of abuses of women migrants requires a regional migration policy that reflects the socioeconomic reality of labor migration in the region by providing legal migration channels to women heading north.

II. A GENDER LENS REVEALS FACTORS THAT CREATE CONDITIONS OF VULNERABILITY TO SEXUAL AND GENDER-BASED VIOLENCE FOR WOMEN MIGRANTS

Mexico's migration policy, both the LGP's former migration regime and the new Migration Law must be understood within the context of Mexico as a country of origin, transit, and destination for migrants. Mexico is the top emigration country in the world³⁹ and sends more of its citizens to the United States than any other country in the world sends to a single destination.⁴⁰ In 2010, more than 400,000 Mexicans emigrated out of the country.⁴¹ About 11.7 million Mexican-born people, roughly 12% of Mexico's population, live in the United States.⁴² In contrast, foreign-born persons in Mexico represent only 0.86% of Mexico's total population (0.19% excluding those born in the United States).⁴³ Because of the large population of Mexican citizens living as migrants abroad, Mexico has taken a position of global leadership to advocate for the rights of migrants internationally and in the United States.⁴⁴

³⁹ IACHR RAPPORTEUR 2003, *supra* note 38, at 3.

⁴⁰ Jeffrey Passel, et al. *Net Migration from Mexico Falls to Zero and Perhaps Less*, PEW HISPANIC RESEARCH CENTER (May 3, 2012), <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/#fn-13587-1> (last visited Apr. 6, 2013).

⁴¹ Consejo Nacional de Poblacion [CONAPO], *Indicadores Demograficos Basicos 1990-2010: Nacional*, [Basic Demographic Indicators 1990-2010: National], CONAPO, http://www.conapo.gob.mx/es/CONAPO/Indicadores_Demograficos_Basicos_1990-2010 (last visited Apr. 6, 2013). *See also* Lucy Williams, *Cross-Border Reflections on Poverty: Lessons from the United States and Mexico*, in *LAW AND POVERTY: THE LEGAL SYSTEM AND POVERTY REDUCTION* 31, 34-35 (Lucy Williams, Asbjørn Kjønsstad & Peter Robson eds., 2003) (relating high levels of Mexico-United States migration to the history of labor market ties serving United States industry and agricultural interests).

⁴² Eileen Patten, *Statistical Portrait of the Foreign-Born Population in the United States, 2010*, PEW HISPANIC RESEARCH CENTER, <http://www.pewhispanic.org/2012/02/21/statistical-portrait-of-the-foreign-born-population-in-the-united-states-2010/> (last visited Jan. 2, 2012).

⁴³ Manuel Ángel Castillo, *Extranjeros en México, 2000-2010* [Foreigners in Mexico, 2000-2010], 2 *CONYUNTURA DEMOGRÁFICA* 57, 58 & 60 (2012), available at <http://www.somede.org/coyuntura-demografica/articulos/castillo-20120716.pdf>.

⁴⁴ Mexico has long defended migrants' rights, pursuing bilateral negotiation and advocacy with the

Mexico is also a country of transit for at least 109,000 people each year who travel north as irregular migrants,⁴⁵ more than 75% destined for the United States.⁴⁶ Approximately 95% of these migrants are Central Americans, principally from El Salvador, Guatemala, Honduras, and Nicaragua.⁴⁷ A small number aim for Mexico, where 45,000 to 75,000 migrant Guatemalans work temporarily in the south,⁴⁸ while some women and youth seek employment in cities as domestic workers, sex workers, and in the informal service sector.⁴⁹ The following sections consider the experiences of women migrants during transit of this migration corridor in order to identify the factors influencing female migration and the probable impact of the new Migration Law on women migrants' experience of violence.

A. *Defining the "Gender Lens:" The Recognition of Gender in Migration Scholarship Acknowledges the Unique Influences and Experiences of Female Migration*

Until the 1970s, little attention was paid to the subject of gender in migration studies, as scholars assumed that women and children migrated to accompany or reunite with a breadwinning male partner.⁵⁰ Since then, scholars recognized that women have represented almost half of migrants

United States government, leading internationally with the drafting of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Their Families, and using public diplomacy and community organizing. Alba & Castillo, *supra* note 28, at 3.

⁴⁵ Estimates vary from 109,000 irregular transmigrants through Mexico to 400,000. IMUMI, *Cifras de mujeres en la migración*, 13 (2013) (citing Salvador Berumen, Juan Carlos Narváez, & Luis Felipe Ramos, *La migración centroamericana de tránsito irregular por México. Una aproximación e los registros administrativos migratorios y otras Fuentes de información*,⁷ in CONSTRUYENDO ESTADÍSTICAS. MOVILIDAD Y MIGRACIÓN INTERNACIONAL EN MÉXICO (Rodríguez, Salazar, and Martínez eds. 2012) (estimating 109,000 based on statistics from the INM, United States Department of Homeland Security, and United States Border Patrol). The Secretary of Governance puts the number at 150,000 in its February 2011 report, while civil society groups generally agree on a higher estimate of 400,000 based on the difficulty of accurately counting irregular migrants. CNDH 2011, *supra* note 14, at 5.

⁴⁶ Cortés Castellanos, *supra* note 16, at 34.

⁴⁷ Gobierno Federal de México, *Informe del estado Mexicano de Secuestro, Extorsión y Otros Delitos Cometidos Contra Personas en Tránsito por Territorio Mexicano*, at 12 (June 16, 2010), available at http://www.seguridadcondemocracia.org/administrador_de_carpetas/migracion_y_seguridad/pdf/INFORME%20MIGRANTES-CIDH.pdf.

⁴⁸ IACHR RAPPORTEUR 2003, *supra* note 38, at ¶ 178.

⁴⁹ Díaz Prieto & Kuhner, *supra* note 20, at sec. VI.1.

⁵⁰ Donato et al., *supra* note 17, at 4-12 (outlining the history of gender in migration studies); Adele Jones, *A Silent but Mighty River: The Costs of Women's Economic Migration*, 33 SIGNAL 761, 764 (2008) (noting the paucity even at the present day of adequate attention to female migration in economic migration studies); Pessar, *supra* note 19, at 2; Patricia R. Pessar & Sarah J. Mahler, *Gender and Transnational Migration 2* (June 30-July 1, 2001) (paper given to the conference on Transnational Migration: Comparative Perspective, Princeton University), available at <http://www.transcomm.ox.ac.uk/working%20papers/WPTC-01-20%20Pessar.doc.pdf>.

globally since the 1960s, and today make up 51% of all migrants worldwide.⁵¹ Though previously women migrated primarily to join a partner, increasing numbers of women, both single and married, have begun moving on their own to find better employment,⁵² particularly since economic liberalization policies affected developing nations in the 1980s.⁵³ Migration scholars dub this global phenomenon the “feminization of migration.”⁵⁴ They have subsequently brought gender centrally into migration studies to remedy decades of inattention.⁵⁵

When scholars understand gender not as a comparison between male and female, but as a social dynamic that influences human relationships, decisions, and system, they better understand the unique forces and experiences that shape female migration distinctly from male migration.⁵⁶ Migration scholars have come to understand “gender” as a social construction different from biological sex, not a comparative of female versus male migrants.⁵⁷ People make decisions to migrate within a context of gender interactions between individuals, families, and institutions,⁵⁸ making gender a set of social relations that organize immigration patterns.⁵⁹ As scholars begin to understand the migration process as a gendered phenomenon, they recognize that traditional explanations for migration do not fully explain women’s choices and methods of migrating.⁶⁰ Applying a gender lens to migration allows one to recognize the role of gender in the law and policy that influence migration choices and processes.⁶¹

Applying a gender awareness lens to the experience of migrants during transit through Mexico also reveals the unique consequences to women of the abuses and risks faced by all migrants in Mexico. Women migrants experience high rates of sexual and gender-based violence. Gender-based violence is “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts

⁵¹ International Labour Organization (ILO), *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An Information Guide Booklet 1 9*, available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/instructionalmaterial/wcms_116360.pdf [hereinafter ILO Guide].

⁵² Martínez Pizarro, *supra* note 25, at 53; Fontes Chammartin, *supra* note 17, at 39; International Labour Organization (ILO), *Migrant Workers*, ¶ 20-22, 87th Sess. 1999 (June 1999), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/r3-1b.htm>.

⁵³ E.g. Sassen, *supra* note 19, at 504-506.

⁵⁴ Fontes Chammartin, *supra* note 17, at 39.

⁵⁵ See sources cited *supra* note 25.

⁵⁶ See Donato et al., *supra* note 17, at 6, 13; Jones, *supra* note 50, at 764-765.

⁵⁷ Donato et al., *supra* note 17, at 5-6; Pessar, *supra* note 19, at 2.

⁵⁸ Donato et al., *supra* note 17, at 5-6; Pessar, *supra* note 19, at 2.

⁵⁹ Pessar & Mahler, *supra* note 50, at 4.

⁶⁰ Donato et al., *supra* note 17, at 6, 13; Jones, *supra* note 50, at 764-765.

⁶¹ Kitty Calavita, *Gender, Migration, and Law: Crossing Borders and Bridging Disciplines*, 40 INTL. MIGRATION REV. 104, 116 (2006); Donato et al., *supra* note 17, at 6.

that inflict physical, mental or sexual harm or suffering, threats of acts, coercion and other deprivations of liberty.”⁶² Sexual violence includes rape, sexual abuse, sexual intimidation, trafficking, and forced prostitution.⁶³

This comment utilizes the definition of gender supplied by migration scholars to consider the experience of women migrants transiting Mexico. Examining transmigration with an awareness of gendered influences and experiences is necessary to understand the gendered impact of law and policy on choices to migrate. This improved understanding of the role of gender, both in factors propelling certain patterns of migration as well as the effect of violence during migration, is essential to understanding the needs of women migrants and the potential of the Migration Law to meet those needs.

B. The Experience of Women Migrants in Transit Reveals a Crisis of Sexual and Gender-Based Violence Against Irregular Migrants

The feminization of migration holds true for migrants in transit through Mexico. Women make up about 20% of migrants in transit through Mexico, but half of the migrant population in the destination country.⁶⁴ More than 75% of women in one study migrated north in search of work so they could save money to send home.⁶⁵ These women were motivated not by unemployment, but by the prospect of better earnings; prior to migration most women worked but earned an average annual income of only USD \$3,875.⁶⁶ The majority planned to stay in the United States for only three to five years to save money, then return to their country of origin.⁶⁷ Nearly half

⁶² Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19 by the Committee on the Elimination of Discrimination against Women (CEDAW), 11th Sess. ¶ 6 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Sexual violence includes rape, sexual abuse, sexual intimidation, trafficking, and forced prostitution. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, ¶ 17, U.N. Doc. A/RES/48/104, art. 2(b) (Dec. 20, 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm> [hereinafter DEVAW].

⁶³ DEVAW, *supra* note 62, at art. 2(b).

⁶⁴ Diaz & Kuhner, *supra* note 20. This discrepancy is likely due to women's lower rates of circular migration, the repetitive migration to the destination country, return to the home country, and migration again. Studies suggest that women do less circular migration because of maternity, the danger of the journey, and economic reasons. Kuhner, *supra* note 20, at 20. In addition, women tend to pay larger sums of money to traffickers to avoid detention, making it more difficult to discern their presence in the migration flow. Diaz Prieto & Kuhner, *supra* note 20, at § V.1.

⁶⁵ Diaz & Kuhner, *supra* note 20 (data based on a study of women in detention).

⁶⁶ *Id.*; Martinez Pizarro, *supra* note 25, at 55.

⁶⁷ Diaz & Kuhner, *supra* note 20.

of women migrants were from Guatemala, Honduras, and El Salvador.⁶⁸ Among the women from Central America, 94% had left children behind.⁶⁹

Women migrants experience the abuses common to all migrants, including kidnapping, extortion, and physical violence, but also the unique experience of sexual and gender-based violence.⁷⁰ Women face such a high risk of rape and sexual assault that many consider it part of the sacrifice for their journey north.⁷¹ Some human rights organizations estimate that six in ten women and girl migrants experience rape during their transit,⁷² while other service providers in the field estimate eight in ten women migrants experience rape and other forms of sexual assault.⁷³ Another study by the Instituto Nacional de Salud Pública (National Institute of Public Health) in which researchers interviewed 750 migrants in one shelter in Tapachula, Mexico, indicated lower rates of sexual violence for women, but much higher incidents of sexual violence against women than against men.⁷⁴ Rape is so prevalent that smugglers sometimes require women to take contraceptives prior to traveling north.⁷⁵

The epidemic of migrant kidnapping for extortion creates the conditions for widespread sexual violence against women migrants. The Mexican National Human Rights Commission (“CNDH”) issued reports in 2009 and 2011 on the kidnappings of migrants. Over a six-month period from 2008 to 2009, perpetrators kidnapped 9,758 migrants;⁷⁶ in the first six months of 2011, they kidnapped 11,333 victims.⁷⁷ These studies indicate

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ While girls may also be victims to these same crimes, this comment does not address the situation of minors in migration. The Migration Law provides unique regulations around minors, especially unaccompanied migrant youth, but those regulations are beyond the scope of this analysis. *See* RLM art. 169-177.

⁷¹ Amnesty 2010, *supra* note 16, at 15.

⁷² *Id.*

⁷³ José Morales, *Violadas, 8 de cada 10 mujeres migrantes* (July 1, 2008), ONGINFO.COM, <http://ong.tupatrocinio.com/violadas-de-cada-mujeres-migrantes-noticia-732.html>.

⁷⁴ This study found that 8.3% of women surveyed reported forced sexual intercourse during their journey (compared to 2.1% of male migrants), while 28.2% reported some type of exchanging sexual relationship for goods or services (transportation, food, protection, or money) (compared to 1.4% of male migrants). INSTITUTO NACIONAL DE SALUD PÚBLICA (INSP), *MIGRACIÓN Y SALUD SEXUAL Y REPRODUCTIVA EN LA FRONTERA SUR DE MÉXICO*, 100, table 5.5 (René Leyva Flores and Frida Quintino Pérez, eds., 2011), available at <http://umys.insp.mx/docs/publicaciones/MigracionSSRMexElectronico.pdf>. The representative quality of these numbers is unknown; though more precise than the 60% estimate, it is based only on a small population of migrants still at Mexico’s southern border. *Id.* Reluctance to report or recognize sexual violence might also lead to misrepresentative numbers. *See* Amnesty 2010, *supra* note 16, at 15.

⁷⁵ Amnesty 2010, *supra* note 16, at 15.

⁷⁶ CNDH 2009, *supra* note 23, at 9, 12 (noting this is likely an underestimate, given the impossibility of detecting all victims during this period).

⁷⁷ CNDH 2011, *supra* note 14, at 26.

that at least 18,000-20,000 migrants are kidnapped per year.⁷⁸ In both studies the largest number of victims were from Honduras, then El Salvador, then Guatemala; in 2011, 10% of victims were Mexican.⁷⁹ Abusers induce or forcibly capture migrants traveling or staying in shelters, take them to “safe houses,” and force them to give up the names of family members who will pay a ransom for their release.⁸⁰ Kidnappers usually subject migrants to beatings and torture⁸¹ and often kill migrants who do not have a way to pay the ransom.⁸² Women experience systematic sexual abuse and rape while kidnapped,⁸³ and are sometimes sold into prostitution.⁸⁴

Migration also makes women vulnerable to human trafficking,⁸⁵ another form of sexual and gender-based violence. More than 20,000 persons are victims of human trafficking in Mexico each year, predominantly near borders and in tourist destinations.⁸⁶ The International Organization for Migration (“IOM”) has provided direct assistance to trafficking victims since 2005, during which time women represented more than 80% of trafficking victims.⁸⁷ Most victims were Central American

⁷⁸ *Id.*; STEVEN DUDLEY, MIGRATION POL'Y INST., TRANSNATIONAL CRIME IN MEXICO AND CENTRAL AMERICA: ITS EVOLUTION AND ROLE IN INTERNATIONAL MIGRATION 1 (2012), available at <http://www.migrationpolicy.org/pubs/RMSG-TransnationalCrime.pdf>.

⁷⁹ CNDH 2009, *supra* note 23, at 13; CNDH 2011, *supra* note 14, at 27.

⁸⁰ Meyer & Brewer, *supra* note 1, at 3; CNDH 2009, *supra* note 23; CNDH 2011, *supra* note 14.

⁸¹ See *supra* note 80.

⁸² Meyer & Brewer, *supra* note 1, at 3.

⁸³ Amnesty 2010, *supra* note 16, at 12-13; *Secuestros a Personas Migrantes en Tránsito por México*, Report from civil society groups for the U.N. Committee for the Protection of the Right of Migrants and Their Families (March 4, 2011), available at http://www2.ohchr.org/english/bodies/cmw/docs/ngos/prodh_Mexico_CAT47.pdf.

⁸⁴ CNDH 2009, *supra* note 23, at; Meyer & Brewer, *supra* note 1 at 3.

⁸⁵ “Trafficking in persons” is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception . . . for the purpose of exploitation. Exploitation shall include . . . prostitution of others or other forms of sexual exploitation, forced labour or services, slavery . . .” Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 25 (II), U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A.55.49 (Vol. 1) at art. 3(a), (Dec. 25, 2003).

⁸⁶ Press Release, International Organization for Migration, IOM and Mexico’s National Human Rights Commission Sign Cooperation Agreement to Fight Human Trafficking and the Kidnapping of Migrants in Mexico (Sep. 14, 2010), <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2010/pbn-listing/iom-and-mexicos-national-human-rights-c.html>; HRC, *supra* note 16, at ¶ 49.

⁸⁷ HÉLÈN LE GOFF & THOMAS LOTHAR WEISS, INT’L ORG. FOR MIGRATION, LA TRATA DE PERSONAS EN MÉXICO: DIAGNÓSTICO SOBRE LA ASISTENCIA A VÍCTIMAS 12, 49 (2011), available at http://www.oim.org.mx/pdf/La%20Trata%20de%20personas_diagnostico2.pdf. The predominance of women as the victims of trafficking, especially international trafficking, is consistent with international trends, where the majority of trafficking victims are women and girls. CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL332006, TRAFFICKING IN PERSONS IN LATIN AMERICA AND THE CARIBBEAN 4 (2011).

females between eight and twenty-two years old, the large majority from Guatemala.⁸⁸

Women are victims of both sex trafficking as well as labor trafficking; those trafficked for labor are usually also victims of sexual and gender-based violence. Of the victims working with the IOM, 70% were victims of labor trafficking.⁸⁹ Traffickers subjected many of those trafficked for non-sexual exploitation to sexual violence as a method of control.⁹⁰ Another 24% were victims of sexual exploitation, including forced prostitution and sex tourism.⁹¹ Abductors or coyotes, paid guides facilitating migration,⁹² sell women to organized criminal groups who force them into prostitution or domestic work in buildings where they hold kidnapped migrants.⁹³ In some cases, criminal organization kidnapped girls and adolescents and sold them to owners of bars and nightlife establishments for sex work.⁹⁴ For those not forcibly abducted, most of the “recruitment” by traffickers occurred in public places in towns near the southern border.⁹⁵ Irregular migrant women and girls are vulnerable at border locations because they have a strong desire to get to or across the United States border but lack migration documentation or sufficient knowledge about the risks of migration to counter the promises made by traffickers.⁹⁶

C. *Gendered Impacts of Economic Policy and Criminal Impunity Create Conditions of Vulnerability to Sexual and Gender-Based Violence Against Women Migrants*

In light of the high risk of rape, sexual assault, and trafficking for women migrants, the following sections consider the factors creating the conditions that make women migrants vulnerable to abuse. First, women are in the irregular migration flow because economic liberalization in Central America increasingly propels women to choose international labor migration in order to find alternative income sources.⁹⁷ Second, women are particularly vulnerable while in that migration flow, due in part to the

⁸⁸ LE GOFF & WEISS, *supra* note 87, at 49. *See also* IACHR RAPPOREUR 2011, *supra* note 24 (Central American women and girls are particularly victimized by trafficking and forced into prostitution, often along Mexico’s southern border).

⁸⁹ LE GOFF & WEISS, *supra* note 87, at 83.

⁹⁰ *Id.*

⁹¹ *Id.* at 77.

⁹² Dudley, *supra* note 78, at 12.

⁹³ *Id.* at 13, 15.

⁹⁴ LE GOFF & WEISS, *supra* note 87, at 80.

⁹⁵ *Id.* at 63.

⁹⁶ *Id.*

⁹⁷ Pessar, *supra* note 19, at 2.

environment of impunity for criminal groups and corrupt state officials who facilitate sexual and gender-based violence.⁹⁸

1. *Economic Liberalization and the Need for Alternative Income Sources Compels the Choice of Labor Migration for Women*

Migration through Mexico has shifted from conflict-driven patterns to economic-driven patterns. The migration of Central Americans to and through Mexico began in the 1980s as people fled civil conflicts in Central America.⁹⁹ Migration continued post-conflict,¹⁰⁰ with 63% of Guatemalan, Honduran, and El Salvadoran immigrants arriving in the United States after 1990.¹⁰¹ These migrations created established networks of irregular entry and transit through Mexico to the United States.¹⁰² In the United States, the majority of Central American migrants do not have legal status; 46% of Salvadoran, 60% of Guatemalan, and 68% of Honduran migrants are undocumented.¹⁰³ In addition to the post-conflict rise in migration, the labor migration flow has changed since the mid-1980s from single male migrants to an increased number of women migrants,¹⁰⁴ of whom more than 90% work in the United States.¹⁰⁵ The continuation of migration after the conflicts and the changing demographic of the migration flow indicate new factors are influencing migration.

Increasing female labor migration can be traced to Central American economic policies,¹⁰⁶ as women migrants search for alternative income sources. Since the mid-1980s, Central American countries have been in a process of economic liberalization. The Caribbean Basin Initiative in the mid-1980s supported liberal economic growth in Central America regions.¹⁰⁷

⁹⁸ Amnesty 2010, *supra* note 16, at 9.

⁹⁹ MPI, *supra* note 34; MARC ROSENBLUM & KATE BRICK, US IMMIGRATION POLICY AND MEXICAN/CENTRAL AMERICAN MIGRATION FLOWS: THEN AND NOW 2 (2011).

¹⁰⁰ Guatemala signed Peace Accords in 1996. Cecilia Menjivar, *Violence and Women's Lives in Eastern Guatemala: A Conceptual Framework*, 43 LATIN AM. RES. REV. 109, 128 (2008). The conflict in El Salvador officially ended in 1992. Cecilia Menjivar & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 AM. J. SOC. 1380, 1392-93 (2012).

¹⁰¹ ROSENBLUM & BRICK, *supra* note 99, at 15.

¹⁰² MPI, *supra* note 34.

¹⁰³ ROSENBLUM & BRICK, *supra* note 99, at 17.

¹⁰⁴ *Id.* at 14.

¹⁰⁵ Cortes Castellanos, *supra* note 16, at 36.

¹⁰⁶ Pessar, *supra* note 19, at 2. See also Bill Ong Hing, *NAFTA, Globalization, and Mexican Migrants*, 5 J.L. ECON. & POL'Y 87, 113-14 (2009) (workforce participation of women increased in 1980s and 1990s).

¹⁰⁷ Jasmine Gideon, *Looking at Economies as Gendered Structures: An Application to Central America*, 5 FEMINIST ECON. 1, 6 (1999).

The region also implemented structural adjustment policies¹⁰⁸—Guatemala in 1986, El Salvador in 1989, and Honduras and Nicaragua in 1990.¹⁰⁹ These policies aimed to integrate Central American economies into the world market and create a smaller role for the state by opening markets to global and regional trade and cutting public expenditure and investment.¹¹⁰ These changes coincided with a shift in Central America during the past twenty years from traditional agricultural exports to exporting labor.¹¹¹

Structural adjustment and liberalization policies in Central America have had a disparate impact on women.¹¹² The policies resulted in reduced wages and increased unemployment, while encouraging growth of low-pay, low-status processing and packing jobs held by women.¹¹³ They intensified gender inequities already present, including the undervaluing of women's work as they consistently work longer hours than men without compensatory pay.¹¹⁴ The economic reforms also adversely affected small-scale agricultural producers, especially women, in part because they have less access to credit and storage facilities than men.¹¹⁵ These changes increased poverty levels and forced households to “look for new means of survival; in many cases . . . looking for alternative income-generating activities.”¹¹⁶ More recently, studies indicate that the forced liberalization of the agricultural sector by the Central American Free Trade Agreement

¹⁰⁸ Structural Adjustment Programs are neoliberal economic policies promoted by the World Bank (WB) and the International Monetary Fund (IMF), often as conditions for receiving loans to service national debt. World Health Organization (WHO), *Structural Adjustment Programmes*, <http://www.who.int/trade/glossary/story084/en/index.html> (last accessed Feb. 2, 2013).

¹⁰⁹ Gideon, *supra* note 107, at 12-13. El Salvador continued structural adjustment economic reforms with IMF and WB loans in the early 1990s. Chris van der Borgh, *The Politics of Neoliberalism in Postwar El Salvador*, 30 INT'L J. POL. ECON., 36, 43 (2000). Guatemala perpetuated neoliberal economic models with the negotiated Peace Accords in 1996. Linda Green, *The Fear of No Future: Guatemalan Migrants, Dispossession and Dislocation*, 51 ANTHROPOLOGICA 327, 329-30 (2009).

¹¹⁰ Gideon, *supra* note 107, at 13.

¹¹¹ Manuel Orozco, *Globalization and Migration: The Impact of Family Remittances in Latin America*, 44 LAT. AM. POL. & SOC'Y. 41, 44 (2002).

¹¹² The greater adverse effect on women of trade policies and structural adjustment is widely recognized. See, e.g., LOURDES BENERÍA, GENDER, DEVELOPMENT, AND GLOBALIZATION 49-53 (2003) (reviewing scholarship documenting how the burdens of adjustment have not been gender neutral); Günseli Berik, *Gender Aspects of Trade*, in TRADE AND EMPLOYMENT: FROM MYTHS TO FACTS 171, 172 (ILO, M. Jansen, R. Peters & J.M. Salazar Ziriniachs eds., 2011); Don Flynn & Eleonore Kofman, *Women, Trade, and Migration*, 12 GENDER & DEV. 66, 67 (2004); Pessar & Mahler, *supra* note 50, at 21 (surveying current scholarship on the issue).

¹¹³ Gideon, *supra* note 107, at 13 & 16.

¹¹⁴ *Id.* at 16-17.

¹¹⁵ *Id.* at 16.

¹¹⁶ *Id.* at 13.

(“CAFTA”) with the United States has exacerbated hunger and food insecurity and inequitably impacted Central American women.¹¹⁷

Simultaneously, cuts in public expenditure on social services such as health care increase the effects of unemployment and lower wages on households.¹¹⁸ The burden of filling these needs often falls on women, who carry the responsibility for family health care.¹¹⁹ As these policies exacerbate poverty, unemployment, and inequity, women increasingly shoulder the burden of household survival in what one scholar calls the “feminization of survival.”¹²⁰

Structural adjustment and CAFTA in Central America fuel out-migration for both men and women as households seek alternative income sources.¹²¹ However, these policies particularly increase migration of women labor migrants due to the gendered impact of structural adjustment and trade liberalization policies.¹²² The alternative income-generating activities sought by households often depend upon women: survival strategies include emigration, informal work, employment in export-zones, and sex work.¹²³ In Central America specifically, the effects of CAFTA—growth of rural poverty and poor employment options for women in the export-oriented factories—have contributed to pressures on women to join the migration movement to the United States.¹²⁴

In addition to factors compelling women to leave their countries of origin, conditions in destination countries—namely the United States—provide incentive for international migration. Central American migrants join a steady flow of Mexican migrants northward, a flow that increased after the economic liberalization of the North American Free Trade Agreement

¹¹⁷ Flynn & Kofman, *supra* note 112, at 67 (citing International Gender and Trade Network study results). Though CAFTA’s more recent implementation provides fewer studies of its results, the parallel North American Free Trade Agreement (NAFTA) has been recognized as resulting in job loss in Mexico and displacement of rural farms. See Hing, *supra* note 106, at 100-102 & 113-121; Jennifer Gordan, *People Are Not Bananas: How Immigration Differs from Trade*, 104 NW. U. L. REV. 1109, 1115 (2010). For recognition of the disparate impact on women of NAFTA and similar trade liberalization policies, see Pessar, *supra* note 19, at 2; Sassen, *supra* note 19, at 504-06; Cortes Castellanos, *supra* note 16, at 43.

¹¹⁸ Gideon, *supra* note 107, at 13, 19.

¹¹⁹ *Id.*

¹²⁰ Sassen, *supra* note 19, at 504-506 & 511-12.

¹²¹ Menjivar & Abrego, *supra* note 100, at 1392-93; Green, *supra* note 109, at 328-329. Looking to the parallel results of NAFTA, see Hing, *supra* note 106, at 98-102; Gordan, *supra* 117, at 1115.

¹²² Pessar, *supra* note 19, at 2; Sassen, *supra* note 19, at 504-06; Cortes Castellanos, *supra* note 16, at 43.

¹²³ Pessar, *supra* note 19, at 2; Sassen, *supra* note 19, at 506, 512-20.

¹²⁴ Flynn & Koffman, *supra* note 112, at 67; see also Menjivar & Abrego, *supra* note 100, at 1392-93.

(“NAFTA”).¹²⁵ In the United States and Canada, the search for higher profits by reducing labor costs has increased the demand for undocumented workers.¹²⁶ Employers often hire undocumented workers because they will accept lower wages and more difficult working environments compared to United States citizens.¹²⁷ For migrant women, gender and race discrimination work together to make them employable in low-skilled, female-intensive labor industries such as service, healthcare, and apparel manufacturing,¹²⁸ because employers assume they are “easier to manage.”¹²⁹ Women migrants also work in low-paying jobs in isolated and unregulated sectors of the economy.¹³⁰ One such example is domestic workers; in North America the demand for international domestic workers has boomed and been filled by migrant workers.¹³¹

2. *Diversification of Organized Crime and Corruption of Mexican State Officials Creates Impunity for Sexual and Gender-Based Violence Against Women Migrants*

Criminal organizations are the primary perpetrators of sexual and gender-based violence of women migrants, facilitated by impunity for perpetrators and corrupt state officials.¹³² In the 1990s, reorganization of drug cartel operations in Mexico and Central America led to the diversification of criminal organizations’ from the drug trade into profit-seeking activities including extortion, kidnapping, and human trafficking.¹³³ Migrant trafficking was a lucrative business in the 1990s, generating USD \$3.5 billion per year in profits for organized criminal groups globally.¹³⁴ In Mexico, each migrant kidnapped brought in approximately USD \$2,500 in ransom; thus, during the six-month period of the CNDH study, organized

¹²⁵ Hing, *supra* note 106, at 94-95, 97; Raúl Delgado-Wise & Luis Eduardo Guarnizo, *Migration and Development: Lessons from the Mexican Experience*, MIGRATION INFO. SOURCE (Feb. 2007), <http://www.migrationinformation.org/Feature/display.cfm?id=581>; Williams, *supra* note 41, at 41.

¹²⁶ Fontes Chammartin, *supra* note 17, at 39-40; Delgado-Wise & Guarnizo, *supra* note 125.

¹²⁷ Fontes Chammartin, *supra* note 17, at 39-40.

¹²⁸ Pessar, *supra* note 19, at 3.

¹²⁹ Fontes Chammartin, *supra* note 17, at 39-40.

¹³⁰ Margaret L. Satterhwaite, *Crossing Border, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 YALE HUM. RTS. & DEV. L. J. 1, 7 (2005).

¹³¹ Pessar, *supra* note 19, at 3.

¹³² DUDLEY, *supra* note 78, at 13.

¹³³ For a full analysis of this reorganization and its impact on migrants, see DUDLEY, *supra* note 78. The Mexican governments attack on drug trafficking has increased violence in the country and made the journey more dangerous for migrants. See ALBA & CASTILLO, *supra* note 28, at 6.

¹³⁴ Sassen, *supra* note 19, at 517.

criminal groups brought in approximately USD \$25 million from migrant kidnapping.¹³⁵

The CNDH study found that organized criminal groups committed 94% of migrant kidnappings.¹³⁶ Groups such as the Zetas and the Mexican Gulf Cartel actively prey on migrants, controlling coyotes or participating in smuggling themselves.¹³⁷ *Maras*, transnational criminal groups originally formed by criminals deported from the United States to Central America, also purportedly have a prominent role in kidnapping and extorting migrants.¹³⁸

The entrance of Mexican cartels into smuggling and human trafficking dramatically increased the risk migrants face when they cross Central America and Mexico.¹³⁹ This correlates directly to the rise in violence against migrant women, especially along the borders and at transit points.¹⁴⁰ In addition to smuggling, these groups also launch direct attacks on migrants, such as one kidnapping in August 2010 that resulted in the killing of 193 migrants.¹⁴¹ Organized criminal groups also force many women into sexual exploitation and prostitution.¹⁴² The Zetas specifically have been connected to human trafficking in the Northern Triangle and Mexico.¹⁴³

The complicity and cooperation of Mexican state officials with organized criminal groups aids criminal operations. Mexican authorities directly participated in at least ninety-one of the almost 10,000 kidnappings in the CNDH study; in another ninety-nine cases, migrants knew that their kidnappers interacted with police.¹⁴⁴ In 2001, INM officials handed 120 migrants over to the Gulf Cartel to be held for ransom.¹⁴⁵ Army personnel have also been connected to extortion and mass kidnapping.¹⁴⁶ Interviews of women in immigration detention in Mexico indicated that in a majority of physical or sexual violence cases, the perpetrator was an authority figure.¹⁴⁷

¹³⁵ CNDH 2009, *supra* note 23, at 12.

¹³⁶ CNDH 2009, *supra* note 23, at 14.

¹³⁷ DUDLEY, *supra* note 78, at 13.

¹³⁸ Alba & Castillo, *supra* note 28, at 5-6.

¹³⁹ DUDLEY, *supra* note 78, at 1.

¹⁴⁰ HRC, *supra* note 16, at ¶ 65.

¹⁴¹ DUDLEY, *supra* note 78, at 13.

¹⁴² MEYER & BREWER, *supra* note 1, at 3.

¹⁴³ DUDLEY, *supra* note 78, at 16.

¹⁴⁴ CNDH 2009, *supra* note 23, at 14 (56 of the 91 being police).

¹⁴⁵ DUDLEY, *supra* note 78, at 14.

¹⁴⁶ *Id.*

¹⁴⁷ Gabriela Diaz & Gretchen Kuhner, *Women Migrants in Detention in Mexico: Conditions and Due Process*, MIGRATION INFO. SOURCE (June 2008), available at <http://www.migrationinformation.org/USFocus/display.cfm?ID=684>. This comment focuses on officials as perpetrators, but does not address abuses or human rights violations of women migrants while in immigration custody or detention. *Id.*

Migrant women also reported being sexually abused by migration authorities in exchange for not being detained.¹⁴⁸

Perpetration of extreme abuses against migrants is encouraged by impunity for perpetrators, exacerbated by a weak judiciary and inefficient police force.¹⁴⁹ Criminal gangs operate without fear of punishment, frequently abducting more than 100 migrants at a time, often in plain view of state officials.¹⁵⁰ While the Mexican government registered 141 kidnapping cases from January 2008 to April 2010, courts sentenced only two people for a crime related to the activity.¹⁵¹ The CNDH recognized impunity and the deterioration of the rule of law as a “fundamental incentive for the increased kidnapping.”¹⁵²

The perpetration of abuses by criminal gangs is aided by the corruption and complicity of state agents, as well as the impunity for actors in both groups. The effect of the relationship between organized crime and government on migrant abuse was articulated in 2008 by the U.N. Special Rapporteur on the human rights of migrants.¹⁵³ He concluded that because of “the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks, incidences of extortion, rape, and assault of migrants continue.”¹⁵⁴ Thus, stopping the perpetrators of violence requires targeting a complex web of corruption between state actors and organized crime.

III. THE ROLE OF MIGRATION LAW IN CREATING MIGRATION PATTERNS THAT INCREASE THE RISK OF SEXUAL AND GENDER-BASED VIOLENCE

Considering women’s experience in the process of migration reveals that economic liberalization propels female labor migration. Criminal organizations and complicit state officials prey upon these migrants, perpetrating gender-based violence, including kidnapping, trafficking, sexual assault, and rape. Underlying these factors, the migration law regime creates the conditions that push women labor migrants into the illicit migration channels that make them vulnerable to the exploitation and abuse of criminal organizations and corrupt officials.

¹⁴⁸ *Id.*

¹⁴⁹ Steven Elías Alvarado & Douglas S. Massey, *In Search of Peace: Structural Adjustment, Violence, and International Migration*, 630 ANNALS AM. ACAD. POL. & SOC. SCI. 137, 138 (2010).

¹⁵⁰ Amnesty 2010, *supra* note 16, at 11.

¹⁵¹ Meyer & Brewer, *supra* note 1, at 7.

¹⁵² CNDH 2009, *supra* note 23, at 29, 32.

¹⁵³ HRC, *supra* note 16, ¶ 65.

¹⁵⁴ *Id.*

A. *Restrictive Immigration Policies of the LGP Exacerbated Women's Vulnerability to Abuse*

Restrictive immigration policies increase the vulnerability of women migrants' position in two ways.¹⁵⁵ First, restrictive immigration policies push migrants into illicit migration channels that make them vulnerable to attack by organized criminal groups.¹⁵⁶ To avoid risks of detention, female migrants rely more on intermediary smugglers, exposing them to greater threats of forced prostitution and human trafficking.¹⁵⁷ Second, the law treats women with irregular status as violators of the law, creating a barrier to criminal accountability and access to services.¹⁵⁸ The following sections consider how the former Mexican migration regime under the LGP created conditions of vulnerability for women migrants.

1. *Inaccessible Legal Status and Punitive Enforcement Against Irregular Migrants Under the LGP Pushed Women Migrants Into Dangerous Migration Channels*

Immigration enforcement mechanisms used prior to the migration law reform under the LGP put women migrants in situations vulnerable to sexual and gender-based violence. Prior to the effectuation of the Migration Law in November of 2012, the LGP governed the rights of migrants in transit through Mexico.¹⁵⁹ In the early 1990s, as the region prepared for greater integration under NAFTA, the United States and Canada pressured Mexico to restrict irregular Central American migrants who joined the flow of Mexican migrants northward.¹⁶⁰ In response, Mexico increased sanctions under the LGP for irregular entry into Mexico.¹⁶¹ They also required Central Americans transmigrants seeking a transit visa, available under the LGP, to demonstrate they had a valid visa to enter their final destination, the United States.¹⁶² This made transit visas effectively inaccessible.¹⁶³ Instead of stemming the flow of migrants northward, the policy forced Central American migrants to enter and traverse Mexico through irregular channels and more frequently rely on smugglers to guide their journey and avoid

¹⁵⁵ Sassen, *supra* note 19, at 517-18.

¹⁵⁶ ILO Guide, *supra* note 51, at 17; Fontes Chammartin, *supra* note 17, at 46.

¹⁵⁷ ILO Guide, *supra* note 51, at 17; Fontes Chammartin, *supra* note 17, at 41.

¹⁵⁸ See *supra* note 157.

¹⁵⁹ LGP; LM.

¹⁶⁰ Alba & Castillo, *supra* note 28, at 5.

¹⁶¹ *Id.*

¹⁶² *Id.*; RLGP 2000 art. 161; Ruiz, *supra* note 29, at 50.

¹⁶³ Alba & Castillo, *supra* note 28, at 5.

detection.¹⁶⁴ The lack of legal channels of migration for migrants under the LGP forced migrants into routes in isolated areas and noncommercial transportation, both susceptible to attack by criminal groups.¹⁶⁵

The pressure on irregular migrants to move “underground” grew as enforcement efforts to detain and deport irregular migrants increased in the last two decades. In 2000, the Instituto Nacional de Migración, or National Immigration Institute (“INM”), was created to implement migration policy, including the administration and enforcement of the LGP.¹⁶⁶ Since the INM’s inception in 2000 until 2011, INM detention centers have doubled and their total budget grew by two-thirds.¹⁶⁷ Between 2000 and 2006, detentions increased from 151,000 to 183,000¹⁶⁸ (though decreased again after 2006 due to shrinking migration flows resulting from the economic recession in the United States, increasing harshness of migration policy, and the increase in violence against migrants).¹⁶⁹

The INM implemented migration checkpoints throughout the country, further motivating migrants to travel in more isolated areas and making them more vulnerable to criminal activity.¹⁷⁰ Although significant procedural requirements of the LGP and its regulations purportedly limited the ability of the INM to conduct migration checks away from established checkpoints, curbing INM’s enforcement power,¹⁷¹ human rights organizations say officials routinely ignored these regulations.¹⁷² The IOM found that the increase and diversification of migration flows and routes through Mexico due to enforcement coincided with greater risks and vulnerabilities of the migrant population to trafficking.¹⁷³

The participation of non-immigration officials in immigration enforcement activities with the INM further proliferates the abuse of women migrants by involving potentially complicit and corrupt state actors. Under the LGP, the INM received assistance from the Federal Police in

¹⁶⁴ *Id.*

¹⁶⁵ Although this comment is limited to a discussion of Mexico’s migration policies, the migration policies of the ultimate destination country, the United States, ultimately reach beyond the Mexico-United States border and affect the entirety of migrants’ journey, contributing to the need for smugglers. For a discussion of these restrictive policies and their effect on Central American migrant, see Menjivar & Abrego, *supra* note 100, at 1397-99 (2012); ROSENBLUM & BRICK, *supra* note 99.

¹⁶⁶ LGP art. 16; RLGP art. 133-36.

¹⁶⁷ Alba & Castillo, *supra* note 28, at 6.

¹⁶⁸ *Id.*

¹⁶⁹ IMUMI, *supra* note 45, at 12.

¹⁷⁰ MEYER & BREWER, *supra* note 1, at 4-5.

¹⁷¹ LGP art. 151 sec. V & 156.

¹⁷² AMNESTY 2010, *supra* note 16, at 22-23.

¹⁷³ LE GOFF & WEISS, *supra* note 87, at 11. *See also* Sassen, *supra* note 10, at 517-18.

enforcement activities.¹⁷⁴ The INM could also request support from federal, local, or municipal public security agents to enforce migration law.¹⁷⁵ In 2001, Mexico implemented Plan Sur, a program supported by the United States, to limit undocumented migration across the southern border by including federal, state, and municipal police, as well as the Mexican Army and Navy, in immigration enforcement efforts with the INM.¹⁷⁶ Civil society groups criticized the program because, by involving state agents in migration control, it increased opportunities for officials complicit with organized criminal groups to abuse migrants.¹⁷⁷ Furthermore, participation of law enforcement contributes to impunity, as it is “virtually impossible” for a migrant to identify which of the 300-plus police forces committed an abuse in order to hold them accountable.¹⁷⁸

The lack of legal migration channels, increased enforcement of migration law within Mexican territory, and the participation of non-immigration officials in immigration enforcement all contributed to push migrants underground into migration channels more vulnerable to attack by organized criminal groups. The CNDH blamed this combination of factors—unauthorized migration checks by non-immigration agent—for creating a climate that permits the continued sexual assault, robbery, and extortion of migrants.¹⁷⁹

2. *LGP Provisions Created Barriers to Reporting the Abuse of Women Migrants and Holding Perpetrators Accountable*

Not only did the LGP enforcement mechanism push migrants into dangerous migration channels, its provisions also created substantial barriers to reporting abuses of women migrants once they did occur. Article 67 obligated federal, local, and municipal state officials to demand proof of legal status from all foreigners who sought their services¹⁸⁰ and report foreigners without legal status.¹⁸¹ This deterred migrants wishing to report an abuse, as the law required the official receiving their report to turn them

¹⁷⁴ LGP art. 16; RLGP art. 133-36.

¹⁷⁵ LGP 73; RLGP 98.

¹⁷⁶ IACHR RAPPOREUR 2003, *supra* note 38, at ¶181-184; Ruiz, *supra* note 29, at 50.

¹⁷⁷ IACHR RAPPOREUR 2003, *supra* note 38, at ¶ 181-184

¹⁷⁸ Diaz & Kuhner, *supra* note 20.

¹⁷⁹ Comisión Nacional de Derecho Humanos de México (CNDH), Recomendación General No. 13/2006: SOBRE LA PRÁCTICA DE VERIFICACIONES MIGRATORIAS ILEGALES [GENERAL RECOMMENDATION NO. 13/2006: ON THE PRACTICE OF ILLEGAL IMMIGRATION CHECKPOINTS] 9 (2006), *available at* http://www.cndh.org.mx/Recomendaciones_Generales.

¹⁸⁰ LGP art. 67.

¹⁸¹ RLGP art. 201.

over to immigration authorities.¹⁸² It also created a disincentive for officials to receive or investigate a report, as the complaining party would be handed over to INM, deported, and no longer be available to assist in the investigation.¹⁸³

Unsurprisingly, this created an environment where women migrants rarely reported sexual abuse.¹⁸⁴ Women were afraid to come forward to civil or state authorities, likely because these players often perpetrated or facilitated the abuses.¹⁸⁵ Migrants also faced the risk of deportation if they reported and thus the loss of their chance to reach the United States,¹⁸⁶ risks many women were unwilling to take given the necessity of economically supporting their families through migration.¹⁸⁷ The INM previously made no effort to gather information or screen for abuses when detaining migrant women, nor was there a mechanism by which detained women could report abuses or receive adequate psychological or medical treatment.¹⁸⁸

In rare cases when migrants did overcome the barriers created by Article 67 and reported abuses by criminal gangs or state officials, the state still rarely held perpetrators accountable. Officials often refused to register migrant's complaints, or did not move the complaint forward.¹⁸⁹ Authorities often failed to investigate or inadequately investigated reports of abuses, contributing to impunity.¹⁹⁰ Few, if any, investigative actions have been taken against officials alleged to have directly participated or colluded with criminal gangs in the abuse or kidnapping of migrants.¹⁹¹ While convictions for human trafficking increased in 2011, the involvement of public officials still receives little investigation.¹⁹² The corruption of officials contributed to impunity, as did the law's treatment of migrants as violators, not victims.

B. *Mexico's Migration Law Reforms Culminated in the Migration Law*

Mexico recognized their migration policy played a role in the vulnerability of migrants to abuse. Since the early 2000s, it has made

¹⁸² AMNESTY 2010, *supra* note 16, at 29; CNDH 2009, *supra* note 23, at 27.

¹⁸³ See *supra* note 182.

¹⁸⁴ CNDH 2011, *supra* note 14, at 7 (migrants often don't report because want to reach their final destination).

¹⁸⁵ Kuhner, *supra* note 20, at 25.

¹⁸⁶ Amnesty 2010, *supra* note 16, at 16.

¹⁸⁷ Kuhner, *supra* note 20, at 25.

¹⁸⁸ Amnesty 2010, *supra* note 16, at 28.

¹⁸⁹ *Id.* at 27.

¹⁹⁰ *Id.* at 15.

¹⁹¹ *Id.* at 14.

¹⁹² UNITED STATES DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 2012 248, available at <http://www.state.gov/documents/organization/192596.pdf>.

significant efforts to amend migration policies under the LGP. These reforms included the 2008 reform of the LGP to abrogate prison terms for irregular migrant workers, the adoption of an anti-trafficking law, improvements to migrant detention centers, and a migrant regularization program, among others.¹⁹³ Despite these efforts, high rates of kidnapping, extortion, cruelty, disappearances, and killing of migrants by criminal groups and state authorities continued, indicating the insufficiency of these reforms to change the patterns underlying the abuses.¹⁹⁴

The need for deeper reform of their migration policy came to the front of the political agenda when growing international attention on the abuses of migrants in Mexico¹⁹⁵ compromised Mexico's foreign policy agenda to protect their migrant citizens abroad.¹⁹⁶ The discovery in August 2010 of 72 bodies of Mexican, Central American, and South American migrants who had been massacred by criminal organizations in San Fernando, Taumalipas,¹⁹⁷ ignited pressure for reform and facilitated the quick and unanimous passage of the migration reform law in May of 2011.¹⁹⁸

The Migration Law repealed Mexico's former migration policy in the LGP.¹⁹⁹ The new Migration Law sets forth the rights and responsibilities for non-citizen immigrants, migrants in transit, and emigrants returning to Mexico.²⁰⁰ Mexico issued regulations for the law on September 24, 2012 (the Reglamento de la Ley de Migración (RLM)); the law went into effect in November 2012.²⁰¹

Mexico's Migration Law does follow recommendations of international bodies to recognize gender and the need for protection of women.²⁰² A guiding principle of the law provides for "unrestricted respect

¹⁹³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPRMW), *Consideration of Reports Submitted by State Parties Under Article 74 of the Convention*, ¶ 7, U.N. Doc. CMW/C/MEX/CO/2 (May 3, 2011).

¹⁹⁴ *Id.* at ¶ 29.

¹⁹⁵ This attention includes the report and hearing before the Inter-American Commission on Human Rights, March 22, 2010, the Amnesty International Report in 2010, and the sixth report on the situation of human rights of migrant by civil society groups. CNDH 2011, *supra* note 14, at 32-38.

¹⁹⁶ Ruiz, *supra* note 29, at 51.

¹⁹⁷ *Morning Edition: Migrant Massacre; Drug Cartel Suspected in 72 Migrants Deaths*, National Public Radio (Aug. 26, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=1294417>; Alba & Castillo, *supra* note 28, at 14. Seventy-two bodies were initially discovered, but later investigation uncovered 192 total victims in this massacre. *Id.*

¹⁹⁸ Alba & Castillo, *supra* note 28, at 14.

¹⁹⁹ LGP; LM.

²⁰⁰ LM art. 1.

²⁰¹ RLM preamble.

²⁰² See, e.g., Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 114, 157 (Sep. 17, 2003), available at http://www1.umn.edu/humanrts/iachr/series_A_OC-18.html.

for the human rights of migrants, nationals, and foreigners, regardless of their origin, nationality, gender, ethnicity, age, and migration situation, with special attention to vulnerable groups such as minors, women, indigenous, adolescents and elderly persons, and victims of crime.”²⁰³ Media and some international human rights institutions commended Mexico for this progressive and modern approach,²⁰⁴ which, according to Mexican officials, puts them at the vanguard of international migration policy.²⁰⁵

The overt recognition of women and gender draws attention to the feminization of migration and special needs of women migrants. However, it does not guarantee that the structures created by the law adequately respond to the unique situations of women migrants, nor that the law will prevent harm to women migrants. Human rights institutions and scholars have criticized the regime and its continued reliance on traditional migration enforcement mechanisms as contravening international human rights standards and the Mexican Constitution.²⁰⁶ The following sections will examine the Migration Law through a gender lens to evaluate its effect on the risk of sexual and gender-based violence facing women labor migrants during transit through Mexico.

IV. MEXICO’S MIGRATION LAW: SOARING RHETORIC RECOGNIZES GENDER BUT ULTIMATELY FAILS TO MITIGATE OR PREVENT THE ACTUAL VULNERABILITY OF WOMEN MIGRANTS TO ABUSES

Women migrants are increasingly pushed to migrate in response to economic liberalization, but due to organized criminal groups and corrupt officials face high levels of gender-based violence during migration.²⁰⁷ Prior to the migration law, women migrants were made more vulnerable to abuse by the restrictive policies of the LGP.²⁰⁸ This section takes up the new Migration Law to consider whether it will reduce the vulnerability created by migration policy. Though the recent effectuation of the law does not provide experiences of its application, the following sections consider the probable capacity of the law to change the dangerous patterns of women’s

²⁰³ LM art. 2.

²⁰⁴ See Luis Gabriela Morales Vega, *Categorías Migratorias en México. Análisis a la Ley de Migración*, XII ANUARIO MEXICANO DE DERECHO INTERNACIONAL 929 (2012).

²⁰⁵ MPI *supra* note 34.

²⁰⁶ Grupo de Trabajo sobre Política Migratoria, *Compilation of Documents 25* (Sept.-Oct. 2011), http://imprasc.net:29572/otros/migracion/reglamento/Compilacion_propuestas_GT_Reglamento_Ley_Migracion.pdf. (The Grupo de Trabajo sobre Política Migratoria, or Working Group on Migration Policy, is comprised on multiple civil society groups who act as defenders of the rights of migrants and reviewed the migration reform process) [hereinafter Grupo de Trabajo]; IACHR Rapporteur 2011, *supra* note 24, at 3.

²⁰⁷ See *supra* Part II

²⁰⁸ See *supra* Part III.

labor migration perpetuated by the LGP. This comment concludes that the Migration Law, though addressing the political progress of the law's language, ultimately fails to create structures that would change the vulnerable position of women migrants.

A. The Migration Law's Rhetoric Acknowledges Women Migrants as a Vulnerable Group without Addressing Causes of Vulnerability

The Migration Law's recognition of gender consists predominantly in identifying women migrants as a particular group of vulnerable migrants with special needs. In Article 2, the first governing principle of the law provides for the protection of migrants' human rights, regardless of migration status.²⁰⁹ The provision gives "special attention to vulnerable groups such as minors, women, indigenous peoples, adolescents and seniors, and victims of crime."²¹⁰ In addition, Article 73, addressing the protection of migrants in transit through Mexico's territory, requires giving adequate attention to migrants in situations of vulnerability, including unaccompanied minors, women, victims of crime, disabled persons, and the elderly.²¹¹

The Migration Law also recognizes the vulnerability of women in regards to particular enforcement activities. Migration proceedings will include questionnaires designed to determine if attention to vulnerable migrants, including women and victims of crime, meets their needs and respects their human rights.²¹² During "assisted return," the "voluntary" option to be returned to one's country of origin when apprehended with irregular status, the INM must allow pregnant women and victims or witnesses of serious crimes to stay in an institution that will provide the attention they require.²¹³ Other provisions of the Migration Law provide adequate nutrition and extra protections for pregnant and lactating women during detention or assisted return.²¹⁴

The recognition of women as a vulnerable category of migrant, while providing important services in some circumstances, does not actually change the experience of women migrants. By consistently categorizing women as vulnerable, the law does not acknowledge that economic policy, criminal impunity, and restrictive immigration policy create women's

²⁰⁹ LM art. 2.

²¹⁰ LM art. 72.

²¹¹ LM art. 73.

²¹² RLM art. 185; LM art. 22.

²¹³ LM art. 113.

²¹⁴ LM art. 107, 110, 120.

vulnerability by pushing them into high-risk migration patterns.²¹⁵ By recognizing the vulnerability of women migrants in the law, Mexico has begun to acknowledge gender-distinct experiences of migration. However, the recognition of vulnerability cannot prevent nor sufficiently mitigate such vulnerability; to the contrary, it can entrench or assume categories of vulnerability without question as to their origin.

One provision of the Migration Law could provide a limited opening for a more nuanced recognition of women migrants. The law creates a partnership with the Instituto Nacional de las Mujeres, or National Women's Institute (Inmujer).²¹⁶ Inmujer must coordinate with INM to address problems of women migrants, ensure compliance with international conventions and treaties, promote action to improve social conditions of female migrants and eradicate discrimination, and provide training to INM officials on gender equality and the human rights of migrants.²¹⁷ Inmujer's training of INM officials will include perspectives of gender and attention to vulnerable groups in migration flows.²¹⁸ Providing gender training to immigration officials could create positive changes for women by improving protection of women migrants and responses to victims.²¹⁹ Civil society groups watching for the impact of the Migration Law on women migrants recommended these trainings.²²⁰ However, the goal of the training continues to couch the experience of women migrants in terms of their vulnerability and need for special attention, rather than dismantling conditions that actually create vulnerability.

B. Mexico's Migration Law Misses Opportunities to Reduce the Vulnerable Conditions of Female Migration Created by Migration Policy

Despite the Migration Law's recognition of women as a particular category of vulnerable migrant, the law fails to create structures that would mitigate the vulnerability created by migration policies or address the forces driving migration and abuse. The Migration Law's failure to provide regular

²¹⁵ See *supra* Parts II and III.

²¹⁶ LM art. 30

²¹⁷ *Id.*

²¹⁸ RLM art. 31.

²¹⁹ The Migration Law also creates general protections that, if enforced, would reduce vulnerability of women migrants. The law recognizes guarantees the personal security of migrants independent of their migration status, LM art. 6, 66, provides all migrants the right to be represented legally during administrative procedures, LM art. 70, prohibits INM verification visits to migrant shelters, LM art. 76, and requires the provision of information and interpretation to migrants prior to assisted return, LM art. 119.

²²⁰ Grupo de Trabajo, *supra* note 206, at 30.

status to labor migrants in transit, continued reliance on restrictive and punitive immigration enforcement mechanisms, and the unchanged power of the INM and participation of other state officials in immigration enforcement continue to leave women vulnerable to sexual and gender-based violence.

1. *Lack of Regular Status for Migrants in Transit Fails to Respond to the Feminization of Migration or Remove Barriers to Safer Migration Patterns*

The Migration Law does not provide regular status to migrants transiting Mexico, failing to respond to the feminization of migration and remove the primary barrier to safer migration patterns. The law did change the visa categories for foreigners entering Mexico under Article 52, perhaps one of the most visible changes created by the law.²²¹ None of these categories provide a visa status for a migrant in transit to another country, unless they can demonstrate economic solvency—unlikely given the economic motivations of most irregular migrants. “Visitante Regional,” or “regional visitor” status, allows foreign nationals of neighboring countries to enter Mexico’s frontier region, but only for up to three days.²²² “Visitante sin permiso para realizar actividades remuneradas” provides visitor status for up to 180 days without permission to work.²²³ Applicants must demonstrate one of several factors, including motivation for their return to their home country, economic solvency, an invitation from an institution for an event or study, or a family relationship with a visa holder.²²⁴ These requirements effectively preclude women labor migrants from utilizing these visas.

For the small number of Central American women migrants destined for Mexico, the employment-based visas do little to reach low-skilled women labor migrants or protect them from labor exploitation. “Visitante trabajador fronterizo,” or “Frontier work visitor,” authorizes a foreign national of a bordering country to stay up to a year in certain location with a work permit based on an offer of employment.²²⁵ “Visitante con permiso para realizar actividades remuneradas” allows a visitor to work at the invitation of certain types of employers.²²⁶ Because women tend

²²¹ LM art. 52; Alba & Castillo, *supra* note 28, at 15.

²²² LM art. 52 III; RLM art. 133.

²²³ LM art. 52 I

²²⁴ RLM art. 104 I-IX.

²²⁵ LM art. 52 IV; RLM art. 134, 135.

²²⁶ LM art. 52 II. The law also provides visas for visitors for humanitarian purposes, visitors for adoption purposes, temporary residents, temporary student residents, and permanent residents.

to work in informal sectors, often with more than one employer and high turnover, these schemes do not provide a likely alternative for irregular women migrants destined for Mexico, and would maintain their vulnerability by making their entry status dependent on a single employer.²²⁷ This scheme fails to respond to the reality of female labor migration in the region.

The only provision of the law providing possible status for women migrants without economic means is a visa for victims or witnesses of a crime.²²⁸ If migration authorities detain a migrant and find indications she may be a crime victim, they must conduct an interview of the migrant.²²⁹ This interview should address the person's background, means for arriving from their country of origin, and physical and emotional health.²³⁰ The law provides no further details on the process of victim detection, creating the potential that authorities will miss victims during screening, or re-traumatize victims by discussing the abuse in inappropriate ways or without proper support. A victim without status can then participate in a criminal proceeding and have the opportunity to regularize their migration situation after the criminal process concludes.²³¹ While intended to encourage reporting of crimes, this structure leaves victims vulnerable throughout the criminal proceedings by not granting status until the completion of criminal proceedings. Given the track record of prosecutions for crimes against migrants, this does not provide a clear safety net for victims. Furthermore, while this provides some important protection in light of the current barriers to reporting abuse, it ultimately perpetuates women as presupposed victims of abuse by predicating immigration status on victimhood versus aiming to end victimhood.

The lack of legal migration options available through the Migration Laws perpetuates the vulnerability engendered by the LGP policies, continuing to push migrants to travel in more isolated routes and depend on smugglers.²³² Mexico initially considered granting visitor visas to migrants in transit in order to allow them greater access to judicial and legal protection.²³³ Mexico left this provision out of the migration law²³⁴ and

²²⁷ See RLM art. 166; Grupo de Trabajo, *supra* note 206, at 33.

²²⁸ LM art. 52 V; RLM art. 137 I.

²²⁹ RLM art. 178.

²³⁰ *Id.*

²³¹ RLM art. 180.

²³² See *supra*, Part II.B.3.

²³³ Alba & Castillo, *supra* note 28, at 16.

²³⁴ Gardenia Mendoza Aguilar, *Nueva Ley de Migracion deja fuera visas de transito en Mexico*, LA OPINION, Sept. 29, 2012, available at http://www.laopinion.com/Nueva_Ley_de_Migracion_deja_fuera_visas_de_transito_en_Mexico.

missed a significant opportunity to shift the balance towards migrants.²³⁵ The provision would likely have encountered opposition from the United States and Canada, as it would have reduced barriers to migrants moving north without a visa to enter either nation.²³⁶

In addition to pushing migrants into dangerous migration channels, the failure to provide regular status to labor migrants in transit ignores the economic conditions that drive women to choose a risky migration in search of income. The law purports to reflect this goal, stating in its guiding principles a commitment to operate complementarily to national labor markets in the region for the adequate management of labor migration in keeping with national necessities.²³⁷ However, the law does not create structures of visas or regular status that would endorse migration patterns that respond to labor needs in the region's countries. Thus, the law utterly fails to account for the reality of the feminization of migration and the growing number of women migrating as laborers.

2. *INM's Continued Unchecked Power Fails to Reduce Corruption and Complicity with Criminal Organizations who Abuse Migrant Women*

While the Migration Law dramatically changes the Mexican government's articulated migration policy priorities, it largely maintains the current institutional migration management structure and thus it does not address the rampant corruption and complicity of immigration and state officials in migrant abuse. The INM retains most policy, enforcement, and administrative responsibilities.²³⁸ The institution remains responsible for enforcement of the laws, including immigration status checks, detention, deportation, administration and adjudication of immigration status determinations, while also charged with protecting the human rights of migrants.²³⁹ The law does contain provisions to sanction immigration officials who share confidential information, impede the normal transit of migration affairs, violate the human rights of migrants,²⁴⁰ or deny a migrant the rights and services provided in the law.²⁴¹ However, these provisions

²³⁵ *Id.*

²³⁶ Alba & Castillo, *supra* note 28, at 15, 16.

²³⁷ *Id.*

²³⁸ LM art. 20; *see also* RLM art. 55-94 (areas of migration control); RLM art. 95, 114 (administrative functions); Alba & Castillo, *supra* note 28, at 15.

²³⁹ LM art. 20.

²⁴⁰ LM art. 140.

²⁴¹ LM art. 148.

lack sufficient power to stem historic corruption, as it makes INM responsible for its own self-regulation and imposition of sanctions.²⁴²

Furthermore, the law fails to adequately protect migrants from the power of other corrupt officials who facilitate abuses.²⁴³ INM can continue to request assistance from non-immigration state officials during migration enforcement actions.²⁴⁴ In migration control actions, such as reviewing documents of those attempting to enter or exit the country, Article 81 of the Migration Law allows the Federal Police to act in support and coordination with the INM at the INM's request.²⁴⁵ The final version of the Migration Law provides for more limited involvement of Federal Police than earlier proposals; media reports indicate that at the last minute legislators eliminated Article 26, a measure that would have charged the Federal Police with the same immigration law enforcement power as that of immigration officials.²⁴⁶

While the final form of the law reduces the power state officials might have been able to legally assert over migrants, the INM can still request assistance from the Federal Police or other state officials under certain circumstances and procedures.²⁴⁷ Given the rate of involvement of INM and other officials in the abuse of migrants, and the sexual abuse and rape that occurs during stops of migrants in transit,²⁴⁸ this allowance for police involvement perpetuates the risks of complicity of officials with criminal organizations. This also furthers impunity due to the inability to track or identify officials responsible for abuses or corruption.²⁴⁹

While the law's guiding principles state a commitment to "combat organized crime, especially . . . trafficking and kidnapping of migrants,"²⁵⁰ it fails to change the institutional structure in a way that can stop patterns of corruption that facilitate abuses. The lack of accountability of the INM and the continued ability of non-immigration officials to participate in

²⁴² LM art. 138.

²⁴³ LM art. 2.

²⁴⁴ RLM art. 196. While these migration control actions are subject to procedural requirements under RLM art. 201 & 213, the pattern of ignoring similar past regulations does not ensure compliance. *See supra* Part II.B.3.

²⁴⁵ LM art. 81; RLM art. 70. While LM art. 81 said that the Federal Police will act in support and coordination with the INM, the RLM clarifies that the Police do not have to act, but will act only at the express request of the INM.

²⁴⁶ David Real, *Senate Approves New Immigration Law*, REAL ACAPULCO NEWS, Feb. 25, 2011, <http://www.realacapulco.com/en/news/2-25-2011/senate-approves-new-immigration-law> (quoting chairman of the Committee on Population, Humberto Andrade Quezada).

²⁴⁷ LM art. 96.

²⁴⁸ *See supra* Part II.B.2.

²⁴⁹ *See supra* Part II.B.2.

²⁵⁰ LM art. 2.

immigration enforcement efforts does not limit the ability of corrupt officials to access migrants or facilitate abuse.

3. *Restrictive and Punitive Immigration Enforcement Continues to Push Women Migrants into Migration Channels that Increase Vulnerability to Abuses*

The Migration Law, while articulating protection for the human rights of migrants, continues to rely on a restrictive and punitive enforcement system that will maintain dangerous irregular migration channels and migrants' dependence on smugglers. The INM may still conduct migration control away from international points of entry and exit with roadblocks, patrols, or migration "filters" away from the country's borders.²⁵¹ The law's continued reliance on punitive enforcement forces women to choose hidden and illicit migration channels. The Migration Law also maintains the detention system (euphemistically called "*aseguramiento*," or "securement") as the principle means of enforcement.²⁵² "*Presentación*," or detention in migration stations, remains the measure used to temporarily lodge a foreigner who cannot prove their status or be returned.²⁵³ Foreigners are subject to deportation if they enter the country without the required documents, enter in a place not authorized for entry, reenter after deportation without entry agreement, or provide false information or documentation.²⁵⁴

While these restrictive policies and enforcement mechanisms will serve to push irregular women migrants further underground, the law also fails to provide an alternative to traditional immigration enforcement structures. By failing to utilize a new approach to immigration policy, Mexico belies its leadership role in migration solutions for the region. The law's guiding principles state that it will protect the human rights of migrants and facilitate the international mobility of people in recognition of the contribution of migrants to the origin and destination societies.²⁵⁵ The continued use of internal migration checkpoints and detention as primary

²⁵¹ LM art. 81 & 97; *see also* JOSÉ ANTONIO GUEVARA BERMÚDEZ, INSTITUTO DE ESTUDIOS Y DIVULGACION SOBRE MIGRACIÓN, INSTITUTIONAL AND NORMATIVE FRAMEWORK FOR INTERNATIONAL MIGRATION IN MEXICO 197-201 (Fabienne Venet Rebiffé, ed. 2011), *available at* <http://imprasc.net:29572/DocumentosyPub/Paginas/Inicio.aspx>.

²⁵² Grupo de Trabajo *supra* note 206, at 28.

²⁵³ LM art. 99. Human rights institutions and scholars criticize this deportation system as a violation of international human rights standards and the Mexican Constitution because it infringes upon a person's liberty and freedom of movement. Grupo de Trabajo, *supra* note 206, at 28; IACHR Rapporteur 2011, *supra* note 24, at 3.

²⁵⁴ LM art. 144.

²⁵⁵ LM art. 2.

enforcement mechanisms to curb migration does little to change the previous migration regime other than providing INM a legal mandate to consider and protect the human rights of migrants. The structures created by the Migration Law do not reflect a state commitment to freedom of movement of women migrants or assurance of safe migration channels void of sexual and gender-based violence.

V. PROPOSALS FOR DECREASING VULNERABILITY OF WOMEN MIGRANTS THROUGH MEXICO'S MIGRATION LAW AND REGIONAL POLICY

The shortcomings of Mexico's migration law reform point to the critical need for Mexico's domestic migration policy to create structures that reduce the conditions of vulnerability for women migrants in transit. Ultimately, however, understanding of the role of economic liberalization in propelling women's migration reveals that preventing abuses of women migrants requires a region-wide migration policy that reflects the gendered socioeconomic reality of northward labor migration. To reach a migration policy that reflects the economically-driven flows, a first critical step requires the Mexican government to create a legal migration channel for migrants transiting Mexican territory. Beyond Mexico's policies, preventing sexual violence and trafficking requires options for legal channels of migration to the destination country, namely the United States, that account for the gendered factors influencing migration.

A. *Providing a Legal Migration Channel to Transmigrants Will Reduce Women Migrants' Reliance on Migration Channels that Heighten the Risk of Sexual and Gender-Based Violence*

Mexico's most significant unilateral policy tool to mitigate the vulnerable position of women migrants is the provision of a regular migration channel to transmigrants. The ILO advocates for more legal and regular migration channels based on the needs of the labor market as a key element of protecting women migrants.²⁵⁶ State and federal authorities, civil society groups, and human rights institutions acknowledge regularization as a way to ease migrants' fear of detention, making it easier for migrants to file complaints against perpetrators of abuses and move freely through Mexican territory.²⁵⁷ Providing legal status would reduce the need for interior migration checkpoints that have been the site of kidnappings²⁵⁸ and

²⁵⁶ Fontes Chammartin, *supra* note 17, at 47.

²⁵⁷ IACHR Rapporteur 2011, *supra* note 24, at 11-12.

²⁵⁸ Amnesty 2010, *supra* note 16, at 22-23.

allow migrants to travel freely, avoiding isolated routes that increase susceptibility to criminal activities.²⁵⁹ This would allow migrants the opportunity to travel directly to the northern border via commercialized transportation.

According to some reports, the INM considered giving transmigrants visitor visa status as a way to ensure their greater access to legal protection.²⁶⁰ The Migration Law provides a framework of existing categories that could be expanded to provide migrants in transit with a visitor visa during transit.²⁶¹ This approach should require the visas be available at the border, not only at consular offices as required for other types of visas.²⁶² However, providing special status to transmigrants is not a politically viable option for Mexico, given the historic pressure from the United States that Mexico effectuate its preferred migration policy.²⁶³ It would furthermore require an administrative process that could effectively limit access to a transit visa.

Another method of providing legal status to migrants in Mexico is to build upon regional cooperative approaches to migration policy.²⁶⁴ In 2002 and 2005, as part of efforts to increase regional integration under the *Sistema de Integración Centroamericano*, or Central American Integration System (“SICA”) Guatemala, El Salvador, Honduras, and Nicaragua ratified an agreement known as CA-4. The agreement permits nationals of a country to move throughout the other three nations with only an identification document.²⁶⁵ Individuals can have intraregional mobility for up to six months but are not authorized to conduct remunerated activities.²⁶⁶ In 2004, Mexico joined SICA as a regional observer state, its participation thus far focused on organized criminal activities rather than migration.²⁶⁷ However, other cooperative efforts to address issues regionally with Mexico and Central America²⁶⁸ indicate the viability of Mexico joining the CA-4

²⁵⁹ Meyer & Brewer, *supra* note 1, at 4-5.

²⁶⁰ Alba & Castillo, *supra* note 28, at 16; *see also supra* Part III, Sec. C.1.

²⁶¹ LM art. 52; *see also supra* Part III, C.1.

²⁶² *See* RLM art. 102.

²⁶³ *See supra* Part III. A.

²⁶⁴ These alternative methods of achieving legal migration challenges are currently being discussed by civil society groups in Mexico. Many thanks to Gretchen Kuhner for pointing my attention to these much more viable approaches.

²⁶⁵ Alba & Castillo, *supra* note 28, at 12.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Efforts such as the Regional Conference on Migration, an intergovernmental forum including Mexico, Central American and North American nations to promote cooperation on migration issues, as well as the Plan Puebla-Panama (now the Mesoamerican Initiative) to promote regional development point to the ability and need for Mexican-Central American collaboration. *Id.* at 12-13.

agreement. This would allow Guatemalans, El Salvadorans, Hondurans, and Nicaraguans to enter and move freely in Mexico without an additional visa.

Alternatively, Mexico could simply suppress the visa requirement for nationals of Guatemala, El Salvador, Honduras, and Nicaragua.²⁶⁹ Currently, Mexico does not require visas for the Central American nations of Costa Rica, Panama, and Belize.²⁷⁰ These citizens may request to enter Mexico as a “visitor without permission to conduct remunerated activities” by presenting their passport or identification upon entry.²⁷¹ They can be asked to demonstrate the reason for their visit, but there is no required showing.²⁷² Citizens of those nations from which Mexico does require a visa must request a visa for a “visitor without permission to conduct remunerated activities” at a Mexican consulate.²⁷³ Mexico has suppressed visa requirements in the past, including for nationals of Colombia as of November 9, 2012, who may now enter Mexico as a visitor for 180 days just upon showing their Colombian passport.²⁷⁴ Article 18 of the Migration Law gives the Secretary of Governance the authority necessary to make such a decision, directing it to formulate and direct migration policy, formulate the requirements and procedures for providing visas, and to establish or suppress requirements for the entry of foreigners to Mexico.²⁷⁵

Mexico’s provision of regular status to transmigrants cannot prevent all dangers to women. Ultimately, criminal organizations prey on traveling migrants regardless of status; providing status serves merely as a means to change the migration patterns of migrants to avoid locations and methods of travel susceptible to attack. Furthermore, even with regularized status in Mexico, the inability to legally cross the northern border could still push women migrants into these same vulnerable channels of migration and dependence on smugglers. Mexico’s limited capacity to impact the flow of labor migration in light of the paucity of legal and regular migration channels to the United States makes it impossible for Mexico to unilaterally prevent migrants from relying on illicit migration channels. However, the

²⁶⁹ See Secretaría de Gobernación (SEGOB), *Países y Regiones que Requieren Visa para Viajar a México* INSTITUTE NACIONAL DE MIGRACIÓN http://www.inm.gob.mx/index.php/page/Paises_Visa (last updated Dec. 13, 2012) [hereinafter SEGOB Visa].

²⁷⁰ Secretaría de Gobernación SEGOB, *Países y Regiones que no Requieren Visa para Viajar a México* INSTITUTE NACIONAL DE MIGRACIÓN (last updated Dec. 13, 2012), http://www.inm.gob.mx/index.php/page/Paises_No_Visa [hereinafter “SEGOB no visa”].

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ SEGOB Visa, *supra* note 269.

²⁷⁴ *México no pedirá visa a los colombianos a partir del 9 de noviembre*, ELESPECTADOR.COM (Nov. 9, 2012), <http://www.elespectador.com/noticias/politica/articulo-386259-mexico-no-pedira-visa-los-colombianos-partir-del-9-de-noviembre>.

²⁷⁵ LM art. 18.

provision of regular channels through Mexico is an important step that would reduce vulnerability by decreasing the time migrants must spend in illicit channels and dependent on smugglers.

B. Preventing Abuse Requires an Integrated Regional Response to Economic and Social Realities

Ultimately, the prevention of abuse of women migrants requires that sending, receiving, and transit nations in the region develop a cooperative migration regime that reflects female labor migration flows created by existing economic conditions. As discussed in Part II, regional economic liberalization and trade agreements with the United States, as well as the demand for labor in the United States, propel female migration. As the primary destination country for migration, the United States is clearly an important player in this regional approach and occupies a powerful position in the migration regime due to its labor needs and restrictive policies.²⁷⁶ However, sending and transit nations must also provide for the movement of people required by the region's economic relationships, such as that provided by the CA-4. Because a migrant's choices are affected by the migration policies along her entire route and in the destination country, changing migration patterns to prevent abuses requires changes region-wide.

Civil society organizations advocating for migrants in Mexico since the 1980s²⁷⁷ have urged countries of the region to adopt a regional, interdisciplinary perspective on migration policy.²⁷⁸ This perspective should consider the asymmetrical relationships between sending and receiving countries,²⁷⁹ recognizing the power differential between the respective abilities of the United States and Central American nations to shape migration flows. These solutions should include social and economic policy, rather than approaching migration as a national security issue.²⁸⁰

A regional and interdisciplinary approach to migration policy in order to prevent the abuse of women transmigrants should start by recognizing the patterns created by the feminization of migration. One such solution, developed by Professor Jennifer Gordon, would accommodate a constant flow of labor migrants by tying immigration status to organizations of

²⁷⁶ See Menjivar & Abrego, *supra* note 100, at 1399.

²⁷⁷ IACHR Rapporteur 2003, *supra* note 38, at ¶ 223-24.

²⁷⁸ See GUEVARA BERMÚDEZ, *supra* note 251, at 212-13; *see also* Flynn & Koffman, *supra* note 112, at 70.

²⁷⁹ GUEVARA BERMÚDEZ, *supra* note 251, at 212-13

²⁸⁰ *Id.*

transnational workers, rather than to employers or nations.²⁸¹ Such a system is predicated on the recognition that migration flows have not been slowed by increased restrictiveness and enforcement; instead, these policies have only exposed migrants to abuses.²⁸² It further recognizes that many labor migrants intend temporary migration²⁸³ and refuses to allow employers to control the conditions of migration.

The concept of transnational labor citizenship could be applied to the particular reality of women labor migrants in order to ensure their access to membership in labor organizations and thus immigration status. In order to affect migration patterns through Mexico, and because women migrants often work in isolated and unregulated sectors,²⁸⁴ these organizations should be accessible from the country of origin. Transnational labor organizations for particular industries where women labor migrants concentrate would allow these organizations to monitor and advocate for migration and labor conditions that reflect the unique experiences and needs of women migrants. By providing status from the country of origin, migration flows would be regularized and migrants' vulnerability to organized crime would be reduced. Tying migration status to women's status as labor migrants responds both to the gendered impact of economic liberalization and restrictive immigration policies that foster the vulnerable migration patterns of women migrants.

VI. CONCLUSION

The feminization of labor migration from and through Mexico to the United States has come at a horrific price. More than half of women migrants are sexual assaulted or raped and face a high risk of trafficking and sexual exploitation by criminal organizations. After being propelled to international migration by economic liberalization, restrictive immigration policies push women migrants into illicit channels that increase their vulnerability to the corruption of state officials and the violence of organized criminal groups. In light of these abuses, Mexico's new Migration Law gives broad legal protection to the human rights of migrants and recognizes the vulnerability of women migrants. However, applying a gender lens to the Migration Law reveals that the reform fails to create structures that will change the conditions of vulnerability for women migrants. While the law

²⁸¹ Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 509 (2007).

²⁸² *Id.*

²⁸³ *See supra* Part II.B.

²⁸⁴ Margaret L. Satterwaite, *Crossing Border, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 YALE HUM. RTS. & DEV. L. J. 1, 7 (2005).

missed opportunities to protect women migrants, Mexico could still implement changes to provide regular migration channels to transmigrants, a change that would make Mexico a regional leader in protecting the rights of women migrants. As Mexico implements its Migration Law and immigration reform enters the political stage in the United States, the time is ripe for Mexico to lead the way to a coordinated regional policy that can prevent the abuses of women migrants in transit.