



CHALLENGES AND BEST PRACTICES IN PROMOTING AND PROTECTING THE HUMAN RIGHTS OF ALL MIGRANTS AT INTERNATIONAL BORDERS

CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS) CONTRIBUTIONS TO THE UNITED NATIONS SECRETARY-GENERAL REPORT ON THE IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION A/RES/68/179 ON THE PROTECTION OF MIGRANTS

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The Centro de Estudios Legales y Sociales (CELS, Argentina)¹ and the Iniciativa Frontera Norte de Mexico (IFNM, Mexico)² hereby submit their contributions to the Office of the High Commissioner for Human Rights (OHCHR) on the issue of “challenges and best practices in promoting and protecting the human rights of all migrants at international borders”, in the framework of the request made by way of the *Note Verbale RRDD/HRESIS/JS/PO/CH/is*. We aim to contribute to the drafting of the UN Secretary General Report on the implementation of UNGA Resolution 68/179 on the Protection of Migrants.

Borders have increasingly come to be treated as zones in which immigration control takes precedence over compliance with human rights standards. This process of securitization, which sees irregular migration as a security concern, serves to legitimize the increasing use of detention and methods of interception and return that are not subject to judicial control. Furthermore, migrants who have suffered mistreatment while on border zones are often left

¹ The Center for Legal and Social Studies (CELS) is a non-governmental organization that has been working since 1979 to promote and protect human rights, and to strengthen the democratic system in Argentina. CELS has been involved in the promotion and protection of the rights of migrants since the 1990s. This work is carried out through strategic litigation both within Argentina and before the organs of the international human rights instruments (Inter-American Human Rights Commission and Court, Committees of the United Nations, Special Rapporteurs etc.) as well as through research, publications and other activities.

² The Iniciativa Frontera Norte de México (IFNM) is an integrated project that seeks to strengthen the work carried out by migrant rights' organizations on the Northern border of Mexico. The work of its constituent organizations includes the protection of human rights defenders (by the Acción Articulada Noreste (AAN)), and documentation of human rights violations in the United States with a focus on condition in detention, due process and family reunification (Programa de Defensa e Incidencia Binacional (PDIB)). **Since 2013 CELS and the IFNM have worked in collaboration on a project that aims to promote the development of human rights standards for border zones, with a focus on the human rights situation on the United States/ Mexico border.**

without a means of redress if they are subsequently removed from the country where the abuse took place, contributing to a culture of impunity.

Against this background we address five key areas, on the basis of experience on the ground and in reference to the relevant international human rights standards, in which we identify challenges for the protection of the human rights of migrants. In addition, we make a number of suggestions with regard to best practices. These areas are:

1. Deprivation of liberty,
2. Consular Protection,
3. Handling of Personal Property,
4. Right to a remedy in the case of human rights violations in border zones, and
5. Unaccompanied children.

1. Deprivation of liberty on border zones

We note that UNGA Resolution 68/179 expresses concern regarding measures that treat irregular migration as a criminal offence.³ In this respect, we identify as a key obstacle for the protection of the rights of migrants on border zones the criminalization of “illegal entry” and the imposition of custodial penalties on migrants who cross borders in an irregular manner.⁴ The Inter-American Court of Human Rights (IACtHR) has analyzed the compatibility of punitive custodial measures for controlling migration with international human rights law, concluding that criminalizing irregular entry goes beyond the States’ legitimate interest in controlling irregular migration and leads to arbitrary detention.⁵ It is of particular concern that migrants prosecuted for such offenses are not provided with the full range procedural safeguards, which are essential to criminal proceedings that may result in a deprivation of liberty, and are

³ General Assembly Resolution A/RES/68/179, preamble, p. 4

⁴ For example on the United States Border, Operation Streamline is an umbrella term for a number of related criminal proceedings in which unauthorized entrants to the U.S. are criminally prosecuted for “illegal entry” and deported or sentenced to prison. See University of Arizona, *In the Shadow of the Wall, Preliminary Data from the Migrant Border Crossing Study*, 2013, http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf.

⁵ IACtHR, *Case of Velez Llor v Panama*, Judgment of 3 November 2010, para. 146. The Court cites in this regard the Report of the Working Group on Arbitrary Detention, A/HRC/7/4, January 10, 2008, Para. 53; See also United Nations, Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, E/CN.4/2003/85, 30 December 2002, Para. 73: “[detention of migrants] because of their irregular status should under no circumstance be of a punitive nature.”

subjected to expedited criminal procedures without legal representation. An example in this regard, based on the experience of the PDIB, is the failure to give “Miranda Warnings” (the explanation of rights given before any custodial interrogation) to migrants detained on borders in the United States informing them on their right to speak to a lawyer and to remain silent. Furthermore, some of the programs operated in the United States to provide legal assistance for migrants on borders involve one lawyer representing groups of migrants in a way that does not allow for quality legal advice to be provided.⁶

The systematic use of administrative detention to control irregular immigration is also a significant problem. In this regard, we emphasize firstly that CELS and PDIB are firmly in favor of the progressive abolition of the administrative detention of migrants. However, until this objective has been achieved, we support the conclusion of the UN Special Rapporteur on the Human Rights of Migrants to the effect that such detention can only be carried out in accordance with the law and in exceptional cases.⁷

Short-term detention in facilities on border zones must comply with international standards regarding conditions in detention.⁸ The PDIB has documented numerous failings in detention conditions in the case of people detained on the US/Mexico border.⁹ We emphasize in this regard that States have special responsibilities towards all persons subject to measures that restrict their liberty, holding the position of guarantor with regard to the protection of their rights. Essentially, the special position of guarantor is a function of the heightened level of control

⁶ See PDIB, Primer Informe 2011: Violaciones de Derechos Humanos de Mexicanos Detenidos en los Estados Unidos 2010-11 (**hereafter PDIB, First Report 2011**) p. 29. Available online: <http://programadefensaincidiabinacional.files.wordpress.com/2012/05/2do-informe-violaciones-a-ddh-de-mexicanos-deportados-de-usa.pdf>. The IACtHR has confirmed that in cases in which the consequence of immigration procedures may be deprivation of liberty of a punitive nature, free legal representation becomes imperative in the interests of justice. See IACtHR, *Case of Velez Loor v Panama*, Judgment of 3 November 2010, Para. 146.

⁷ United Nations, Report of the Special Rapporteur on the human rights of migrants, François Crépeau A/HRC/20/24 (2 April 2012) para. 72.5, 8 “The Special Rapporteur calls on States to consider progressively abolishing the administrative detention of migrants. In the meantime, Governments should take measures to ensure respect for human rights of migrants in the context of detention including by (a) Ensuring that procedural safeguards and guarantees established by international human rights law...are applied to all forms of detention”.

⁸ See CELS and Conectas Contributions for the Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners. 14 January 2014. Available at: http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/IEGM_Vienna_25-28-March-2014/CELS-E-VMTG.pdf

⁹ Interviews with people detained on the Mexican border for periods of less than 72 hours have revealed numerous breaches of the international instruments relating to detention standards including poor food, lack of hygiene and sanitation, and poor quality healthcare provision, PDIB First Report 2011, p. 70, 73, 75.

exercised by the state over certain persons in its jurisdiction, and the inherent vulnerability of such persons in the light of the restrictions on their liberty.¹⁰

Deprivation of liberty in border zones is not limited to detention in purpose built establishments. As well as being detained in more formal settings, persons entering border zones are often subjected to restrictions on their movement and find themselves under the de facto control of a state's authority.¹¹ Within the definition of deprivation of liberty must be included, for example the retention of migrants in transit zones, forced transportation¹² and other measures that restrict freedom of movement for example forcing migrants to cross borders on foot.¹³ In this regard, with respect to monitoring under the Optional Protocol to the Convention against Torture (OPCAT), we support the position that "places" of detention must include means of transport and areas such as airport holding zones.¹⁴

Lastly, it is cause for concern that migrants detained on borders face obstacles when reporting mistreatment and poor conditions in detention. This is due to limited information about and access to complaint procedures, as well as fear of repercussions where complaints procedures are not anonymous and require the report to be made to the same authority against which the complaint is directed.¹⁵ In the case of the United States, it appears that outsourcing of immigration control has created significant barriers to accountability, due to the management of detention facilities by different contractors who are not required to comply with a single set of

¹⁰ See jurisprudence of the IACtHR with regard to the "*posición del Estado como garante*": IACtHR, *Mendoza and others Vs. Argentina*. 2013. Para. 188; IACtHR. *Instituto de Reeducción del Menor Vs. Paraguay*. 2004. para. 152; IACtHR. *Pacheco Teruel and others Vs. Honduras*. 2012. Para. 64.

¹¹ In this regard we make reference to the definition found in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Article 4 (2) "2....deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority." See also Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas "deprivation of liberty" means: "Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses."

¹² See Human Rights Committee, *Saldías de López v. Uruguay*, (A/36/40) Para. 13. IACtHR, *Nadege Dorzema and others Vs. Dominican Republic*, 24 October 2012, Para. 130

¹³ Migrants are sometimes obliged by immigration officials to cross borders on foot see for example IACHR, Report No. 64/12, *Benito Tide Mendez and others Vs. Dominican Republic* 29th March 2012, Para. 89

¹⁴ See APT, National Preventive Mechanisms: Monitoring the forced deportation flights of migrants, March 2012, P.4; See also Association for the Prevention of Torture, OPCAT: An Opportunity for Refugee and Migrant Protection: Briefing Paper (2009).

¹⁵ See PDIB, First Report 2011, p.74, Second Report 2012, p.21

standards.¹⁶ Migrants should be able to make complaints regarding their treatment to the authorities responsible for the administration of the place of detention and to higher authorities, including judicial authorities.¹⁷

2. Consular Protection

UN Resolution 68/179 reaffirms the duty on States to ensure full observance of the Vienna Convention on Consular Relations, and takes note the Inter-American Court of Human Rights' Advisory Opinion 16/99 on the Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process. It is a cause for concern that significant problems have been recorded with access to consular assistance by migrants detained in border zones. In the experience of the PDIB, Mexican migrants detained in the United States are routinely denied access to consular protection through failure to inform them of their right to communicate with consular officials (the right to information). Migrants who do not have the information stated clearly and in a language they understand may not understand the benefits of consular protection, leading them to reject the offer of consular notification.¹⁸

Through contact with consular officials, migrants access such services as securing legal representations and assistance with locating family members, which may be vital to supporting immigration claims. Consular officials may also assist with providing information on release on bail and on types of deportation. This assistance is particularly important in the case of migrants in border zones who lack information about immigration proceedings and may be vulnerable to acting on misinformation or coercion by immigration officials. Migrants who are subject to such coercion may make ill-informed decisions with negative consequences for the

¹⁶ For example, when producing its annual reports on the human rights violations experienced by Mexicans detained in the United States, the PDIB has found management of detention centers by different private companies makes it difficult to monitor compliance with standards. See PDIB, First Report 2011, p. 89, Second Report 2012, 2013 p. 23. See also the IACHR commenting after a visit to the United States: "The Rapporteurship noticed significant disparities in detention conditions between the different adult immigration detention facilities it observed. The subcontracting to state and local prisons and the frequent sub-subcontracting of the staffing for the facilities to private correctional service companies create significant obstacles to providing immigrant detainees care that comports with their basic human rights. Moreover, as a structural matter, this does not provide accountability for human rights violations. It has also been reported to the Rapporteurship that DHS's National Performance-Based Standards that govern adult immigration detention conditions are not legally-enforceable if they are violated." IACHR Press release 53/09, available: <http://www.cidh.org/Comunicados/English/2009/53-09eng.htm>.

¹⁷ See UN Commission on Human Rights, Report of the Special Rapporteur on the Human Rights of Migrants: Migrant Workers, 30 December 2002, E/CN.4/2003/85 para. 75(l)

¹⁸ PDIB, First Report 2011, p.44

possibility of regularizing their stay, including renunciation of rights to appeal or consenting to forms of removal that will result in re-entry bans.¹⁹ As emphasized by the IACtHR, consular protection represents one of the countervailing measures that help reduce or eliminate the obstacles that impair an effective defense and ensure that those facing disadvantage enjoy a real opportunity for justice.²⁰

Furthermore, the assistance offered by consular authorities has a wider impact than ensuring the right to a fair hearing during criminal and immigration proceedings. Consular communication allows for monitoring of conditions of detention, and consular officials may be able to assist migrants with reporting mistreatment at the hands of border authorities.²¹ The Inter-American Commission on Human Rights' Special Rapporteurship on Migrant Workers and their Families has noted the development of consular assistance to cover not only those facing trial for crimes carrying severe penalties but also to address the problems facing migrants in administrative detention.²²

Also in this regard, the UN Special Rapporteur on the human rights of migrants recommends that in countries with high migrations rates, such assistance should be provided by representatives of all relevant government ministries and departments, as well as specialized medical, social and psychological personnel. He has urged states to ensure that there is a mechanism to address cases of negligence on the part of sending states in providing consular assistance. Inadequate responses to requests for assistance can have serious consequences for migrants, and states must give consideration to this when allocating officials.²³

¹⁹ See PDIB, Second Report 2012 p. 57; Migrants have testified to the Inter-American Commission regarding the coercive tactics deployed by government officials to force individuals to sign documents without the assistance of legal counsel see Press Release No. 53/09 IACHR Visits U.S. Immigration Detention Facilities <http://www.cidh.org/Comunicados/English/2009/53-09eng.htm>

²⁰ IACtHR, Advisory Opinion OC-16/99, 1 October 1999, para. 119. See also Advisory Opinion OC-18/03 Juridical Condition and Rights of the Undocumented Migrants, 17 September 2003 (Ser. A) No. 18 (2003), para. 122.

²¹ Based on the experiences of the PDIB on interviewing Mexicans repatriated from the United States. See also IACtHR Advisory Opinion OC-16/99, op. cit. para. 86.

²² IACHR, Special Rapporteurship on Migrant Workers and their Families, Seventh Progress Report (OEA/Ser.L/V/II.124) 27 February 2006, para. 164.

²³ United Nations, Report of the Special Rapporteur on the human rights of migrants, Gabriela Rodríguez Pizarro, E/CN.4/2003/85 (30 December 2002) para. 76.

3. Handling of personal property

The confiscation and non-return of migrants' personal property by border control and other agents is a widespread problem on the United States/Mexico border.²⁴ The experiences of the PDIB regarding the consequences of being removed without personal property highlight the importance of this issue, which might otherwise appear trivial in the context of the other human rights abuses that take place on border zones.

Belongings that are routinely confiscated include identity documents, clothing, money, mobile phones, and items of sentimental value such as wedding rings or photographs. Money that is confiscated is seldom returned to migrants, who then arrive in Mexico with no funds for onward travel, or it is returned in the form of cheques which are difficult to cash and carry commission. The failure to return mobile telephones and personal documents such as address books makes communication with family members on return difficult or even impossible, increasing the isolation of returnees. Lack of identity documentation leaves migrants vulnerable to arrest and detention. They also find it difficult to secure formal work, and are forced to accept more precarious work in poor conditions and without access to social security. In some cases, employers take advantage of their vulnerability to refuse to pay them for work completed. One of the documents most commonly retained by US official is the identification issued by the Mexican electoral authority, which is used to exercise the right to vote, as well as required for various administrative procedures.²⁵

The procedures for the recovery of property left in the United States are complicated, particularly for migrants who do not have a contact in the United States to assist them, and require the assistance of the Mexican embassy/consulate. A receipt is required to recover property, but research has shown that these are not always issued.²⁶ Migrants, and organizations seeking to assist them, are further prejudiced in their efforts to recover property by the fact that procedures vary between authorities and states. A different procedure exists for

²⁴ A recent survey of 1,100 repatriated migrants surveyed in six Mexican cities between 2009 and 2012 has revealed that just over one third of deportees report having belongings taken and not returned. Among deportees who were carrying identity documents 1 in 4 had these confiscated and not returned. See Immigration Policy Center 'Bordering on Criminal: The Routine Abuse of Migrants in the Removal System. Part II: Possessions Taken and Not Returned' 2013 available at las.arizona.edu/mbcs

²⁵ See PDIB, First Report 2011, p. 75, PDIB, Second Report 2012, p.6, 21- 2

²⁶ PDIB, First Report 2011, p. 75

the recovery of property that is confiscated on entry into the country, which is similarly obscure and presents similar obstacles in terms of failure to provide accessible information regarding the procedure.

We note that the confiscation of identity documents in particular appears to be a widespread abuse and has been identified in other regions.²⁷ The Inter-American Commission on Human Rights (IACHR) has affirmed that this practice may constitute an inhumane and degrading treatment due to the intensity of psychological suffering caused to a group in a highly vulnerable situation, and may also result in breaches of the rights to nationality and legal personhood.²⁸

With regard to best practices, these problems illustrate the importance of establishing clear and enforceable standards for the treatment of migrants' property by immigration and border control officials. The circumstances in which personal property can be removed from migrants should be clearly defined, and confiscation of property must always be accompanied with the delivery of a receipt.²⁹ Migrants whose property is confiscated during immigration or criminal proceeding should have their property returned prior to release or deportation, in line with international standards on prisoners' rights.³⁰

²⁷ See Gadem Report On Morocco's Implementation Of The International Convention On The Protection Of The Rights Of Migrant Workers, August 2013 "Seizure and destruction of personal belongings by the police are very common during arrests, when migrants are being taken to the police station (if it exists), or during 'refoulement' operations. When belongings are confiscated, the police do not take inventory and do not issue receipt in practice, in contradiction with what is provided for by the legal procedure. Confiscations of passports are also very common during an arrest. In some cases, administrative documents are even destroyed during 'refoulement' operations and migrants are again deprived of any remedy against such illegal practices."

²⁸ This issue has arisen in a case currently before the IACtHR, see report of the IACHR, Report No. 64/12, Benito Tide Mendez and others Vs. Dominican Republic 29th March 2012 para. 207-8

²⁹ With regard to documentation, see for example Convention on the Rights of Migrant Workers, Article 21 "It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family." See also UN, Standard Minimum Rules for the Treatment of Prisoners, art. 43 (1) "All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. "

³⁰ See for example UN, Standard Minimum Rules for the Treatment of Prisoners art 43 (2) "On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him."

4. Right to a remedy in the case of human rights violations at border zones

Migrants in border zones are frequently subject to abuses by state actors during arrest, detention and removal. They are also vulnerable to acts of violence, kidnapping, unlawful detention and unlawful killing by private actors, which appears to be particularly concentrated in the case of migrants in transit and in border zones.³¹ Ensuring the right to a remedy in the case of human rights violations that take place on border zones presents particular challenges, which, if not addressed, results in borders becoming zones of impunity.

As it is well understood, undocumented migrants who are victims of crime or human rights abuses face obstacles with regard to access to justice. Some measures that have aimed to address this problem have focused on eliminating the fear of deportation through the use of 'firewalls' between public services, and temporary visas, for example, for victims of trafficking during criminal proceedings.³² However, the reality of the situation in border zones is that migrants are often removed from the territory before they are able to report abuses or access complaint mechanisms. It is for this reason that the UN Committee on Migrant Workers, for example, recommends that the States adopt specific measures to ensure that undocumented migrants whose rights have been violated have access to effective remedies and appropriate redress, even if repatriated, noting that the shortness of the period spent in the country could result in a curtailment of their right to a remedy.³³ Furthermore, border zones are particularly hostile environments in which to report abuses, due to the use of detention and lack of clarity about the different authorities operating there, in the case of violations by state authorities, and fear of reprisals in the case of private actors. It is also the case that family members of victims of kidnappings and disappearances in border zones, to whom international human rights law recognizes the status of victims, struggle to participate effectively in investigations.³⁴

³¹ See IACHR Report on Citizen Security and Human Rights (OEA/Ser.L/V/II) 31 December del 2010, para. 90. Migrants in Mexico are particularly vulnerable to enforced disappearance. In 2009, the National Human Rights Commission (CNDH) reported 9,578 kidnappings, mainly by criminal organizations. 8.9% of abductions documented in those six months of 2010 involved government authorities, see United Nations Working Group on Enforced or Involuntary Disappearances, Mission to Mexico, A/HRC/19/58/Add.2, 20 December 2011, para. 69. Amnesty International's Report 'Invisible Victims: Migrants on the Move in Mexico' finds that 6 in every 10 women experience sexual violence during their journey through Mexico, see <http://www.amnistia.org.ar/sites/default/files/mexico-victimas-invisibles-migrantes-en-movimiento.pdf>.

³² See for example, report of the Special Rapporteur on the Rights of Migrants, François Crépeau (A/68/283) 7 August 2013, para. 82

³³ See CMW, Concluding Observations: Mexico (CMW/C/MEX/CO/2) 3 May 2011, para. 26

³⁴ International human rights law recognizes victim status to such persons, see for example, Human Rights Committee *Quinteros vs. Uruguay*, Communication No. 107/1981 21 July 1983, para. 14; United Nations

We suggest, along those lines, that mechanisms to ensure human rights abuses on borders are reported and investigated could include a role for states of origin. States should be called upon, as a minimum, to implement procedures that allow victims to report incidents of human rights abuses in the country of return. This process could also include assistance with collecting the initial evidence needed to substantiate the complaint. Further, mechanisms should also be implemented to ensure that the information collected is sent to the State in which the abuse took place.

5. Unaccompanied children

The principle that the best interests of the child must be a primary consideration applies to all children who come under a State's jurisdiction while attempting to enter the country's territory, and can never be overridden by non-rights based considerations such as immigration policy.³⁵ In border zones, however States have tended to prioritize the integrity and security of the border over human rights concerns. This approach has led to the implementation of policies that are not in accordance with the best interests principle or other international law norms relating to children, including automatic detention, removal without due process guarantees and/or a holistic assessment of the risks faced on return,³⁶ and failure to provide for the material, health and psycho-social needs of unaccompanied children who may have travelled long distances and have particular vulnerabilities.³⁷

Declaration on the Protection of All Persons from Enforced Disappearance art. 1.2. In this regard, the response of the Mexican government to the massacre of 72 migrants in San Fernando, Tamaulipas reveals the failure to adequately address the problem of violence against migrants in the border area, and to ensure access to justice for victims. Failures in the initial criminal investigations were not addressed in the investigation by the National Human Rights Commission which did not ensure that family members were treated as victims and able to participate in the process see <http://www.fundacionjusticia.org/san-fernando-opacidad-cndh/>.

³⁵ UN Committee on the Rights of the Child General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, para 12, para 86

³⁶ See for example Los Derechos Humanos de Niños, Niñas y Adolescentes Migrantes en la Frontera México-Guatemala Informe elaborado por el Centro de Derechos Humanos de la Universidad Nacional de Lanús y el Centro de Derechos Humanos Fray Matías de Córdova 2012 which analyses Mexico's immigration policies and their effects on migrant children and adolescents with a particular focus on detention and repatriation measures. A key finding was that although various mechanisms have been developed with regard to protecting children's rights, the goals of migration policy were placed ahead of child protection, resulting in the continuance of arbitrary repatriations and automatic administrative detentions. (Executive summary available in English <http://ninezmigrante.blogspot.com.ar/>)

³⁷ In this regard, we draw attention to the tragic case of the suicide of a 12-year-old child in the city of Juarez on the Northern Border of Mexico, which may reveal a failure by the authorities to provide adequate protection during the period immediately following her apprehension while trying to cross the border.

States' obligations towards to unaccompanied children in border zones have been comprehensively defined by the Committee on the Rights of the Child in its General Comment No. 6.³⁸ The challenge, therefore, is translating these standards into practice. In this regard, we call attention to the publication of a Protocol for the Protection, Assistance and Search for Durable solutions for unaccompanied or separated asylum-seeking children, based on an inter-institutional project undertaken by government bodies, international organizations and civil society, as an example of best practice.³⁹ The objective of this protocol is to establish a response to the cases of unaccompanied children based on a child's rights perspective and taking into account that the problem requires a coordinated response by a range of institutions, whose functions and obligations must be clearly defined. As such, the protocol includes guidelines for action by the Immigration Authority, Refugee Commission, national and local organisms specializing in children's rights, the Public Defenders Office, and civil society organizations.

The first part of the Protocol covers initial measures of protection and assistance, including evaluation of health and psycho-social and material needs, and well as the implementation of a process for the determination of need for international protection. A key feature of the protocol is immediate referral by border control authorities to the National Commission for Refugees, where relevant, and to the Public Defenders Officer (Defensoría General la Nación – DGN). Thereafter, the role of the DGN includes the appointment of a guardian in the shortest time possible, age determination procedures, and measures relating to initial protection needs. The initial interviews are designed to collect information regarding physical health, violence or trauma experienced by the child and any mental health needs, in order to plan special care and protection measures. The second part addresses the implementation of a formal procedure of the determination of the best interests of the child, while the third part covers an

³⁸ General Comment 6 requires the implementation of measures relating to, among others, automatic entry to the territory, prompt registration, procedures for identification of unaccompanied children, initial interviews, designation of a guardian and legal representative, measures relating to ensuring physical and mental health needs are met, and training for border officials who have contact with children.

³⁹ The organisations were UNHCR, la Comisión Nacional para los Refugiados (National Refugee Commission) , Secretaría de Niñez, Adolescencia y Familia, la Defensoría General de la Nación (Department for Children and Families of the Public Defenders Office) , la Dirección Nacional de Migraciones (National Immigration Department) IOM, UNICEF, Fundación Comisión Católica Argentina de Migraciones, Fundación Migrantes y Refugiados en la Argentina, Consejo Federal de Niñez, Adolescencia y Familia. Available at: <http://www.mpd.gov.ar/articulo/index/articulo/protocolo-para-los-ni-os-no-acompa-ados-o-separados-de-sus-familias-en-busca-de-asilo-953>

implementations strategy, with special reference to training and awareness-raising for the different actors who intervene in children's cases.

We are grateful for the opportunity to provide this information, and hope that these contributions will be of use during the drafting of this report on the Protection of Migrant Rights. We remain open to provide any further information that may be required.

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