



**INTERNATIONAL TRIBUNAL of CONSCIENCE  
OF PEOPLES IN MOVEMENT**

**First Hearing on the Human Rights Crisis in Mexico  
Preliminary Findings, Verdict, Recommendations**

**New York City, U.S.A.**

**September 25-27, 2015**

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## **I. SUMMARY OF FINDINGS:**

On the first anniversary of the cruel massacre of 43 student teachers in Ayotzinapa, in the state of Guerrero, Mexico, this Tribunal heard and reviewed extensive evidence of the comprehensive circumstances leading to this massacre. We now find that this massacre was committed by government agents and that it is part of an ongoing pattern of human rights violations based on both direct governmental actions as well as policies supporting impunity for those committing grave human rights violations. We find that the governments of Mexico and the United States have violated international law including fundamental rights that apply whether or not a specific treaty has been entered into acceding to international jurisdiction. This includes violations of the right to life, the right to freedom from discrimination (based on race/ethnicity/national origin, gender, class and migratory status), due process rights, equality before the law and equal protection of the law, family unity, and simple human dignity. In addition, the rights of refugees and asylum seekers (fleeing violence in Central America and Mexico) must be protected by both the United States and Mexico.

The victims are poor, indigenous peoples, migrants, women and children who must be immediately protected through systemic changes in Mexican human rights policies, and in both Mexican and United States immigration policies. The remedies we call for include investigation, prosecution and punishment of those governmental authorities responsible for the human rights violations summarized herein, as well as the systemic changes by both the governments of Mexico and the United States needed to guarantee that such violations will not be repeated.

## **II. JURISDICTIONAL PRECEDENTS:**

A Tribunal of Conscience is a People's Tribunal. Such tribunals date back more than six decades to the era of the Russell Tribunal on US war crimes in Viet Nam and the Universal Declaration of the Rights of People (Algiers, 1976). They provide an alternative forum for those who find no recourse in the formal institutions of the state or the international community. They are the place where the people judge the crimes of the state, not where the state judges the people.

A Tribunal of Conscience is an opportunity to gather and review evidence of wrongs committed against the people, and to bring them before the public in a manner that exposes the cruel policies and the tragic cost of state actions that negatively affect the people, their communities and the environment.

Such Tribunals offer a public forum for those whose voices have been silenced, and raise consciousness within society of the need for historic and contemporary justice in contexts of impunity. The Tribunal calls upon the public to hold governments accountable for crimes of the state and ensure that the violations it has found are not repeated. Finally, a Tribunal of Conscience can point the way to initiatives, reforms and basic changes whereby social justice, not injustice, becomes the norm in everyday life.

Our Tribunal arose out of this history and extends the three-year process in Mexico of the Permanent People's Tribunal, whose findings were presented in November of 2014. The jury for the present International Tribunal of Conscience is made up of 14 international experts in the fields of law, political science, social welfare policy and the protection of human rights.

### **III. PROCEEDINGS:**

On September 26, 2015, international jurors, sitting in New York City, heard testimony pertaining to serious human rights violations in Mexico, and against Mexicans and other Latinos in the United States. The date of this Tribunal of Conscience coincided with the one-year anniversary of the attacks, assassination and disappearance of students from the Raul Isidro Burgos Rural Teachers' College in Ayotzinapa, Guerrero, a landmark human rights case in the history of the nation and one of the cases presented.

#### **The cases presented to the jury included:**

1. The massacre of Acteal, Chiapas, in which 45 indigenous men, women and children of the group Las Abejas were brutally murdered by Mexican paramilitary forces on Dec. 22, 1997.
2. The current impact of militarization and economic policies on Mayan women, in Chiapas.
3. Violations of the rights of Central American migrants in transit through Mexico, as well as conditions and violations in state migration detention facilities.
4. The murder and disappearance of students in Ayotzinapa: The role of Mexican state security forces and municipal, state and federal governments.
5. The San Fernando massacre in 2010, and mass graves in the same area.
6. The death of Ecuadorean indigenous migrant child Noemí Alvarez Quillay.
7. Gender violence and feminicides (Ciudad Juárez, Narvarte murders in Mexico City, and that of activist Nadia Vera), as well as the prolonged imprisonment of Nestora Salgado.
8. Violation of the rights of ex-Braceros.
9. Violation of the rights of unaccompanied minors in transit through Mexico.
10. Violation of the rights of migrants in the U.S.
11. Human rights violations at the US-Mexico border.

**The Jurors were:** Cruz Reynoso (former Associate Justice, Calif. Supreme Court), Jorge Bustamante (former UN Special Rapporteur for Migrant Rights), Azadeh Shahshahani (immediate past president, National Lawyers' Guild - NLG), Jeanne Mirer (President, International Association of Democratic Lawyers- IADL), Gill Boehringer (former Dean, Macquarie Law School, Australia: representative, International Association of Peoples' Lawyers- IAPL), Arturo Viscarra (School of the Americas- SOA Watch), Wilma Reverón-Collazo (MINH/ACLU, Puerto Rico), Laura Carlsen (Americas Project, Center for International Policy, Mexico City), Julia Camagong (International Migrants' Alliance- IMA), Roberto Márquez (Professor Emeritus, Latin American and

Caribbean Studies, Mt. Holyoke College), Katrina Abarcar (International Coalition for Human Rights in the Philippines-ICHRP), Sandra Trujillo (former Deputy Director, Childrens´ Defense Fund-CDF), Katherine Culliton-González (Hispanic National Bar Association; Advancement Project), Terrence Valen (National Alliance for Filipino Concerns- NAFCON), Aaron Ceravoy (Ibon Foundation, the Philippines), Johanna Fernández and Sophia Williams (Bring Mumia Home Campaign), Peter Clark (International Leonard Peltier Defense Committee), Kerry McLean (NY chapter NLG).<sup>i</sup>

#### IV. WHAT WE HEARD:

The jurors heard testimonies concerning a wide range of subjects from the impact of agribusiness in Chiapas, to multinational land grabs by extractive industries.

- Testimony on the general conditions prevalent in countries of origin, in Mexico and in the United States revealed **structural human rights violations with fifty-two million Mexicans living in poverty and an impunity rate of 98% for serious crimes committed**. In addition, testimony was given as to the specific causal features of the cases presented.
- The focus of the Tribunal on migration established a **clear pattern in which those seeking to survive through migration are exploited by sex and drug trafficking rings, corruption and other forms of organized crime, frequently with the complicity of government officials**. This results in tens of thousands of migrants disappearing and being killed, as evidenced in the San Fernando massacre and mass graves, and corroborated by hundreds of subsequent cases.
- The jury also heard testimony regarding the deplorable conditions for migrants illegally detained in government migrant facilities.
- The overwhelming majority of migrants are poor and indigenous peoples (not Caucasian).
- **Violence and discrimination against women in Mexico** was well-documented, both for women migrants who face sexual abuse from members of organized crime and government officials, and against women activists and dissidents.
- **Regarding the United States (US), the jurors considered the long history of migrant exploitation and criminalization**, including the disgraceful failure to provide the ex-Braceros with their long overdue full compensation.
- **The jurors heard from immigrant families in the US regarding the discrimination they suffer and the lack of remedies available to them** in the areas of housing, employment and social services. We also heard about the benefits of collective action among immigrants.
- The jurors also took into account US aid and policies impacting Mexico and Central America.

#### V. WHAT WE FOUND:

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<sup>i</sup> Affiliations are for identification purposes only and do not connote endorsement.

Our preliminary findings are below, pending the full verdict which will be subsequently delivered. After summarizing applicable law, the following section details our verdicts against Mexico and the United States.

## **A. Applicable law**

As has been the standard practice of People's Tribunals, this Tribunal was guided in its deliberations by reference to the international norms relating to human rights that have been established over many decades since the end of the second World War, including importantly the Universal Declaration of Human Rights, and successive Declarations and Conventions that have provided a comprehensive suite of protections against human rights abuses.<sup>ii</sup> Reference was also made to the provisions protecting human rights that are found in the Constitution of the Republic of Mexico.

## **B. Preliminary Verdict Regarding Mexico**

Based on the oral testimony presented at the Tribunal and the written documentation presented to the jury:

**1. We find the Mexican state guilty of crimes against humanity.** Crimes against humanity are defined by the International Criminal Court as “any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or other forms of sexual violence; persecution against an identifiable group (in this case migrants); enforced disappearance; apartheid and other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.”

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<sup>ii</sup> These include, but are not limited to: The Inter-American Declaration on the Rights and Duties of Man, Inter-American Convention on Human Rights, Inter-American Convention to Prevent and Punish Torture, Inter-American Convention on Forced Disappearance of Persons, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Convention on the Rights of the Child, Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Prevention and Punishment of the Crime of Genocide, International Convention for the Protection of All Persons from Enforced Disappearance, and Indigenous and Tribal Peoples Convention.

*Forced disappearance:* Primary among these we found forced disappearance, as exemplified in the case of Ayotzinapa--one among thousands--where 43 students were victims of forced disappearance by state agents, with the alleged participation of organized crime. The evidence presented to the jury clearly establishes the presence of all three levels of government (municipal, state and federal) at the scenes of the crime, their active participation in the crimes, coordinated action, and failure/refusal to prevent these crimes despite ample opportunities to do so. We note the need for a credible, comprehensive and independent investigation of the role of the armed forces in the commission of the crimes, and the role of the Mexican Attorney General (Procurador General de la República) in compromising the investigation and covering up critical evidence.

*In addition, as summarized below, we heard overwhelming testimony of systematic persecution, deportation, imprisonment and sexual violence against migrants.*

**2. We therefore find the Mexican state guilty of a *war of extermination* against migrants, with indications of possible social genocide against migrants as a targeted group.** This indictment is based on detailed testimony regarding the massacre of 72 migrants at San Fernando and the mass graves containing nearly two hundred bodies, with government participation in these crimes. It is also based on abuses including extortion, rape, torture and lack of protection of primarily, but not exclusively, Central American migrants in transit through Mexico. We also note the violation of basic social, economic and cultural rights in the countries of origin, which systematically fail to provide a decent living and basic rights to communities, particularly indigenous and *campesino* populations, in their places of origin. The victims are overwhelmingly indigenous and *campesino* (non-European, non-Caucasian) persons.

The US government has promoted the drug war within its own borders, and in Mexico through the Merida Initiative with more than \$3 billion and unconditional political support to the Calderon and Peña Nieto governments. The funding supports militarization, an important factor in many of the cases we reviewed.

### **(a) Violations of the rights of migrants**

Mexico is living through an acute human rights crisis, and migrants or trans-migrants are the most vulnerable population in the country. The witnesses presented compelling evidence that Mexico's *Instituto Nacional de Migración* ("INM") or National Institute of Migration is complicit in systemic violations of the human rights of migrants and their families, including kidnapping, extortion, sexual abuse and rape, arbitrary detention, and homicide.

INM officials collude with organized or authorized crime by facilitating or allowing individuals or criminal organizations access to migrants for their own unlawful purposes, or leaving their kidnapping and subsequent human rights violations against migrants in

impunity. Criminal organizations engage in systemic kidnapping, extortion, human trafficking, forced prostitution, slavery, murder, and even black market organ trafficking.

As the witness Fr. Solalinde stated, migrants are treated as merchandise in Mexico. State actors, non-state actors, and non-state actors operating under the color of law, participate in the treatment of people as disposable commodities, with prices put on their lives and bodies with little regard to their humanity or that of their families. The San Fernando Massacre of 72 migrants is but one emblematic case proving not only the depraved and callous treatment of migrants by state and non-state actors, but how the Mexican government allows even the most notorious crimes against migrants to remain in impunity.

Hard figures for killed or disappeared migrants in Mexico are difficult to ascertain, partly because migrant life is not given the same importance as other life in Mexico, monitoring difficulties, and the relative inability of family and friends to search for migrants in Mexico. Figures range between 30,000 – 80,000 killed or disappeared in Mexico in the last eight years. The hundreds of bodies found in mass graves in the aftermath of the San Fernando massacre, the Ayotzinapa killings and disappearances, and other instances and locations, point to a shocking, and massive, yet not fully known scale of this human rights and humanitarian crisis.

### **3. We also find the Mexican state guilty of the systematic violation of economic, social and cultural rights of its population.**

We find that poverty and extreme poverty, food insecurity, lack of basic services, unemployment and underemployment and housing scarcity has resulted from the inequality inherent in the neoliberal economic model, particularly since Mexico entered into the North American Free Trade Agreement (NAFTA). We concur with other experts<sup>iii</sup> that the failure of the state to guarantee these basic human rights is a serious violation that should also be characterized as a crime against humanity. Poverty implies the individual and collective violation of the right to self-determination, and a violation of social, economic and cultural rights, including right to food, right to decent housing, and the basic right to life, all of which are formally recognized in the Mexico constitution.

### **4. We find the Mexican state guilty of carrying out a generalized pattern of state terror and attacks on public safety.** The Government of Mexico is indicted for a generalized pattern of state terror, which is defined as the state's complicity with and authorization of organized crime in acts of violence against targeted populations, extortion, sexual violence, suppression of dissidence, criminalization of social protest, assassination and forced displacement. This indictment is supported by credible testimony, particularly in the cases of the Ayotzinapa, San Fernando and Acteal massacres.

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<sup>iii</sup> See the work of Amartya Sen and Thomas Pogge on this point.



**5. We find the Mexican state guilty of “deviation of power” and misuse of public resources.** We concur with the findings of the Permanent People’s Tribunal (Mexico Chapter) that the Mexican state is guilty of a massive “deviation of power,” from serving the basic needs and guaranteeing the basic rights of its population to serving elite sectors and transnational allies. This violation of the social pact is characterized by the strengthening of the repressive apparatus and actions against the population, while simultaneously weakening institutions to protect and fulfill the civil, political, economic, cultural and social rights of the people.

## **6. Indictment of Mexican government’s acts and omissions regarding gender violence, particularly against women & girls**

The government of Mexico is indicted for failure to investigate and prosecute the vast majority of femicides in the border city of Ciudad Juarez where hundreds of women’s bodies have been found with evidence of rape and torture, as well as femicide in the rest of the country where the rate of femicide has skyrocketed since the war on drugs began. It is also indicted for failure to adequately investigate the gender-based violence committed against and murder of Nadia Vera, Mile Virginia Martin, Alejandra Negrete Yesenia Quiroz, and the illegal use of character defamation against the victims; and the unlawful arrest and imprisonment of indigenous political prisoner Nestora Salgado, leader of the community police in her home state of Guerrero.

In sum, testimony on gender violence in Mexico began with the declaration: “There is a silent gender war against women in Mexico”. Evidence amply substantiated this claim.

### **(a) Case of Noemí Álvarez Quillay**

Noemí Alvarez Quillay<sup>iv</sup> grew up in the village of El Tambo, in the Cañar region of Ecuador, one of the poorest and most marginalized in the country, where most of the population speaks *quichua*, the indigenous language which was the language of the Inca civilization. Her father migrated to New York City shortly after she was born to a family with 5 children. Her mother joined him there 3 years later, leaving Noemí in the loving care of her grandparents. 60% of the schoolchildren in that region belong to migrant families<sup>v</sup>.

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<sup>iv</sup> [http://www.nytimes.com/2014/04/20/nyregion/a-12-year-olds-trek-of-despair-ends-in-a-noose-at-the-border.html?\\_r=0](http://www.nytimes.com/2014/04/20/nyregion/a-12-year-olds-trek-of-despair-ends-in-a-noose-at-the-border.html?_r=0); see also blog dedicated to compiling material regarding her case, based on journalistic research by Daniela Aguilar: <https://noemiquillay.wordpress.com/>, and Aguilar’s article regarding child trafficking from Ecuador: <http://www.insightcrime.org/news-analysis/child-trafficking-from-ecuador-to-the-us-through-hell>

<sup>v</sup> [http://www.unicef.org/socialpolicy/files/Childhood\\_and\\_Migration\\_in\\_Canar.pdf](http://www.unicef.org/socialpolicy/files/Childhood_and_Migration_in_Canar.pdf)

Because her parents are undocumented, the only way for them to be reunited with Noemí without sacrificing their family's sustenance in New York was to save enough to bring her, through the human smuggling and trafficking networks that have proliferated and profited as the U.S has militarized its borders. Two attempts were made to bring Noemí to NY, a 6, 500 mile journey; the first time, in 2012, she got as far as Central America, but was turned back. The second ended after a 33 day journey when Noemí was seized by Mexican police from the home in the Colonia Anapra in Ciudad Juárez where her smugglers had taken her as the last step before she was to be smuggled across the border, only 10 minutes away. Noemí was then brought to a migrant youth shelter by Mexican authorities, pending her repatriation or deportation. The Ecuadorian government was never informed of her detention in Mexico<sup>vi</sup>, as international law requires.

A few days later, on March 11, 2014, a couple of days after International Women's Day, during International Women's History month, Noemí was found dead hanging in the bath room at the Villa Esperanza migrant youth shelter in Ciudad Juárez, shortly after she was aggressively interrogated by Mexican Federal police agents. She would have been 13 years old in May.

On the eve of the first anniversary of her death, a statement was released by the U.S Embassy in Mexico confirming that Noemí was raped prior to her death, which had been described as a "suicide"; local forensic reports confirming the sexual violence which she had been subjected to were reportedly suppressed due to "superior orders" from state authorities in Chihuahua.<sup>vii</sup> Ciudad Juárez has of course become notorious throughout the last 20 years for a persistent pattern of largely unsolved femicides (many of them involving minors in addition to young women more generally) which accompanied the imposition of NAFTA, and which preceded and were later intertwined with the high levels of concentrated violence brought by the drug war between 2007 and 2011 (Fregoso and Bejarano 2010; Bowden 2011)<sup>viii</sup>.

The statement released by the embassy also confirmed U.S involvement in a joint Mexican and Ecuadorian investigation of an alleged child trafficking ring linked to her death which led to the indictments of 42 suspects, which certainly earned all 3 governments some positive publicity as to the repositioning of the case as its first anniversary loomed. But no one has been prosecuted, as yet, for the acts and conditions which made Noemí vulnerable and which culminated in her death, as such.

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<sup>vi</sup> Text of Ecuadorian government communiqué regarding the case (July 2014): <http://mexico.embajada.gob.ec/pronunciamento-de-la-viceministra-de-movilidad-humana-del-ecuador-mgs-maria-landazuri-sobre-el-caso-de-la-detencion-y-deceso-de-la-nina-migrante-jhoselin-noemi-alvarez-quillay-acaecida-en-territo/> (English summary: <http://www.cancilleria.gob.ec/ecuadorian-government-pleads-for-death-of-teenager-in-mexico-to-be-clarified/>);

<http://www.jornada.unam.mx/2014/07/10/politica/016n1pol>

<sup>vii</sup> [http://diario.mx/Local/2015-02-26\\_0e0f740e/si-violaron-a-noemi-eu/](http://diario.mx/Local/2015-02-26_0e0f740e/si-violaron-a-noemi-eu/)

<sup>viii</sup> These issues were highlighted in the landmark Inter-American Court of Human Rights "Cotton Field" case: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)

**(b) 370 migrant children were detained in Mexico on their way to the U.S border the week following Noemí's death** (NY Times, id.). Noemí died at the height of the massive exodus between March and July 2014 of tens of thousands of migrant children and youth- many of them unaccompanied- and their families, who came to the U.S border seeking refuge and asylum, and, like Noemí, seeking, hoping, for the reunification of their families. Hundreds are still being held in detention under precarious conditions more than a year later, with continuing uncertainty as to the disposition of their cases and ultimate status, amid the persistent exodus of thousands more from the same countries and regions of origin.

## 7. Transnational complicity

The neoliberal free-market economy has resulted in vast inequality in the United States. Such inequality has been greatly intensified in the poorer economies of Mexico and other Central American countries under NAFTA and CAFTA. A direct consequence of these economic conditions is the forced migration of people from Central American and Mexico to the north as a matter of survival. The hostility to migration openly stated by US policies and politicians is not reflected by US employers who seek migrant labor as a source of cheap and exploitable labor.

We indict both the Mexico and US governments for the imposition of an economic model, essentially neoliberalism, that is a direct cause of grave human rights violations including forced displacement, the criminalization and consequent vulnerability of migrants that makes them prey to violence (the massacres of San Fernando and others), extortion, forced recruitment and human trafficking, as well as forced prostitution. These reflect patterns of transnational complicity between governments and economic elite against the rights and interests of the people.

We also heard testimony regarding the impetus for this model of taking control of land and resources historically belonging to indigenous and *campesino* communities, and others, as being for mining and oil concessions and other forms of exploitation. This directly violates the right to self-determination of indigenous populations and the right to livelihood and the right to stay home of both rural and urban populations affected, along with the right to food, a healthy environment and others. The terms of NAFTA and CAFTA opened up these possibilities and have caused an exodus of and from rural communities where farmers face unfair competition and threats such as genetically modified seed and monocrop plantations.

The jury heard testimony that as part of this form of economic integration and in the context of the US post-9/11 National Security Doctrine, Washington engineered the extension of NAFTA to security under the Security and Prosperity Partnership and the Merida Initiative. Later CAFTA was also extended to security under the Central American regional Security Initiative and Alliance for Prosperity. We also heard evidence that these US-led integration programs have promoted militarization, criminalization of migrants, economic displacement, mass deportation and border violence.

Transnational complicity also includes a pact of silence between the U.S. and Mexican administrations regarding the human rights violations of the Mexican government that this Tribunal seeks to break.

## **C. Preliminary Findings Indicting the United States**

**1. The War on Drugs:** The contemporary cases heard by the jury described a context of violence and impunity that has been greatly exacerbated since 2006 by the so-called war on drugs. The massive deployment of the armed forces and various police forces with the pretext of combating illegal drug trafficking has increased the vulnerability and criminalization of migrants. These forces have become major violators of the rights of migrants and enforcers of social control of an increasingly repressive state apparatus. This has contributed notably to the unprecedented current human rights crisis Mexico now faces with over 140,000 dead and at least 25,000 disappeared since 2007, not including an unknown number of disappeared migrants and unregistered cases. The war on drugs has increased drug-related violence and corruption that has major repercussions on migrants and the civilian population, as seen in San Fernando and the mass graves in Tamaulipas. The militarization of the US and Guatemalan borders has created new dangers and more deaths among Mexican and Central American migrants.

Within the United States, the war on drugs, largely concentrated on the young, has led to mass incarceration, particularly of African-American and Latino populations. Witnesses testified that the biased enforcement of drug laws and the criminalization of migration account for the vast majority of prisoners in private and public prison facilities, creating a means of social control over these populations and a source of profit for giant prison companies.

**2. Indictment of the U.S. Government for violations of migrants' human rights:** The government of the United States is responsible for the violation of migrants' human rights in their countries of origin, transit countries, and destination countries. Transnational policies of economic exploitation, militarization, and mass incarceration and/or deportation are crafted, supported, imposed, and/or funded in all three country types by the U.S.

### **(a) Indictment of US policies in countries of origin, most notably El Salvador, Guatemala, and Honduras:**

The U.S. has colluded with local elites to deny potential or future migrants their economic, social, and cultural rights. The U.S. has now for centuries intervened militarily in Central America, either directly or by proxy. This is not an exception to the rule, but rather the established pattern since at least the late 1800s, with the most recent examples including the 2009 Honduran *coup d'état* and aftermath, or the generalized militarization as represented by the ongoing "War on Drugs." Neoliberal economic policies that benefit the local elite and transnational companies include those currently

embodied in CAFTA; support for repressive regimes; and militarization, training, arming, and funding of repressive security forces all greatly contribute to the current wave of migrants/refugees fleeing Central America.

## **(b) Indictment of US policies in Mexico:**

The U.S. has pressured the government to take a hardline stance against migrants similar to the treatment, attitude, and policies the U.S. implements within its own soil and at the U.S.-Mexican border.<sup>ix</sup> A few years ago, in response to the widespread violence against migrants by its own officials, non-state actors, and officials colluding with non-state actors, Mexico announced that it would grant trans-migrants a free visa in order to make their journeys through Mexico less dangerous. The U.S. pressured Mexico to reverse this announcement, and has instead pushed Mexico to make travel more daunting for migrants, to make them more vulnerable in their journey. Similarly to what the U.S. has done in pushing migrants through the desert at their border, the U.S. is helping Mexico make migrant travel through Mexico more treacherous and deadly. Instead of the searing desert heat and thirst claiming lives, it is a purposeful attempt to discourage migrants, or have them stopped, from reaching the U.S. by utilizing the brutality of the Mexican state and non-state actors.

- **Mexico’s “Frontera Sur” or Southern Border program is a U.S. conceived and financed initiative.** It has resulted in the de facto expansion of the U.S. border to Mexico’s Southern border, at least in the areas of militarization, repression, and violations of international and domestic laws. Mexico now detains and deports more migrants than the U.S., a milestone reached for the first time this year. The Obama administration’s solution to the so-called child migrant crisis of 2014 was to further militarize Mexico, especially Chiapas, increasingly away from the immediate border, intensifying not only apprehension, but the exploitation and vulnerability of migrants in Mexico.

**(c) Indictment of US immigration policies:** U.S. immigration policies are unjust, cruel, and propelled by greed given the strong influence that companies that build and/or operate private immigration detention centers, most notably the GEO Group and Corrections Corporation of America, have on immigration policies.

The long amount of time elapsed between economically motivated, de facto recruitment of immigrant labor and meaningful and just immigration reform, has led to a generalized state of violence and amounts to an act of state terror against millions of migrants who live in the U.S. under an irregular immigration status. Moreover, over the last several decades, as the demographics of immigration changed so that the majority of immigrants are Latino (most are Mexican), and the supra-majority are also people of color (Asian and African), U.S. immigration policy has become increasingly restrictive.

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<sup>ix</sup> There is a stark difference in policies at the U.S.-Canadian border, where due to better policies, human rights violations are exceedingly rare.

Racial profiling in immigration enforcement is well-documented, and the overall racial discrimination inherent in U.S. immigration policy is readily apparent through statistical and anecdotal evidence.

U.S. policies that affect migrants in countries of origin, transit, and destination greatly contribute to the systemic violation of migrants' rights, especially those of children. As the witness from APOFAM and the young Mexican girl who gave a letter to Pope Francis during his visit to the U.S. stated, we all have a right to a family. Children have a right to be able to live with their parents, yet the U.S. is exacerbating family separation with all of the above-mentioned policies.

## **(d) US-Mexican border & US immigration policies in violation of fundamental human rights**

Our Tribunal heard testimony and received information indicating ongoing human rights violations at the US-Mexican border, including violations of the right to life, the right to freedom from torture, the rights to freedom from discrimination based on race and gender, the rights of the family and rights of the child, the rights of asylum seekers and refugees, as well as fundamental due process rights.

### **(1) Need for Comprehensive Immigration Reform**

The failure of the U.S. Congress to pass Comprehensive Immigration Reform and the concurrent failures of the Administration to refrain from implementation of unjust and racially discriminatory immigration policy has resulted in chaos and inhumanity at the U.S.-Mexico border. The region has always been plagued by human rights violations, but they have been exacerbated since September 11, 2001, despite the fact that the acts of terror committed on that day had nothing to do with immigration policy. Since 9/11, the U.S.-Mexico border has become increasingly militarized, while the U.S.-Canada border has not. In addition, the current political rhetoric against immigrants—which is not only perpetrated by presidential candidate Donald Trump, but also by law-makers—is decidedly racist. This, along with the fact that U.S. immigration policy has become increasingly restrictive as the demographics of immigration have changed from being majority-Caucasian to majority-Latino, is a troubling indicator of racially discriminatory motives causing the human rights violations against Latino/a immigrants at the border.

Due to the failure to provide a safe and legal way of entry to the U.S. from Mexico, Guatemala, El Salvador and Honduras, where many individuals, families and children are fleeing extreme violence, asylum seekers, refugees and immigrants fleeing poverty are forced to try to enter the U.S. through underground channels that are exceedingly dangerous. The danger is (1) through being trafficked by smugglers who commit grave human rights violations, including all those described above; and (2) through crossing the desert. While the world focuses on the refugee crisis in Europe, which indeed deserves attention, there is also a refugee crisis in the U.S. In 2012, the University of Arizona's Binational Migration Institute reported on an ongoing humanitarian crisis at the border caused by the "funnel effect" of increasing border security pushing migrants to

cross at the most dangerous points in the desert.<sup>x</sup> The number of border deaths doubled from 2009-2011. In Pima County, Arizona, there were 79 deaths of migrants for every 100,000 who were apprehended.<sup>xi</sup> Over 2,100 migrants have died in this part of the desert since 2001.<sup>xii</sup>

## (2) Violations of Refugees' Rights

The factors pushing people to attempt crossing are relentless, and in 2014, the United Nations determined that the wave of children fleeing violence in Central America, which had reached nearly 90,000, was a refugee crisis. The stories of children being tortured or burned to death in Guatemala,<sup>xiii</sup> subject to gang violence and similarly high levels of murders in El Salvador,<sup>xiv</sup> and unable to go to school because public schools are run by gangs in Honduras who force the children to deal drugs or become sex slaves,<sup>xv</sup> are all

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<sup>x</sup> Similar to the analysis of this Tribunal, the Arizona Institute found that: “This humanitarian crisis is a consequence of multiple interrelated and intersecting factors, 1) the long history and socially embedded culture of migration in many areas of Mexico (Portes and Sensenbrenner 1993), 2) neoliberal economic reform during 1990s that displaced hundreds-of thousands of *campesinos* throughout the country (Wise 2009; Garcia Zamora 2009), 3) inadequate U.S. immigration policies ill-equipped to deal with the reality of an increasingly globalized world, 4) border enforcement and securitization practices initially instituted in the mid-1990s that effectively pushed would-be migrants into the most remote, hot, and dry regions of the desert borderlands (Cornelius 2001, 2005; Rubio-Goldsmith et al. 2006), and 5) the structurally embedded demand for immigrant labor in the United States (Cornelius 1998).” Binational Migration Institute, *A Continued Humanitarian Crisis at the Border* (June 2013), available at: [http://bmi.arizona.edu/sites/default/files/border\\_deaths\\_final\\_web.pdf](http://bmi.arizona.edu/sites/default/files/border_deaths_final_web.pdf).

<sup>xi</sup> *Id.*, [http://bmi.arizona.edu/sites/default/files/border\\_deaths\\_final\\_web.pdf](http://bmi.arizona.edu/sites/default/files/border_deaths_final_web.pdf), at 12-13.

<sup>xii</sup> “Arizona Desert Swallows Migrants on Riskier Paths,” *New York Times* (May 20, 2013), available at: <http://www.nytimes.com/2013/05/21/us/immigrant-death-rate-rises-on-illegal-crossings.html>.

<sup>xiii</sup> See, e.g., “Video of Mob Burning Teen Alive in Guatemala Sparks Outrage,” *CNN* (May 15, 2015), available at: <http://www.cnn.com/2015/05/27/americas/guatemala-girl-burned-mob/index.html>. (This is reportedly one of over 200 such “vigilante justice” killings this year in Guatemala, the only Latin American country where genocide has been proven, in which the President recently stepped down due to widespread protest over corruption, collusion with narco-trafficking, and impunity.)

<sup>xiv</sup> See, e.g., “Gangs, Violence, and the Exodus of Children,” *Toronto Star* (Nov. 14, 2014), available at: [http://www.thestar.com/news/world/2014/11/14/in\\_el\\_salvador\\_children\\_flee\\_gangs\\_and\\_violence.html](http://www.thestar.com/news/world/2014/11/14/in_el_salvador_children_flee_gangs_and_violence.html). (Only 4% of murders investigated; gangs effectively control more than half of El Salvador’s public schools; police and government controlled by gangs.)

<sup>xv</sup> “CRISTIAN OMAR REYES, an 11-year-old sixth grader in the neighborhood of Nueva Suyapa, on the outskirts of Tegucigalpa, tells me [Sonia Nazario] he has to get out of Honduras soon — ‘no matter what.’ In March, his father was robbed and murdered by gangs while working as a security guard protecting a pastry truck. His mother used the life insurance payout to hire a smuggler to take her to Florida. She promised to send for him quickly, but she has not. Three people he knows were murdered this year. Four others were gunned down on a nearby corner in the span of two weeks at the beginning of this year. A girl his age resisted being robbed of \$5. She was clubbed over the head and dragged off by two men who cut a hole in her throat, stuffed her panties in it, and left her body in a ravine across the street from Cristian’s house.” Sonia Nazario, *New York Times*, <http://www.nytimes.com/2014/07/13/opinion/sunday/a-refugee-crisis-not-an-immigration-crisis.html>.

related to systems of failed states and police impunity—calling the police means the police or the gangs will kill the children and their families. This has impacted hundreds of thousands of children, along with Mexican children who the Department of Homeland Security similarly fails to ask if they have been trafficked or fear persecution. We agree with the following analysis:

“By sending these children away, ‘you are handing them a death sentence,’ says José Arnulfo Ochoa Ochoa, an expert in Honduras with World Vision International, a Christian humanitarian aid group. This abrogates international conventions we have signed and undermines our credibility as a humane country.”

-Sonia Nazario, “The Children of the Drug Wars: A Refugee Crisis, Not An Immigration Crisis,” Opinion, *New York Times* (July 11, 2014), available at: <http://www.nytimes.com/2014/07/13/opinion/sunday/a-refugee-crisis-not-an-immigration-crisis.html>.

In such circumstances, rather than detention and removal, shelters for refugees, family unity, and resettlement are required. Instead, the U.S. has sent children fleeing extreme danger and violence back to their home countries. The Administration has also aggressively defended its policy that children may be deported without any legal representation, which flies in the face of the most basic due process rights, including the heightened due process rights of children.

Furthermore, U.S. migrant detention policies, especially detention children and their mothers, violate fundamental human rights. The Latino community is responding to the humanitarian crisis of children fleeing violence in Mexico and Central America, through receiving children who are relatives or providing an outpouring of donations for children in shelters. There is no reason for their detention or separation from their families in the U.S. On July 24, 2015, a federal judge ordered the closing of three immigrant family detention centers, which was a major setback for the Administration’s attempt to expand family detention in response to the humanitarian crisis of children and their mothers fleeing violence. The policy was found to be in violation of the *Flores* settlement, which prohibited detention of minors, but the government had argued that it didn’t apply to minors who were with their parents. What will happen to the families is unclear, as the order could permit release of the children while keeping their mothers in detention. More than 55,000 families were impacted during 2014, and the conditions of family detention have been crowded, unsafe, and not conducive to childcare and education.

On July 24, 2015, the Inter-American Commission on Human Rights issued a comprehensive report on the Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America, documenting these concerns and more.<sup>xvi</sup> The Commission found that, “during U.S. fiscal year 2014, the U.S. Border Patrol apprehended a total of 68,541 unaccompanied children and 68,445 families, which represented a 77% increase in the number of arrivals of unaccompanied

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<sup>xvi</sup> OAS/Ser.L/V/II. 155, Doc. 16, available at: <http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.



children and a 361% increase in families over fiscal year 2013;” and that, “this drastic uptick in the number of arrivals signals a worsening human rights situation in the principal countries of origin.”<sup>xvii</sup> The Commission visited the border region where most crossings occurred, in Texas, and found that families, including children, are being arbitrarily detained for the duration of immigration proceedings, even in cases when the mother has passed her initial asylum screening. Other human rights violations were also found repeatedly. Furthermore:

The Commission is concerned over allegations of sexual, physical, and verbal abuse by U.S. border officials committed while migrant and refugee children and families are in the State’s custody as well as the inadequate detention conditions at border and port of entry stations and family immigration detention centers. The Commission is also deeply concerned over expedited processing of these groups and the lack of access to legal representation in the immigration proceedings initiated against them.<sup>xviii</sup>

This Tribunal agrees and finds that the U.S. Government in particular must undertake all of the recommendations of the Commission’s report as they are needed to urgently remedy the situation for families and children fleeing violence who cross the US-Mexican border. In no instances should children be returned to Mexico or Central America, nor should children be held in detention facilities. Because of their fundamental rights to family unity, mothers, fathers, and other family members should be released with children. Every child should have the right to adequate counsel, and the Administration should cease its litigation of this issue. This is the minimum that must be done immediately.

### (3) Need to De-Militarize the Border

Militarization of the border is not appropriate and will only lead to further human rights violations. Instead, the root causes of migration must be addressed, and there must be a safe and legal way for persons to migrate from Latin America, especially those fleeing violence and extreme poverty in Mexico, El Salvador, Guatemala and Honduras.<sup>xix</sup>

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<sup>xvii</sup> *Id.* at p. 9.

<sup>xviii</sup> *Id.* at p. 10

<sup>xix</sup> We agree with the following assessment of the Inter-American Commission: “The IACHR stresses that measures taken to securitize the border will not bring these crises to an end. Rather, the underlying factors generating the crises in the principal countries of origin must be comprehensively addressed. This approach must tackle the poverty, economic and gender inequality, multi-sectorial discrimination, and high levels of violence in El Salvador, Guatemala, Honduras, and Mexico. Without national and regional efforts to address such factors, mixed migratory movements will only continue. Without the ability to migrate safely and through more open or regular channels, these persons will be forced to take even more dangerous and clandestine routes in order to bypass increasingly securitized borders. Such new routes increase the likelihood that persons in the context of human mobility will fall victim to violence and exploitation at the hands of organized crime groups.” *Id.* at p. 10-11.

Furthermore, the Border Patrol has “absolved itself in dozens of incidents of lethal force.”<sup>xx</sup> These incidents include the 2010 shooting a 15-year-old boy in the face after he allegedly threw rocks on a border bridge in Texas, and similarly, the 2011 shooting of a 17-year-old across the border fence in Nogales, Arizona. A 19-year-old US citizen was killed as he attempted to climb the fence to get back home, and there were internal investigations of 67 shooting incidents which left 19 people dead, of which only three resulted in charges.<sup>xxi</sup> The case of Adrián Hernández Güereca was litigated by his mother and father against the Border Patrol agent who killed their son and against the U.S. Government. The defense argued that the Fourth Amendment’s protections against unjustified use of deadly force do not apply in cross-border shootings such as the deadly shooting on the border bridge in Texas. The federal district court agreed with the parents that deadly force was unjustified, but the Fifth Circuit Court of Appeals overturned that decision and held that Fourth Amendment Protections do not apply as their son was killed just after he ran back to the Mexican side of the bridge. On July 23, the parents have petitioned the Supreme Court to review this decision, because: “If left standing, the Fifth Circuit’s decision will create a unique no-man’s land—a law-free zone in which U.S. agents can kill innocent civilians with impunity.”<sup>xxii</sup> This Tribunal agrees with the parents and urges the Supreme Court to accept jurisdiction and find that the unjustified use of deadly force is absolutely prohibited at the border. To find otherwise would provide impunity for violations of the right to life and other clearly fundamental rights that are embodied in the U.S. Constitution and under international law, are inalienable *jus cogens* rights that apply whether or not the country has agreed to relevant treaty obligations.

#### **(4) Racial discrimination against Latinos in the US**

Human rights violations in the border region are not limited to “border patrol” and detention policies. The mistreatment of Latinos in the border region, whether they are citizens or immigrants, is also highly problematic. Racial profiling of Latinos in the border region is literally supported by U.S. government policy. Since the Supreme Court’s decision in *United States v. Brignone Ponce*, 42 U.S. 873 (1975), the use of “Mexican appearance” has been permitted by immigration officials at the border, effectively sanctioning racial profiling in the region. In the post-9/11 era, the “border” region has been expanded by internal Department of Homeland Security regulation to include the entire country, and immigration enforcement has been expanded to include many more state and federal government agencies. In this climate, particularly in the region near the US-Mexican border, racial profiling of Latinos has increased and become commonplace. For example, Latino judges driving to work have been stopped by border patrol officials. In the most egregious instances, Arizona officials have been investigated for the illegal use of racial profiling, yet the U.S. Government itself has continued to sanction such policies—when the Obama Administration recently took the

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<sup>xx</sup> Brian Bennett, “Border Patrol absolves itself in dozens of incidents of lethal force,” L.A. Times, (June 15, 2015), available at: <http://www.latimes.com/nation/la-na-border-patrol-shootings-20150615-story.html>.

<sup>xxi</sup> *Id.*

<sup>xxii</sup> *Hernandez v. Mesa*, Petition for Writ of Certiorari Before the U.S. Supreme Court (July 23, 2015), available at: <https://lawfare.s3-us-west-2.amazonaws.com/staging/Hernandez%20Petition.pdf>.

positive step forward of issuing regulations against racial profiling, it exempted local police and immigration law enforcement from the regulations.

Furthermore, in the border region, in Southwest Texas, state officials are refusing to issue birth certificates to U.S. citizen children of undocumented Latino immigrants. This violates the fundamental Inter-American right to birthright citizenship that is enshrined in the U.S. Constitution as well as Inter-American human rights law, and it violates the right to freedom from racial discrimination, as the practice is solely directed against Latinos.<sup>xxiii</sup> On October 16, 2015, a federal judge denied a petition for a preliminary injunction against this practice, and a trial regarding permanent injunction is pending. We urge the federal court to take into account the fundamental rights enshrined in the Fourteenth Amendment, providing the right to citizenship to every person born in the United States, regardless of race. Failure to provide a birth certificate effectively robs U.S.-born Latino children of that right and all the privileges of citizenship, including the right to vote and the right to residency, as well as the right to family unity, the right to an education, health care, and to the pursuit of liberty and happiness.

#### (d) Case of the Ex-Braceros

Starting in 1942, the United States and Mexico created a program in which Mexican workers moved to the U.S. to work temporarily on inland citrus groves and other sites.<sup>i</sup> The Mexican government deducted 10 percent of each Bracero's wages, to be put in a savings account for each Bracero once they returned to Mexico.<sup>ii</sup> Between 1942 and 1946, the Mexican government collected at least \$32 million in deductions.<sup>iii</sup> This program ran through the 1960s.<sup>iv</sup>

A group of Mexican Braceros workers began a class action lawsuit in 2001.<sup>v</sup> The suit covered Braceros wages between 1942 and 1946, though some Braceros insisted their government had taken money out of their checks in the 1950s and 1960s as well.<sup>vi</sup> The plaintiffs claimed "the Mexican government owed the Braceros an amount ranging between \$500 million and a billion dollars, counting interest."<sup>vii</sup> This claim is based on the fact that the Mexican government took 10 percent of every Bracero's wages,<sup>viii</sup> and takes into account interest and inflation.

The Mexican government was supposed to place this money in state-owned bank accounts as savings funds for each Bracero.<sup>ix</sup> However, almost no worker received any of that money,<sup>x</sup> and many did not even know it had been deducted from their wages.<sup>xi</sup> Braceros "earned about 50 cents an hour, and advocates say many were unable to read their contracts to learn about payroll deductions or were too daunted to try to collect their money in Mexico."<sup>xii</sup>

The case was dismissed twice; the courts decided too much time had passed and the suit against Mexico should not have been brought in the United States courts.<sup>xiii</sup> Both

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<sup>xxiii</sup> See, e.g., Katherine Culliton-González, "Born in the Americas: Birthright Citizenship and Human Rights," *Harvard Human Rights Law Journal* 25.1 (2009), available at: <http://harvardhrj.com/wp-content/uploads/2009/09/Culliton-Gonzalez.pdf>.

the United States and Wells Fargo Bank were also included as defendants in the case, due to their alleged knowledge and compliance with the scheme to keep the Braceros' 10% wages.<sup>xiv</sup> Both were eventually dismissed from the case.<sup>xv</sup> Finally in 2008, a settlement was reached between the Braceros and Mexico, after a Federal District Court in San Francisco gave preliminary approval for settlement.<sup>xvi</sup>

Mexico agreed to pay each Bracero or their surviving heirs \$3,500, much less than what the Braceros were owed.<sup>xvii</sup> Only 49,000 of the 212,000 applications received by the court could provide documentation of their work as Braceros.<sup>xviii</sup>

Many of the workers lost their contracts between moves back to Mexico, and finally back to the United States later in life.<sup>xix</sup> Further, the heirs of those Braceros who are deceased are unable to locate the necessary contracts.<sup>xx</sup> The Braceros who were unable to provide the required documentation were not given any money owed to them from the Mexican government. The settlement also allowed Mexico to deny any wrongdoing whatsoever.<sup>xxi</sup>

The case of the ex-Braceros was also brought before the Permanent People's Tribunal, an international body that hears human rights cases.<sup>xxii</sup> While such opinions are not legally binding, they are meant to bring about awareness of injustices so they may be brought in front of binding tribunals such as the International Court of Justice.<sup>xxiii</sup> The Tribunal also reviewed the accusations against the United States, which were dismissed in the class action lawsuit above.<sup>xxiv</sup> The plaintiffs accused the United States of being complicit with the Mexican government and Wells Fargo Bank in transferring the funds to Mexican banks, rather than the individual Braceros savings accounts.<sup>xxv</sup>

## **(1) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“Convention”).<sup>xxvi</sup>**

Mexico ratified this Convention, meaning all provisions in the convention are binding law on Mexico and its actions. While the U.S. has not ratified this Convention, it still is a persuasive guide to how the U.S. should act in international affairs. The following are rights guaranteed to migrant workers under this convention:<sup>xxvii</sup> Migrant workers shall be treated just as citizen workers would be treated in that country, with regard to terms and conditions of work.<sup>xxviii</sup> U.S. courts should therefore rule the wages be returned to the Braceros if they were U.S. citizens, so the Braceros, as migrant workers, must be treated in this same manner.

The Convention also provides that “no migrant worker or member of his or her family shall be required to perform forced or compulsory labour.”<sup>xxix</sup> This can be interpreted to mean the worker cannot be forced to work without pay, such as when Mexico took part of the Braceros' wages, but still required them to fulfill their contracts in the U.S.

Furthermore, no migrant worker or member of his or her family shall be arbitrarily deprived of property. If one is deprived of their property, the person concerned shall have the right to fair and adequate compensation.<sup>xxx</sup> Mexico, the U.S., and Wells Fargo

Bank deprived the Braceros of their wages when they deducted 10% from each paycheck of each Bracero for approximately 20 years. Incredibly, the savings accounts are still inaccessible. The Braceros and their families have the right to fair and adequate compensation for their lost wages.

The Convention additionally provides that countries “shall take all appropriate measures to ensure migrant workers are not deprived of any rights due to their irregular employment status.” In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.<sup>xxxii</sup> Thus, Mexico cannot be relieved of its contractual duty to pay the Braceros the 10% wages deducted, plus interest and taking into account inflation.

An impartial committee can be sought to resolve disputes under this Convention.<sup>xxxiii</sup> Mexico has recognized the committee’s jurisdiction, so a complaint may be brought against Mexico before this committee for review. The Organization of American States has special Rapporteurs (neutral third parties) who can monitor and observe human rights abuses and their resolutions. This process would be appropriate in order to ensure all parties involved in this dispute participate fully so that the Braceros and their families are finally compensated and provided with full restitution of their rights.

## **(2) Conclusions in the case of the ex-Braceros**

Justice delayed is justice denied. Through no fault of their own, the ex-braceros were withheld 10% of the payment owed to them. The stringent documentation required under the settlement is unfair. The United States and Wells Fargo were inappropriately dropped from the suit. The former braceros have a right to seek US and Mexican courts to reopen the suit and compel discovery from all parties that are likely to have information regarding the number of contracts they worked and the amount placed into the savings accounts.

Many former braceros worked multiple contracts during 1942 and 1947, when the US and Mexican governments agreed to abolish the savings account provision of their agreements. The ex-braceros who reject the terms of the settlement have a right to demand the full amount owed to them including interest and adjusted for inflation.

The steps outlined above will help ensure honesty and integrity of the procedures that should be followed in the future in the event that the United States adopts another guest worker program involving labor from other countries. This is especially important given the perceived need for immigration reform in the United States.

A neutral 3<sup>rd</sup> party must oversee the process through the end to ensure that self-interested parties do not hijack any procedure devised to provide reparations for the former braceros and their families. Consequently, OAS rapporteurs must be recruited as monitors. In addition, the governments of the US and Mexico as well as the banks that denied full payment to the ex-braceros must be required to pay into an Apology fund created to provide relief for elderly workers in the US and Mexico.

## **VI. RECOMMENDATIONS OF THE TRIBUNAL:**

In addition to all the measures called for above, in order to remedy the human rights violations found above:

### **Regarding the Mexican Government:**

We call on the Mexican government to acknowledge these violations and take effective steps to remedy them. These steps must include public recognition of crimes committed, impartial and effective investigations, reparations and guarantees of non-repetition.

In particular:

- We call on the Mexican government to fully comply with the recommendations and requests of the Interdisciplinary Group of Independent Experts (GIEI) appointed by the Inter-American Commission on Human Rights, regarding further investigation, prosecution and remedies in the case of the 6 assassinations and 43 disappeared students of Ayotzinapa, including a commitment to allow interrogation of military personnel and inspection of armed forces facilities.
- We call on the Mexican government to pass a federal Law on Forced Disappearances and accept the participation and recommendations put forth by the organizations of families of the victims.
- We call on the Mexican government to investigate and prosecute crimes committed by members of the INM, to close Migration Stations where illegal detention and immigrant abuse takes place on a daily basis, to end summary deportations, and to guarantee and uphold the rights of migrants and refugees as established in international and national law.

More generally, the Mexican government should also:

- \* Take all necessary steps to guarantee human rights and prevent their violation, in accordance with its own Constitution and its responsibility as a state under international law, e.g., the Universal Declaration of Human Rights, the Convention Against Torture, and the Conventions on Economic, Social, Political and Cultural Rights;
- \* Fully implement the Convention on the Elimination of All Forms of Discrimination Against Women;
- \* Effectively recognize the rights of indigenous peoples enshrined in the Declaration on the Rights of Indigenous Peoples, in particular their right to self-determination; right to land, territory and natural resources; and to be consulted on projects that affect them and their resources.

- \* Comprehensively address issues relating to migration both in relation to policies to reduce forced migration for economic and other issues, and to the protection of migrants in transit through their own country or from another country;
- \* Stop practices that endanger, repress and criminalize dissent, social movements, journalists, lawyers and other human rights defenders;
- \* Remove all institutional and legal provisions, policies and practices that contribute to the perpetuation of impunity for human rights violators;
- \* Comply with its obligations to investigate adequately and timely all serious cases of human rights violations, punish the offenders and provide reparation to those abused;
- \* Develop more effective investigation capacity and design a thorough and comprehensive system for protecting and monitoring human rights.

## Regarding the US Government

- We call on the U.S. government to fully recognize the universal rights of migrants, to end mass deportation, to provide full labor rights to migrant workers, to compensate for violations of rights in the past, and to provide full access to basic social services.
- To cease all aid to Mexican security forces given the systematic violation of human rights and widespread criminal activity within their ranks.
- To review and reform economic policies including NAFTA and CAFTA that lead to displacement and forced migration.
- To cease aid to Central American security forces and other government agencies that are corrupt or provide impunity for widespread violence, including unspeakable torture and human rights violations against women and children.
- To aid in the economic development of indigenous peoples and the poor in Mexico and Central America.
- To undertake all measures necessary to remedy the rampant human rights violations at the U.S.-Mexican border, including comprehensive immigration reform, the end of family detention, the end of racial profiling and other abuses by immigration officials, the end of returning persons fleeing violence, and respecting the rights of the family and most especially, the rights of children.
- Based upon the grave conditions in Mexico, El Salvador, Guatemala and Honduras, to immediately enact Temporary Protective Status for nationals of those countries living in the United States. This is clearly and completely within the discretion of the President, who we respectfully urge to take this measure immediately.

### **Members of the jury present during the hearings in New York City, who hereby affirm and adopt this preliminary verdict:**

Cruz Reynoso (former Associate Justice, Calif. Supreme Court)

Jorge Bustamante (former UN Special Rapporteur for Migrant Rights)

Azadeh Shahshahani (immediate past president, National Lawyers Guild - NLG)

Jeanne Mirer (President, International Association of Democratic Lawyers- IADL)

Gill Boehringer (former Dean, Macquarie Law School, Australia: representative, International Association of Peoples' Lawyers- IAPL)

Arturo Viscarra (School of the Americas- SOA Watch)

Wilma Reverón-Collazo (MINH/ACLU, Puerto Rico)

Laura Carlsen (Americas Project, Center for International Policy, Mexico City), Julia Camagong (International Migrants' Alliance- IMA)

Roberto Márquez (Professor Emeritus, Latin American and Caribbean Studies, Mt. Holyoke College)

Katrina Abarcar (International Coalition for Human Rights in the Philippines-ICHRP)

Sandra Trujillo (former Deputy Director, Childrens' Defense Fund-CDF)

Katherine Culliton-González (Hispanic National Bar Association; Advancement Project)

Terrence Valen (National Alliance for Filipino Concerns- NAFCON),

Aaron Ceravoy (Ibon Foundation, the Philippines)

Johanna Fernández and Sophia Williams (Bring Mumia Home Campaign)

Peter Clark (International Leonard Peltier Defense Committee)

Kerry McLean (NY chapter NLG)

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<sup>i</sup> *UC Riverside: Braceros present case in "people's tribunal,"* The Press Enterprise, November 21, 2013, available at <<http://www.pe.com/articles/-739709--.html>> (hereafter "*UC Riverside*"); *Braceros Workers Class Action*, Leiff, Cabraser, Heimann & Bernstein, available at <<http://www.lieffcabraser.com/Case-Center/Braceros-Workers-Class-Action.shtml>> (hereafter "*Braceros Workers Class Action*"). See also *LEGAL AFFAIRS/U.S. Bracero Program Dispute/Mexican workers seek WWII pay/Lawsuit claims forced savings weren't repaid*, Eric Brazil, SFGATE, July 15, 2001, available at <<http://www.sfgate.com/news/article/LEGAL-AFFAIRS-U-S-Bracero-Program-Dispute-2898199.php>>. The agreement between the United States and Mexico was created under Public Law 78.

<sup>ii</sup> *UC Riverside*.

<sup>iii</sup> *Settlement Will Allow Thousands of Mexican Laborers in U.S. to Collect Back Pay*, New York Times, October 15, 2008, available at <[http://www.nytimes.com/2008/10/16/us/16settle.html?\\_r=1&](http://www.nytimes.com/2008/10/16/us/16settle.html?_r=1&)> (hereafter "*Settlement*").

<sup>iv</sup> *UC Riverside*.

<sup>v</sup> *Settlement*.



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- vi *UC Riverside*.
- vii *Elderly Braceros Fight for Stolen Pensions*, New America Media, July 19, 2011, available at <<http://newamericamedia.org/2011/07/braceros-retirement-savings-have-not-been-returned.php>>.
- viii *UC Riverside*.
- ix *Id.*
- x *Id.*; Settlement.
- xi *Settlement*; *UC Riverside*.
- xii *Settlement*.
- xiii *Id.*
- xiv *Id.*; *UC Riverside*.
- xv *Settlement*.
- xvi *Id.*; *UC Riverside*.
- xvii *Braceros Workers Class Actions*; *Settlement*.
- xviii *Settlement*.
- xix *Id.*
- xx *Id.*
- xxi *UC Riverside*.
- xxii *Id.*
- xxiii *Id.*
- xxiv *Id.*
- xxv *Id.*
- xxvi International Human Rights in a Nutshell, 2009, p. 108.
- xxvii International Human Rights in a Nutshell, 2009, p. 109-10;  
<http://www2.ohchr.org/english/bodies/cmw/cmw.htm>
- xxviii International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 25(1).
- xxix International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 11(2).
- xxx xxx International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 15.
- xxxi International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 25(3).
- xxxii [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)