

Extreme Vulnerability of Migrants: The Cases of the United States and Mexico

Jorge A. Bustamante
El Colegio de la Frontera Norte

ABSTRACT

Vulnerability of migrants and reports about human rights violations against immigrants in Mexico and the United States are analyzed and contrasted in regard to the reaction of both governments respectively about those reports. A theoretical frame of the concept of vulnerability is discussed.

Keywords: 1. social inequality, 2. Hegelian dialectic, 3. vulnerability of migrants, 4. human rights migrants, 5. globalization.

La vulnerabilidad extrema de los migrantes: Los casos de Estados Unidos y México

RESUMEN

En este artículo se discute el contraste entre las reacciones de los gobiernos de México y Estados Unidos ante evidencias de violaciones a los derechos humanos de sus respectivos inmigrantes y se analizan algunas condiciones de su vulnerabilidad a la luz de un marco teórico resumido en un diagrama.

Palabras clave: 1. desigualdad social, 2. dialéctica hegeliana, 3. vulnerabilidad de migrantes, 4. derechos humanos de migrantes, 5. globalización.

Introduction

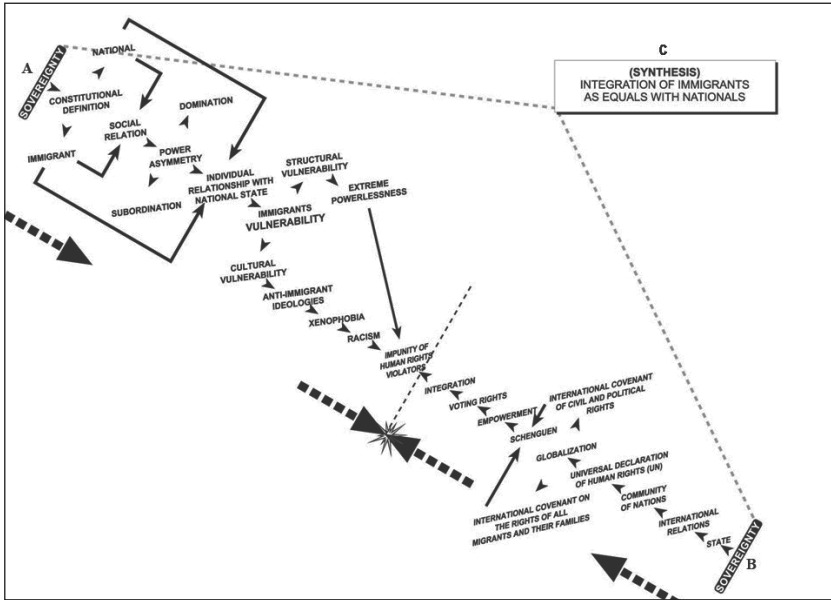
This paper deals with the notion of vulnerability of migrants as defined elsewhere (Bustamante, 2007), in regard to the realities of two countries, the United States and Mexico explored here. The vulnerability of migrants is understood as a heterogeneously imposed condition of powerlessness. This is based on the assumption that migrants are inherently vulnerable as subjects of human rights from the time they leave home to initiate their migration. In other words, any human being is less vulnerable at home than right after he leaves it to become a migrant. The same applies to the sociological extension of the notion of home to a community of origin. The same person that migrates had more resources, both material and human, to defend and/or protect, himself, when he was at home, prior to moving elsewhere, than after the outward movement had taken place. This assertion is less easy to maintain, when one attempts to expand its logic to propose that the further away a migrant is from home, the more vulnerable he is. This might be more true for internal than for international migration. It is true insofar as the notion of vulnerability of migrants has to do with their social and political relations with the members of the society of their current location and with the corresponding national state. This would be altered when the migrant becomes an international one, by virtue of entering a country other than his own. Thus, the initial assertion that migrants' vulnerability is directly related to their geographical distance from home, should be restricted to the case of internal migration, since the crossing of an international border alters the relationship between the migrant and the State or States of his destination, making it necessary to distinguish between the "internal" (vis-à-vis the national State of origin) and the "international" (vis-à-vis the State or States of destination) vulnerability of migrants, as discussed elsewhere in this paper. Such a distinction concerns with the different nature of the corresponding state's accountability regarding the protection of human rights from which the notion of vulner-

ability of migrants is derived. In the case of “internal” vulnerability, the migrant’s corresponding State of origin is accountable to its nationals (in accordance with its own national Laws) about the extent to which it complies with its duties to protect the human rights (usually constitutional rights) of its subjects. The notion of “responsibility of State” in International Law includes States’ obligation to protect and respect the human rights of foreigners/immigrants within their own territory. In the case of “international” vulnerability, the State’s accountability for both immigrants, internal migrants and, national/emigrants) is to the international community, usually represented by the United Nations and/or its agencies, in accordance with International Law.

The works cited above discuss a dialectical relationship between two State’s acts of sovereignty made at two different points in time. One occurs when the State (usually in its Constitution) defines who is a national and who is a foreigner—establishing a nominal dichotomy which, when transported into the empirical reality of a social relationship between a national and a foreigner, is transformed into a social structure of inequality consisting of an asymmetry of power between nationals and foreigners, constitutionally defined as distinct individuals with a power difference vis à vis the State. Then, at a much later time, the same State decides, as an act of sovereignty, to join the international community in agreeing to protect and promote human rights, as defined by the United Nations’ Universal Declaration of Human Rights, at the highest level of its hierarchy of laws. This therefore creates a dialectical contradiction between the distinction made by the Constitution between nationals and foreigners—in Phase 1—and the decision to join—in Phase 2—, the UN’s Universal Declaration of Human Rights, which *does not* make a distinction based on national origin. This contradiction gives rise to a long social process of contradictory evolutions between Phase 1 and Phase 2, as they were depicted in the following diagram, that are published and explained elsewhere. The diagram assumes that between Phase 1 and Phase 2, there is a process of evolution

driven by various moments in the dynamics implied in the notion of globalization.¹

Following diagram 1, there is a point where “structural vulnerability” is conceived not only as describing an empirical fact but as a theoretical construct to be used as a point of reference for the measurement of empirical reality (Weber, 1994).



Source: An analytical tool made by the author.

Diagram. 1. Dialectic of Migrant Vulnerability

The Case of the United States

This is presented with reference to two sources, one being the report to the General Assembly of the UN Human Rights Council

¹Anthony Giddens’ definition of globalization is the most fitting: “Globalization can be defined as the intensification of worldwide social relations, which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa. This is a dialectical process because such local happenings may move in an obverse direction from the very distant relations that shape them. Local transformation is as much part of globalization as the lateral extension of social connections of time and space” (Giddens, 1990: 64).

(A/HRC/7/12/Add.2) submitted by Jorge A. Bustamante on March 5, 2008, on his mission to the United States of America [particularly the findings reported in paragraphs 59 to 67 of pages 16 and 17 of his report (Bustamante, 2008)]. In this part of Bustamante's official report to the UN—as Special Rapporteur for the Human Rights of Migrants—he cites the personal accounts of a number of victims of home raids by ICE agents that he was given in various cities in the United States. He was provided with detailed information on human rights violations, such as forced entries into homes without a warrant and physical separation of children from their parents. These accounts mentioned in the Special Rapporteur's report, were flatly denied by the U.S. delegation to the UN, as “significant misstatements and misinterpretations of U.S. law and policy ... resulting in an incomplete and biased picture of the human rights of migrants in my country” (United States Response to HRC Report of the SR on the human rights of migrants, March 7, 2008. UN Human Rights Council. Seventh session, 2008).

These words of the U.S. delegation to the UN, intentionally uttered to undermine the credibility and professionalism of the UN Special Rapporteur, were not corrected when later on, a confirmation of the same kind of abuses by ICE agents reported to UN by the Special Rapporteur Bustamante appeared as research findings published in 2009 with the title: *Constitution on ICE: A Report on Immigration Home Raid Operations* by Bess Chiu, Lynly Egyes, Peter L. Markowitz and Jaya Vasandany of the, Immigration Justice Clinic of the Benjamin N. Cardozo School of Law at Yeshiva University in New York (Hereafter called Cardozo study). As will be evident from the following quotations from this study, its findings corroborate the violations of human rights included in Bustamante's Report to the UN human Rights Council quoted above. It is noteworthy that no comment has been made so far by the UN delegation of the United States in regard to the way this corroboration of the facts mentioned in the SR report contradicts the disqualifying statements made in the U.S. delegation response to the Bustamante's report.

In regard to the following quotations from the Cardozo study, the first paragraph of its executive summary could serve as an introduction to the “Case of the United States” in terms of the empirical reality of the “extreme vulnerability” of immigrants to the United States from Mexico and Central America.

During the last two years of the Bush Administration, the U.S. Immigration and Customs Enforcement agency (ICE) vastly expanded its use of home raid operations violations. These home raids generally involve teams of heavily armed ICE agents making predawn tactical entries into homes, purportedly to apprehend some high priority target believed to be residing therein. ICE has admitted that these are warrantless raids and, therefore, that any entries into homes require the informed consent of residents. However, frequent accounts in the media and in legal filings have told a similar story of constitutional violations occurring during ICE home raids- a story that includes ICE agents breaking into homes and seizing all occupants without legal basis.

After some excerpts of *Constitution on ICE* are presented here as illustrations of the conditions of extreme vulnerability under which the victims of these constitutional violations were subjected, an analysis of U.S. immigration policy will be discussed, under the theoretical framework synthesized in the diagram presented above.

Excerpts from Constitution on ICE

Constitutional Requirements for ICE Home Raids

The Supreme Court has held that “physical entry of a home is the chief evil against which the wording of the Fourth Amendment is directed”. In the absence of consent from an adult resident, or exigent circumstances, a search conducted without a judicial warrant issued by an impartial magistrate is presumed to be in violation of the Fourth Amendment of the Constitution. Administrative warrants do not authorize agents to enter homes without consent because they are not issued by impartial magistrates...

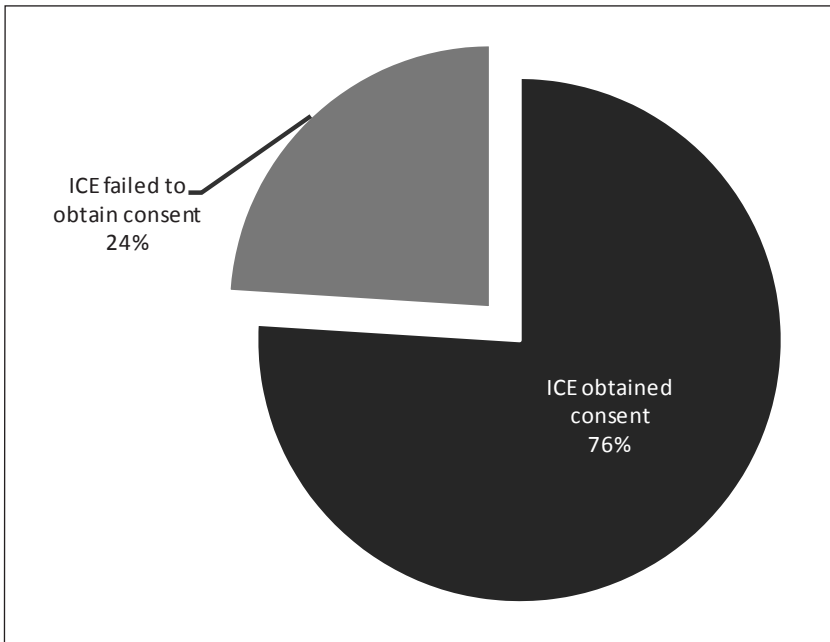
These constitutional requirements should govern ICE's conduct in home raids. When an ICE agent enters a home without consent, armed only with an administrative warrant, it is a constitutional violation that goes to the heart of the Fourth Amendment.

Starting in 2006, a growing body of evidence has arisen which suggests that many ICE agents have failed to routinely observe constitutional requirements in carrying out ICE home raid operations ... From legal filings accounts, the picture that emerges of a typical home raid depicts a team of heavily armed ICE agents approaching a private residence in the pre-down hours, purportedly seeking an individual target believed to have committed some civil immigration violation. Agents, armed only with administrative warrants, which do not grant them legal authority to enter private dwellings, then push their way in when residents answer the door, enter through unlooked doors or windows or in some cases, physically break into homes. Once inside, agents immediately seize and interrogate all occupants, often in excess of their legal authority and even after they have located and apprehended their target—though in the large majority of cases, no target is apprehended ... relatively little public scrutiny has been focused on the related phenomena of ICE raids. This report seeks to begin filling that void.

*Empirical Evidence.-Data from ICE Arrest Records
Quoted in Constitution on ICE*

ICE agents from the New York and New Jersey Field Offices Failed to obtain lawful consent to enter homes in violation of the Constitution in a large percent of cases. Two data sets of ICE arrest records were reviewed in preparation for this report to examine whether, among other things, consent was noted on the arrest records. The first data set was obtained pursuant to a Freedom of Information Act (FOIA) lawsuit and included arrest records from the home raid operations in Nassau and Suffolk County, New York between January 1, 2006 and April 18, 2008 (hereinafter "Long Island data set"). This data set included the ICE arrest records related to 100 randomly selected individuals arrested in home raids out of the total of 457 such arrests during this period. The second data set was also obtained through a FOIA lawsuit and included 600 electronically available

arrest reports from home raid operations conducted by the Newark, New Jersey ICE Office and the Central New Jersey ICE Office on certain dates between February 22, 2006 and December 7, 2007 (hereinafter the “New Jersey data set”). The data from both sets reveal several alarming trends. As set forth in Figures 1 & 2, based on the assumption that ICE is following its own legal requirements regarding notation of consent, and based upon ICE’s public statements that it does not obtain judicial warrants in home raid operations, both data sets demonstrate that ICE agents from the New York and New Jersey Field Offices failed to obtain lawful consent to enter homes in violation of the Constitution in a large percentage of cases.

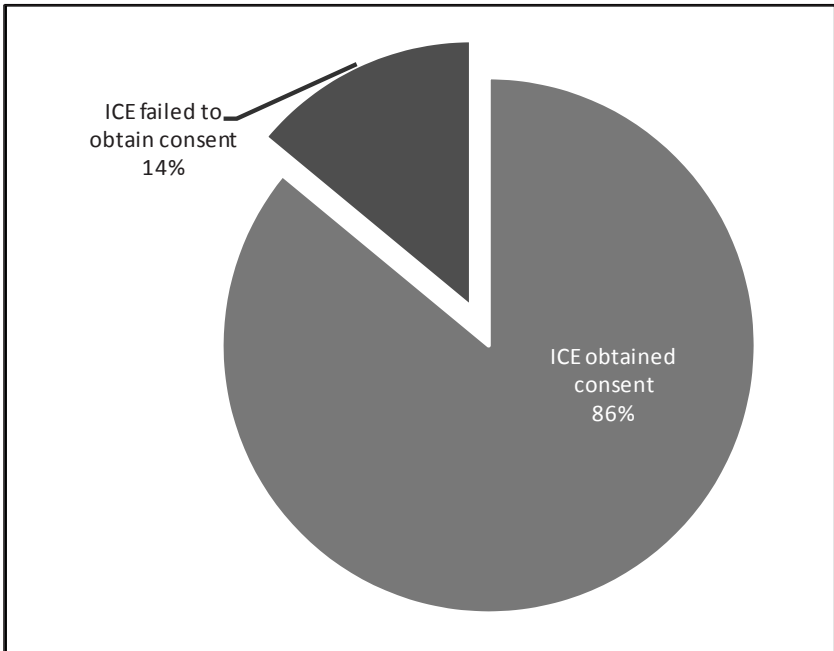


Source: Chiu, Bess *et al.* (2009), *Constitution on ICE: A Report on Immigration Home Raid Operations*, New York, NY, Cardozo Immigration Justice Clinic, p 10.

Figure 1. New Jersey: Consent Data

A review of the arrest records also demonstrated that, notwithstanding the legal requirement that ICE have some reasonable suspicion before it detains and questions individuals, the large majority of arrest reports articulated no basis for the initial seizure. Again, the data

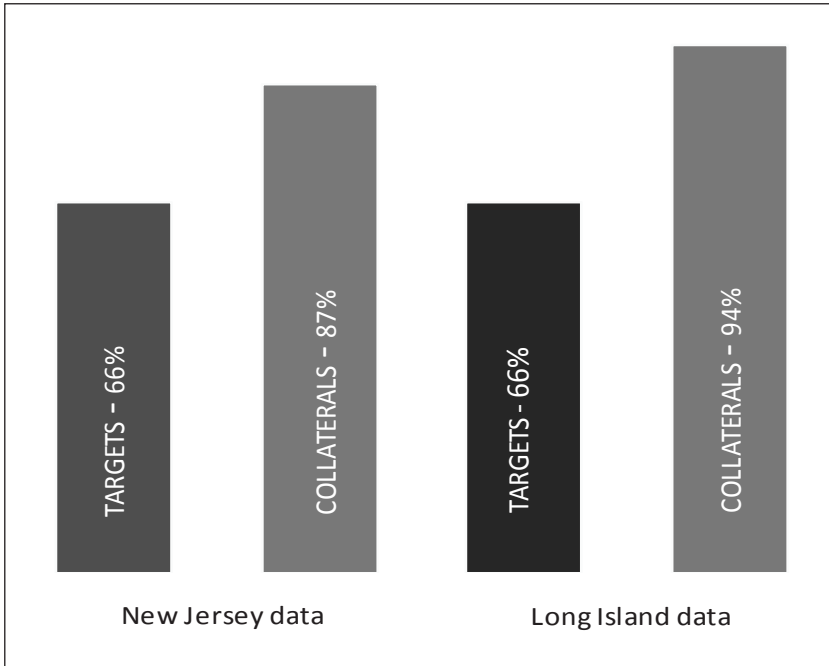
is extremely consistent and suggestive of widespread Fourth Amendment violations by agents from the New Jersey and New York Field Offices. While, unlike the consent data, there are no regulations specifically requiring ICE agents to note the basis for their initial stop, such information is precisely what one would expect to find in an arrest report. Further, the fact that such information is included in approximately one-third of such reports, suggests that ICE agents are trained to include the information.



Source: Chiu, Bess *et al.* (2009), *Constitution on ICE: A Report on Immigration Home Raid Operations*, New York, NY. Cardozo Immigration Justice Clinic, p 10.

Figure 2. Long Island: Consent Data

Finally, the data [quoted in *Constitution on ICE*] also revealed a disturbing trend suggestive of racial profiling by ICE agents during home raid operations by the New Jersey and New York Field Offices. Specifically, the data demonstrates that Latinos are significantly overrepresented in collateral arrests by ICE agents during home raids. Figure 3 below compares the percentage of Latinos arrested as targets with the percentage of Latinos arrested as collaterals in both data sets.



Source: Chiu, Bess *et al.* (2009), *Constitution on ICE: A Report on Immigration Home Raid Operations*, New York, NY, Cardozo Immigration Justice Clinic, p 12.

Figure 3. Percentage of Arrestees Who Were *Latino*

As the authors of *Constitution on ICE* expressively recognize, the home raids that were the subject of their report are conducted on a regular basis in many other parts of the United States. This makes the “extreme vulnerability” alluded to in this paper a phenomenon of a national scope.

The U.S. Immigration Policy

President Obama promised the leadership of Latino organizations that he would submit his proposal for an immigration reform to Congress at the beginning of 2010. When the first version of this paper was written, at the end of 2009, there was no clear indication of what such a proposal would consist of, or how it would deal with the complexities of immigration, particularly with the

challenge of the presence in the United States of close to 12 million undocumented immigrants, half of them nationals from Mexico.² Recent speeches in early November of 2009 by Janet Napolitano, head of the Department of Homeland Security in charge of the enforcement of U.S. immigration laws, have stated the readiness of the U.S. government for a proposal to Congress based on her assertion that U.S. borders have been controlled and that the number of new entries of undocumented immigrants has been significantly reduced (Martin, 2010). The leadership of the Republican Party immediately contradicted Ms. Napolitano by denying that U.S. borders had been controlled and stating that the reduction of new entries of undocumented immigrants was only temporary, since it was mainly due to the rise in unemployment related to the ongoing economic crisis. The fact remains that the polarization between the two parties regarding the question of immigration will probably prevent U.S. Congress' passage of an immigration reform before the presidential elections of 2012. Whatever the legislative reform, it will be unsuccessful in stopping the flow of undocumented immigration and the many problems associated with it. One of the reasons for this is the length of time the U.S. has maintained its unilateral approach to immigration policies. The United States government has defined undocumented immigration as a "domestic problem" which requires a unilateral decision—of a police or military nature—to solve.³ It is not, but for ideological reasons, the United States government has not recognized that immigration from Mexico is by

²A total of 10 760 000 undocumented immigrants in the United States of which 5 660 000 were Mexican citizens in 2010, according to data from the Department of Homeland Security of the United States (Notimex, 2010). In contrast, a census produced by the Pew Research Center, found the number of persons of Mexican origin or born in the United States to be 3.70 millions in 2008, including the undocumented (Bustamante, 2010).

³At the end of July 1977, the Mexican Government received a confidential document containing what would become the official proposal on immigration policy that President Carter prepared to present to the Congress on August 4, 1977. In this document's first paragraphs immigration was defined as a "domestic problem" underlying the unilateral approach taken by the Carter administration. Such an approach has been maintained right up to the Obama administration.

definition a bilateral phenomenon. It is shaped by factors located on either side of the border, involving the interaction between endogenous U.S. demand for an immigrant labor force, including the undocumented and an endogenously produced supply from Mexico, within a *de facto* context of an international labor market involving the two nations in both its causes and consequences. For years, the United States, including President Obama, has failed to accept a bilateral approach to deal with the complexities of immigration-related problems, one that requires common definitions and bilateral negotiations toward bilaterally reached solutions, implying mutually agreed commitments to enforce such solutions respectively. A bilateral or multilateral approach is what the United Nations has recommended as the most rational approach to deal with international differences. The Mexican government has insisted on a bilateral approach to problems related to migration for years to no avail.

It is no wonder then, that the question of immigration from Mexico has not been solved, despite the decades during which such a question has remained on the national agendas of the two governments respectively. What is clear is that a unilateral decision will not solve the problems associated with a phenomenon that has been bilaterally shaped by factors located in the two countries.

The Case of Mexico

Mexico has been a country of both, outmigration to the United States and immigration from Central American countries, although it would actually be more accurate to call it “transmigration”, since the overwhelming majority of Central American migrants that enter Mexico, wish to reach the United States by crossing the Mexican territory in between. Once in the United States, migrants from Central America follow a similar pattern of residence and occupation to Mexicans, except that Central Americans constitute a more recent migratory phenomenon, with a lower volume and less inclination to engage in agricultural jobs.

To refer to the other case of “extreme vulnerability” of migrants alluded to in the title of this paper, this section will also rely on two sources. One is the report by the Special Rapporteur on his visit to Mexico (Bustamante, Special Report, 2008), and the other a report submitted by the National Human Rights Commission of Mexico to the Mexican Senate on human rights violations against Central American migrants in Mexico, focusing on abduction, extortion and homicides.

There are many problems of systematic violations of human rights against Central American migrants in Mexico. But there are two that seem to override them all, in the face of the apparent indifference of the Mexican government to acting on them with the degree of urgency and depth that these problems require. The first is the widespread practice of abductions of Central American migrants by members of various police forces in the federal, state and municipal governments. Having forcefully abducted the migrants, the kidnappers demand ransoms from the migrants’ relatives in their country of origin, threatening the migrants’ lives or their physical integrity. These criminal practices have been denounced to no avail by Bustamante as UN’s Special Rapporteur.⁴ More recently, the National Human Rights Commission of Mexico (CNDH) submitted a report to the Mexican Senate under the title: “Special CNDH Report on the Abduction of Migrants” (excerpts of this report will be quoted below) The Mexican government’s apparent indifference to these denunciations has resulted in further impunity regarding these violations. The Mexican government has failed to end these abductions. There have been no actions to prosecute public officials accused of being involved in the kidnapping of migrants, or to implement exemplary measures against them or draw up statistical data on legal actions against the perpetrators. Instead, the President of

⁴The following have been Op-ed pieces by J. Bustamante, published by Reforma newspaper where violations of human rights against Central American migrants were denounced: 22-Abr-2008 “Campeon violador”; 8-Jul-2008 “Una anécdota para ilustrar”; 26-Ago-2008 “Sobre la ‘ineptitud’”; 14-Oct-2008 “Fuente ovejuna”; 01-Sep-2010 “Procuraduría del migrante”.

Mexico initiated an equivocal explanatory approach consisting of a *de facto* exoneration of police and military involvement in the perpetration of human rights violations against Central American transmigrants through Mexico; by declaring that “organized crime” was the “main” source of such violations.⁵

The other main problem of the systematic violations of Central American migrants’ human rights in Mexico concerns child labor. This is not only carried out against migrants but against Mexicans themselves. It is another widespread practice throughout the country, breaking not only national labor laws but UN treaties duly ratified by Mexico. This again has been the subject of frequent public denunciations by the author and others, to no avail. High level Mexican government officials have made public promises to take action to put an end to child labor practices in the country with no significant results. This problem was compounded by the UN omission to recognize this when it was Mexico’s turn to be subjected to the *Universal Periodic Review (UPR)*.

There are many other problems of systematic human rights violations against immigrants to Mexico, which, it should be noted, are not unlike those committed against Mexican migrants in the United States. One problem in Mexico that summarizes all these human rights violations is that of impunity combined with corruption. This involves all levels of the judicial system with the exception of the Supreme Court. The absence of the drastic measures that this problem requires, suggest a low level of awareness among the highest circles of the Mexican government of the seriousness of such a problem, which is affecting the very foundations of the nation’s governance. Reference to this problem was made

⁵This declaration was made at an international meeting in Puerto Vallarta (GFMD, 2010). Later on, Secretary of the Interior Francisco Blake, compounded the mistake by saying that the “only” source of those violations against Central American migrants in Mexico was organized crime (López, 2010) Pillay, United Nations High Commissioner for Human Rights, made a statement recognizing the involvement of Mexican military and the police in the disappearance of forty Central American migrants that disappeared last month in Mexico (Archibold, 2011). Such a discrepancy in the assignment of responsibilities for the kidnappings and violence against Central American immigrants raised more questions about the extent to which President Calderon’s fight against organized crime is justified.

explicitly in the Special Rapporteur's report to the UN's Human Rights Council (Bustamante, 2008) of which some paragraphs are cited below.

Excerpts from the Bustamante Report to the UN's Human Rights Council on his Official Visit to Mexico in 2008

The Special Rapporteur on the Human Rights of Migrants visited Mexico from March 9 to 15, 2008. He toured Arriaga and Tapachula, Chiapas; as well as Tijuana, Baja California and Mexico City. The Special Rapporteur inspected three governmental migration detention centers—the Migrant Holding Center (Estacion Migratoria) Iztapalapa in Mexico City, the Migrant Holding Center of Tijuana and the Siglo XXI Migrant Holding Center Model Siglo XXI in Tapachula to observe migrants' detention conditions and an official center for migrant children in Tapachula. The Special Rapporteur conducted a brief tour of the Mexico-Guatemala border, near Tapachula, including the official border crossings of Talisman and Ciudad Hidalgo with the assistance of the Beta Group and the INM.

Vulnerability of Central American Migrants

The clandestine abuse of domestic migrant workers (especially from Central America) is a major issue, but there are few programs to protect them and little data on their numbers and nationality. As such they are largely unprotected and remain especially vulnerable to abuse. The Special Rapporteur received reports of wealthier Mexican families employing "servants" from Guatemala, El Salvador and Honduras. These reports indicate the existence of a "market" in Chiapas where Central Americans minors are "sold" under conditions of virtual slavery.

Child Labor

Child labor is prohibited nationally as well as internationally. Nevertheless, the Special Rapporteur observed rampant violations

of this prohibition, with regard to child migrants from other countries as well as those migrant Mexican children who have migrated internally. Although figures are inconclusive due to the clandestine nature of child labor, it is estimated that more than 100 000 children (nationals and non-nationals) under the age of 16 work in the Mexican agricultural industry. This is evident in the Western states of the Pacific coast of Mexico. Moreover, children under the age of 16 can be found working in the mining industry (Tlachinollan Foundation, documentary, 2009), as well as in domestic service in the central and southern parts of Mexico with alarming violations of the rights of girls in the domestic service sphere being specifically reported. These violations are acute in the case of indigenous Mexican children who have migrated internally and migrant minors from Guatemala. The Special Rapporteur heard accounts of a “word of mouth” labor market where employers exchange information on where and how to buy “servants” in Tapachula to work in Mexico City. Migrant children form part of a sobering phenomenon of street children and children engaged in prostitution, confirmed by the Special Rapporteur on the sale of children, child prostitution and child pornography when he visited Mexico City in May 2007. He has reported to the Human Rights Council that the fact that more and more children are in the street, using drugs or involved in illegal migrant smuggling or drug trafficking only increases their vulnerability and exacerbates the likelihood of their becoming victims of sexual exploitation.⁶

⁶The UN Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, visited bars and other popular night spots in Tijuana, both during the day and night. He was informed that groups of minors were involved in the local sex trade and that there was a proliferation of other businesses employing minors who provided sexual services, such as massage parlors, beauty salons, spas and escort or modeling agencies. All of these operate outside the public health inspection system, since they are not registered as establishments providing sexual services. There is therefore no information on the number of minors employed or the conditions in which they work (Bustamante, 2008:47-59).

Migrant Women

Migrant women are particularly vulnerable in Mexico. They form the majority of cases of harassment or abuse in detention, clandestine domestic workers (particularly domestic maids or “servants”), prostitutes, sexual abuse and physical and sexual assault in smuggling operations. They also constitute the majority of victims of trafficking (the total being estimated at 16 000 to 22 000 victims annually, including children) and there are unusually high rates of homicide of women, especially in some border towns such as Ciudad Juarez. Women migrants who enter Mexico regularly or find decent work are often subjected to a wage differential based on their sex, reported to be as much as 40 percent lower than for men with the same skill level.

According to reports from civil society organizations, there are recurrent incidents of women being treated with violence or aggressively by INM personnel when being transferred to detention centers and by staff upon arrival and during the course of their stay. Some refer to aggressive, discriminatory comments while others report physical mistreatment. There are few formal complaints, however, both because of fear of reprisal, or because there seems to be little knowledge about how to lodge a formal complaint. Care and treatment related to sexual violence need to be further developed and offered more widely. IOM has a program in Tapachula to fill this gap and reports that there is a stigma attached to reporting incidences of sexual abuse. Although many women migrants flee abuse of such a kind or experience it along the way, few programs for counseling or, more specifically, for victims of trafficking, exist.

Impunity and Corruption

Transnational migration continues to be a business in Mexico, operated largely by transnational gang networks involved in the smuggling and trafficking of persons and drugs, with the collabo-

ration of the local, municipal, state and federal authorities. These practices are directly related to the rise in cases of violence against women and children, especially along the northern and southern borders, and at transit points. Impunity for human rights abuses against migrants is therefore rampant. With the pervasiveness of corruption at all levels of government and the close links many authorities have with gang networks, the incidence of extortion, rape and assault of migrants continues. Both corruption and violence at the northern border are closely linked to the vicinity with the United States, the site of the highest demand for drugs worldwide. That gives rise to the most lucrative drug markets in the world, control of which is violently disputed by drug traffickers with profits and weapons coming from the United States.⁷

The Special Rapporteur was informed by immigrants of abuses by the INM, public law enforcement agents and private security personnel. Civil society organizations reported that arbitrary arrests are carried out by private security groups. These groups, which are mainly in charge of guarding railroads and trains, arrest undocumented migrants illegally and hand them over to the INM. The most famous cases seem to be those associated with the “train of death”, which used to be a means of transport often used by undocumented migrants traveling internally. Reports indicate that mutilations, kidnappings, assaults and sexual harassment and abuse of migrants occurred with some regularity during this journey. The Special Rapporteur received reports of frequent operations during which police and private security forces used extreme violence, beat people or threw them out of the train, causing serious accidents which resulted in the amputation of limbs (arms or legs). Civil society organizations and journalists reported cases of aggression, intimidation, violence and kidnapping of human rights defenders of migrants and those who assist undocumented migrants. These often take place in areas near the

⁷The most complete report on impunity and corruption regarding violations of human rights against migrants in Mexico is the report to the Mexican Senate prepared and submitted by the National Human Rights Commission on the kidnapping of Central American migrants during 2008 and 2009.

shelters where migrants are housed or in migrant communities. Many of these incidents and practices are associated with transnational gang networks.

Unlike the U.S. government, the Mexican government did not discredit the report to the UN's Human Rights Council about the visit to its country.

As in the U.S. case, an investigation was conducted by personnel from the Mexican ombudsman's office (CNDH), which is an autonomous institution (its officials are appointed by the Mexican Senate) in charge of ensuring respect for human rights by government offices, particularly those in charge of law enforcement. Within this capacity, CNDH conducted an investigation on the abduction of Central American Immigrants; its report to the Mexican Senate was made public on June 15, 2009. The fact that this document widely confirms the findings contained in the Special Rapporteur's report to the UN Human Rights Council partially quoted above, means that readers might find it useful to read the CNDH Special Report to the Mexican Senate on migrant abductions (Mexico's National Commission of Human Rights, 2009) as a key document for reinforcing the main topics explored in this paper.

Conclusion

After the presentation of the findings of the sources quoted above, the cases of "extreme vulnerability" (Bustamante, Special Report, 2008; Cardozo Immigration Justice Clinic, 2009) of migrants have been made on the basis of the empirical information quoted, about events that have taken place in both in the United States and Mexico. What remains now is to place those facts in the context of the diagram on the dialectics of migrants' vulnerability. The right hand side of the diagram shows a social process derived from the individual relationship of the migrant with his nation of origin. This relationship leads to another social process in which there is a feedback effect on the structural vulnerability of migrants, drawn from what it is conceptualized as "cultural vulnerability". This consists mainly of anti-immigrant ideologies,

xenophobia and racism. It should be borne in mind that this social process derives from the original act of sovereignty that defined who is a national and who is a foreigner. Once transformed into an empirical social relationship between the two, this social relationship can be characterized as a social structure with an asymmetry of power between nationals and foreigners, derived from the different kinds of individual relationship nationals and foreigners have with the national State. This asymmetry of power is then nourished by the feedback effect of “cultural vulnerability” over “structural vulnerability”. Here is where one finds the extreme cases of vulnerability presented in this paper. They happen because they have been preceded by the social processes explained above. In the case of the United States, the immigration policy of home raids became a government policy only because of the powerful effect of anti immigrant ideologies, which provided political support, not only for such a policy, but also for the *de facto* impunity of migrants’ human rights’ violations. [After this paper was first presented, an illustration of this point would be what came to be known as the “Arizona Law” SB 1070]. This is the point where this type of impunity clashes with the dialectically opposed forces coming originally from the other side of the diagram. It began as an act of sovereignty consisting of the State’s decision to join the international community by accepting the obligation to protect and promote migrants’ human rights, *regardless of their national origin*, by placing that obligation above its “laws of the land” and therefore entering into a dialectical contradiction with the previous sovereign decision to distinguish between nationals and foreigners. In the case of Mexico, “cultural vulnerability” consists of similar cultural elements to those in the U.S. case, in addition to widespread indifference to the plight of Mexican undocumented immigrants in the United States, as borne out by Mexican civil society five years ago, when there were protest marches against U.S. legislative anti-immigrant projects (i.e. the Sensenbrenner project) with over a million protesters in more than a hundred cities in the United States with no public demonstrations of solidarity whatsoever occurring in Mexico.

After the first version of this paper was presented, the immediate reaction in the history of Central American transmigration through Mexico occurred, which consisted of public demonstrations of Central Americans in Mexico (in the states of Chiapas and Coahuila), protesting over the mass executions of their fellow countrymen discovered in Tamaulipas in August of 2010.

For stylistic reasons, the male pronoun is used throughout the text, on the understanding that migrants are just as likely to be female as male.

References

- Archibold, Randal C., 2011, "U.N. Urges Inquiry of Migrants' Disappearance in Mexico", *The New York Times*, January 21. Available at <http://www.nytimes.com/2011/01/22/world/americas/22mexico.html?_r=1&ref=randalcarchibold#> (last accessed on February 18, 2011).
- Bustamante, Jorge A., 2007, "A Dialectical Understanding of the Vulnerability of International Migrants", in Vera, Hernan, and Joe R. Feagin, *Handbook of the Sociology of Ethnic and Ethnic Relations*, New York, Springer, pp. 161-190.
- Bustamante, Jorge A., 2010, "Aumenta a 30.7 millones el número de mexicanos en EU", *La Crónica*, March, 21. Available at <http://www.cdi.gob.mx/index.php?option=com_content&view=article&id=910:31-de-marzo-de-2010&catid=17&Itemid=200008> (last accessed on March 21, 2010).
- Bustamante, Jorge A., 2008, Report to the General Assembly of the UN Human Rights Council (A/HRC/7/12/Add.2). Available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/81/PDF/G0811281.Pdf?>> (last accessed on February 18, 2011).
- Chiu, Bess *et al.*, 2009, *Constitution on ICE: A Report on Immigration Home Raid Operations*, New York, NY, Cardozo Immigration Justice Clinic, p. 10.
- Giddens, Anthony, 1990, *The Consequences of Modernity*, Stanford, California, Stanford University Press, p. 64.

Global Forum on Migration and Development Fourth Meeting (GFMD), 2010, at the Puerto Vallarta International Convention Center (PVICC), Puerto Vallarta, Mexico, held on November 8-11.

López, Horacio, 2010, "El crimen es el único culpable de la violencia en México", *Milenio*, November, 11. Available at <<http://www.milenio.com/node/575895>> (last accessed on February 18, 2011).

Martin, Gary, 2010, "DHS chief: sw border is largely controlled", *Arizona Daily Star*, September 14. Available at <http://azstarnet.com/news/local/border/article_4954de05-e810-54b1-b1fac225519ba44.html> (last accessed on February 18, 2011).

Notimex, 2010, "El número de mexicanos indocumentados en EU se incrementó 42% en nueve años", *La Jornada*, February 10. Available at <<http://www.jornada.unam.mx/2010/02/10/index.php?section=sociedad&article=042n1soc>> (last accessed on February 18, 2011).

The National Human Rights Commission (CNDH), 2009, "Special Report by the National Commission on the Kidnapping against Migrants", Mexico, D. F., CNDH.

UN Human Rights Council, 2008, *United States Response to HRC Report of the SR on the Human Rights of Migrants*, UN Human Rights Council, 7th session.

Weber, Max, 1994, *Weber, Political Writings*, in Peter Lassman and Ronald Speirs (eds.), Cambridge, Massachusetts, University Press, pp. 310-312.

Date of receipt: September 29, 2010.

Date of acceptance: January 10, 2011.