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Jorge A. Bustamante

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# EXTREME VULNERABILITY OF MIGRANTS: THE CASES OF THE UNITED STATES AND MEXICO

JORGE A. BUSTAMANTE\*

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This paper deals with the notion of vulnerability of migrants,<sup>1</sup> with respect to the realities of two countries, the United States and Mexico. The vulnerability of migrants is understood as a heterogeneously imposed condition of powerlessness. This is based on the premise that migrants are inherently vulnerable as subjects of human rights from the point of their departure as they leave home to initiate their migration. That is, any human being is less vulnerable at home than after she leaves home to become a migrant. The same applies to a sociological extension of the notion of home - a community of origin. The same person that migrates has more resources to defend or protect herself when she is at home prior to moving elsewhere than after the outward movement has taken place. The assertion is less salient, however, when one attempts to expand its logic to propose that the further away a migrant is from home, the more vulnerable she is. This might be more true for internal than for international migration, to the extent that the notion of migrants' vulnerability is linked to their social and political relations with the members of the society within their actual location and to the corresponding national State. When linking to the latter, the notion of a migrant's vulnerability becomes altered; in as much as the migrant becomes an international one, by virtue of entering a country other than her own. Thus, the initial assertion that the vulnerability of migrants is directly related to their geographical distance from home should be restricted to the case of internal migration. In summary, the crossing of an international border alters the relation between the migrant and the State or States of her destination, making it necessary to distinguish between the 'internal' (*vis-a-vis* the national State of origin) and the 'international' (*vis-a-vis* the State or States of destination) vulnerability of

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1. Jorge Bustamante, *A Dialectical Understanding of the Vulnerability of Migrants*, in *HANDBOOK OF THE SOCIOLOGY OF RACIAL AND ETHNIC RELATIONS* 161-90 (Verna Hernan & Joe Feagin eds., 2007).

migrants.<sup>2</sup> Such a distinction has to do with the different nature of the corresponding State's accountability regarding the protection of human rights from which the notion of migrants' vulnerability is derived. In the case of the "internal" vulnerability, the corresponding State of origin is accountable to its nationals (in accordance with its own national laws) in its duties to protect the human rights (usually in the form of protecting its citizens' constitutional rights) of its subjects. In the case of "international" vulnerability, the State's accountability, in this case in the destination country, is to the international community, usually represented by the United Nations or its agencies, in accordance with international law.

In the discussed works, a dialectical relation between two States' acts of sovereignty is made at two different points in time. The first act of sovereignty occurs when the State defines (usually in its Constitution) who is a national and who is a foreigner. In other words, the state establishes a nominal dichotomy, which, in turn, develops into the social relationship between foreigners and nationals. This act occurs at what will hereinafter be referred to as Time 1. The dichotomy created at Time 1 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 difference in power *vis-a-vis* the State.

The second act of sovereignty occurs much later in time, Time 2, when the same State decides to join the international community by agreeing to protect and promote human rights, as defined by the United Nations' Universal Declaration of Human Rights. This act of sovereignty thus becomes embodied in the highest level of the State's hierarchy of laws. This creates a contradiction between the distinction made by the Constitution defining nationals and foreigners in Time 1, and of the decision to join the UN's Universal Declaration of Human Rights in Time 2, where a distinction based on national origin is not made. This contradiction gives rise to a long social process of contradictory evolutions between Time 1 and Time 2 regarding the distinction between foreigners and nationals.<sup>3</sup>

The diagram assumes that, between Time 1 and Time 2, there is a process of evolution moved at various times by the dynamics implied in the notion of globalization.<sup>4</sup>

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2. Jorge Bustamante, *Migración Internacional y Derechos Humanos*, Instituto de Investigaciones Jurídicas, 2002, at 189.

3. See *supra* notes 1-2.

4. Anthony Giddens's definition of globalization is the most fitting: "Globalization can . . . be defined as the intensification of world wide 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." ANTHONY GIDDENS, *THE CONSEQUENCES OF MODERNITY* 64 (1990).

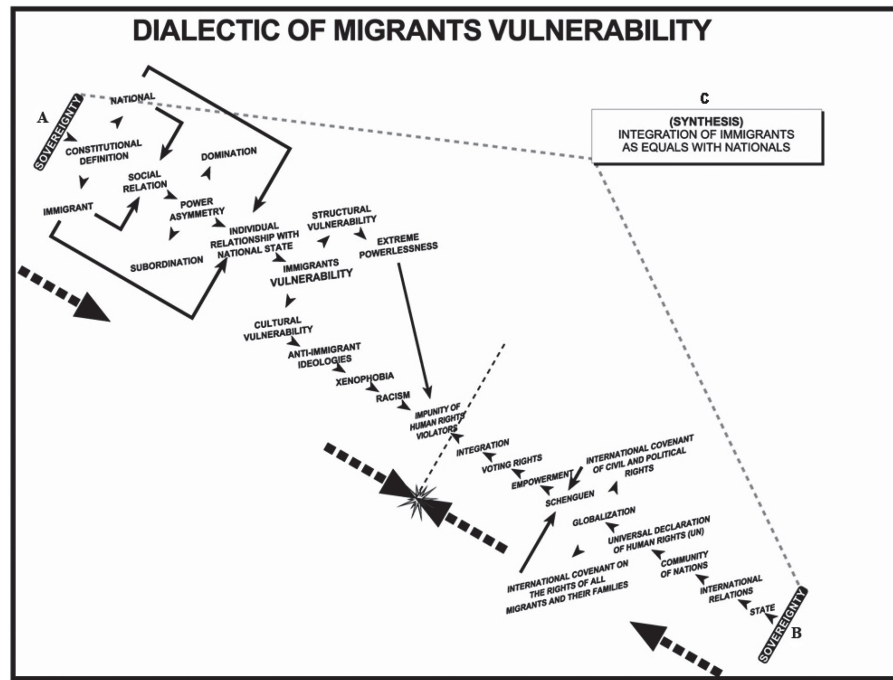


Diagram 1.

In the above diagram, there is a position where “structural vulnerability” reaches a point of “extreme powerlessness,” which is conceived as an ‘ideal type’ in terms understood by Max Weber.<sup>5</sup> This point is not an empirical fact, but is rather a theoretical construct to be used as a point of reference for the empirical reality understood as such.

#### THE CASE OF THE UNITED STATES

This part of the paper discusses two sources: a report to the General Assembly of the UN Human Rights Council and *Constitution on ICE: A Report on Immigration Home Raid Operations*.<sup>6</sup> The report to the General Assembly of the UN Human Rights Council was submitted by Jorge A. Bustamante, the UN Special Rapporteur for the Human Rights of Migrants, on March 5, 2008, about his mission to the United States of America.<sup>7</sup> This

5. MAX WEBER, *POLITICAL WRITINGS* 310-12 (Peter Lassman & Ronald Speirs eds., Cambridge Univ. Press 1994).

6. Bess Chiu, Lynly Egyes, Peter L. Markowitz, & Jaya Vasandani, *Constitution on ICE: A Report on Immigration Home Raid Operations* (2009), available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC\\_ICE-Home-Raid-Report%20Updated.pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICE-Home-Raid-Report%20Updated.pdf).

7. UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, *Mission to the United States of America*, ¶¶ 59-67, A/HRC/7/12/Add.2 (Mar. 5, 2008) (prepared by Jorge A. Bustamante), available at <http://daccess-ods.un.org/TMP/4889415.html>.

part of the report includes the personal testimony of victims of home raids by ICE (Immigration and Customs Enforcement) agents that were reported during public hearings held in various cities of the United States. In these hearings, detailed information was provided to the Special Rapporteur about violations of migrants' human rights, such as forceful entries into homes without a warrant and separation of parents from their children. These accounts mentioned in the official report of the Special Rapporteur's mission to the United States 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 [the United States]." <sup>8</sup> The statements by the U.S. delegation were meant to undermine the credibility and professionalism of the UN Special Rapporteur, but were not corrected or rescinded when they later appeared published in the second source discussed in this section. <sup>9</sup> As will be evident by the following quotations from this study, its findings corroborate the violations of human rights included in the Bustamante Report to the UN Human Rights Council. It should be noted that no comment has been made by the UN delegation of the United States in reference to the way that such a corroboration of the facts mentioned in the Special Rapporteur report contradict the U.S. delegation's response to the Bustamante report. The following quotation from the ICE study could serve as an introduction to the "Case of the United States," as it demonstrates 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 . . . . 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. <sup>10</sup>

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8. Protection of Migrants: Special Rapporteur's Mission to the United States, 2008 DIGEST § 6, at 340.

9. See Chiu, *supra* note 6.

10. Chiu, *supra* note 6, at 1.

*Excerpts from Constitution on ICE*

Some excerpts of *Constitution on ICE* are presented here as illustrations of the conditions of extreme vulnerability under which the victims were subjected to constitutional violation analysis of the US immigration policy and will be discussed under the theoretical framework synthesized in the diagram.<sup>11</sup>

*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.<sup>12</sup>

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 [media and 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 unlocked 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.<sup>13</sup>

[R]elatively little public scrutiny has been focused on the . . . phenomena of ICE raids. This report seeks to begin filling that void . . . .<sup>14</sup>

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11. See *supra* notes 1-2.

12. Chiu, *supra* note 6, at 6.

13. *Id.* at 3.

14. *Id.*

*EMPIRICAL EVIDENCE: Data From ICE Arrest Records*

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

**Fig. 1: New Jersey  
Consent Data**

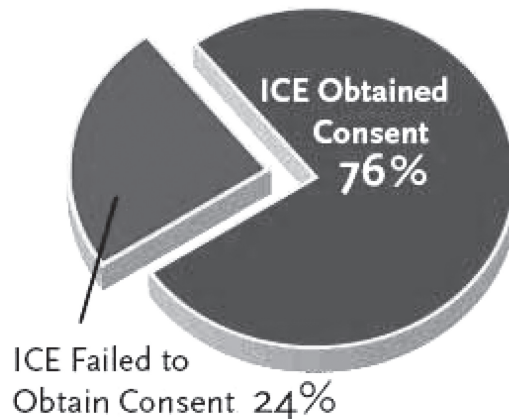
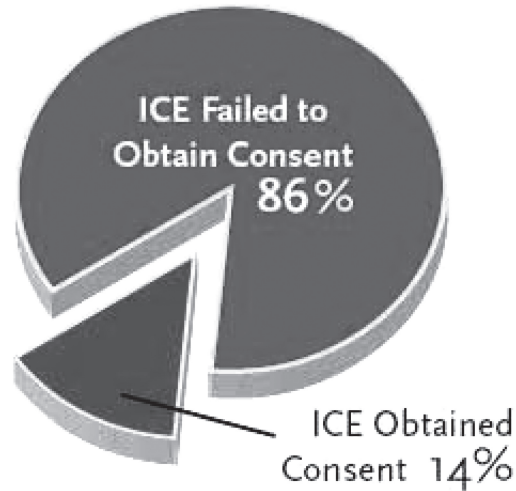


Fig. 2: **Long Island  
Consent Data**



*New Jersey and Long Island Consent Data*<sup>16</sup>

enter homes in violation of the Constitution in a large percentage of cases.<sup>15</sup>

A review of the arrest records . . . demonstrated that, notwithstanding the legal requirement that ICE has [sic] some reasonable suspicion before it detains and questions individuals, the large majority of arrest reports articulated no basis for the initial seizure . . . . [T]he 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.

[T]he data 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 7 below compares the percentage of Latinos arrested

15. Chiu, *supra* note 6, at 9-10.

16. *Id.*



Fig. 5: **New Jersey**  
Basis for Seizing &  
Questioning

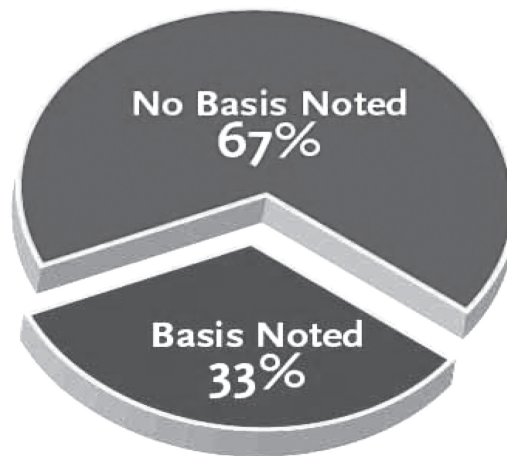
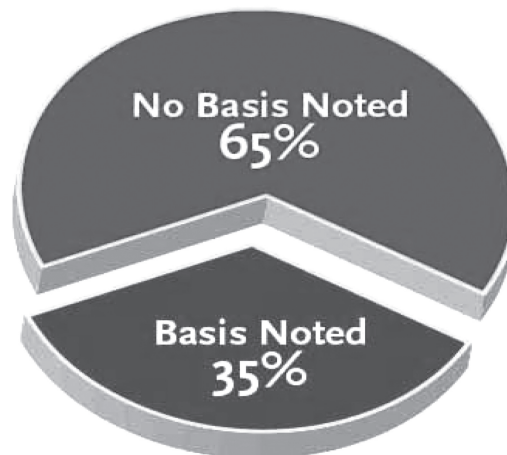


Fig. 6: **Long Island**  
Basis for Seizing &  
Questioning



### Percentage of Arrestees who were Latino

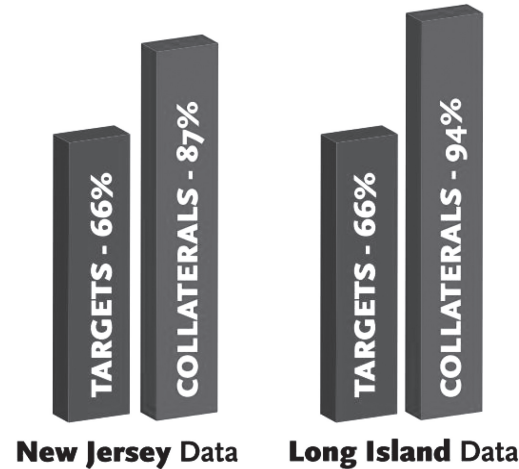


Fig. 7. *New Jersey and Long Island Arrest Data*<sup>18</sup>

as targets with the percentage of Latinos arrested as collaterals in both data sets.<sup>17</sup>

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 whole country of the United States. This makes the “extreme vulnerability” alluded to in this paper, a phenomenon of a national extension.

#### *The US Immigration Policy*

Home raids, as reported in *Constitution on ICE*, have continued to the present. President Obama promised the leadership of Latino organizations that he would present to Congress his proposal for immigration reform at the beginning of 2010.<sup>19</sup> In his first major immigration speech, President Obama rejected both “blanket amnesty” and “mass deportation.”<sup>20</sup> He declared that the Secretary of Homeland Security was improving enforcement policy, and there were “more boots on the ground on the Southwest border than at any time in [the United States’] history.”<sup>21</sup> Finally, he called for businesses that “deliberately hir[e] and exploit[] undocumented workers” to be “held account-

17. Chiu, *supra* note 6, at 11-12.

18. *Id.*

19. Jorge A. Bustamante, *Silencio Mexicano*, REFORMA (Mex.), Apr. 14, 2010, at 16.

20. Office of the Press Secretary, *Remarks by the President on Comprehensive Immigration Reform* (July 1, 2010), <http://www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform> (last visited Jan. 8, 2011).

21. *Id.*

able”; for undocumented immigrants to be “required to register, pay their taxes, pay a fine, and learn English”; for the legal immigration system to be reformed to make legal immigration easier; for farm workers to have a path to legal status; and for the passage of the DREAM Act.<sup>22</sup> However, the polarization that exists between the two political parties regarding the question of immigration will make it extremely difficult, if not impossible, to pass an immigration reform package.

One of the reasons for this difficulty is the unilateral approach to immigration policies traditionally taken by the United States. 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 it. The reluctance of the United States to recognize that undocumented immigration from Mexico is a bilateral phenomenon is the result of ideology. The problem of undocumented immigration from Mexico is one shaped by factors on both sides of the border; namely the intersection between a US endogenous demand for the labor force of immigrants, including the undocumented ones, and an endogenously produced supply of labor from Mexico. For years, the United States, including the Obama Administration, has not accepted a bilateral approach to deal with the complexities of immigration related problems.

A bilateral approach requires common definitions, negotiations toward mutually agreeable solutions, and a joint commitment to enforce the solutions. A bilateral or multilateral approach is what the United Nations has recommended as the most rational way to deal with international differences. The Mexican government has proposed a bilateral approach to the problems related to migration for years to no avail.

It is no wonder that the issue of undocumented immigration from Mexico has not been resolved, despite decades during which the issue has remained in the national agendas of the two governments.

#### THE CASE OF MEXICO

Mexico has witnessed both emigration to the United States and immigration from Central American countries. Perhaps a more accurate description would be to call it transmigration, since the overwhelming majority of Central American migrants that enter Mexico want to reach the United States by crossing the Mexican territory in between. While migrants from Central America follow a similar pattern of residence and occupation as Mexican migrants, Central Americans represent a migratory phenomenon that consists of fewer persons and less inclination to end up in agricultural jobs.

This section of the paper will discuss another case of “extreme vulnerability” of migrants, discussing the report of the Special Rapporteur of his visit to

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22. *Id.*

Mexico,<sup>23</sup> and a report by the National Commission of Human Rights of Mexico to the Mexican Senate<sup>24</sup> about violations of human rights against Central American migrants in Mexico. There are systemic violations of human rights against Central American migrants in Mexico. Two such violations stand out due to the apparent indifference of the Mexican government to respond at the level of urgency and depth required. The first is the wide-spread practice of abductions of Central American migrants by members of various federal, State and municipal police forces. Once forcefully abducted, the kidnappers demand ransoms from the migrants' relatives in their country of origin, under threats to the migrants' lives or physical integrity. These criminal practices have been repeatedly denounced by this Special Rapporteur.<sup>25</sup>

More recently, the National Commission of Human Rights of Mexico (CNDH) submitted a report to the Mexican Senate under the title: "Special Report of the CNDH about Kidnappings Against Migrants." The Mexican government's failure to react to these denunciations has resulted in a further perpetuation of these human rights violations. The Mexican government has failed to stop these kidnapping practices. There have been no actions taken to prosecute public officials accused of being involved in the kidnappings of migrants, no implementation of measures preventing further kidnappings, and no statistical accounting of legal actions against the perpetrators.

The second instance of systemic violations of human rights against Central American migrants in Mexico is the practice of child labor. This occurs not only against Central American migrants, but also against Mexican citizens themselves. This rampant practice not only violates national labor laws, but also United Nations treaties duly ratified by México. This also has been the subject of frequent public denunciations by the Special Rapporteur and others, to no avail. High-level officials of the Mexican government have made public promises to take action to terminate child labor practices in the country with no significant results. This problem was compounded by the UN's failure to recognize it during México's UN Universal Periodic Review in February, 2009.

There are many instances of systemic violations of human rights against Central American immigrants in Mexico which are not unlike those committed against Mexican migrants in the United States. However, the combination of impunity and corruption exacerbates these human rights violations in

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23. The Special Rapporteur on the human rights of migrants, *Report of the Special Rapporteur on the Human Rights of Migrants*, U.N. Doc A/HRC/7/12/Add.2 (Mar. 5, 2008).

24. National Commission of Human Rights of Mexico, Special Report to the Mexican Senate of the Kidnappings Against Migrants, June, 2008.

25. Bustamante published the following op-ed pieces in the news paper *Reforma*, where violations of human rights against Central American migrants were denounced: Jorge A. Bustamante, *Campeón Violador*, REFORMA (Mex.), Apr. 22, 2008, at 11; Jorge A. Bustamante, *Una Anécdota Para I*, at 15; Jorge A. Bustamante, *Sobre la 'ineptitud'*, REFORMA (Mex.), Aug. 26, 2008, at 13; Jorge A. Bustamante, *Fuente Ovejuna*, REFORMA (Mex.), Oct. 14, 2008, at 17.

Mexico. This implicates all levels of the judicial system, with the exception of the Supreme Court. The absence of drastic corrective measures suggests a low level of awareness at the highest circles of the Mexican government of the seriousness of the problem, which undermines the foundation of good governance. This problem was explicitly addressed in the Special Rapporteur's report to the UN's Human Rights Council.<sup>26</sup>

*Excerpts of the Special Rapporteur's Report to the UN's Human Rights Council on his Official Visit to Mexico*

The Special Rapporteur on the human rights of migrants visited Mexico from [March 9 to March 15, 2008]. He visited Tapachula (Chiapas state), Tijuana (Baja California), and Mexico City (Federal District) . . . .<sup>27</sup>

The Special Rapporteur visited three governmental migration detention centres during his visit—the Migrant Holding Centre (Estación Migratoria) Iztapalapa in Mexico City, the Migrant Holding Centre of Tijuana and the Migrant Holding Center Model Siglo XXI in Tapachula—to observe migrants' detention conditions and an official shelter for migrant children in Tapachula. The Special Rapporteur did a brief tour of the Mexico-Guatemala border near Tapachula, including the official border crossings of Talismán and Ciudad Hidalgo, with the assistance of the Beta Group and the INM [Mexico's National Institute of Migration].<sup>28</sup>

*Vulnerability of Central American Migrants*

The clandestine abuse of domestic migrant workers (especially those from Central America) is . . . a major issue, but there are few programmes to protect them and little data on their numbers and nationality. As such, they may go 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 . . . .<sup>29</sup>

*Child Labour*

Child labour 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

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26. Special Rapporteur on the Human Rights of Migrants, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 23 U.N. Doc A/HRC/11/7/Add.2 (May 14, 2009).

27. *Id.* ¶ 1.

28. *Id.* ¶ 4.

29. *Id.* ¶ 36.

as those Mexican children who have migrated internally. Although figures are inconclusive due to the clandestine nature of child labour, it is estimated that more than 300,000 children (nationals and non-nationals) under the age of 16 work in the Mexican agricultural industry. This is evident in the western states on the Pacific coast of Mexico. Moreover, children under the age of 16 can be found working in the mining industry, as well as in domestic service in the central and southern parts of Mexico; alarming violations of the rights of girls in the domestic sphere were 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” labour market where employers exchanged information on where and how to buy “servants” in Tapachula to work in Mexico City, or in Guatemala to take across the northern border of Mexico.

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 who visited Mexico in May 2007. In his report to the Human Rights Council (A/HRC/7/8/Add.2), the Special Rapporteur noted 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.”<sup>30</sup>

#### *Migrant Women*

Migrant women are particularly vulnerable in Mexico. They form the majority of cases of harassment or abuse in detention, clandestine domestic workers (sometimes “servants”), prostitutes, sexual abuse and physical and sexual assault in smuggling operations. They are also the majority of victims of trafficking (the total estimated at 16,000 to 22,000 victims annually, including children), and there are unusually high rates of homicides of women, especially in such border towns such as Ciudad Juarez. Those women migrants who enter Mexico regularly or find decent work are often subject to a wage differential based on their sex, reported to be as much as 40 per cent lower than men of the same skill level.<sup>31</sup>

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

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30. *Id.* ¶¶ 45-47.

31. *Id.* ¶¶ 48-49.

upon arrival and during the duration of their stay. Some [reports] refer to aggressive and discriminatory comments, and others report physical mistreatment. There are few formal complaints, however, both because of fear of reprisal, and because there seems to be little knowledge about how to lodge a formal complaint.<sup>32</sup>

Care and treatment related to sexual violence needs to be further developed and offered more pervasively. IOM [International Organization for Migration] has a programme 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 programmes for counseling or, more specifically, for victims of trafficking, exist.<sup>33</sup>

### *Impunity and Corruption*

Transnational migration continues to be a business in Mexico, largely operated by transnational gang networks involved in smuggling and trafficking in persons and drugs, with collaboration 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. As such, impunity for human rights abuses against migrants is rampant. With the pervasiveness of corruption at all levels of government and the close relationship that many authorities have with gang networks, incidences of extortion, rape, and assault of migrants continue . . . .<sup>34</sup>

Both corruption and violence at the northern border are intimately related to the close vicinity of the United States, where the biggest demand for drugs in the world is located. This combination of factors generates 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.

The Special Rapporteur has been informed 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 are mainly in charge of guarding railroads and trains, who arrest undocumented migrants illegally and hand them over to the INM. The most infamous cases seem to be those associated with the “train of death,” a mode of transport often used by undocumented migrants traveling internally. Reports indicate that mutilations, kidnappings, assaults and sexual harassment and abuse of

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32. *Id.* ¶ 51.

33. *Id.* ¶ 52.

34. *Id.* ¶ 65.



migrants occur with some regularity during transit. The Special Rapporteur received reports of frequent operations during which the police and private security forces use extreme violence, beat people or throw them out of the train, causing serious accidents which can result 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 shelters where migrants are housed or in migrant communities. Many of these incidents and practices are associated with the transnational gang network.<sup>35</sup>

Unlike the United States, the Mexican government did not refute the Special Rapporteur's report to the UN's Human Rights Council. Like the case of the United States, there was an investigation in Mexico conducted by the personnel of the Mexican ombudsman office (CNDH), an autonomous institution<sup>36</sup> in charge of monitoring government compliance with human rights, particularly in those offices in charge of law enforcement. In this capacity, the CNDH conducted an investigation on the kidnappings of Central American immigrants and prepared a report that was presented to the Mexican Senate and made public on June 15, 2009. This report corroborated many of the findings contained in the Special Rapporteur's report to the UN's Human Rights Council.<sup>37</sup>

*Excerpts of the Special Report of the CNDH to the Mexican State*

The Human Rights National Commission (CNDH) has acknowledged the constant and serious events of kidnapping which the migrants are victims of, during their crossings through the Mexican territory. The grounds for this knowledge is the information derived from the complaints filed by the victims themselves or investigated by this national organism through testimonies obtained in shelters, migrants stations, and locations of high concentration and transit of migrants, as well as the information requested and provided by the Human Mobility Pastoral Dimension of the Mexican Episcopate Conference, and the shelters and houses of migrants which are part of the National Register of Aggressions to Migrants Net. Also, through oped pieces published in national or regional media.<sup>38</sup>

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35. *Id.* ¶¶ 68-69.

36. Its officials are appointed by the Mexican Senate which also approves its annual budget.

37. Comisión Nacional De Los Derechos Humanos, *Special Report of the Human Rights National Commission of Mexico Over Kidnapping Against Migrants*, (June 15, 2009), available at [http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra\\_ingles.pdf](http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra_ingles.pdf)

38. *Id.* at 1.



Migrants without identification papers, of different nationalities, who make their journey through the national territory are highly vulnerable, due to the facts of: traveling by high risk transportation vehicles such as cargo railroads or trucks with double bottom; they choose shortcut roads or lonely roads in general; they sleep out in open spaces; they do not know the zones they go through; they avoid police contact or with any state officer; they do not know their rights or decide not to exercise them if that means being exposed; they are far away from their homes and do not know who to go [to] for help in case they need it or are unaware of their country's laws.<sup>39</sup>

This Human Rights National Commission has been aware, either by complaints filed by the affected persons themselves or as part of its own duties, or by news published in the communication media or also, through testimonies directly obtained in shelters, migratory stations and migrants [sic] influx places, of the growing increase of the kidnapping phenomenon against the people from other countries, most of them from Central America, who get into the national territory without migratory identification papers, with the intention to reach the United States.<sup>40</sup>

In a particular way, we highlight the information provided by the Human Mobility Pastoral Dimension of the Mexican Episcopate Conference and from the migrants' shelters and houses [that are] part of the National Register of Aggressions to Migrants Net.<sup>41</sup>

In order to emphasize the dimension of the migrants kidnapping problematic, [sic] we can make the following projection: as per the figures obtained in six months, the number of kidnapping events per year could reach the figure of 400, and the victims figure could reach 18,000 per year.<sup>42</sup>

This information clearly shows that the frequency and magnitude of the kidnappings of migrants, implicates a delinquency activity of huge proportions. As per the information obtained, the amount of money exacted to victims, in general, goes from 1,500 to 5,000 dollars. The average of the amounts exacted to victims in this investigation is 2,500 dollars per person. Thus, from the 9,758 cases of identified victims, the kidnappers might have gotten an illicit benefit of approximately 25 millions of US dollars.<sup>43</sup>

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39. *Id.* at 2-3.

40. *Id.* at 4.

41. *Id.*

42. *Id.* at 6.

43. *Id.*

In the south part of the country 5,416 migrants (55%) were kidnapped; in the north, 981 (11.8%); in the centre, 124 (1.2%); and it was not possible to establish where 3,237 victims (32%) were kidnapped . . . . By federal entity, the Veracruz and Tabasco states have the highest figures of kidnapped migrants, 2,944 and 2,378 respectively, figures which when added together, represent 55% of the kidnappings registered during this investigation. The rest of the migrants kidnapped were affected in the following entities: Tamaulipas, 912; Puebla, 92; Oaxaca, 52; Sonora, 45; Chiapas, 42; Coahuila, 17; San Luis Potosi, 15; Estado de Mexico, 6; Guanajuato, Nuevo Leon, and Tlaxcala, 5 on each of them; Chihuahua, 2; and the Federal District, 1. As mentioned before, in 3,237 cases it was not possible to identify the places where the kidnapping took place.<sup>44</sup>

#### CONCLUSION

The findings of the sources discussed throughout this paper demonstrate instances of migrants' "extreme vulnerability". These instances were based on empirical information gained from fact-finding missions that took place in both the United States and Mexico. The remaining task is to place those facts in the context of the diagram on the dialectic of migrants' vulnerability. The right hand side of the diagram depicts a social process derived from the individual relationship of the migrant with the State of her origin. This relationship creates another social process: specifically, a social structure that derives from anti-immigrant ideologies, xenophobia, and racism. It is important to keep in mind that this social process begins with an original act of sovereignty, namely, the establishment of a constitutional definition of who is a national and who is a foreigner. Once this definition is transformed into a social relationship between the two groups, an asymmetry of power between nationals and foreigners based on their respective relationship with the nation state is formed. That asymmetry of power is nourished by the feedback effect of the "cultural vulnerability" over the "structural vulnerability." It is at the intersection of cultural vulnerability and structural vulnerability that one finds the extreme cases of vulnerability presented in this paper. They happen as a result of the social processes explained above.

In the case of the United States, ICE home raids became a governmental policy only because of the strong effect of anti-immigrant ideologies, which provided political support, not only to such a policy, but to the *de facto* impunity of violations of the human rights of migrants. This is the point where such impunity clashes with the dialectically opposed forces coming from the other side of the diagram, which started with another act of sovereignty—the State's decision to join the international community

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44. *Id.* at 7.

by accepting human rights at the top of its “laws of the land.” That is, accepting the obligation to protect and promote the human rights of migrants, regardless of national origin. This implies a contradiction with its previous sovereign decision to distinguish between nationals and foreigners.

In the case of Mexico, the “cultural vulnerability” consists of similar elements as the U.S. case, except that in the case of Mexico the “cultural” element is one of a relative indifference about the plight of Mexican undocumented immigrants. This indifference was shown by the civil society of Mexico six years ago, when there were marches throughout the United States to protest U.S. anti-immigrant legislation and policies (i.e., the Sensenbrenner project). More than a million marchers in over one hundred cities of the United States held events televised all around the world. Such a phenomenon of public protest in the United States, on an issue affecting millions of Mexican citizens, did not provoke a single sign of public solidarity or concern in any part of Mexico.

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