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## IACHR Wraps Up Visit to the United States of America

October 2, 2014

San Antonio, Texas, United States of America - The Inter-American Commission on Human Rights (IACHR) conducted a visit to the southern border of the United States from September 29 to October 2, 2014. The purpose of the visit was to monitor the human rights situation of unaccompanied children and families who have crossed the southern border of the United States, with respect to their apprehension, immigration detention over long periods of time, immigration proceedings, as well as deportations and removals. The Commission carried out this visit to oversee compliance with the international human rights obligations of the United States of America under the American Declaration of the Rights and Duties of Man (ADRDM), which constitutes a source of international legal obligation for all Member States of the Organization of American States (OAS).

The IACHR delegation visit was organized in the context of the dramatic increase in the number of families with children and unaccompanied children, in particular those from the countries of the Northern Triangle of Central America – El Salvador, Guatemala and Honduras – and Mexico arriving to the United States of America during the past fiscal year. The delegation was composed of Commissioner Felipe González Morales, Rapporteur on the Rights of Migrants and the Country Rapporteur for the United States; Commissioner Rosa María Ortiz, Rapporteur on the Rights of the Child; and staff members of the Executive Secretariat. During the visit, the IACHR delegation visited Hidalgo, McAllen, Harlingen, Karnes City and San Antonio. The IACHR held meetings with State authorities, civil society organizations, victims of human rights violations, and with the consulates of El Salvador, Guatemala and Honduras.

The Commission thanks the government of the United States of America for its efforts in facilitating this visit. In particular, the IACHR thanks the authorities and the people of the United States for the hospitality they showed the delegation and for the assistance they provided during the visit. Likewise, the Commission appreciates and values the information provided by the government, the above-mentioned consulates, civil society organizations, affected persons, and other stakeholders. Nonetheless, the IACHR deeply regrets the decision of the Border Patrol and the Immigration and Customs Enforcement (ICE) to refuse to grant the delegation free and full access to the Border Patrol Station in McAllen and to the Rio Grande Valley Central Processing Center. Regarding visits to detention centers, the Commission or any of its members must be able to interview any persons, groups, entities or institutions freely and in private, as established in the pertinent articles of its Rules of Procedure governing on-site visits; because of the restrictions imposed, the Commission was unable to visit these centers.

During the visit, the Inter-American Commission received troubling information concerning allegations of grave violations of rights to: liberty, personal security; family life and protection of the family unit; protection of the child; protection from arbitrary arrest; fair trial and due process of law; equality before the law; seek and receive asylum; and the principle of *non-refoulement* and the right to be free from persecution or torture. Some of the violations that the Commission observed during its last on-site visit, in 2009, continue, and the situation has been exacerbated as a result of the measures implemented during this summer. According to the U.S. Customs and Border Protection Agency (CBP), through August 31, 2014 of U.S. fiscal year 2014, which runs from October 1, 2013 to September 30, 2014, the Border Patrol apprehended 66,127 unaccompanied children, far outstripping the already-high number of 38,759 children who were apprehended during fiscal year 2013. The CBP also reports having apprehended 66,142 family units through

August 31, 2014 of this fiscal year along the U.S. southwest border. This number represents an increase of 412% in comparison with the apprehensions of family units in fiscal year 2013, of which there were 12,908.

The Commission observes that U.S. law subjects children to distinct legal regimes with respect to their detention and procedures to consider their claims against expulsion. Their classification depends on whether they are apprehended while crossing the border unaccompanied or with their parents; and whether they are from a Central American country or Mexico.

To understand the current influx of families and children migrating to the United States of America, it is essential to take into consideration the push and pull factors of migration occurring in the countries of the migratory corridor between the Northern Triangle of Central America, Mexico and the United States of America. Many of the persons who are migrating to the United States are fleeing various forms of violence, poverty, inequality, and also the effects of natural disasters in their countries of origin. These push factors combine with pull factors, such as family reunification, better job opportunities, and the chance for a better standard of living. The many factors that cause the migration of persons in this region explain why the influx of persons, mainly from the aforementioned Central American countries and Mexico, is a mixed migration flow composed of migrants, asylum seekers, persons in need of international protection, victims of human trafficking and children who are either unaccompanied or separated from their families, among others.

Regarding the treatment of families, principally that of mothers detained with children under the age of 18, the Commission must indicate a number of serious concerns following the visit. A top concern is the use of a widespread regime of immigration detention, given that the vast majority of families are being automatically detained under the custody of ICE. The Commission notes with concern that there is no substantive difference or criteria used to determine the families that will be released on bond or on recognizance to a sponsor other than the capacity of the family immigration detention centers to accommodate new families. In this sense, the Commission regrets that the United States is planning to expand its detention facilities and detainee capacity by 2400 additional beds in the new facility being constructed in Dilley, Texas. The Commission observes with concern that families who are detained following their processing at a border station or a port of entry are generally maintained in detention for the duration of their immigration proceedings, even where a positive credible fear determination has been made by an asylum official. The Commission understands that families are regularly being denied bond or the bond amount is set extremely high, to amounts of \$15,000 or more, such that those who may qualify to leave are unable to do so.

Another major concern is that of access to legal representation and information on U.S. immigration proceedings. The Commission notes that there is a shortage of lawyers who are willing and able to provide legal representation at low or no cost to the families detained, and likewise notes the difficulties expressed by organizations and individual attorneys who represent detained families in entering the center and being able to bring in with them tools such as phones and computers in order to work more efficiently on cases.

Another of the Commission's principal concerns regarding families is that of the conditions of the detention, and how the fact of being detained may aggravate the consequences of violence or trauma from which many are fleeing, and generate further trauma for the detained families.

With regard to unaccompanied Mexican children, the Commission, based on the information gathered during the visit, finds that the Department of Homeland Security applies a presumption that these children are not in need of international protection. However, under the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), the border officials are required to determine whether the child may present protection needs. Current operational practices applied by DHS result in placing upon the Mexican unaccompanied child the burden of establishing that he/she has a need for international protection.

In order to respond appropriately to the increasing number of people fleeing their home countries as a result of various forms of violence or in search of better living conditions, the Commission calls upon the United States of America to establish appropriate measures to identify persons who may be refugees or who, due to their vulnerable condition, may have special protection needs, such as families and migrant children. The Commission is also concerned about limitations in access to legal representation and information about the process and procedures, given that those are precisely the guarantees necessary to present a request for asylum to avoid persecution if returned or other grounds that may require protection under the standards of international law.

Taking into consideration the government's decision to impose generalized and automatic family detention, the Commission reiterates that the detention of migrants in an irregular situation, asylum seekers, refugees, and other persons in need of international protection is an intrinsically undesirable measure. Hence, it must be used only as an exceptional measure, and then only as a last resort and for the shortest period of time possible. In the case of vulnerable persons like children and families with children, the United States should adopt legislative measures to ensure that these persons are not placed in immigration detention.

The Commission also urges the United States of America to ensure that when families or unaccompanied children undergo removal proceedings, they will be represented by an attorney who has had sufficient time to discuss and prepare the case with them and with *ad litem* guardians to determine the best interest of the child.

Following the visit, the Commission will hold two hearings on the issue of children and families in its 153<sup>rd</sup> Period of Sessions, from October 27 to 31, 2014 in Washington D.C. One hearing will be dedicated to examining this issue in the United States and the other hearing will have a regional scope.

The Inter-American Commission will continue to analyze these and other serious concerns that it has documented during the present visit, and will prepare a report with a more detailed analysis of the situation in light of the international obligations of the United States of America, as well as recommendations aimed at supporting reforms and advances in responding to these challenges.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

## **Press Contact´**

**Milli Legrain**

**IACHR communications consultant**

[mlegrainconsultant@gmail.com](mailto:mlegrainconsultant@gmail.com)

**+ 1-202 531 6449**