



IMMIGRATION-RELATED DETENTION IN THE CONTEXT OF COVID-19 PUTS THE HEALTH OF MIGRANTS AT RISK AND VIOLATES THEIR RIGHTS

Photo: Duilio Rodriguez



March 2021

ALIANZA
MOVILIDAD INCLUSIVA EN LA PANDEMIA

Despite the restrictions on movement imposed by most governments in the region in response to the COVID-19 pandemic, thousands of people in Central America continued to be forced to leave their countries to safeguard their lives and those of their families. Those forced to flee their countries because of persecution and in need of international protection were joined by many others driven to emigrate by worsening poverty and increased restrictions on access to rights and health as a result of the pandemic and the devastation caused by hurricanes Eta and Lota in November 2020.

The Alianza Movilidad Inclusiva en la Pandemia (Inclusive Mobility in the Pandemic Alliance) notes with great concern that, ignoring the risks to people’s health, Mexican immigration authorities maintained their policy of detaining and deporting people without putting in place health measures to prevent infection, locking thousands of people in migrant detention centres during the pandemic, in violation of Mexico’s international obligations regarding the rights to life and health. According to publicly available information, the health authorities were not involved in devising the health measures in the country’s migration policy or in coordinating their implementation, despite the fact that it is their responsibility to safeguard the right to health of all people, including those on the move.

Why should the health authorities intervene in migration policy operations and specifically in the detention of migrants by the National Migration Institute?

- The deeply politicized environment created by the pandemic, as well as political, economic and social factors, has prevailed over the recognition of the right to health as a human right. Health is a fundamental human right for the realization of other rights recognized in treaties ratified by Mexico. It is a constitutive component of development in all countries and linked to multiple fundamental social aims for sustainable global development. Therefore, in the response to the pandemic, the enjoyment of the highest standard of health for all is an aim that must take precedence over political, economic and social factors in all countries.
- In the context of the pandemic, it is the health authorities who must establish the guidelines that other authorities and the population must follow to prevent, treat and contain infection.²
- From a public health and human rights perspective, all authorities should adapt, change and apply their procedures in line with the amendments set out by health authorities, including the National Migration Institute (Instituto Nacional de Migración, INM) and authorities whose mandate includes processes to protect international movement, such as the Ombudsperson’s Offices for the Protection of Children and Adolescents and the Mexican Commission for Aid

1 Alianza Movilidad Inclusiva en la Pandemia (Inclusive Mobility in the Pandemic Alliance) is an initiative led by Amnesty International, the Independent Monitoring Group of El Salvador (Grupo de Monitoreo Independiente de El Salvador) and the Institute for Women in Migration (Instituto para las Mujeres en la Migración), involving more than 30 civil society organizations and hostels in Mexico and Central America. The Alianza emerged in March 2020, with the support of the Open Society Foundations, to promote the protection, non-discrimination and inclusion of health measures for migrants detained, deported or under international protection in Mexico and Central America; it advocates for an end to detention and deportation and for appropriate reception in communities from a gender and health perspective.

2 From the perspective of international governance, the WHO is the body that regulates health policy and coordinates responses to public health emergencies of international interest. The regulations and guidelines to be followed by WHO member states in health emergencies are governed by the International Health Regulations (IHR 2005), which are binding on Mexico. The purpose and scope of the IHR (2005) is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade. See <https://www.who.int/news-room/q-a-detail/emergencies-international-health-regulations-and-emergency-committees>

to Refugees (Comisión Mexicana de Ayuda a Refugiados, COMAR), among others.³

- Everyone present in Mexican territory, regardless of nationality or migration status, must be included in the measures set out by the health authorities.⁴ The absence of the health authorities and the health system and the lack of *in*

situ epidemiological monitoring of the enclosed and confined spaces where migrants are held, coupled with the lack of transparency or conflicting information issued by the migration authorities on their operations in these locations, puts the health and human rights of migrants at risk.

Mexico's failure to fulfil its obligations

Under national law,⁵ migrants are entitled to medical treatment, regardless of their migration status. This right and other aspects of the right to health are also guaranteed in various international instruments that Mexico has ratified.⁶

In the context of the pandemic, a number of international human rights protection bodies have issued statements on the need to end the detention of migrants in order to preserve the rights to health, life and physical integrity of detainees and to prevent the spread of infection. The Inter-American Com-

mission on Human Rights (IACHR) has recommended that states:

“Avoid the use of strategies of detention of migrants and other measures that may increase the risk of contagion and propagation of the disease caused by COVID-19 and the vulnerability of migrant people, such as deportations or mass expulsions, or any form of return without proper coordination and verification of the corresponding health conditions, ensuring that these people and their families can preserve

3 In accordance with Article 73, section XVI, paras 1 to 3, of the Constitution of the United Mexican States, the Congress of the Union is responsible for enacting laws on general health in the Republic and only the federal health authorities (the President of the Republic, the General Health Council and the Ministry of Health) can issue mandatory provisions throughout the country and dictate essential preventive measures related to serious epidemics. See <https://www.gob.mx/segob/prensa/acuerdos-por-contingencia-sanitaria-estan-actualizados-en-el-diario-oficial-de-la-federacion> (Spanish only). The General Law on Health, Title Ten on Extraordinary Action in General Health Matters: Article 181 states that in the event of a serious epidemic, danger of communicable diseases entering the country, emergency situations or catastrophes affecting the country, the Ministry of Health will immediately dictate essential measures to prevent and combat harm to health, subject to such measures being later sanctioned by the President of the Republic. See http://www.diputados.gob.mx/LeyesBiblio/pdf/142_190221.pdf (Spanish only).

4 In the case of the SARS-CoV2 virus epidemic and COVID-19, it is the General Health Council that sanctions the preparation, prevention and control measures, designed, coordinated and supervised by the Ministry of Health and implemented by the subsidiaries and entities of the Federal Public Administration, the Legislative and Judicial Powers, the institutions of the National Health System, the governments of the Federative Entities and various organizations in the social and private sectors. See http://dof.gob.mx/nota_detalle.php?codigo=5590161&fecha=23/03/2020 and http://www.diputados.gob.mx/LeyesBiblio/pdf/142_190221.pdf (Spanish only).

5 Law on Migration, Article 8; General Health Law, Article 77a(7).

6 Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, including measures necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases”. See also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 28; the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e) (iv); the Additional Protocol to the American Convention on Human Rights, Article 10; and the Convention on the Elimination of All Forms of Discrimination against Women, Article 12. See also the recommendations Committee on the Elimination of Discrimination against Women regarding migrant, refugee, and Afro-descendant women, Concluding observations on the ninth periodic report of Mexico, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMEX%2fCO%2f9&Lang=en

their right to health without discrimination of any kind. Mechanisms should quickly be put in place to free people who are currently in detention centers.”⁷

Considering that migration-related detention puts the health and life of migrants and those seeking international protection at risk, civil society organizations in Mexico lodged a petition (*amparo*) against the detention of migrants and asylum-seekers in the context of the pandemic. On 17 April 2020, a ruling by a Mexico City judge⁸ set out 11 measures to protect the lives and health of people on the move detained in migrant detention centres, with an emphasis on groups at particular risk or vulnerable to coronavirus, and children and adolescents. This court order instructs the INM, the Ministry of the Interior (Secretaría de Gobernación, SEGOB), the Government of Mexico and the Ministry of Health (Secretaría de Salud, SSA), among others, to:

- Immediately release migrants who belong to vulnerable groups and grant them a regular status in the country, and

to access to essential services, such as health services, without discrimination.

- Carry out regular inspections at migrant detention centres throughout the country, in order to verify that standards are met in terms of respect for the human rights of those held there.
- Prepare and publish a detailed report setting out the number of people in migrant detention centres, specifying their level of risk.
- Establish a strategy to enable migrants and those seeking international protection to access federal economic support.

The INM has not complied with the provisions set out by the judge and has not to date reported on its implementation of the measures ordered by the court.

Statistics

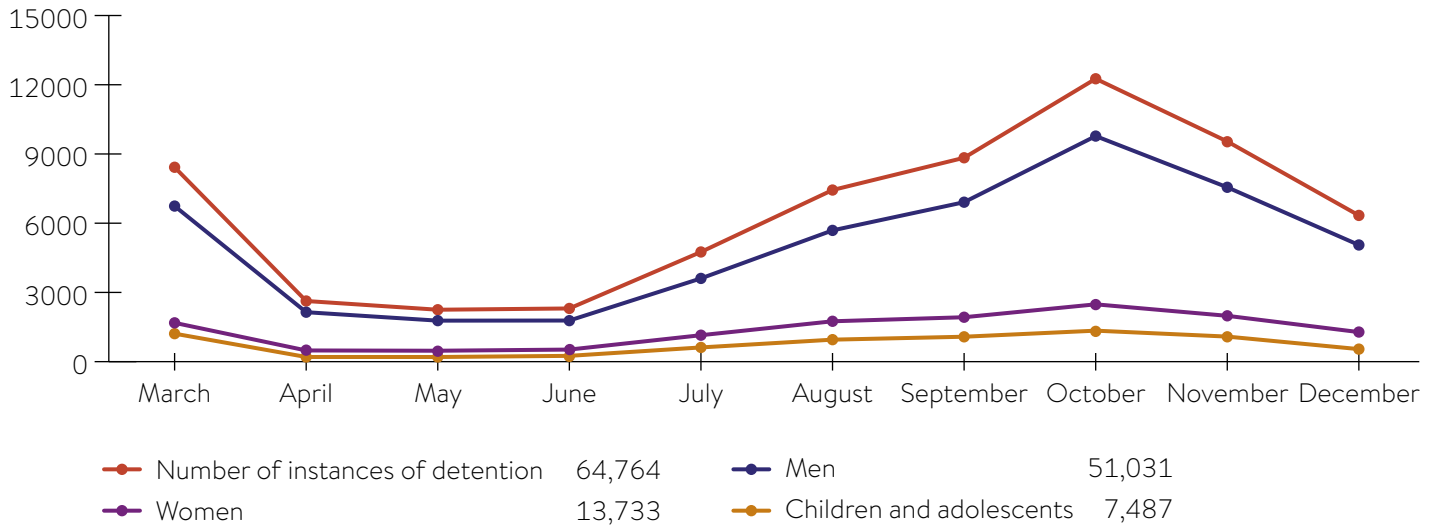
Between March and December 2020, there were 64,770 detentions⁹ in Mexico; 21% were of women and 79% of men. Of the total detentions, 12% were of children and adolescents. Despite the resolution of *amparo* No. 426/2020 and the court’s current order for the release of vulnerable groups of people of the move, people continued to be detained, as shown in the graphs below.

7 Pandemic and Human Rights in the Americas, Resolution 1/2020, Inter-American Commission on Human Rights, 10 April 2020, <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf> See also, UN Office of the High Commissioner for Human Rights, 7 April 2020, https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf and Interim Guidance, COVID-19: Focus on persons deprived of their liberty, March 2020, <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty>

8 *Amparo* 426/20. Ruling of Vicenta Margarita González Vega, Secretary of the Mexico City First District Court (Administrative Matters), acting as District Judge, in the case of the *amparo* petition brought by the Institute for Women in Migration A.C., the Foundation for Justice (Fundación para la Justicia y el Estado de Derecho Democrático and the State of Democratic Law and Without Borders (Sin Fronteras AIP).

9 The Ministry of the Interior has stated that the information refers to migrants presenting at and entering INM migrant detention centres under administrative procedures for not demonstrating their immigration status (“la información se refiere a eventos de migrantes ingresados en las estaciones migratorias del INM bajo el procedimiento administrativo de presentación por no acreditar su situación migratoria”). In other words, the number does not indicate the number of individuals as the same person can enter a detention facility one or more times during the year. See <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN?Anual=2019&Secc=3>

Number of instances of detention per month from March to December 2020

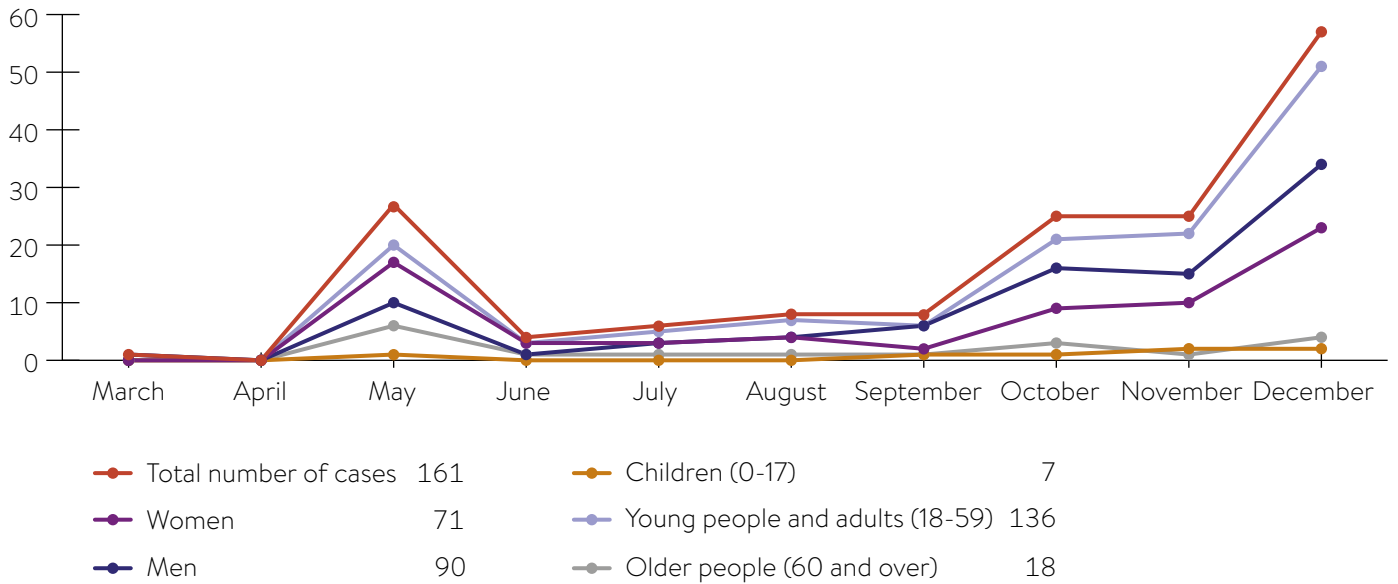


Source: Based on statistics issued by the Ministry of the Interior.

With regard to migrants in Mexico who are suspected of having or have tested positive for COVID-19, the Alianza identified that information reached the health system on migrants suspected of having or who tested positive COVID-19 reached the health system during the period March to December 2020. However, it is not known how migrants were identified and it is unclear who is categorized as a migrant by the SSA;¹⁰ that is, it is not possible to establish from the published data whether those held by the INM are deported Mexicans, foreign nationals with immigration documents or people seeking international protection.

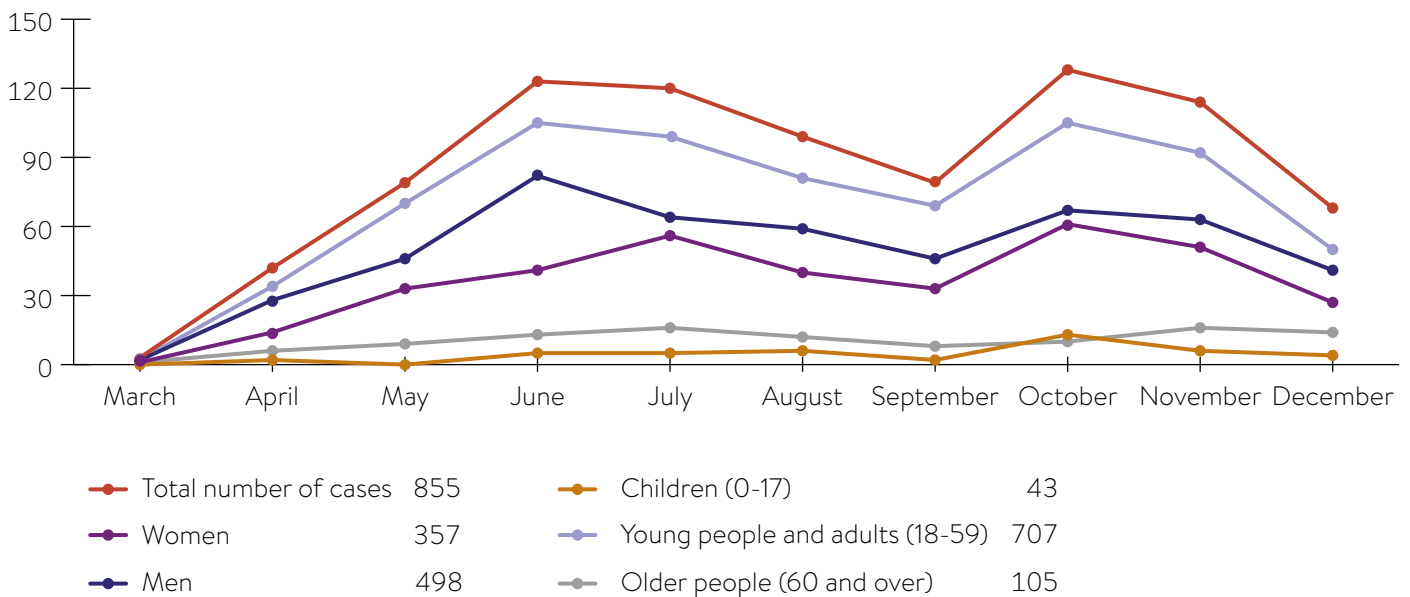
10 Although the information published by the SSA does not define who is classified as a migrant, it has been established that the following definition is used by the Ministry, SIMBA/DGIS/DGE: Migrant is understood to mean any individual, alone or accompanied, of any age group and sex, who moves for variable periods of time from their habitual place of residence to another temporary place of residence and who has not remained in the same place continuously for a period of five years or more. [“Entiéndase por migrante todo individuo, sólo o acompañado, de cualquier grupo de edad y sexo, que se mueve por tiempos variables de su lugar de residencia habitual a otro de residencia temporal y que no ha permanecido en el mismo lugar de manera continua por un lapso igual o mayor de 5 años.”]

Migrants suspected of having covid-19



Source: Based on public information issued by the SSA.

Migrants who tested positive for covid-19



Source: Based on public information provided by the SSA.¹¹

¹¹ The database on COVID-19 in Mexico was published by the Directorate-General for Epidemiology, updated as of 31 December 2020. The estimated number of suspected or confirmed cases of COVID-19 was based on laboratory tests disaggregated by sex and age group. The SSA only identifies whether or not a person is a migrant (along with nationality), but does not indicate whether someone is in a migrant detention centre or refuge.

From migrants' testimonies, the organizations identified cases of people with COVID-19 symptoms in immigration-related

detention as a result of the lack of adequate sanitary conditions to prevent infection in these centres.

Main human rights and health concerns of the Alianza

Several civil society organizations and shelters in Mexico who are part of the Alianza and who are allowed to enter migrant detention centres in the country, confirm that among those detained in 2020 were: women – including victims of gender-based violence, sexual abuse and serious crimes as well as pregnant women; children and adolescents;¹² and people in need of international protection and seeking asylum. While several organizations were denied access to migrant detention centres and there were no channels of communication with migrants, they were able to receive information about conditions in detention centres through care providers and interviews with people after their release. In addition, organizations have confirmed that in some migrant detention centres there are and remain conditions that prevent the implementation of hygiene measures to prevent the spread of infection and therefore put at risk the rights to health, life and physical integrity. While the information varied over time and between locations where people were held in immigration-related detention, there are human rights and health concerns in the context of the pandemic, some of which are listed below:

- **Overcrowding** (highlighted for years by civil society organizations, the National Human Rights Commission (CNDH) and other international bodies)¹³ that has persisted during the pandemic. For example, some people report having been in a room without adequate ventilation with 50 other people, making it impossible to physically distance;

- **Lack of hygiene and sanitation in migrant detention centres:** people often cannot wash their hands with soap regularly, antibacterial gel and face masks are often not provided, or when masks are provided they cannot be changed after it has been used;
- **Lack of medical care:** the failure to ensure access in a systematic manner to health services for people suspected of having COVID-19 or who present with respiratory tract infections or who have other health needs, such as reproductive and sexual health, obstetrics, treatment for pre-existing conditions or conditions identified in transit;
- **Absence of prevention measures and of information** about the COVID-19 health emergency on arrival and inside migration holding facilities and the lack of a strategy to identify asymptomatic cases that could lead to outbreaks: after being enclosed in a patrol car, often without physical distancing or face masks, people entering migrant detention centres are not tested or medically examined, although sometimes their temperature is taken on arrival or the person is asked questions about their health;
- **Lack of access to mental health services** despite the widespread need for them among detainees.

12 As of January 2021, the Law prohibits the immigration-related detention of children and adolescents and mandates the involvement of other authorities such the ombudsperson's offices for children and adolescents (Procuradurías de Protección de Niñas, Niños y Adolescentes).

13 Committee against Torture, Concluding observations on the seventh periodic report of Mexico, 24 July 2019, para. 48, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/7&Lang=en and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 27 September 2017, CMW/C/MEX/CO/3, para. 42, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW/C/MEX/CO/3&Lang=En See also, Consejo Ciudadanos del Instituto Nacional de Migración, Misión de Monitoreo de Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración, 2017, <https://observatoriocolef.org/articulos/personas-en-detencion-migratoria-en-mexico-mision-de-monitoreo-de-estaciones-migratorias-y-estancias-provisionales-del-instituto-nacional-de-migracion/> (Spanish only). Sin Fronteras, La detención migratoria, un análisis desde el modelo penitenciario y el gasto público, [Immigration Detention, An Prison Model and Public Expenditure Analysis] 2019, (Spanish only) <https://sinfronteras.org.mx/wp-content/uploads/2019/02/informe-estaciones-migratorias-2019-final.pdf>

A young Honduran woman detained in northern Mexico described the lack of health measures and the spread of infection in immigration detention as follows:



When I was detained I was not given gel or a face mask; the vehicle that took me to the migrant detention centre was packed. A doctor at the migrant detention centre examined me. At the migrant detention centre I was put in a room with up to 35 other women. We slept on a mat and ate in that room; to go to the bathroom, we had to ask the guards for permission. Some people got sick and they then moved us to another room for women. One day people arrived with medical equipment and four people tested positive. I wasn't tested for COVID when I left the migrant detention centre."

Statement of a young Honduran woman.¹⁴

Some organizations made requests to access public information to find out what the process was for identifying suspected cases of COVID-19 and channelling those who were, or were thought to be, infected, to health services, and the number of suspected and positive cases. However, the information they received was not consistent with the observations of the CNDH or what migrants said in their testimonies.

Some of the elements identified by civil society organizations are consistent with what was stated by the CNDH in its recommendation No. 34/2020 of 31 August 2021. The CNDH acknowledged that there had been a violation of the rights to the protection of health, life and to health information of a Salvadoran migrant who died of COVID-19 after being held in the Mexico City Migration Detention Centre, as well as of the right to the protection of health of people held in the context of migration in that facility and of all those who enter, stay or work there.¹⁵

It is also striking that, according to publicly available information on health protocols and guidelines on the website, the health authorities were not involved in drawing up the guidelines that should be followed in a context of a health emergency in immigration-related detention; these were drafted unilaterally by SEGOB-INM. The documents and protocols for different groups detained in Mexico's prison system were prepared by the Ministry of Health or with its participation,¹⁶ with

the exception of the "Protocol for the prevention and care of suspected and confirmed cases of COVID-19 in migrant detention centres and those held temporarily by the National Migration Institute".¹⁷ According to publicly available information, there is no evidence that the health authorities are monitoring conditions in migrant detention centres to ensure that the health measures stipulated to avoid the spread of infection and protect life are fully complied with.

¹⁴ Statement dated 2 November 2020.

¹⁵ CNDH, Recommendation 34/2020 of 31 August 2020 (migration detention centre in Mexico City), available at: <https://www.cndh.org.mx/documento/recomendacion-342020> (Spanish only).

¹⁶ Official website of the Mexican government on COVID-19, <https://coronavirus.gob.mx/documentos-de-consulta/> (Spanish only).

¹⁷ See "Protocolo de actuación para la prevención y atención de casos sospechosos y confirmados de COVID-19 en las Estaciones Migratorias y Estancias Provisionales del Instituto Nacional de Migración". See SEGOB Protocol https://coronavirus.gob.mx/wp-content/uploads/2020/05/Protocolo_de_actuacion_-INM_19042020.pdf (Spanish only).

Recommendations of the Alianza

The detention of migrants during a pandemic *per se* poses a serious risk to health and to life in Mexico because of the precarious conditions in detention centres and in general cannot be considered a justified or proportionate response, especially when the right to health cannot be guaranteed. Testimonies from individuals indicating that measures to curb infection are not being applied, coupled with the lack of information on the

management of the situation inside migration detention centres, give rise to grave concerns regarding Mexico's compliance with its international obligation to ensure the right to health of all migrants and people in need of international protection.

The Alianza calls on health authorities to:

1. Instruct the National Migration Institute and the Ministry of Foreign Affairs¹⁸ to end immigration-related detention – above all of groups at risk and vulnerable to COVID-19, on the ground that this is not a necessary or proportionate response and puts at risk the right to health – as ordered by the judgment issued in August 2020 and in compliance with the amendment, which came into force on 12 January 2021, of the Migration Law prohibiting the immigration-related detention of children and adolescents, among others;
2. Implement measures to ensure that everyone has effective access to health care and treatment, including transfer to hospital where necessary;
3. Undertake visits to and monitor any facility run by the INM, as well as the process of immigration-related detention itself so that health and epidemiological measures are complied with and give instruction on compliance with epidemiological monitoring; these measures should be in place during the management of implementing the policy of ending immigration-related detention;
4. Ensure that during the process of releasing or transferring migrants from the INM to Ombudsman's Offices for Children and Adolescents, other authorities or civil society organizations, health protocols on infection prevention and affecting the health of migrants and the community are implemented;
5. Report, with disaggregated and public data, on the migrant population being treated by the health system, how they were referred, where suspected cases or symptoms of COVID-19 were detected, what kind of care has been given and whether there was a report of COVID-19; and
6. Establish mechanisms to facilitate the submission of complaints by migrants to CONBIOÉTICA (the National Bioethics Commission).

18 To the Ministry of Foreign Affairs in its role as coordinator of the Comisión Intersecretarial de Atención Integral en Materia Migratoria (CIAIMM).