

Comments on the draft *General Comment No. 1 (2017) on the implementation of article 3 of the Convention in the context of article 22*

Submission to the Committee against Torture

24 April 2017

The Human Rights Program and the “Alaíde Foppa” Refugee Law Clinic at Ibero-American University, Mexico City campus,¹ welcomes the coming revised *General Comment No. 1 (2017) on the implementation of article 3 of the Convention in the context of article 22*, as it will certainly lead to a better understanding of the scope of the obligations derived from article 3 of the Convention against Torture.

In the knowledge that the Committee has already received a large number of observations and recommendations to the draft, our submission will focus on paragraph 13 under Section II. General Principles, which reads as follows:

Each case should be individually examined by the State party through competent administrative and/or judicial authorities. Any form of collective deportation without any objective examination of the particular cases should be considered as a violation of the principle of non-refoulement as it prevents States parties from adequately verifying through an assessment of each individual case, whether there are well founded reasons not to deport a person.

Recognizing that the aforementioned paragraph addresses a highly relevant issue, in our opinion an addition should be made in order to guarantee that this text offers a more comprehensive protection against refoulement. In this regard, we respectfully urge the Committee to specify that (textual addendum marked in bold) “[a]ny form of collective deportation **or administrative and/or judicial decision that leads to the deportation of a group** without any objective examination of the particular cases should be considered as a violation of the principle of non-refoulement...”

The decision to deport individually or collectively is always taken by a competent authority “A” empowered by law to do so. However, depending on the States’ administrative architecture, certain authority “B”, different to the former, may be empowered to take decisions that, without constituting a legal order to deport, causes

¹ The Ibero-American University (or *Universidad Iberoamericana*), Mexico City campus, is a prestigious academic institution founded by the Society of Jesus in 1943. It is part of the Jesuit education network in Mexico. More information can be found in <http://www.iberomex.mx/>. The Human Rights Program seeks to advance human rights in Mexico through research and advocacy, while the Alaíde Foppa Refugee Law Clinic, located within the Department of Law, represents asylum seekers in Mexico, mainly from Central America, and carries out strategic litigation to advance refugee rights in the country.

authority “A” to involuntarily transfer² a group without having analyzed the particular situation of each person.

Mexico is one of such countries and serves as an example. Although the National Migration Institute (INM) is empowered by immigration law to decide on and execute the deportation of foreigners, another governmental body, the Mexican Commission for Refugee Assistance (COMAR) is empowered by refugee law to decide whether or not a person is a refugee or needs complementary protection³, decision that later determines whether he /she is deported or not by the INM.

Having said that, it is important to specify that COMAR (as probably the asylum procedures in other countries) has the possibility to receive two kinds of petitions: individual or collective. In the latter case, petitions are filed by a “main applicant” accompanied by family members. However, COMAR’s practice is to focus the analysis of each collective case on the situation of the “main” applicant, usually the father or the mother. The adjudicator will not necessarily interview and get to understand the situation of each one of the family members, with the risk of ignoring important information regarding each personal situation: indeed the very specific and individual experience of forced migration.

Although there is no clear obligation to interview each person in the group, research done by the Human Rights Program and the “Alaíde Foppa” Refugee Law Clinic⁴ shows that even when the main applicant’s narrative suggests or explicitly expresses that the person under risk is in fact, *e.g.* his/her son or daughter, the COMAR bases its decision on the statement of the former without bearing in mind the situation of the child, much less interviewing him/her. As a consequence, the group (i.e. the family) will face an immigration process without procedural safeguards nor full information of the procedure and therefore, will be deported by the INM, situation that has the same effects of a collective deportation as understood by the Committee.

The above is of particular concern if we consider the Central American context, which is increasingly pushing refugees out of their countries,⁵ and particularly, children who

² We support the recommendation made by several organizations regarding the use of the term “involuntary transfer”, instead of “deportation”, throughout the General Comment. *See* Joint Observations regarding Revised General Comment No. 1 (2017) on the implementation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by the OMCT et al.

³ Complementary Protection is regulated by the Mexican Law on Refugees, Complementary Protection and Political Asylum to provide protection against *non refoulement* to people in danger of being subjected to torture and other cruel, inhuman or degrading Treatment or Punishment.

⁴ The first preliminary report of said research is included here as an annex, that we ask the Committee *not* to publish in website.

⁵ According to official reports, in the year 2013 COMAR received almost 1300 asylum applications. By 2016 that number raised to 8,781. COMAR calculates that the number may exceed 20 thousand applications in 2017.

are at risk of forced recruitment by street gangs, or “maras”.⁶ The lack of individual examinations in collective applications by the COMAR may lead to an unjust deportation carried out by the INM in refugee cases, which is aggravated by the fact that the INM does not perform a screening to identify whether a person or group has substantial grounds for believing that they are in danger of being subjected to torture. Moreover, the INM takes for granted that people are not at risk of torture because they were not granted asylum nor complementary protection by the COMAR, authority that lacks a proper mechanism for identifying and taking decisions regarding the risk of torture.

In summary, it is our contention that the proposed addition to paragraph 13 would not only offer protection from collective deportation but also from situations that have the same effects due to the lack of individual analysis of each person’s situation in collective cases by authorities whose decisions impact the migratory situation of a group.

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⁶ Further information about this phenomenon can be found in: Jesuits. Unwilling Participants: The Coercion of Youth into Violent Criminal Groups in Central America’s Northern Triangle, Jesuit Conference of Canada and the United States, 2015.