

The Mexican Asylum System: Between Protecting and Control**El sistema de refugio mexicano: entre proteger y contener**Eduardo Torre Cantalapiedra,¹ María Dolores París Pombo² and Eduardo Elías Gutiérrez López³

ABSTRACT

In a context of restriction of both irregular migration flows and those in need of protection in the global North, the objective of this article is to analyze the implementation of Mexican refugee policies after the legal changes of 2011. Based on the documentary review and the statistics from the administrative records of COMAR, the obstacles encountered by those who require international protection to be granted refugee status, or, in this case, complementary protection (*protección complementaria*), are analyzed. While Mexican legislation is generous in terms of the possibility of granting these legal protections, the analysis of their implementation allows us to account for practices of blocking, deterrence and immobilization that – in the logic of containment – make it difficult, as well as with often prevent, achieve international protection.

Keywords: 1. refugees, 2. complementary protection, 3. international protection, 4. Central America, 5. Mexico.

RESUMEN

En un contexto de restricción tanto de los flujos migratorios irregulares como de necesitados de protección en el Norte global, el objetivo de este artículo es analizar la implementación de las políticas de refugio mexicanas tras los cambios legales de 2011. Con base en la revisión documental y las estadísticas de los registros administrativos de la Comisión Mexicana de Ayuda a Refugiados (COMAR), se analizan los obstáculos que encuentran quienes requieren de protección internacional para que se les otorgue la condición de refugiado, o en su caso, protección complementaria. Mientras que la legislación mexicana es generosa en cuanto a la posibilidad de otorgar estas protecciones legales, el análisis de su puesta en marcha permite dar cuenta de prácticas de bloqueo, disuasión e inmovilización que –en la lógica de la contención– dificultan, así como con frecuencia impiden, alcanzar protección internacional.

Palabras clave: 1. refugiados, 2. protección internacional, 3. protección complementaria, 4. México, 5. Centroamérica.

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INTRODUCTION

As of the nineties, each year thousands of alien individuals -including an important proportion of people in need of international protection- traverse over the Mexican territory in order to reach the United States (El COLEF *et al.*, 2019), either to irregularly enter the US or to ask for asylum or another sort of humanitarian protection. In response to these flows, the American government has pressured their Mexican peers to impose migration controls for decades; such political and economic pressure intensified more than ever under Trump's administration (2017-2021) and focused on imposing restrictions for the arrival of people in need of international protection from the south. The US has intended to make Mexico a third safe country to be able to reject asylum seekers, arguing they should have asked for protection previously in Mexico.

The administration of Andrés Manuel López Obrador –who assumed office in December 2018– has not accepted to sign any third safe country agreement– which allows alien people in Mexico to have the option to ask for asylum in the US. By contrast, Lopez Obrador's administration gave in due to a sudden progressive tariff escalation in May 2019, and redoubled efforts to contain irregular migration –which made it difficult for migrants to reach American soil to ask for asylum. Moreover, as of January 2019, Mexican government has accepted to temporarily receive asylum seekers so that they wait in Mexico for months while their processes are carried out in some court in the United States by means of a program called “Migrant Protection Protocols” (MPP).⁴

The regularization options for people who enter Mexico without documents are almost exclusively limited for asylum seekers. That is to say, most of the migrants have to travel over Mexico irregularly, at risk of being detained and deported by Mexican authorities.⁵

In this context of restrictive policies in Mexico and the US, in recent years, a growing number of people, though still a minority, has been noticed to settle down in Mexico – from the beginning or after giving up entering into the US (Torre Cantalapiedra, 2020). Obtaining the status of refugee in Mexico has been a mechanism to do so. Nevertheless, most migrants and people in need of international protection still prefer reaching the US, as they have intended for decades (El COLEF *et al.*, 2019).

In order to address people who decide to ask for international protection, Mexico has developed a number of juridical instruments over recent years to grant them a legal status and other sort of support for their integration. The 2011 Law on Refugees, Complementary Protection and Political Asylum, reformed in 2014 –which owing to

⁴ Asylum seekers in this program attend the sentry the day of their hearing in the court and are presented to the judge by American migration authorities. After the hearing, they are returned to Mexican territory.

⁵ Considering that Mexico does not recognize itself as a third safe country, it is paradoxical that the alternative to deportation offered by the government to most of the migrants is the refugee status.

clarity will be referred to as Law on Refugees— sets forth the suppositions under which the refugee status is recognized for an alien individual who applies for it, or as the case may be, complementary protection (CP). As pointed out by other authors, the status of refugee generally depends on political and economic interest, and administrative decisions as well. Moreover, refugee policies tend to subordinate to migration policies and intergovernmental relationships. In this way, the tendency in the US and many European and other countries around the world is toward incongruence and hypocrisy. Despite their legal commitments, they have opted for hindering in various ways the access to international protection and deporting rejected asylum seekers (Arango, 2019). The fundamental question is, what has been the setting into motion of the new Mexican legislation like in a context of exclusion of those who seek / need international protection and pressure/influence from the American government so that Mexico contains migration flows?

In this context of restriction of irregular migration flows and people in need of international protection, the goal of this article is to analyze the implementation of Mexican asylum laws after the legal changes in 2011. This work is divided into three sections. In the first place, a debate is held on who the refugees are, and in a broader sense, people in need of international protection, and how they are seen in the current debates as regards restrictive measures for refugees/asylum seekers in various countries. Secondly, two juridical instruments in the Law on Refugees to shelter foreign individuals in need of international protection are succinctly analyzed: the status of refugee and CP. In the third place, on the basis of a document revision, statistics on asylum seekers⁶ and resolutions by *Comisión Mexicana de Ayuda a Refugiados*, COMAR [Mexican Commission to Aid Refugees], as well as previous fieldworks, the obstacles found by asylum seekers to attain the status of refugee, or CP, and how these vary in function of the applicants' national background are analyzed.

People in need of international protection in a world of restrictions

Refugees are people who meet certain criteria established in national and international legislations, which give them right to receive special protection in the destination country (Espinar Ruiz, 2010). Therefore, asylum is a legal construction, which as such varies from one country to another in function of the international treaties they ratify and the way these are developed in the national legislations. In any case, this figure is similar between

⁶ Data from the statistics produced by *Unidad de Política Migratoria* [Units for Migration Policies], *Registro e Identidad de Personas*, UMPRIIP [Registration and Identity of Individuals] of the Secretariat of Government were retaken from COMAR administrative records.

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countries, since most of them, including Mexico, adhere to the 1951 Refugee Convention, Geneva, and the 1967 Protocol Relating to the Status of Refugees, New York.

There is a usual distinction between: i) refugees who have the status by a certain State or the UN High Commissioner for Refugees (UNHCR); and, ii) *de facto* refugees, i.e., those who meet the conditions established by the Convention and Protocol, but who owing to various reasons do not have such status in the recipient country: they did not ask for it; they asked for it, but was denied; the State in question does not recognize this juridical figure; among others.

Among the refugees defined in terms of the 1951 Convention and the migrants called “voluntary” there is a grey area of people with need for protection as valid as those of the “convention refugees” (McAdam, 2006; Betts, 2013). To address such individuals, several countries have decided to broaden the concept of asylum as well as utilize other additional protection instruments.

In relation to Latin America, some countries, Mexico among them, have adhered to the 1984 Cartagena Declaration on Refugees, which expands the definition for the refugee status. Plus, some national legislations have incorporated instruments that grant equal or lower protection than someone with refugee status, though it may be granted to people who do not meet the requirements to be a refugee (McAdam, 2006; Espinar Ruiz, 2010); this is the case of CP in Mexican legislation.⁷ Other ejection factors that have become noticeable in the debate on asylum are climate change, environmental degradation and natural or anthropogenic disasters. In any case, people with acute needs are excluded from the international umbrella protection, for example, those who run away from extreme poverty –save if these individuals have other characteristics that meet the parameters to receive international protection at the same time.

Those who meet the requirements find it increasingly complicated to attain international protection, since most of the developed countries have privileged migration control over their commitments regarding asylum and refugees. For decades in Europe, there has been a progressive withdrawal from the commitments of the 1951 Refugee Convention, under the fallacious reason that most are economic immigrants (Fassin, 2015). That same discourse has been wielded by the US since the 1980’s at least (Aguayo Quezada, 1986) and has reached a peak under Donald Trump, who promoted a political agenda against asylum seekers who arrive from the southern border.

The States of the Global North introduce a combination of obstacles with a view to preventing those who seek / need international protection from reaching their territories, dissuading they even try or else, *de facto* denying asylum or the refugee status for the

⁷ In this work we use the term international protection to refer not only to the instruments that confer a higher protection level –refugee status and political asylum–, but to the instrument that adds to the previous, CP.

individuals who reach these countries (Gammeltoft-Hansen & Tan, 2017; FitzGerald, 2019). In this way, countries have externalized their boundaries by means of pressure and arrangements so that the origin and transit countries detain irregular migrants and those in need of international protection. In this sense, the term neo-refoulement has been coined to refer to the return made by those who seek asylum and other migrants toward regions in the origin or transit countries before they reach the territories where they might process their requests, being understood more as a problem related to security than protection to refugees or asylum (Hyndman & Mountz, 2008). Another mechanism has been the creation of contention areas (FitzGerald, 2019). For the European Union, these areas have been set up in the south of the Mediterranean; in the case of the US, Mexico has served as a country to contain unwanted migration flows.

Moreover, the systems to detect and deport in the destination countries that intend to discourage irregular immigration also dissuade the asylum seekers to make an application (Hyndman and Mountz, 2008; Amnistía Internacional, 2008). The detention centers establish long waits while the cases are reviewed, while migrants are threatened to be deported to their countries of origin if their petitions are denied. The long waits are a privileged dissuasion mechanism among the asylum policies of the Global North, not only when applicants are detained, but also when waits take place in conditions of vulnerability, with no access to basic services and in dangerous territories (París Pombo, 2020).

Some of the barriers most difficult to overcome for asylum seekers are the very international protection policies; they impose long, expensive and tortuous administrative or juridical processes on asylum seekers, frequently with no legal accompaniment and without economic support. In these processes, there is almost always suspicion on the testimony of the applicant, mistrust has thus become the dominating tone in the analysis of asylum requests. As a result, only a minority of requests is legally recognized with the status of refugee (Fassin, 2015).

Before protection instruments, some authors have read the systems of asylum in light of turning them into instruments in favor of the securitization of migrations. In this sense, Gammeltoft-Hansen and Tan (2017, p. 29) speak of the “dissuasion paradigm” instrumented in developed countries and imposed on transit ones: the main response in the face of enforced migrations is preventing people in need of international protection from reaching their borders at all costs.

JURIDICAL INSTRUMENTS IN THE LAW ON REFUGEES

Ever since *Instituto Nacional de Migración*, INM [National Migration Institute] was created in 1993, Mexico has built complex devices to stop and deport people in movement. In parallel, it has created laws and institutions to assist people in need of international protection. However, most of the people who flee from their countries owing

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to persecution or generalized violence has not been able to use the protection mechanisms in this country.

A brief review of the historic background

The recent history of refugees in Mexico dates back to the 1980's, with the arrival of mass flows of Central Americans during the armed conflicts in Guatemala and El Salvador, the creation of COMAR in 1980 and the opening of the UNHCR office in 1982. In the case of Guatemalan refugees, the answer of the Mexican government varied: 1) at first, in 1981, it did not accept they were refugees and deported about two thousand; 2) in 1982, it accepted UNHCR in Mexico and refugee camps in Chiapas were created. In the absence of *ad hoc* legal instruments, the refugees were regularized by means of non-migrant border visitor visas (FM8) that had to be renewed every 90 days, or as agricultural workers; 3) in 1984, it relocated almost half of the refugees in the camps to Campeche and Quintana Roo (Aguayo Quezada, 1986; Aguayo Quezada & O'Dogherty, 1986; Rodríguez Chávez, 2011). After the signing of the peace agreements, thousands of Guatemalans decided to return to their places of origin, while some others stayed in Mexico and obtained Mexican nationality (Lerma Rodríguez, 2016).

While camps in the south of the country emerged, hundreds of thousands of people from Nicaragua, El Salvador and Guatemala entered Mexico looking for security. This population, considered disperse refugees, was also under the command of UNHCR (París Pombo, 2017).

Paradoxically, the recognition of the figure of refugee in the General Population Law in 1990 and its regulation in 1992, occurred at a time when pressure for asylum decreased. At once, over such decade the flows of Central American migrants crossing over Mexico heading for the US as well as detentions and deportations by INM noticeably grew (París Pombo, 2017). In 2002, two years after the ratification of the 1951 Convention, in Mexico, COMAR started to analyze requests for the refugee status individually via investigation (Rea Granados, 2016), taking the same recognition logic followed by Global North countries. In spite of which, Mexican asylum policy remained particularly restrictive: between 2002 and 2011, COMAR received 5 255 requests, of which 1,186 were positive (Cobo and Fuerte, 2012, p. 63). That is to say, Mexico granted on average the refugee status to 118 individuals a year.

In 2011, the Congress approved the Law on Refugees, which is analyzed below.

*Refugee Status and CP*⁸

Article 13 of Law on Refugees set forth the suppositions under which the status of refugee will be recognized. In its three sections, it retakes the definition of refugee in the 1951 Geneva Convention –incorporating gender as a reason for persecution– (fraction I), the extended definition in 1984 Cartagena Declaration (fraction II), and the definition of *sur place*⁹ refugee (fraction III) (ACNUR & COMAR, 2012; Impacto Social Consultores, 2019). The Mexican state is urged to recognize the status of refugee for every foreign individual who meets such definitions. The three suppositions necessarily imply that the request for the status of refugee is applied at an official Mexican crossing point or else, when the foreign individual is already in Mexico.

According to Article 12 of the Law on Refugees, when the refugee status is recognized in Mexico, this migratory benefit also applies for the spouse, partner, blood relatives of the spouse up to second degree who economically depend on the applicant and who are as well in Mexico. In the understanding that the status of refugee according to provisions in Article 54 of the Law on Migration has the same migratory and legal effects as permanent residence in Mexico.

CP means not to return certain individuals who had been previously denied the refugee status “to a territory in another country where their life would be at risk or would be in danger of experiencing torture or other cruel, inhuman or degrading treatments” (Law on Refugees, 2011: fraction VII of article 2).

Deciding that an individual is eligible to receive CP must be notified in the same resolution that rejects the status of refugee (Law on Refugees, 2011, art 30). In terms of migratory status, this legal figure has the same juridical effects as refugee status in Mexico and people under this protection become permanent residents. However, it must be stated that CP does not have some rights conferred to people deemed refugees; for example, it does not include family reunification, refugee status for their relatives and access to public services and programs in order to facilitate their integration in the terms of the Law on Refugees (Sin Fronteras I. A. P., 2016). Besides, the Secretariat might revoke CP if the causes that motivated the protection disappear (Law on Refugees, 2011, Art. 32 II).

⁸ In addition to Refugee status and CP, fraction one of article 2 of the Law on Refugees incorporates Political Asylum. Unlike asylum, political asylum is discretionally granted out of political reasons and can be requested via diplomacy. Since it is an instrument whose idiosyncrasy is utterly different from the refugee status and that very few people with a public political profile obtain international protection in this manner, we will not pay attention to this figure in this work analysis.

⁹ A *sur place* refugee is an individual who was not a refugee when they left their country of origin, but became one owing to later events which make them afraid of being persecuted if they return to their country of origin.

Administrative process

Foreigners may ask for the status of refugee in any of the four COMAR offices (in Mexico City; Acayucan, Veracruz; Tapachula, Chiapas; and Tenosique, Tabasco). In the rest of the cities, processes associated to the status of refugee have to be carried out in INM, which sends the information to the nearest COMAR office. Foreigners can also ask for asylum at migratory stations and airports (CEAR, 2018).

COMAR must provide foreigners with information on the right to apply for a refugee status and the proceedings (Regulation of the Law on Refugees, 2012, Art. 15 I). INM has the attribution of detecting people who presumably need international protection and communicate them their right to ask for the recognition of the status of refugee (Regulation of the Law on Refugees, 2012, Art. 16 I)

In principle, every individual has a 30-working-day deadline to process their request after arriving in Mexico. Though, people can ask for the status of refugee after these 30 days, if they justify it in writing and it is accepted by the authority.

Once the request for the status of refugee is made, it has to be admitted by COMAR, which delivers the individual a certificate that recognizes them as requesters and so, it accredits that the process has begun (ACNUR México, 2020). As of the moment when the individuals express they want to apply for the status of refugee in Mexico, they cannot be deported (CEAR, 2018). With this certificate, they can ask for a visitor's card owing to humanitarian reasons (VCHR) at INM, which allows the applicant to work and travel at will over the national territory for a year.

During the proceedings to obtain the refugee status, the applicant must remain in the state they made the application and weekly attend COMAR or an INM office to sign a certificate of permanence in the state, if they do not attend two weeks in a row, the application is deemed void (ACNUR México, 2020).

The applicants must fill in a questionnaire and have an interview that defines whether their fear of persecution is well-based in accordance with the Law on Refugees.

Then, COMAR staff interviews the applicants, studies the cases and issues a resolution. In order to do so, the state has a 45-day deadline, extendable to forty-five days plus ten days to notify the resolution. That is to say, the longest duration of the process to obtain the status of refugee legally provided at a first instance is one hundred days (CEAR, 2018, p. 16).

If the resolution is favorable, the individual has to attend to INM to process their permanent residence in Mexico as a refugee. If the resolution is not favorable, the solicitant may resort to various sorts of resources (in this regard, see Kerwin, 2018).

ANALYSIS OF THE IMPLEMENTATION OF ASYLUM POLICIES: OBSTACLES FOR REFUGEES

The review of documents and administrative data in COMAR, together with the experience on the field, allow stating that obtaining the refugee status implies overcoming a series of obstacles, which vary according to the nationality of the applicant, from the beginning to the end of the process. Following, we review those we consider most relevant.

Barriers for applications

The contention policy carried out by Mexican authorities is the first barrier to grant the right to ask for refuge in Mexico, since it has as an objective to detect foreign people who enter the country irregularly and deport them soon (Kerwin, 2018).

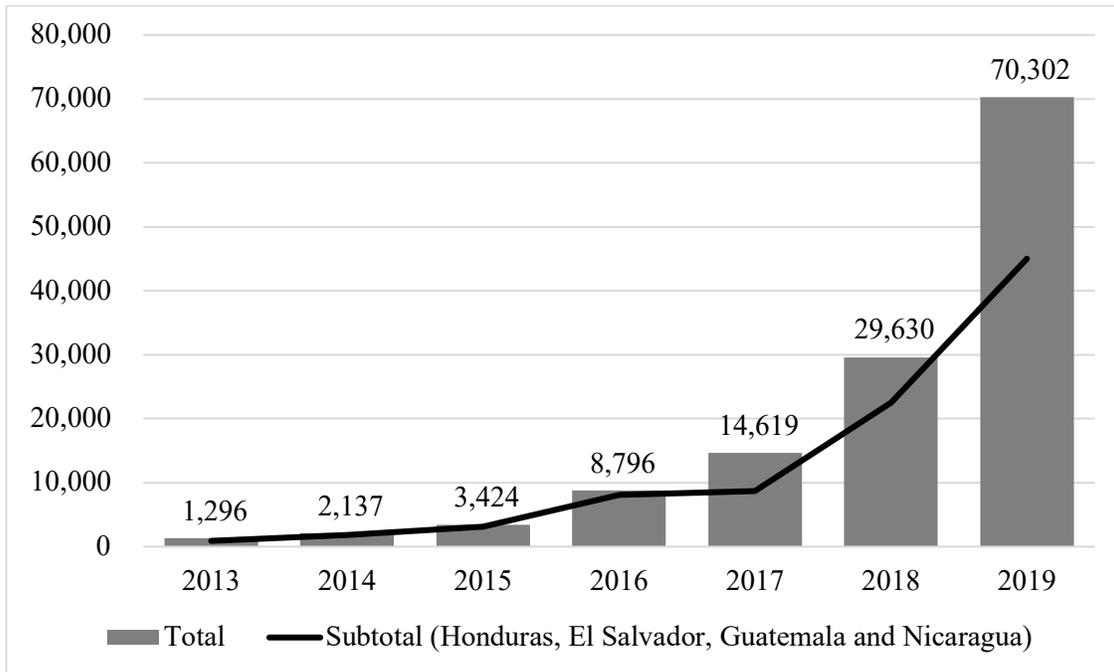
Amnesty International (2018) found out that Mexican authorities had returned asylum seekers and people with credible fear to their countries of origin, thus compromising their lives and physical integrity. By contrast, the same authorities had not duly performed the identification of the prospective refugees, nor had they fully informed them about their right to ask for asylum in the country (Kerwin, 2018; Amnistía Internacional, 2018). Even if they receive the information, at once they are discouraged to apply as they are told the difficulties they will face to successfully proceed (Human Rights First, 2017).

The rule to ask for asylum within 30 working days, counted from the next day after entering the country, has become an impediment for people who deserve this recognition to receive protection (Sin Fronteras I. A. P., 2016). In this regard, UNHCR has pointed out that the best practice is not to set a deadline to ask for asylum (UNHCR Regional Legal Unit cited in Rea Granados, 2016).

Applications received

The number of applications for the refugee status grew exponentially from 2013 to 2019, distinguishing the fact that in only four years this figure changed from 3 424 to 70 302 applications (graph1). Figures would possibly be higher if the barriers mentioned above did not exist, and as argued below, if the overall functioning of the asylum program was simpler.

Graph 1. Applications for the status of refugee received by COMAR, 2013-2019*



* Data for 2019 are preliminary.

Source: own elaboration based on data from UPMRIP, COMAR and SEGOB (2019, 2020).

The increase is propitiated by the combination of various factors such as:

- 1) The situation lived in the main countries of origin of the applicants: Honduras, El Salvador and Venezuela, which makes more people in need of protection reach Mexico.
- 2) A better understanding of the process among foreigners, which is likely due to the dissemination of this figure by international agencies, civil society organizations (CSO), the Mexican government itself and communication media, adding to the circulation of this information in the applicants' social media, friends, families, *coyotes*, among others, and also previous mobility experiences. With data from Emif Sur, it was demonstrated there was substantial growth in the percentage Central Americans returned by Mexican authorities who declared they were informed on the right to ask for asylum, protection, or refugee status by such authorities, because between 2016 and 2019, they changed from 6 to 31 percent (Bermúdez Lobera, 2020).
- 3) Anti-immigrant policies and those against people in need of international protection in the US, plus the supporting Mexican contention policies promote that migrants and people in need of international protection settle down in Mexico (París Pombo, 2019; Torre Cantalapiedra, 2020).

4) The use of the application for the refugee status to obtain documents to travel over Mexico toward the US.

Another aspect to underscore in graph 1 is that up to 2016, the majority of applications was from Central America; however, as of 2017, some countries outside this region (especially South America and the Caribbean) start to become important. Accordingly, it is worth analyzing the number of applicants by country of origin.

The country of origin of most of the applications is Honduras, which year after year produced the highest number of applications and 42.4 percent of the period total (Table 1). It is followed by El Salvador which from 2013 to 2017 showed application figures similar to Honduras', but with much lower figures the last two years; for example, in 2019 applications from Salvadorans were 8 991 (12.8%) v. 30 045 Hondurans (42.7%). To a lesser extent, Guatemala and Nicaragua also participate among the countries of origin of the applicants. Application figures for these four Central American countries are a thermometer of the situation experienced by citizens in the countries of origin. The third country with the most applications is Venezuela, which evinces the worsening of the political situation in that country which began to be noticed in 2016.

By 2019, the application figure from Venezuelans was the largest in absolute terms for this population over the analyzed period with 4 662 applications. The case of applications of Cuban citizens must be understood in the context of the termination of the "wet-foot/dry-foot policy" by Obama's administration in 2017. While between 2013 and 2016, annual applications of Cuban citizens did not surpass a hundred, in 2017, they were 796. However, this pales in comparison with the events only two years later: after a drop in application figures in 2018 to 214 they soared to 8 677 in 2019. This is explained because that year, the National Institute for Migration stopped issuing a so called "departure document" (*oficio de salida*) with which Cubans used to travel to the north to enter the US by land; this way, applications for the status of refugee might be one way to obtain legal documents to travel in the country. In relation to applications from Haitians, it is considered they have a very similar pattern to that of Cubans.

Table 1. Applications for the status of refugee received by COMAR by country of origin, 2013-2019

	2013		2014		2015		2016		2017		2018		2019*		Total	
	Abs.	%	Abs.	%	Abs.	%	Abs.	%	Abs.	%	Abs.	%	Abs.	%	Abs.	%
Honduras	530	40.9	1,035	48.4	1 560	45.6	4 129	46.9	4 274	29.3	13 678	46.2	30 045	42.7	55 251	42.4
El Salvador	309	23.8	626	29.3	1 476	43.1	3 494	39.7	3 708	25.4	6 193	20.9	8 991	12.8	24 797	19.0
Guatemala	47	3.6	108	5.1	102	3.0	437	5.0	676	4.6	1,347	4.5	3 758	5.3	6 475	5.0
Nicaragua	20	1.5	28	1.3	28	0.8	70	0.8	62	0.4	1,271	4.3	2 227	3.2	3 706	2.8
Venezuela	1	0.1	56	2.6	57	1.7	361	4.1	4 038	27.7	6 327	21.4	7 662	10.9	18 502	14.2
Haiti	14	1.1	25	1.2	16	0.5	47	0.5	436	3.0	78	0.3	5 538	7.9	6 154	4.7
Cuba	98	7.6	96	4.5	37	1.1	43	0.5	796	5.5	214	0.7	8 677	12.3	9 961	7.7
Others	277	21.4	163	7.6	147	4.3	215	2.4	613	4.2	522	1.8	3404	4.8	5 341	4.1
Total	1 296	100	2 137	100	3 423	100	8 796	100	14 603	100	29 630	100	70 302	100	130 187	100

* Preliminary data.

Source: own elaboration based on data from UPMRIP, COMAR and SEGOB (2019, 2020).

Long waits, restrictions for mobility and deprivations of liberty

During the process substantiation, every individual who requests asylum in Mexico has to face long waits, and as the case may be, restrictions for mobility or deprivations of liberty. For the purpose of clarity, we differentiate between migratory stations' applicants –who are under detention, either for only a part of the process– and office applicants – who are free over the substantiation of the procedure because they started the process directly in a COMAR (or else INM) office.

At least as of 2017, waiting times to have a resolution are longer or much longer than set forth in the law (Human Rights First, 2017; CEAR, 2018). At present, requesting the status of refugee takes months or even longer than a year. With COMAR data obtained via a transparency request, Asylum Access (2020, p. 10) points out “that 13,089 people who asked for the status of refugee in 2018 were still waiting for a resolution on October 25th, 2019, including 6.230 people waiting for more than a year and 662 who had been waiting for more than 18 months so far”. In the case of those who submit their request at an INM office, the process takes even longer than usual (Gutiérrez López, 2019). Delays are attributed to the lack of resources of the institutions to address the increasing number of applications made.

For office applicants, the wait begins before starting the process, when the person in need of international protection approaches to COMAR offices. At that moment, they are appointed to fill in the application, which usually takes place several weeks later. On the basis of a survey carried out in Tapachula by CDHMC and El COLEF (2020) among applicants for the refugee status between November 2018 and January 2019, it is estimated that for 181 cases the average waiting time was 24 days per applicant. About a half of the applicants had to wait more than a month to “begin” their process. As in the US, Mexico has a metering system for the number of applications that can be started each day.¹⁰

Once the application is completed, the individual has to wait for more weeks before receiving the statement of acceptance and begin the process in INM to receive a VCHR, which can take several weeks to process. Thousands of office applicants are forced to desist or abandon the process due to long waiting times and difficulty to obtain resources from labor activities. Consequently, remaining in Mexico irregularly or continuing to travel to the north over increasingly dangerous and uncertain routes implies the risk of being deported to their countries of origin where their life and physical integrity are at risk. Most of these individuals have to look for remunerated activities to earn some resources with which to afford lodging and basic services, which leads them to precarious

¹⁰ Even though it is a wait before the process, owing to clarity and as it is a waiting mechanism, it was included in this section.

jobs in regions where they are processing their application.¹¹ The weekly signature in COMAR, or INM, is a grave problem for many applicants who lack economic resources to visit the offices. On the other hand, if applicants find an employment, even an informal one, they may lose it as they miss a day to attend the COMAR office.

This is the case of Armando, who arrived in Mexico with the first migrant caravan by the end of 2018, and accepted the possibility offered by the Mexican government to request the status of refugee. After 20 days in a detention center, he was released and given a *Clave Única de Registro de Población, CURP* [Single Population Registration Number] so that they were able to work and carry on with the process in COMAR under the office modality. This way, Armando tried to remain in Mexico, he stayed a little longer than a week in Tapachula before he dropped the process and retook the initial plan to go to the US. The reason is a mixture of impossibility to earn means for survival and live up in decent conditions and the burdensome process in COMAR:

I had to get a job in Chiapas, [...] I had to sign and be in migration and COMAR, I lost my job, slept for long where the buses are, I slept there a lot, about three nights because I had no money to pay for the hotel (Armando, face-to-face communication, December 31st, 2018).

The spatial immobilization implied by the refugee process in a certain state prevents the applicants from going to other Mexican states, where they may have better opportunities to find employment and better security. Although some obtain a permit from COMAR to attend another office, most of them are forced to look for employment in some of the most impoverished and insecure regions in the country such as Chiapas, Oaxaca and Tabasco.

One of the reasons why it is intended to restrict the applicants' spatial mobility seems to be related to keeping aliens from going to the US, at least until the process finishes. Owing to Mexico's geographic location, it is difficult to distinguish between asylum seekers who want to settle down in Mexico and those who resort to this instrument as a means to carry on traveling toward the United States (Rodríguez Chávez, 2011). In the face of the arrival of two migrant caravans from Central America, in October 2018 (during the administration of Peña Nieto) and January 2020, Mexican authorities expressed the possibility that migrants may stay in Mexico as temporary workers and have promoted refugee status as an option to remain in that region.¹² Within a context of heavy pressures

¹¹ As of 2018, UNHCR provide the applicants with a little income for the first three months, though not every individual access this economic aid. In the city of Tapachula, where almost half of the applications concentrate, such international agency also rents a hotel where families and people in particular vulnerability conditions, such as LGBTQ individuals, are lodged.

¹² In October 2018, the administration of Enrique Peña Nieto fostered the program "You are at home" promoting the insertion of migrant population into temporary employment in Chiapas and Oaxaca, and also the application for the refugee status at COMAR. In

from the US on Mexico to control migration flows, the Mexican government responds trying to retain people in the south of the country with temporary employment programs and making the application at COMAR.

The applicants for the status of refugee who submit their request in a point of entry, or are retained by Mexican authorities before starting the process, have to wait for its substantiation in a migratory station, unless a CSO makes the necessary proceedings to ask for the legal and due transfer to any address and report it to the Mexican migration authorities. As of 2016, the growing number of applicants for the status of refugee can leave the migratory status via a pilot program for “detention alternatives” fostered by UNHCR in collaboration with CSO and shelters. In the context of this program, INM regularly sends the High Commissioner a list of the people who have asked for international protection at a migratory station and have already received their certificate. UNHCR identifies those in vulnerable situation (children, adolescents, pregnant women, LGBTQ+ community,¹³ et cetera), communicates with shelters nearby to find out the spaces available and accordingly reports to INM the name of the people who might receive an alternative to detention in equal number as the spaces available (CEAR, 2018). This program has been successively extended, however the increase in asylum seekers has rendered these spaces insufficient (París Pombo, 2019).

Even if the asylum seekers who are at a migratory station may have their basic needs covered, they have their liberty restricted during the substantiation of their processes and frequently face very precarious conditions (sanitary, abuses, and so on) which have led many people in need of international protection to desist and *voluntarily* accept their repatriation (Human Rights First, 2017).

Withdrawal and abandonment

The applicants’ long waits in detention or in high-vulnerability situations (with no means for survival, lodging, no access to services, etc.) make many of them despair and promote withdrawal. In this sense, COMAR records show that year by year an important percentage of applicants desists via a document in which they express their desire to stop the process, or they drop out of it due to missing the weekly signatures.

Based on data from a transparency request that comprises 90 397 asylum seekers from January 1st, 2018, to October 25th, 2019, Asylum Access México (2020) states that 9 549 applications were dropped, which account for 10.6 percent of the total applications, while the average number of days between applying and dropping out was 149. For their part,

January 2020, a very similar program was boosted, once again, promoting the processing of the request at COMAR (SEGOB, 2018, 2020).

¹³ LGBTQ+ refers to lesbian, gay, bisexual, transexual, transgender, transvestite and intersexual.

532 were withdrawn, which accounts for 0.5 percent of the total requests and with an average time between application and withdrawal of 54 days. The figures above, significant on their own, will be significantly higher, for 70.6 percent of the applicants is still waiting for a resolution.

Another possible explanation for withdrawals and abandonments is the fact that some of the applicants carry out this process with a view to obtaining the documents that enable them to traverse the Mexican territory regularly; thereby, if they receive a VCHR they will drop out of the process to carry on with their journey toward the US.¹⁴ Nevertheless, given the times to receive this sort of documents and its cumbersome processing, it is likely a last resort.

Deficits against the effectiveness of the due process

A key aspect regarding the due process is having legal assistance, though many asylum seekers have to navigate the complex asylum system on their own (Human Rights First, 2017). In spite of the existence of more than a dozen CSO, considered UNHRC partners, that offer legal advice for applicants,¹⁵ the accelerated increase in requests makes it increasingly difficult to provide legal assistance for most of the applicants.

Various organizations have documented processes and resolutions that incorporated a number of violations to the due process such as failure to meet deadlines, interviews on the phone or with no qualified interpreters, dissuasion to use legal assistance by COMAR staff, short notices for appointments, resolutions with information from other cases, resolutions with no studies following the CP patterns, wrongly substantiated juridical resolutions, resolutions that discriminate women and minors, among others (Rea Granados, 2016; Sin Fronteras I. A. P., 2016; Universidad Iberoamericana Ciudad de México *et al.*, 2017).

Recognition of international protection

Early in 2020, only 37 076 out of 130 187 applications in COMAR between 2013 and 2019 had been solved (table 2); in Mexico, more than 20 000 individuals received the status of refugee and more than 5 000, CP. Most of the people with a positive resolution comes from Venezuela (8 779), followed by Honduras (6 198), and El Salvador (4 671); very far are Guatemala (539) and Nicaragua (266). As for CP, distinguishable are

¹⁴ VCHR allows freely moving without the risk of being detained and deported; it enables, according to personal resources, choosing the safest means of transport (Torre Cantalapiedra & Mariscal Nava, 2020).

¹⁵ *Servicio Jesuita a Refugiados* [Jesuit Service for Refugees], Asylum Access, Sin Fronteras I. A. P., Fray Matías de Córdova Human Rights Center, among others.

Honduras (2 457) and El Salvador (2 338). These two Central American countries also receive the majority of negative resolutions (5 113 and 3 195, respectively).

Table 2. Resolutions issued by COMAR
by nationality and according to sort of resolution (total for 2013-2019)*

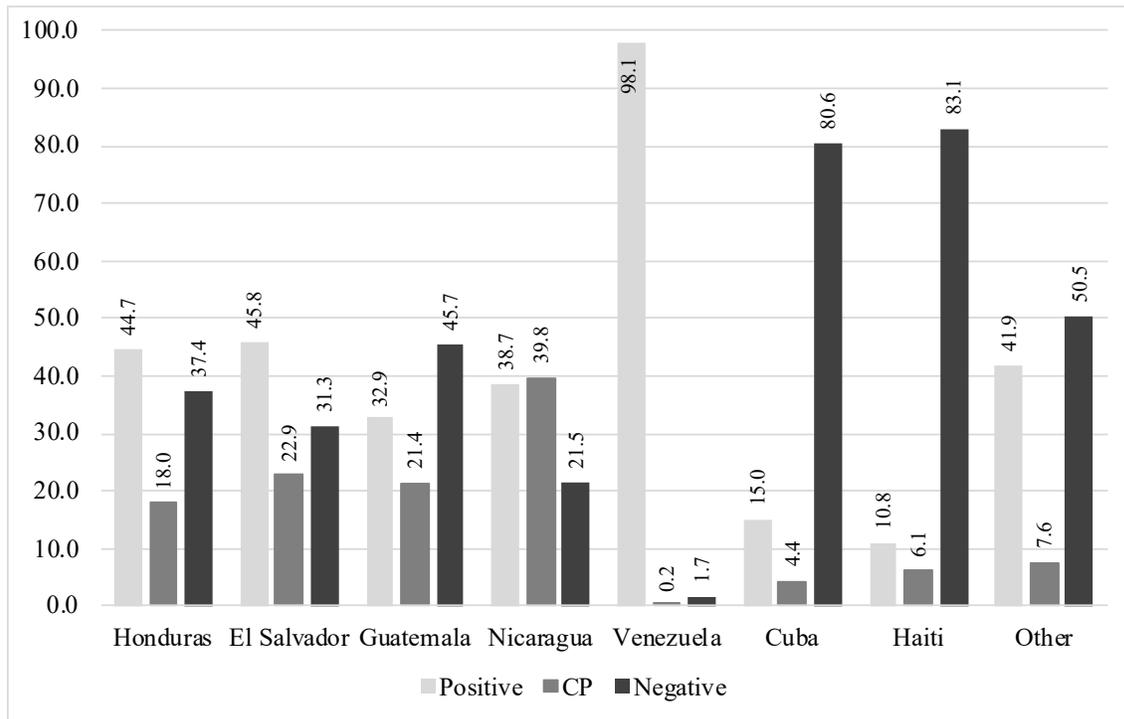
Country	Refugee			Total
	Status	CP	Non recognized	
Honduras	6 108	2 457	5 113	13 678
El Salvador	4 671	2 338	3 195	10 204
Guatemala	539	351	749	1 639
Nicaragua	266	274	148	688
Venezuela	8 779	15	156	8 950
Cuba	131	38	703	872
Haiti	23	13	177	213
Other	349	63	420	832
<i>Total</i>	20 866	5 549	10 661	37 076

* Preliminary data, including all the resolutions issued within 2013-2019.

Source: own elaboration based on data from UPMRIP, COMAR and SEGOB (2019, 2020).

A large part of the explanation for such figures is in the application of different criteria for the various nationalities. As previously pointed out, Venezuelans were included in the broadest definition of 1984 Cartagena Declaration, which has meant that their applications are almost always given the refugee status (98.1%, graph 2). The rest of the countries are applied a more restrictive definition of the 1951 Geneva Convention, which explains the higher rate of negative resolutions. At the other end, the Cubans and Haitians who concluded the process –very few– have very high rates of rejection, in these two cases over 80 percent. As regards Central Americans, they are at an “intermediate” point; as noticed, the percentage of positive resolutions for this population oscillates between 32.9 percent for Nicaraguans and 44.7 for Hondurans. It is worth underscoring that CP becomes greatly relevant in the international protection given to Central American countries. In the case of Nicaraguans, CP was given more often than the refugee status.

Graph 2. Percentage distribution of resolutions issued by COMAR by nationality and according to sort of resolution (total for 2013-2019)



* Preliminary data, including all the resolutions issued within 2013-2019.

Source: own elaboration based on data from UPMRIP, COMAR and SEGOB (2019, 2020).

This differentiated treatment according to national origin cannot be explained only in legal terms, but taking domestic and foreign policy reasons into account. This way, during Peña Nieto’s administration (2012-2018) the figure of refugee was privileged for Venezuelans, at once the Mexican government took part in censorship and sanctions against the government of such country. As regards people from the Caribbean, their transit across Mexico was facilitated by means of departure documents. Conversely, in the case of Central Americans, thus far the policy has been to force them to remain in the south for months or years by means of humanitarian devices, such as refugee camps in the 1980’s or the long processes in COMAR at present, or else with projects for temporary labor insertion in the states of southern Mexico.

CONCLUSIONS

The analysis of some instruments in the Law on Refugees allows noticing that Mexico recognizes a right to asylum that allows continuing with the advance in this regard as of the 1980’s and which adopted additional protection mechanisms such as CP. By contrast, those who need / look for international protection in Mexico face a series of obstacles to receive it, which are mostly due to the action or omission of the Mexican state actors, institutions and actions to manage the flows of migrants and refugees; these are blocks,

dissuasion and immobilization, which follow the logic of contention, make it difficult and frequently prevent the obtaining of international protection:

- 1) Certain policies to control migration flows that stop and block, at once, access to refugee status.
- 2) Those who manage to apply for refugee status experience long waits, which do not comply with the legislation, in detention or in liberty, though in precarious conditions without the right to move freely over the country. This fact and high rejection rates represent a deterrent for many to begin the process or drop it to be deported, settle down or travel irregularly over Mexico (being subject to detention and deportation).
- 3) Many applicants have to face the process with no assistance from an attorney and have to endure other multiple violations to the due process, which affects their possibility of success.

What the Mexican governments have been trying to do –since the passing of the Law on Refugees and up to the present– is resorting to its own institutional dysfunctionality and incapability. In the facts, this means restricting the number of people who receive international protection and somehow stop or slow down the mobility processes that involve those in need of international protection. Even though more than 20 000 people had obtained the refugee status and more than 5 000, CP, during the 2013-2019 period, these figures pale in comparison with the Central American migration phenomenon and the demographic size of Mexico, and show that solidarity in this regard is far from the grandiloquent discourses of the authorities about the generosity of Mexico with alien people and its asylum system.

Another finding of this work points at certain dependence of the Mexican international protection system on the contention of migration flows in transit over the country. The pressures and influence exercised by the US on Mexico to perform contention tasks, and more explicitly after Trump's arrival, seem to even have had an effect on the Mexican asylum system. The way these individuals are immobilized in certain cases and the slow functioning are possibly due to the concern that foreigners will use this juridical instrument to reach American soil. In this sense, future research should thoroughly approach the interconnections between migratory control and international protection policies between Mexico and the US. In like manner, it would be interesting to research how the migrants navigate these and those.

After analyzing the Mexican asylum system, it is evident that the control of mobility is not only exercised by controlling the space and physical and human barriers, but also by managing times. Because of this, it is recommendable that future research on the policies to manage international migrations toward Mexico and in transit on this country retake the growing literature that approaches the migration phenomenon underscoring time.

In recent years the role of Mexico as an asylum country has increased and it is expected that it will continue growing to the extent the United States weakens its asylum system and demands that applicants ask for protection in the transit countries in the first place. Therefore, it is necessary to increase the discussion about the figures that Mexico may receive, the way in which the system that provides international protection works, the way the applicants are treated and integrating those who receive the status of refugee or CP, and also what to do with those who are rejected.

Translation: Luis Cejudo-Espinosa

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