

Protection gaps in Mexico

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With Mexico a major destination – and transit – country for people displaced by violence in the Northern Triangle of Central America, the Mexican government needs urgently to improve its asylum systems and procedures if they are to be fit for purpose.

The Central America-Mexico-United States migration route is one of the largest in the world. According to UNHCR, the UN Refugee Agency, every year some 500,000 people pass through Mexico.¹ For at least a decade, however, there have been clear changes in the composition and characteristics of irregular migratory flows into Mexico, particularly with regard to the causes of displacement in Honduras, El Salvador and, to a lesser extent, Guatemala.

In the 1980s, civil war and repression in countries such as Guatemala and El Salvador triggered displacement both internally and abroad. Some people fled to neighbouring countries but hundreds of thousands went to the United States (US). With the end of

internal conflicts in the region in the 1990s, the flow of Central American refugees came to an end but in its place came large numbers of economic migrants fleeing the poverty that continued to afflict Central American countries, especially the countries of the Northern Triangle (NTCA)² – El Salvador, Guatemala and Honduras. Large-scale natural disasters, such as Hurricane Mitch in 1998 and El Salvador's earthquake in 2001, generated further migration to the US.

In response, Mexico established a Commission for Refugee Assistance (COMAR) in 1980, UNHCR opened an office in Mexico in 1982, and in 1990 Mexico founded a National Commission for Human Rights. The refugee regime was incorporated into Mexican

legislation in 1990, and ten years later Mexico ratified the 1951 Convention Relating to the Status of Refugees. In 2011, Mexico passed a Migration Law and a Law on Refugees and Complementary Protection (a modified version of which became in 2014 the Law on Refugees, Complementary Protection and Political Asylum).

New migration profiles

More recently, the number of people leaving Honduras and El Salvador for purely economic reasons has been declining, while the number of



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The JRS Office in the city of Tapachula in Chiapas, Mexico, provides psychological assistance to a refugee woman, who is holding a worry doll.

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people fleeing violence, organised crime and persecution has been rising. Since 2006, an estimated 150,000 people have been killed in El Salvador, an average of more than 50 homicides per 100,000 inhabitants per year, more than three times Mexico's rate and more than ten times the US average. In 2015, El Salvador recorded a rate of 103 homicides per 100,000 inhabitants, Honduras 57 and Guatemala 30. The percentage of children under 20 years of age among the victims of homicide in El Salvador and Guatemala is higher than anywhere else in the world, and in 2015 Mexican immigration authorities detained almost 35,000 adolescents, almost half of whom were unaccompanied.

In the last four years, asylum applications in Mexico increased from 1,296 in 2013 to 8,788 in 2016, of which 2,872 were granted refugee status or asylum. These numbers are small, however, compared with the number of people fleeing NTCA countries who are intercepted and detained in Mexico. From 2013 to 2016, more than 520,000 people from NTCA countries were arrested, most of whom (517,249) were subsequently deported by the authorities (under the aegis of the National Institute of Migration, INM).³ Of an estimated 51,000 unaccompanied migrant children and adolescents with possible protection needs arriving in Mexico from Central America between 2013 and 2016, only 1.1% applied for asylum and 230 (0.4%) were granted refugee status or complementary protection.

Despite recent improvements in recognition rates and a commitment made at the UN Summit for Refugees and Migrants in 2016 to introduce seven concrete actions in order to provide 'a dignified and humane treatment of migrants and refugees', there continue to be many challenges to providing protection for refugees in Mexico. There is an immediate need to adopt measures to identify those in need of protection, and to provide timely and effective access to refugee status determination procedures including access to justice and in particular to legal defence. Mexico also needs to develop public policies which will be effective in ensuring local integration and the full guarantee of rights for the refugee population.

Refugee identification measures

A fundamental consideration in the formulation of public policies is the socio-demographic profile of those who seek protection. So far, this element has had little or no impact on the actions taken by COMAR or INM to improve on the provision of information on the right to asylum, its scope and access mechanisms.

Those who flee to Mexico from El Salvador, Guatemala and Honduras commonly have low levels of schooling and/or are socio-economically vulnerable, yet information about asylum and how to apply for it is still meagre and provided only grudgingly. There may be reasons for this but keeping back this information ignores the fact that people who require protection tend not to know their right to be recognised as refugees; they are usually less educated, and may even be illiterate, factors that hinder their full understanding of the legal aspects of the situation in which they find themselves. Their relatively low socio-economic status increases their vulnerability and their suffering. Lack of information about their situation is an impediment to identifying – and addressing – their protection needs.

Access to asylum procedures

The migration policies and practices currently implemented by Mexico are one of the main barriers to access to asylum procedures. Measures such as compulsory and systematic detention of persons on the move and the administrative speed with which enforced repatriation is carried out, as well as the lack of resources available to individuals wishing to seek protection from being returned, all interfere with the right to apply for refugee status. In this regard, it is essential to take measures that override the official discourse that people are merely 'in transit' through Mexico. This argument is increasingly questionable and unsustainable. The State must also ensure that returns do not violate the principle of *non-refoulement*. Mexico needs to instigate appropriate training, including guidelines and implementation manuals, in order to ensure that Mexico's migration and asylum practices conform

to international standards – such as, for example, developing and introducing alternatives to detention for asylum seekers.

Access to justice and due process

The Law on Refugees, Complementary Protection and Political Asylum establishes standards of protection and procedures that are clear and adequate. In practice, however, there are administrative and operational barriers that undermine the protection guaranteed by law and the implementation of the right to fair and efficient proceedings – such as, for example, through limiting access to legal assistance for those individuals detained in immigration detention centres. Such barriers obstruct and limit the right to protection as a refugee, which in turn can call into question a State's commitment to providing effective protection for refugees.

In addition to addressing the shortcomings that currently obstruct recognition of refugee status, Mexico must

also introduce effective mechanisms of inter-institutional coordination with the National Institute of Migration to facilitate the process of regularisation once people are recognised as refugees. And, finally, Mexico will need to establish comprehensive programmes to ensure that all members of the refugee population have access to rights such as health and education and to promote their social and economic integration.

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1. UNHCR Fact Sheet. February 2017
<http://bit.ly/UNHCR-Mexico-Feb2017>
2. Also now referred to as Northern Central America.
3. Source: Ministry of the Interior - Migration Policy Unit