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# The Mexican Asylum System in Regional Context

HELEN KERWIN<sup>†</sup>

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## I. INTRODUCTION

This Article examines the functioning and response of Mexico's asylum system to an exponential increase in asylum claims in recent years within the larger countervailing context of an aggressive border enforcement policy, in cooperation with the United States, that limits access to asylum. While scarcity of resources to attend to an ever-growing population of asylum-seekers goes some way toward explaining the existing protection gaps in the system, Mexico's policy of large-scale detention and deportation<sup>1</sup> itself constitutes the greatest barrier to effective access to asylum.

Since the introduction of a new asylum system administered and adjudicated entirely by the Mexican government in 2011, the number of asylum petitions presented annually has skyrocketed by more than 1,000 percent, from 752 in 2011 to 8,788 in 2016;<sup>2</sup> in 2017, asylum

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1. E.g. Jo Tuckman, *Mexico's Migration Crackdown Escalates Dangers for Central Americans*, THE GUARDIAN (Oct. 13, 2015, 8:30 AM), <https://www.theguardian.com/world/2015/oct/13/mexico-central-american-migrants-journey-crackdown>; *Mexico Deporta más Centroamericanos que EU*, EXCELSIOR (June 18, 2015, 2:45 PM), <http://www.excelsior.com.mx/nacional/2015/06/18/1030178>; see *infra* Section II.B.i.

2. Mark Manly (@MarkManly), TWITTER (Aug 23, 2017, 9:48 AM), <https://twitter.com/MarkManly/status/900399250554662912>; Mark Manly (@MarkManly), TWITTER (Sept. 7, 2017, 9:21 AM), <https://twitter.com/MarkManly/status/905828381228498944>. Manly is the current UNHCR Representative in Mexico.

petitions reached a historic high of 14,596, fueling concerns about growing backlogs.<sup>3</sup> This growth in asylum petitions largely responds to worsening conditions in northern Central America (Honduras, El Salvador, and Guatemala)—where violence associated with gangs (*maras*), drug trafficking, and, in lesser measure, state actors, have caused the highest homicide rates in the world for countries not at war<sup>4</sup>—and Venezuela—where a deepening economic and political crisis has made access to food and medicine precarious.<sup>5</sup> Mexico also receives smaller numbers of Cuban and Haitian asylum-seekers, as well as asylum-seekers from outside the American continent.<sup>6</sup> At the same time, increased awareness of the existence of asylum in Mexico has likely led to a greater number of applications year on year.<sup>7</sup>

Given its proximity to northern Central America, Mexico is a

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3. Comisión Nacional de los Derechos Humanos (CNDH), Press Release: *La CNDH hace un llamado urgente al gobierno federal ante el posible colapso del sistema de protección a refugiados en México* [CNDH urgently calls on the federal government given the possible collapse of the refugee protection system in Mexico], CNDH, February 25, 2018, [http://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com\\_2018\\_046.pdf](http://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com_2018_046.pdf).

4. See generally Kirk Semple, *Fleeing Gangs, Central American Families Surge Toward U.S.*, N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/world/americas/fleeing-gangs-central-american-families-surge-toward-us.html>; Emilio González González, *Crisis Humanitaria, Violencia Criminal y Desplazamiento Forzado en el Triángulo Norte de Centroamérica* (*Humanitarian Crisis and Survival Migration in Central America's Northern Triangle*), 2 STAN. INT'L POL'Y REV. 27 (2015); Arrancados de Raíz, U.N. HIGHER COMMISSIONER ON REFUGEES [hereinafter UNHCR] (2014), <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Publicaciones/2014/9828>; *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, UNHCR 6 (2016), <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>; *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, UNHCR (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.

5. Meridith Kohut & Isayen Herrera, *As Venezuela Collapses, Children Are Dying of Hunger*, N.Y. TIMES (Dec. 17, 2017), [https://www.nytimes.com/interactive/2017/12/17/world/americas/venezuela-children-starving.html?\\_r=0](https://www.nytimes.com/interactive/2017/12/17/world/americas/venezuela-children-starving.html?_r=0); Nicholas Casey, *Dying Infants and No Medicine: Inside Venezuela's Failing Hospitals*, N.Y. TIMES (May 15, 2016), <https://www.nytimes.com/2016/05/16/world/americas/dying-infants-and-no-medicine-inside-venezuelas-failing-hospitals.html>; Nicholas Casey, *Venezuelans Ransack Stores as Hunger Grips the Nation*, N.Y. TIMES (June 19, 2016), <https://www.nytimes.com/2016/06/20/world/americas/venezuelans-ransack-stores-as-hunger-stalks-crumbling-nation.html>; see also *Operation Portal: Venezuela Situation*, UNHCR (2018), <https://data2.unhcr.org/en/situations/vensit> (last visited Mar. 24, 2018).

6. Comisión Mexicana de Ayuda a Refugiados (COMAR), *Estadísticas 2013–2017 (4to semestre)* [Statistics 2013–2017 (4th quarter)], SEGOB SECRETARÍA DE GOBERNACIÓN, [https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS\\_2013\\_A\\_4TO\\_TRIMESTRE\\_2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/290340/ESTADISTICAS_2013_A_4TO_TRIMESTRE_2017.pdf) (last visited May 12, 2018).

7. See, e.g., Andrea Villaseñor & Elba Coria, *Protection Gaps in Mexico*, FORCED MIGRATION REV. 6–9 (Oct. 2017).

critical country of asylum for persons fleeing violence in Honduras, El Salvador, and Guatemala. But Mexico's immigration policy in recent years has been better characterized by increased immigration enforcement and a heightened number of detentions and deportations, particularly following the so-called "surge" of unaccompanied Central American children who arrived at the United States' southern border in the summer of 2014 and the contemporaneous introduction of Mexico's Plan Frontera Sur ("Southern Border Plan"), first announced in July 2014.<sup>8</sup> Mexico's aggressive border enforcement has decreased access to the US' southern border—including to ports of entry,<sup>9</sup> where asylum-seekers have the right under international law to seek asylum—and correspondingly lowered detentions and deportations of Central Americans.

The logic of aggressive border enforcement dramatically impacts the availability of asylum to people who need it. This is evident, first, in the disparity between the number of deportations of Central Americans and the number of asylum petitions presented by Central Americans during this period—in 2016, less than six percent of the total number of Central Americans detained by Mexican authorities presented asylum petitions.<sup>10</sup> While no comprehensive studies currently exist on the total number of Central American nationals leaving their countries who may be in need of international protection, UNHCR has indicated that up to half of all Northern Triangle nationals leaving their countries could be in need of international protection.<sup>11</sup> The case of unaccompanied children is especially egregious. One study conducted in 2016 indicates that 58 percent of children leaving Central America may need international protection;<sup>12</sup> however, among the tens of thousands of children detained and deported each year, just 229 unaccompanied children presented asylum petitions in 2016.<sup>13</sup> These

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8. See *infra* Section II.B.i.

9. Caitlin Dickerson & Miriam Jordan, 'No Asylum Here': Some Say U.S. Border Agents Rejected Them, N.Y. TIMES (May 3, 2017), [https://www.nytimes.com/2017/05/03/us/asylum-border-customs.html?\\_r=1&ref=nyt-es&mcid=nyt-es&subid=article](https://www.nytimes.com/2017/05/03/us/asylum-border-customs.html?_r=1&ref=nyt-es&mcid=nyt-es&subid=article).

10. *Boletines Estadísticos*, SEGOB SECRETARÍA DE GOBERNACIÓN (Jan. 31, 2018), [http://www.politicamigratoria.gob.mx/es\\_mx/SEGOB/Boletines\\_Estadisticos](http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos) (according to government statistics, Mexico carried out 147,370 deportations in 2016 and received 8,788 asylum petitions in the same year).

11. James Frederick, *Before Migrants Reach U.S., Mexico Departs Central Americans*, NPR (Aug. 26, 2016, 4:29 PM), <https://www.npr.org/2016/08/26/491531862/before-migrants-reach-u-s-mexico-departs-central-americans>; see also *Children on the Run*, *supra* note 4, at 6; *Women on the Run*, *supra* note 4.

12. *Children on the Run*, *supra* note 4, at 6.

13. This represents a slight increase over 138 petitions presented in 2015, and 55 presented in 2013.

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data indicate serious gaps in access to protection for those who wish to seek it in Mexico.

This article proceeds in three parts: first, it describes Mexico's substantive asylum law and adjudication in theory and in practice, based partially on interviews with Mexican asylum practitioners;<sup>14</sup> second, it analyzes some of the most serious barriers to asylum in Mexico, loosely classified into issues related to resource constraints and issues related to the policy of massive detention and deportation, signaling in particular the concerning situation of unaccompanied children. Finally, it concludes by considering the importance of both ensuring that Mexico's asylum system provides accessible and effective international protection to those who need it and choose to pursue it, while also recognizing the importance of family unity and effective enjoyment of rights for vulnerable groups, and that the asylum system is not itself a mechanism of border control.

## II. LEGAL FRAMEWORK AND THE ADMINISTRATIVE ASYLUM PROCESS

Mexico's substantive law of asylum offers fairly broad protection based on a variety of international and regional sources, and the administrative asylum process administered by the Mexican Refugee Commission ("COMAR," *Comisión Mexicana de Ayuda a Refugiados*) is designed to be efficient. However, in practice, practitioners express concerns about the application of the law and the celerity and fairness of the administrative process. This section of the Article provides basic information about Mexico's asylum law and administrative asylum process, about which there is little information available in English to date, as well as about the practical application of the law and procedure.

### A. *The Substantive Law*

Mexico's refugee law, the Law on Refugees, Complementary Protection, and Political Asylum (*Ley sobre Refugiados, Protección Complementaria y Asilo Político*), was passed in 2011 and updated in 2014.<sup>15</sup> The law incorporates four separate forms of international

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14. Interviews with Representatives from Fray Matías Centro de Derechos Humanos (from Tapachula and Tuxtla Gutierrez, Chiapas), Sin Fronteras (from Mexico City), and Representatives from the Clínica Jurídica de Refugiados "Alaide Foppa" (from the Universidad Iberoamericana in Mexico City). Interviews took place in Austin, Tx. (May 9, 2017).

15. Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.).

protection: 1) Convention asylum, based on the definition in the 1951 Convention Relating to the Status of Refugees;<sup>16</sup> 2) Cartagena asylum, based on the expanded refugee definition set out in the 1984 Cartagena Declaration on Refugees;<sup>17</sup> 3) “complementary protection,” based on the concept of *non-refoulement*;<sup>18</sup> and 4) political asylum, derived from the regional tradition of granting discretionary asylum on political grounds in Latin America.<sup>19</sup> There is no legal difference between

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16. 1951 Convention Relating to the Status of Refugees (Refugee Convention), July 21, 1951, 189 U.N.T.S. 2545; 1967 Protocol Relating to the Status of Refugees (Refugee Protocol), Jan. 31, 1967, 606 U.N.T.S. 8791 (both available at: <http://www.unhcr.org/3b66c2aa10.pdf>); Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art. 13, sec. I, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.); Mexico’s law expands the Convention definition to include gender, defined as “the gender or sexual preferences of the applicant,” as a protected ground. This definition helps to ensure recognition of claims based on sexual and gender-based violence, and claims by LGBTQ asylum-seekers. Reglamento de la Ley Sobre Refugiados y Protección Complementaria (Regulations of the Law on Refugees and Complementary Protection) [RLRPC], art. 4, sec. IV, Diario Oficial de la Federación [DOF] 21-02-2012 (Mex.).

17. Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena Declaration), Nov. 22, 1984, [https://www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf); Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art.13 sec. II, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.). This Declaration created an expanded definition of refugee in light of a massive increase during the 1980s of Central Americans in need of international protection who did not fit the 1951 Convention definition, including those fleeing their countries “because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order,” (Cartagena Declaration) 3, Nov. 22, 1984, [https://www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf).

18. Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art. 28, art. 2, sec. VII, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.); *see also* Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art. 29-31, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.); “Complementary Protection” in Mexican law is similar to Withholding of Removal under the Convention Against Torture (“CAT Withholding”) in US law, granting protection to individuals not recognized as refugees but who require protection in order not to be “returned to the territory of another country where their life would be threatened or where there are reasonable grounds to believe that they would be in danger of being subjected to torture or other cruel, inhuman, or degrading treatment or punishment.” A grant of complementary protection is only considered, but is considered automatically, upon the denial of an asylum claim. Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art. 32, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.).

19. “Protection granted by the Mexican State to a foreigner who it considers is persecuted for political motives or crimes, or for common crimes that are connected to political motives, whose life, liberty, or security is in danger. The protection may be requested by diplomatic or territorial channels.” Ley Sobre Refugiados y Protección Complementaria (Law on Refugees and Complementary Protection), art. 2 sec. I, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.); *see also* *Ficha T. .cnica Sobre el Derecho*

refugees recognized under the 1951 Convention definition and the Cartagena definition in Mexico; all receive the same legal status and legal benefits upon a positive adjudication.<sup>20</sup> The exclusion and cessation grounds included in the 1951 Convention are also incorporated into the Mexican law.<sup>21</sup>

COMAR has not apparently used any part of the Cartagena definition in favor of Central American applicants to date, continuing to find that the violence in the Northern Triangle countries, though pervasive, is not indiscriminate but remains targeted against specific individuals.<sup>22</sup> However, practitioners report that since 2016, COMAR has begun to use the “massive violations of human rights” subsection of the Cartagena Declaration to recognize claims by Venezuelans, citing the lack of access to basic nutrition and medication in that country.<sup>23</sup>

In addition to the Law on Refugees, additional sources of relevant law include the Law’s implementing Regulations (*Reglamento de la Ley sobre Refugiados, Protección Complementaria y Asilo Político*),<sup>24</sup> the Migration Law (*Ley de Migración*)<sup>25</sup> and its implementing Regulations (*Reglamento de la Ley de Migración*),<sup>26</sup> the General Law

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a *Buscar y Recibir Asilo*, UNHCR, 2-3, (Art. 22.7) <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2017/11216> (on the history of political asylum in Latin America).

20. See *Ley Sobre Refugiados y Protección Complementaria* (Law on Refugees, Complementary Protection and Political Asylum), Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.) (creating same legal benefits for all “refugees”).

21. See 1951 Convention, Art. 1(c),(f); *Ley Sobre Refugiados, Protección Complementaria y Asilo Político* (Law on Refugees, Complementary Protection and Political Asylum), arts. 27, art. 34, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.).

22. See also *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, UNHCR 45 (2016), <http://www.refworld.org/docid/56e706e94.html>; *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras*, UNHCR (2016), <http://www.refworld.org/docid/579767434.html>. (Both of these documents consider that the violence in those countries is not indiscriminate).

23. See also Josefina Salomón, *Venezolano Cambiaría Forma en que México Trata a Refugiados* [Venezuelan Man Would Change the Way Mexico Treats Refugees], NEWSWEEK EN ESPAÑOL (Dec. 21, 2017), <https://newsweekespanol.com/2017/12/venezolano-cambiar-forma-en-que-mexico-trata-refugiados/>.

24. *Reglamento de la Ley Sobre Refugiados y Protección Complementaria* (Regulations of the Law on Refugees and Complementary Protection) [RLRPC], Diario Oficial de la Federación [DOF] 21-02-2012 (Mex.).

25. *Ley de Migración* (Migration Law) [LM], Diario Oficial de la Federación [DOF] 25-05-2011, últimas reformas DOF 21-04-2016 (Mex.).

26. *Reglamento de la Ley de Migración*, Diario Oficial de la Federación (Regulations of the Law on Migration) [DOF] 28-09-2012, últimas reformas DOF 23-05-2014. (Mex.).

on Children's Rights (*Ley General de los Derechos las Niñas, Niños y Adolescentes*, LGDNNA)<sup>27</sup> and its implementing Regulations (*Reglamento de la LGDNNA*).<sup>28</sup> Because Mexico has accepted the jurisdiction of the Inter-American Court of Human Rights and, since its 2011 constitutional reform, incorporated international human rights law into its internal law, Inter-American legal precedents on asylum are also an important source of law.<sup>29</sup>

Mexico's Law on Migration (*Ley de Migración*) also creates a visa for "visitors for humanitarian reasons" ("visitante por razones humanitarias"), available according to the terms of the law to migrants who have been the victim or witness of a crime in Mexico and report the crime to the police; asylum-seekers; and unaccompanied children.<sup>30</sup> The visa is valid for one year, or for the duration of the asylum proceedings, and does not create a path to permanent residency.<sup>31</sup> By law, holders of humanitarian visas are authorized to work, but practitioners indicate that the ID cards granted to visa holders do not indicate actual work authorization and do not contain a *clave única de registro de población* (CURP, like a Social Security number), both of which make practical access to legal work difficult or impossible in

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27. *Ley General de los Derechos las Niñas, Niños y Adolescentes*, [LGDNNA], Diario Oficial de la Federación [DOF] 04-12-2014 (Mex.).

28. *Reglamento de La Ley General De Los Derechos De Niños, Niñas, y Adolescents* [RGDNNA] Diario Oficial de la Federación, 02-12-2015 (Mex.).

29. Key Inter-American Court decisions regarding asylum include: *Familia Pacheco Tineo v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272 (Nov. 13, 2013); and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion 21/14, Inter-Am. Ct. H.R. (ser. 21) (Aug. 19, 2014). The Inter-American Commission's report, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System* (2015), <http://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>, compiles other relevant cases and standards of the Inter-American Commission and Inter-American Court. An interesting new development in the area of Inter-American jurisprudence on asylum are the precautionary measures granted by the Inter-American Commission in 2016 in the cases of *E.S.G. and A.E.S.G. v. US*, Precautionary Measure No. 297-15, Inter-Am. Comm'n H.R., Resolution 30/2016, (May 11, 2016), and *D.S. v. U.S.*, Precautionary Measure No. 152-16, Inter-Am. Comm'n H.R., Resolution 21/2016, (April 9, 2016) (involving Salvadoran claimants alleging serious due process violations in expedited removal proceedings).

The reports: *Refugees and Migrants in the United States: Families and Unaccompanied Children*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [IACHR] (June 24, 2015), <http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>; and *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [IACHR] (Dec. 30, 2013), <http://www.oas.org/en/iachr/migrants/docs/pdf/report-migrants-mexico-2013.pdf> also contain useful Inter-American legal standards and analysis.

30. *Ley de Migración* (Migration Law) [LM], art. 52 sec. V, Diario Oficial de la Federación [DOF] 25-05-2011, últimas reformas DOF 21-04-2016 (Mex.).

31. *Id.*

practice.<sup>32</sup>

### *B. The Administrative Asylum Process*

Asylum applications are handled by the Mexican Refugee Commission (“COMAR”)<sup>33</sup> in a purely administrative (non-adversarial) process.<sup>34</sup> By statute, the process lasts 45 business days (about three months), with up to ten additional business days (two weeks) to analyze the possibility of granting complementary protection after a denial of asylum;<sup>35</sup> however, wait times continue to increase given the growing number of asylum claims and limited institutional capacity to process them, and many claims were even indefinitely suspended following the September 2017 earthquake that affected Mexico City.<sup>36</sup> The process includes one merits interview toward the end of the 45 day period; these interviews generally last about two hours, and asylum-seekers are permitted to have a lawyer present (though the lawyer is not always permitted to speak), as well as in some cases a psychologist.<sup>37</sup>

By law, asylum-seekers must present themselves before any COMAR office or National Migration Institute (“INM”)<sup>38</sup> delegation in the country to request asylum within 30 business days of their entry

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32. Interview with lawyer from Sin Fronteras, *supra* note 14. See also, e.g., Mark Manly, (@MarkManly), TWITTER (Sept. 6, 2017, 6:10 PM) <https://twitter.com/MarkManly/status/905599203681812481>.

33. Both COMAR and INM are located within the Ministry of the Interior (Secretaría de Gobernación, SEGOB). COMAR has existed since the 1980s, though prior to the 2011 law reform its role was largely focused on the provision of humanitarian aid. For decades, UNHCR performed refugee status determination in Mexico by mandate; COMAR began adjudicating refugee claims in collaboration with UNHCR in 2003, and assumed complete control over the adjudication of refugee claims in 2011, after the Refugee Law was passed. Relevant legal norms governing COMAR’s work can be found at: *Marco Normativo en Materia de Refugiados*, COMISIÓN MEXICANA DE AYUDA REFUGIADOS (Mar. 9, 2016), <http://www.gob.mx/comar/documentos/marco-juridico-en-materia-de-refugiados>.

34. There is no adversarial asylum process analogous to defensive asylum proceedings before an Immigration Judge in the US; all asylum claims are handled administratively in the first instance by COMAR’s asylum officers.

35. Reglamento de la Ley de Migración, Art. 45, Diario Oficial de la Federación [DOF] 28-09-2012, últimas reformas DOF 23-05-2014. (Mex.).

36. Comisión Nacional de los Derechos Humanos (CNDH), Press Release: *La CNDH hace un llamado urgente al gobierno federal ante el posible colapso del sistema de protección a refugiados en México* [CNDH urgently calls on the federal government given the possible collapse of the refugee protection system in Mexico], CNDH, February 25, 2018, [http://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com\\_2018\\_046.pdf](http://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com_2018_046.pdf).

37. Interview with Representatives from Fray Matías Centro de Derechos Humanos, Sin Fronteras, Clínica Jurídica de Refugiados “Alaíde Foppa,” *supra* note 14.

38. INM is responsible for immigration enforcement in Mexico, performing functions analogous to Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) in the US.

into the country.<sup>39</sup> COMAR offices currently exist only in Mexico City; Tapachula, Chiapas; and Acayucan, Veracruz.<sup>40</sup> INM delegations exist throughout the country.<sup>41</sup> Any person in immigration detention (*estación migratoria*, EM) may request asylum before the INM officers present there; nonetheless, a number of problems inside the centers impede migrants from requesting asylum in detention.<sup>42</sup> While many asylum-seekers remain detained for the duration of the adjudication of their asylum claim, alternatives to detention are sometimes granted to asylum-seekers.<sup>43</sup>

All asylum-seekers whose claims are denied by COMAR are entitled to an administrative review of the decision by the same agency through a *recurso de revisión*.<sup>44</sup> Essentially, upon filing the *recurso de revisión*, the 45-business-day clock is restarted, and the decision is reviewed.<sup>45</sup> However, this review generally examines only the legality of the process (without re-assessing the merits of the claim); practitioners advise that they generally pursue *recursos de revisión* only when there are extremely evident problems with the first-instance decision, such as incorrect names or material facts in the decision.<sup>46</sup> Further appeals after a negative decision may be pursued via a *juicio de nulidad*, a legal proceeding in which the asylum-seeker petitions to have COMAR's previous order vacated ("nullified") and substituted with a favorable decision, before the *Tribunal Federal de Justicia Administrativa* ("TFJA"), an administrative law tribunal.<sup>47</sup> Historically

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39. Ley de Migración (Migration Law) [LM], art. 18, Diario Oficial de la Federación [DOF] 25-05-2011, últimas reformas DOF 21-04-2016 (Mex.).

40. *Oficinas y delegaciones de la COMAR*, COMISIÓN MEXICANA DE AYUDA A REFUGIADOS, last visited May 12, 2018, <http://www.comar.gob.mx/en/COMAR/Oficinas>.

41. *Horario y Oficinas del INM*, INSTITUTO NACIONAL DE MIGRACIÓN (June 14, 2016), <https://www.gob.mx/inm/acciones-y-programas/horario-y-oficinas-del-inm>.

42. See *infra* Section II.B.ii.

43. *Id.*

44. Ley de Migración (Migration Law) [LM], art. 25, Diario Oficial de la Federación [DOF] 25-05-2011, últimas reformas DOF 21-04-2016 (Mex.).

45. *Id.*

46. Interview with Representatives from Sin Fronteras and Clínica Jurídica de Refugiados "Alaíde Foppa," *supra* note 14.

47. *Id.*; see also Article 83 of the Federal Law on Administrative Procedure: "A judicial review or, when appropriate, a judicial trial corresponds against the acts and resolutions of administrative authorities that finalized the administrative procedure". Ley Federal de Procedimiento Administrativo (Federal Administrative Procedure Law) [LFPA], Art. 83, Diario Oficial de la Federación [DOF] 08-04-1994, últimos reformas DOF 19-04-2000, 30-05-2000 (Mex.); Ley Sobre Refugiados, Protección Complementaria y Asilo Político, arts. 25, 39, and 47, Diario Oficial de la Federación [DOF], 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.); Reglamento de la Ley Sobre Refugiados y Protección Complementaria (Regulation of the Law on Refugees and Complementary Protections) [RLRPC], arts. 45, 55, 59, & 60, Diario Oficial de la Federación [DOF], 21-02-2012 (Mex.); Ley Federal del

a tax court, the tribunal has been the subject of criticisms by practitioners that its magistrates and staff are not familiar with human rights law or especially well-equipped or trained to adjudicate refugee cases.<sup>48</sup> There are an increasing number of TFJA precedents on refugee law that COMAR is bound to follow; these precedents could be overruled by future precedents from the *Poder Judicial* (the judicial branch).

Asylum-seekers may also seek judicial protection via a *recurso de amparo*, a constitutional claim brought when human rights have been violated.<sup>49</sup> Asylum-seekers may seek an *amparo* before the courts at any point to allege human rights violations in the asylum process (e.g. in the context of detention). For example, one court recently ruled in an (non-precedential) *amparo* proceeding that detention of asylum-seekers is exceptional, and liberty should be the rule.<sup>50</sup> To date, there is no binding precedent on refugee law from the judicial power.<sup>51</sup>

Asylum-seekers and migrants can also present complaints to Mexico's National Human Rights Commission ("CNDH") about any human rights violation they suffer in Mexico (including for example immigration detention conditions, due process violations in the asylum process, children's rights violations, and so on).<sup>52</sup> The CNDH does not have any formal role in the asylum adjudication process, and so cannot review or revise decisions in individual cases, but its recommendations can change policies and practices within relevant institutions, including COMAR and INM.<sup>53</sup> CNDH complaints are also useful as an

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Procedimiento Contencioso Administrativo (Federal Law of Administrative Disputes Procedures) [LFPCA], Art. 2, Diario Oficial de la Federación [DOF] 01-12-2005, últimas reformas DOF 27-01-2017 (Mex.).

48. Jorge Ríos, *Un "Tribunal de Asilo" para México*, SINEMBARGO (June 7, 2016), <http://www.sinembargo.mx/07-07-2016/3063642>; *Evolución y Retos del Asilo en M. . . xico*, SIN FRONTERAS I.A.P., 55 (2016), [http://sinfronteras.org.mx/wp-content/uploads/2017/06/InformeAsilo\\_2016\\_WEB\\_02.pdf](http://sinfronteras.org.mx/wp-content/uploads/2017/06/InformeAsilo_2016_WEB_02.pdf).

49. Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos (Constitutional Protection Law, Regulating Articles 103 and 107 of the Political Constitution of the Mexican United States) [LARACPEUM], art. 1, Diario Oficial de la Federación [DOF] 10-01-2011, últimas reforma DOF 06-17-2016 (Mex.).

50. *See En principio, solicitantes de asilo no podrán ser privados de libertad, fallo histórico del Poder Judicial en México [¡Conoce la sentencia!]*, IJPP/CJR "Alaide Foppa," (May 5, 2017), <http://ijpp.mx/images/IJPP-comunicado-PJF-fallo-historico-2017.pdf>.

51. Interview with Representatives from Sin Fronteras, *supra* note 14.

52. *Id.*; *see also Quinta Visitaduría General*, COMISIÓN DE LOS DERECHOS HUMANOS, last visited May 12, 2018, <http://www.cndh.org.mx/Estructura> (information under "Quinta Visitaduría").

53. For example, the CNDH recently declared irregularities in COMAR's adjudication practices and INM's detention practices. *Recomendación de CNDH Reconoce que COMAR e INM Violan Derechos Humanos de Solicitantes de Asilo* [CNDH recommendation recognizes

information-gathering mechanism.<sup>54</sup>

### III. CURRENT CHALLENGES FOR MEXICO'S ASYLUM SYSTEM

#### *A. Growing Numbers of Asylum-Seekers Strain COMAR and Civil Society Capacity*

The number of asylum claims presented each year in Mexico has skyrocketed since 2011.<sup>55</sup> While the makeup of asylum applications has been fairly constant in recent years, with Honduras consistently in first place and El Salvador in second or third, in 2017, the number of Venezuelan asylum claimants increased significantly.<sup>56</sup>

While these growing numbers likely reflect a growth in the absolute number of persons in need of international protection fleeing Central America, they also undoubtedly indicate an increased knowledge of and access to the asylum system in Mexico, driven by increased outreach efforts by governmental, international, and civil society agencies, and word of mouth. A growth in asylum claims of more than 1000 percent in six years has, unsurprisingly, put serious strain on existing systems for aid and attention to migrants. The following sections examine some of the administrative strains being put on this system.

#### 1. COMAR

Undoubtedly the most serious barrier to the effective adjudication of asylum claims in Mexico is COMAR's extremely limited staff and its limited geographic reach. Until late 2016, there were fewer than 20 COMAR officials in the country; there are now reportedly between 30 and 40 officials who hear and decide cases.<sup>57</sup> The statutory 45-day

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that COMAR and INM violate the human rights of asylum-seekers], CMDPDH (Oct. 20, 2017), <http://cmdpdh.org/2017/10/recomendacion-cndh-reconoce-comar-e-inm-violan-derechos-humanos-solicitantes-asilo/>.

54. Interview with Representatives from Sin Fronteras and Clínica Jurídica de Refugiados "Alaide Foppa," *supra* note 14.

55. *See supra* notes 2, 3 and accompanying text; Kevin Lui, *Mexico's Asylum Application Numbers Are Up by 150% Since the U.S. Election*, TIME (Apr. 19, 2017), <http://time.com/4745785/mexico-asylum-applications-trump-election/>.

56. Mark Manly, (@MarkManly), TWITTER (Sept. 7, 2017, 9:21 AM), <https://twitter.com/MarkManly/status/905828381228498944>.

57. Interview with Representatives from Sin Fronteras, Clínica Jurídica de Refugiados "Alaide Foppa," and Fray Matías Centro de Derechos Humanos, *supra* note 14; *see also* Luis Alfredo Arriola Vega, *Policy Adrift: Mexico's Southern Border Program*, JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY, 4 (June 2017), <https://www.bakerinstitute.org/media/files/files/fa7ac127/MEX-pub-FronteraSur->

period for adjudication is being extended (usually for an additional forty-five days) due to the high numbers of petitions with increasing frequency, reportedly often without advising asylum-seekers—and since the October 2017 earthquake that affected Mexico City, wait times are reportedly even longer.<sup>58</sup> Staff turnover is reported to be very high, making training a constant challenge.<sup>59</sup>

In this context, practitioners report that decisions by COMAR often demonstrate a lack of legal analysis and reasoning.<sup>60</sup> This is likely a result both of limited training and limited time to spend on cases. Another serious procedural flaw identified by practitioners is that COMAR generally interviews only the person designated as the principal applicant on the petition (usually the male head of household), which is both *machista* and can lead to negative case outcomes when other family members, including wives and adolescent children, have relevant information about the claim but are not given the opportunity to communicate it to adjudicators. Additionally, merits interviews are recorded, but practitioners report that it is more common for COMAR officials to review and use the interview notes (which are not a transcript) for their written decision.<sup>61</sup> Practitioners report that COMAR is regularly performing interviews just a few days before the 45-day window for adjudication runs out, raising concerns that COMAR is writing its decisions largely on the basis of the intake forms, rather than on the interviews.<sup>62</sup> Taken together, these issues present serious concerns about the consistency and fairness of the COMAR adjudication process.<sup>63</sup>

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062317.pdf.

58. Diana Higareda, *México deja a refugiados en el limbo*, EL UNIVERSAL (Apr. 2, 2018), <http://www.eluniversal.com.mx/nacion/sociedad/mexico-deja-refugiados-en-el-limbo>.

59. Interview with Representatives from Fray Matías Centro de Derechos Humanos, Sin Fronteras, Clínica Jurídica de Refugiados “Alaide Foppa,” *supra* note 14.

60. *Id.*; see also *Informe Preliminar: La interpretación y aplicación del derecho internacional y nacional de los refugiados en México: Análisis de las resoluciones de primera instancia de la Comisión Mexicana de Ayuda a Refugiados*, COMISIÓN MEXICANA DE AYUDA A REFUGIADOS (2017), <http://192.203.177.41/sites/all/themes/ibero/descargables/ibero/pdh/resumen-ejecutivo-informe-asilo.pdf>.

61. Interview with Representatives from Clínica Jurídica de Refugiados “Alaide Foppa,” Fray Matías Centro de Derechos Humanos, and Sin Fronteras, *supra* note 14.

62. *Id.*

63. The phenomenon of disparities in asylum adjudication is an issue that would also benefit from further comparative research among countries in the future, in the areas of both procedural due process and substantive guarantees of protection. See, e.g., JAYA RAMI-NOGALES, ANDREW I. SCHOENHOLTZ, & PHILIP G. SCHRAG, *REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM* (2009); REBECCA HAMLIN, *LET ME BE A REFUGEE: ADMINISTRATIVE JUSTICE AND THE POLITICS OF ASYLUM IN THE UNITED STATES*,

Because COMAR has brick-and-mortar delegations only in Mexico City, Tapachula, and Acayucan, asylum claims presented in other parts of the country may be adjudicated by the Mexico City office, or by mobile field units.<sup>64</sup> These geographic limitations mean that asylum interviews often take place in general immigration facilities rather than in dedicated asylum offices. They also often take place by telephone under inadequate conditions, including a lack of privacy, though advocacy by practitioners is beginning to change the practice of telephone interviews.<sup>65</sup>

## 2. Civil Society

The increase in asylum-seekers in Mexico has also placed corresponding burdens on civil society actors, including migrant shelters, lawyers, social workers, psychotherapists, food banks, and other providers of humanitarian aid, among others.

The migrant shelter network in Mexico continues to adjust to provide services to asylum-seekers during multi-month stays, rather than to migrant workers during overnight stays, with substantial financial and logistical support from UNHCR.<sup>66</sup> These shelters provide an important point of civil society contact with migrants in Mexico, providing humanitarian aid and information about access to asylum, as well as a point of contact to gather demographic and qualitative data about the situation of irregular migrants in Mexico.<sup>67</sup>

The few NGOs that provide legal representation to asylum-seekers are similarly strained by the growing demand for their services.

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CANADA, AND AUSTRALIA (2014).

64. *Oficinas y Delegaciones de la COMAR*, *supra* note 40.

65. Interview with Representatives from Fray Matías Centro de Derechos Humanos, Clínica Jurídica de Refugiados “Alaide Foppa,” *supra* note 14.

66. Alejandro Olayo-Méndez, *La 72: An Oasis Along the Migration Routes in Mexico*, 56 FORCED MIGRATION REV. 10, 10–11 (2017); Víctor Hugo Gutierrez Albertos, *La 72 Como Espacio Intercultural de Emancipación y Resistencia Trans en la Frontera sur de México*, XII No. 2 PENÍNSULA 69, 80 (2017); *Mexican Shelter Provides Safe Space for Central Americans*, UNHCR (Oct. 17, 2017), <http://www.unhcr.org/en-us/news/latest/2017/10/59e085fb4/mexican-shelter-provides-safe-space-central-americans.html>.

67. See, e.g., REDODEM (Red de Documentación de las Organizaciones Defensoras de Migrantes), MIGRACIÓN EN TRÁNSITO: ROSTRO DE UNA CRISIS HUMANITARIA INTERNACIONAL (2016), [https://www.entreculturas.org/sites/default/files/informe\\_redodem.pdf](https://www.entreculturas.org/sites/default/files/informe_redodem.pdf) (report on the situation of irregular migrants in Mexico based on data gathered by a network of migrant shelters across Mexico); CNDH, LOS DESAFÍOS DE LA MIGRACIÓN Y LOS ALBERGUES COMO OASIS: ENCUESTA NACIONAL DE PERSONAS MIGRANTES EN TRÁNSITO POR MÉXICO (2017), <http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/Informe-Especial-Desafios-migracion.pdf>.

Lawyers additionally report barriers to performing their jobs, including limitations on the scope of representation permitted by COMAR.<sup>68</sup> The availability of psychological services for asylum-seekers and refugees, particularly outside of Mexico City, is similarly limited.<sup>69</sup>

Asylum-seekers often face serious barriers to making ends meet and integrating into Mexican society.<sup>70</sup> Humanitarian assistance and other assistance to asylum-seekers remains limited, and perhaps the most common complaint among asylum-seekers is that it is difficult in practice to find legal work.<sup>71</sup> First, because their legal work authorization is difficult to prove and access, and second, because the lived experience of being an asylum-seeker in Mexico is one of waiting in endless queues: to check in weekly with COMAR and/or INM, and to obtain humanitarian aid, medical care, and food.<sup>72</sup> These realities severely limit the options for stable work.<sup>73</sup> Difficulty finding work, or well-paid work, makes conditions of life difficult for asylum-seekers.<sup>74</sup>

#### *B. The Larger Context of Aggressive Border Enforcement Limits Access to Asylum*

Notwithstanding the serious challenges to accessing asylum in Mexico generated by the context of scarce resources described above, access is much more severely limited by Mexico's wider immigration policy of large-scale detention and deportation. This limits migrants' access to information about asylum as well as access to the proceeding itself, disincentivizes migrants from beginning or completing the process, including due to intolerable detention conditions, and

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68. Interview with Representatives from Fray Matías Centro de Derechos Humanos, Clínica Jurídica de Refugiados "Alaíde Foppa," and Sin Fronteras, *supra* note 14.

69. *Id.*; see also Comisión Interamericana de Derechos Humanos, *México: Solicitantes de Asilo y Refugiados*, YOUTUBE (Mar. 17, 2017), [https://www.youtube.com/watch?v=i8eQaP89u\\_c](https://www.youtube.com/watch?v=i8eQaP89u_c); Inter-American Commission on Human Rights (IACHR), *Report on the 161st Session of the IACHR* (Mar. 22, 2017), [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/035A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/035A.asp) (giving brief summary in English of "Mexico: Solicitantes de asilo y refugiados"); *Situación de los Derechos Humanos de las Personas Solicitantes de Asilo y Refugiadas en México*, 20–26 (Mar. 17, 2017) [http://sinfronteras.org.mx/wp-content/uploads/2017/03/InformeAuienciaCIDH\\_-17\\_Marzo.pdf](http://sinfronteras.org.mx/wp-content/uploads/2017/03/InformeAuienciaCIDH_-17_Marzo.pdf) (report from above-referenced hearing).

70. Interview with Representatives from Fray Matías Centro de Derechos Humanos, Clínica Jurídica de Refugiados "Alaíde Foppa," and Sin Fronteras, *supra* note 14; see also Diana Higareda, *México deja a refugiados en limbo*, EL UNIVERSAL (Apr. 2, 2018), <http://www.eluniversal.com.mx/nacion/sociedad/mexico-deja-refugiados-en-el-limbo>.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

particularly harms unaccompanied children.

### 1. Plan Frontera Sur and U.S.-Mexico Border Enforcement Cooperation

Mexico's growing asylum system exists within a larger policy context of mass immigration detention, and deportation, carried out largely for the benefit of the United States.<sup>75</sup> The United States has specifically cooperated with and given money to Mexico for border enforcement at least since 2008, within the framework of the Mérida Initiative.<sup>76</sup> Since July 2014, when the so-called "Plan Frontera Sur" ("Southern Border Plan") was first publicly announced,<sup>77</sup> Mexico has substantially increased immigration enforcement across the country, particularly in the southern states.<sup>78</sup> The announcement of the Plan Frontera Sur coincided virtually exactly with the peak of the "surge" of unaccompanied Central American children arriving on the U.S.'s southern border, which provoked heavy media coverage and public concern that the children presented a grave threat to U.S. border security and an unsustainable burden on its immigration system.<sup>79</sup> The Plan Frontera Sur was created to address migration, security, and border enforcement issues, though it has been criticized as "disjointed" and incomplete policy.<sup>80</sup>

While Mexico's southern border with Guatemala—the vast majority of which is composed of the shallow Suchiate River and the Petén rainforest—has traditionally been described with adjectives like

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75. Arriola Vega, *supra* note 57.

76. *Id.* at 6.

77. CHRISTOPHER WILSON & PEDRO VALENZUELA, WILSON CENTER MEXICO'S SOUTHERN BORDER STRATEGY: PROGRAMA FRONTERA SUR (2014).

78. Alejandra Castillo, *The Mexican Government's Frontera Sur Program: An Inconsistent Immigration Policy*, COUNCIL ON HEMISPHERIC AFFAIRS (OCT. 25, 2016), <http://www.coha.org/wp-content/uploads/2016/10/The-Mexican-Government%E2%80%99s-Frontera-Sur-Program-An-Inconsistent-Immigration-Policy.pdf>.

79. Some academics and practitioners have questioned whether this event in fact constituted a "crisis," given that the numbers of women and children who arrived on the U.S.'s southern border that summer constituted neither a historic high in immigration nor an increase in arrivals to the U.S. out of line with recent trends in migration. *See, e.g.*, Arriola Vega, *supra* note 57; Karen Musalo & Eunice Lee, *Seeking a Rational Response to a Regional Refugee Crisis: Lessons from the Summer 2014 "Surge" of Central American Women and Children at the US-Mexico Border*, 5 J. ON MIGRATION AND HUM. SECURITY 137 (2017); William C. Gruben, & Tony Payan, *"Illegal" Immigration on the U.S.-Mexico Border: Is it Really a Crisis?*, BAKER INSTITUTE FOR PUBLIC POLICY (Oct. 17, 2014, 5:46 PM), <https://www.bakerinstitute.org/research/illegal-immigration-usmexico-border-it-really-crisis/>.

80. Arriola Vega, *supra* note 57.

“porous”<sup>81</sup> (not to say, to a large extent, nonexistent), Plan Frontera Sur has concentrated immigration enforcement operations particularly in southern states like Chiapas, Tabasco, Oaxaca, and Veracruz—sometimes described as a policy of “pushing the U.S. border south” or creating a new “vertical border”<sup>82</sup> within Mexico. This increased border enforcement, with the collaboration and financing of the U.S. government largely via Mérida Initiative funds,<sup>83</sup> has quickly turned Mexico into the country that deports the greatest number of Central Americans; the uptick of deportations from Mexico in recent years corresponds quite closely with a decrease in deportations from the U.S. (see Figure 1). Recently, the Trump Administration has proposed taking border externalization a step further by designating Mexico as a so-called “Safe Third Country,” which could prevent tens of thousands of Central American and other asylum-seekers who reach the U.S. via Mexico from effectively accessing asylum in the U.S. if it is determined that they could have requested asylum in Mexico.<sup>84</sup> It has also contributed to a fragmentation of migrant routes through southern Mexico away from the traditional train routes, taking migrants further from the established network of shelters and exposing them to danger at the hands of human traffickers and criminal groups.<sup>85</sup>

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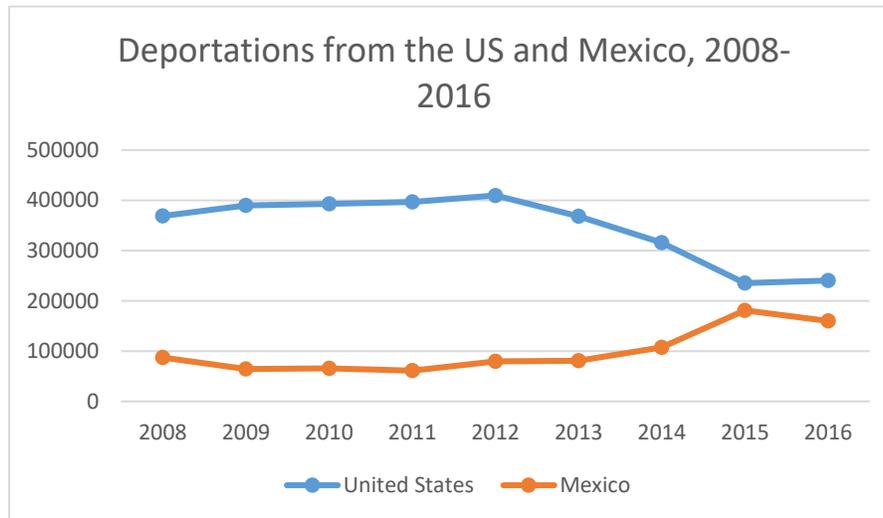
81. CLARE RIBANDO SEELKE & KRISTIN FINKLEA, CONG. RESEARCH SERV., RL41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND, 21 (2017).

82. Cf. José Carlos Yee Quintero & Eduardo Torre Cantalapiedra, *Lidiando con la Frontera Vertical: Estrategias Migratorias de los Hondureños en Tránsito por México [Dealing with the vertical border: migration strategies of Hondurans in transit through Mexico]*, 47 REMHU - REV. INTERDISCIP. MOBIL. HUM. 97, 99–100 (2016).

83. SEELKE & FINKLEA, *supra* note 81; Arriola Vega, *supra* note 57, at 6. While the full extent and nature of cooperation in this area is not publicly known, reports indicate that the U.S. additionally provides other kinds of technical assistance and equipment to Mexican authorities as well. ADAM ISACSON, MAUREEN MEYER, & HANNAH SMITH, *Increased Enforcement at Mexico’s Southern Border: An Update on Security, Migration, and U.S. Assistance*, WASHINGTON OFFICE ON LATIN AMERICA (WOLA), 2 (2015) [https://www.wola.org/files/WOLA\\_Increased\\_Enforcement\\_at\\_Mexico’s\\_Southern\\_Border\\_Nov2015.pdf](https://www.wola.org/files/WOLA_Increased_Enforcement_at_Mexico’s_Southern_Border_Nov2015.pdf).

84. HUM. RTS. FIRST, DANGEROUS TERRITORY: MEXICO STILL NOT SAFE FOR REFUGEES, 1 (2017).

85. WASHINGTON OFFICE ON LATIN AMERICA, *Migration through Mexico: A Humanitarian Emergency* (2016), <https://www.wola.org/analysis/migration-through-mexico-a-humanitarian-emergency/>.

FIGURE 1<sup>86</sup>

The growth in deportations from Mexico in recent years has been enormous, and almost entirely targeted toward the detention and deportation of nationals of Guatemala, Honduras, or El Salvador (“Northern Triangle nationals”).<sup>87</sup> Whereas in 2013, Mexico detained a total of 86,298 individuals and deported 80,902, by 2015 that number peaked at 198,141 detentions and 181,163 deportations—of which 177,949 detentions (89.8 percent) and 175,136 deportations (96.7 percent) were of Northern Triangle nationals.<sup>88</sup> In 2016, Mexico detained 186,216 and deported 159,872 foreigners, of which 150,035 (80.6 percent) and 149,540 (93.5 percent), respectively, were Northern Triangle nationals.<sup>89</sup>

## 2. INM Detention and Deportation Practices

The principal agency in charge of administering Mexico’s “deportation machine” is the Instituto Nacional de Migración (INM,

86. Department of Homeland Security (DHS) and Secretaría de Gobernación (SEGOB) statistics.

87. See RODRIGO DOMINGUEZ VILLEGAS & VICTORIA RIETIG, MIGRATION POLICY INSTITUTE, MIGRANTS DEPORTED FROM THE UNITED STATES AND MEXICO TO THE NORTHERN TRIANGLE, A STATISTICAL AND SOCIOECONOMIC PROFILE, 1 (2015) (“Together, the United States and Mexico have apprehended almost 1 million people who originated from the Northern Triangle of Central America in the past five years, and have deported more than 800,000 of them”).

88. UNIDAD DE POLÍTICA MIGRATORIA, BOLETÍN MENSUAL DE ESTADÍSTICAS MIGRATORIAS 2017 (2017).

89. *Id.*

National Migration Institute), which carries out the mass detention and deportation of migrants.<sup>90</sup> As an organ of the State, INM is obligated to act to guarantee the State's obligation of non-refoulement by identifying, referring, and, in every case, avoiding the deportation of individuals who may need international protection.<sup>91</sup> However, practitioners, asylum-seekers, and international human rights organizations regularly report that INM creates barriers to accessing the asylum system and sometimes fails to guarantee access even to those who expressly state their desire to seek asylum.<sup>92</sup> Indeed, a recent survey by Amnesty International found that as many as 40 percent of respondents who had been detained by INM gave "solid indications" of having been returned to their home countries despite evidence of a need for international protection, in likely violation of international law.<sup>93</sup>

Asylum-seekers may request asylum before COMAR or INM. While COMAR offices currently exist only in Mexico City; Tapachula, Chiapas; and Acayucan, Veracruz, INM delegations exist throughout the country; the vast majority of potential asylum-seekers are thus more likely to first come into contact with INM than with COMAR. Nonetheless, INM officials and asylum-seekers alike see these delegations as primarily involved in immigration enforcement procedures, including detention and deportation, rather than processing of refugee claims.<sup>94</sup> While any person in immigration detention (*estación migratoria*, EM) has the right to request asylum before the INM officers, reports of poor detention conditions, abusive

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90. *¿Qué hacemos? [What do we do?]*, INSTITUTO NACIONAL DE MIGRACIÓN, <https://www.gob.mx/inm/que-hacemos> (Mex.).

91. *Ley de Refugiados*. See 1951 Convention Relating to the Status of Refugees, 22 Apr. 1954, 189 U.N.T.S. 150, art. 33; Case of the Pacheco Tineo Family v. Bolivia, Inter-Am. Ct. H.R. (Nov. 25, 2013), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_272\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_272_ing.pdf); Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (Aug. 19, 2014), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf).

92. *Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children*, HUMAN RIGHTS WATCH, 48 (2016), <https://www.hrw.org/report/2016/03/31/closed-doors/mexicos-failure-protect-central-american-refugee-and-migrant-children>; Joselin Barja Coria, *Derechos Cautivos: La situación de las personas migrantes y sujetas a protección internacional en los centros de detención migratoria: siete experiencias de monitoreo desde la sociedad civil* (2015); *Facing Walls: USA and Mexico's Violations of the Rights of Asylum-Seekers*, AMNESTY INTERNATIONAL (2017), <https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/>.

93. *Descarga el informe 'Ignoradas y sin protección', la mortal devolución de personas solicitantes de asilo*, AMNESTY INTERNATIONAL, (Jan. 23, 2018), <https://amnistia.org.mx/contenido/descarga-el-informe-ignoradas-y-sin-proteccion-la-mortal-devolucion-de-personas-solicitantes-de-asilo/>.

94. *Closed Doors*, *supra* note 92.

behavior by immigration officials, a lack of adequate information inside detention centers about the existence and availability of asylum, insecurity inside the facilities, and attempts by immigration officials to dissuade migrants from claiming asylum, or to convince migrants that they should accept a voluntary deportation<sup>95</sup> and come back to seek asylum in liberty, are common factors that impede migrants from requesting asylum in detention.<sup>96</sup> Of course, migrants in parts of the country where COMAR is not located are likely to be understandably wary of approaching INM in liberty to request asylum at all, which further limits access to protection.

Conditions in Mexican immigration detention centers are notoriously bad.<sup>97</sup> Asylum-seekers and other individuals who may need international protection detained in INM facilities may request deportation because they cannot endure the prison-like conditions of the detention centers.<sup>98</sup> For example, the Siglo XXI detention center in Tapachula, Chiapas—the largest immigration detention facility in Latin America, with the capacity to hold up to 990 migrants<sup>99</sup>—is badly overcrowded, forcing migrants to sleep on cots or mats in crowded rooms where lights are left on all night.<sup>100</sup> There are separate

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95. Unlike in the U.S., prior deportations from Mexico do not in general have future immigration consequences, so asylum-seekers should not fear future ineligibility for asylum as a consequence of accepting a deportation. (With the caveat that, if they made a prior asylum claim, a lack of new facts/persecution in a future claim may be a bar to success on the merits, as in the U.S.)

96. See generally *Closed Doors*, *supra* note 92; see also *The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children's Access to International Protection*, GEORGETOWN LAW HUMAN RIGHTS INSTITUTE, 35 (2015), [https://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/HRI-Fact-Finding-Report-Stemming-the-Tide-Web-PDF\\_English.pdf](https://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/HRI-Fact-Finding-Report-Stemming-the-Tide-Web-PDF_English.pdf); Joselin Barja Coria, *Derechos Cautivos: La situación de las personas migrantes y sujetas a protección internacional en los centros de detención migratoria: siete experiencias de monitoreo desde la sociedad civil* (2015).

97. See, e.g., ARDELIO VARGAS FOSADO, COMISIÓN NACIONAL DE DERECHOS HUMANOS, INFORME 7/2016 DEL MECANISMO NACIONAL DE PREVENCIÓN DE LA TORTURA SOBRE ESTACIONES MIGRATORIAS Y ESTANCIA PROVISIONALES EN LOS ESTADOS DE GUERRERO, MICHOACÁN, NUEVO LEÓN, QUINTANA ROO, SONORA Y VERACRUZ (2016) [http://www.cndh.org.mx/sites/all/doc/PrevTortura/7\\_2016.pdf](http://www.cndh.org.mx/sites/all/doc/PrevTortura/7_2016.pdf) (Mex.); Valeria Fernández, *On the way to the US, children seeking asylum are often put in Mexico's detention centers*, PRI (Jan. 3, 2017), <https://www.pri.org/stories/2017-01-03/children-fleeing-violence-central-america-who-don-t-make-it-us-often-end-mexican>; *Closed Doors*, *supra* note 92.

98. *The Cost of Stemming the Tide*, *supra* note 96, at 35–37; see also CENTER FOR GENDER AND REFUGEE STUDIES, NIÑEZ Y MIGRACIÓN EN CENTRO Y NORTE AMÉRICA: CAUSAS, POLÍTICAS, PRÁCTICAS Y DESAFÍOS, 249–250 (Feb. 2015), <http://www.acnur.org/t3/fileadmin/Documentos/Publicaciones/2015/9927.pdf?view=1>.

99. See, e.g. *The Cost of Stemming the Tide*, *supra* note 96, at 22, n.85.

100. *Closed Doors*, *supra* note 92 (“Accounts from children and adults held in Tapachula’s Siglo XXI detention center indicate not only that it is overcrowded but also that mattresses are in short supply; moreover, they described conditions that were far less hygienic than those we

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areas for men, women, and adolescents, aged 13-17<sup>101</sup> (unaccompanied children are turned over to child protection officials).<sup>102</sup> Families are generally separated,<sup>103</sup> except for mothers with children aged 12 and under, or adolescent daughters.<sup>104</sup> Despite improvements in the use of alternatives to detention, immigration detention continues to be “the rule and not the exception.”<sup>105</sup>

The situation of unaccompanied children in detention is especially concerning. By law, unaccompanied child asylum-seekers must be referred to Family Welfare Agency (“DIF”) shelters, where they must stay at least until the adjudication of their asylum claims.<sup>106</sup> The DIF shelters are secure facilities—children cannot leave the facility and are not integrated into the community—and so are not completely distinct from detention centers.<sup>107</sup> Furthermore, many unaccompanied adolescent boys and girls, as well as children accompanied by their mothers, may be held in adult immigration detention.<sup>108</sup> Such detention violates the regulations implementing the Law on Children’s Rights, which prohibit immigration detention of children, both accompanied and unaccompanied,<sup>109</sup> as well as

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saw in the Acayucan immigration detention center.”); *The Cost of Stemming the Tide*, *supra* note 96, at 36; Barja Coria, *supra* note 96, at 67.

101. *The Cost of Stemming the Tide*, *supra* note 96, at 33; Barja Coria, *supra* note 96, at 67.

102. *The Cost of Stemming the Tide*, *supra* note 96 (“Transfer to DIF is the exception rather than the rule, even though Mexican law calls for the immediate transfer of all unaccompanied children to DIF shelters.”)

103. *Closed Doors*, *supra* note 92, at 86 (“Mexico’s INM-run immigration detention centers that are authorized to receive children usually have separate sections for adult men, adolescent boys, and women and girls, meaning that families are generally separated when they are detained”); GEORGETOWN LAW HUMAN RIGHTS INSTITUTE, *The Cost of Stemming the Tide* 33 (2015).

104. *Closed Doors*, *supra* note 92, at 87 (“Children under the age of 12 are generally assigned to a detention center’s section for women and girls if they have mothers or other family members in that section. Unaccompanied boys under 12 may also be held in the section for women and girls.”); Barja Coria, *supra* note 96, at 69 (“Los niños y niñas tienen un tratamiento diferencial según sexo y edad: las niñas de 12 a 17 años permanecen con sus madres en el módulo de mujeres, pero los niños de la misma edad son detenidos en el área específica de adolescentes”).

105. Simón Hernández León, *La política de detención de solicitantes de asilo en México y su impacto en la integridad personal*, NEXOS, February 27, 2018, <https://eljuegodelacorte.nexos.com.mx/?p=7777>.

106. Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes [RLGDNNA], Diario Oficial de la Federación [DOF] 02-12-2015.

107. See, e.g. *Closed Doors*, *supra* note 92, at 104.

108. See also *Facing Walls*, *supra* note 92, at 32–33.

109. Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes [RLGDNNA], Art. 111, Diario Oficial de la Federación [DOF] 02-12-2015. [T2: Foreign Jurisdictions – Mexico – Regulations] (“Migrant children, whether or not traveling in the company of an adult person, shall at no time be deprived of their liberty in detention centers,

international law.<sup>110</sup>

### 3. Issues Within the Asylum System

The repressive logic of Mexico's migration system is further replicated within aspects of its international protection system, principally in limitations placed on asylum-seekers' freedom of movement during the adjudication process, as well as the treatment of unaccompanied or separated migrant children.

COMAR places a variety of restrictions on asylum-seekers' freedom of movement during the adjudication process with the apparent aim of preventing movement within the country, including northward, during adjudication. Asylum-seekers are not permitted to travel outside of the Mexican state in which they request asylum without prior authorization by COMAR until they receive a positive adjudication of their application;<sup>111</sup> transfers within Mexico are generally permitted only for reasons of personal safety or upon proof of relation to a family member in another part of the country who can demonstrate financial ability to receive the asylum-seeker.<sup>112</sup> COMAR tends to be quite stringent with requests for transfer of asylum-seekers, likely because transfers away from states where it has delegations place administrative burdens on COMAR, and because it tends to be suspicious of requests to relocate further north in Mexico, perhaps considering that individuals will seek to abandon their claims in

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nor in any other immigration detention facility.”)

110. *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. ¶ 154 (Aug. 19, 2014), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf) (“[T]he Court finds that the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity, because this measure is not absolutely essential in order to ensure their appearance at the immigration proceedings or to guarantee the implementation of a deportation order ... [T]he Court finds that the deprivation of liberty of a child in this context can never be understood as a measure that responds to the child's best interest. ... In sum ... the deprivation of liberty of a child migrant in an irregular situation, ordered on this basis alone, is arbitrary and, consequently, contrary to both the Convention and the American Declaration.”); Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 61, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005), <http://www.refworld.org/docid/42dd174b4.html>; DETENTION GUIDELINES: GUIDELINES ON THE APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM-SEEKERS AND ALTERNATIVES TO DETENTION, UNHCR, Guideline 9.2 (2012), <http://www.unhcr.org/505b10ee9.html>.

111. See generally *Facing Walls*, note 92 (making the argument to put in place special mechanisms for vulnerable groups of asylum-seekers, in particular transgender women, that may need to be urgently transferred from border areas to other parts of the country to await the outcome of their asylum proceedings).

112. Interview with representatives from Fray Matías Centro de Derechos Humanos, Sin Fronteras, Clínica Jurídica de Refugiados “Alaíde Foppa,” *supra* note 14.

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Mexico and travel on to the United States if they are permitted freedom of movement during the asylum process.<sup>113</sup> Additionally, asylum-seekers may be required to check in (“ir a firmar”) weekly with COMAR and/or INM in the place where their asylum claim is being adjudicated to ensure that the person is following through with the asylum application and process.<sup>114</sup>

The situation of unaccompanied or separated children in Mexico is particularly concerning. While estimates indicate that more than half of Central American children in Mexico may be in need of international protection, the number of asylum claims presented yearly by unaccompanied children is shockingly low. In 2015, for example, Mexico detained about 18,000 unaccompanied children, but fewer than 150 of them (less than one percent) lodged asylum claims.<sup>115</sup> While it seems likely that this is attributable in part to the fact that many or most unaccompanied children are seeking to reunite with family members in the United States, the low rate of asylum claims brought by unaccompanied children is also caused by grave problems in Mexico’s child protection system.<sup>116</sup>

Unaccompanied children who present asylum claims are housed in Family Welfare Agency (DIF) shelters, which are closed-door facilities.<sup>117</sup> This situation likely leads some youth to abandon potential asylum claims to avoid prolonged detention. Furthermore, if an unaccompanied child is recognized as a refugee and cannot be reunited with family in Mexico, they will be required to live in the care of the State in a DIF shelter until they turn eighteen years old, as they are unlikely to be released into foster care due to lack of family placements.<sup>118</sup> This arrangement may make unaccompanied children understandably wary of seeking asylum in Mexico, particularly if they

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113. *Id.* COMAR’s role should not be one of policing the U.S. border by preventing asylum-seekers from reaching the United States, or one of obliging individuals to pursue asylum in Mexico only. In reality, an individual may have genuine protection needs but also desire to rejoin family in the United States for needed support during the asylum process and upon recognition of refugee status. Family unity is in fact recognized as fundamental in Mexico’s Refugee Law (art. 5), as well as in international law. Problems with delays and inaccessibility of services in Mexico may also contribute to a decision to abandon the process and/or continue on to the United States.

114. *Id.*

115. *Estadísticas 2013–2017, supra* note 6. The number of unaccompanied children seeking asylum has not increased significantly in subsequent years: COMAR reports that just 141 unaccompanied children sought asylum in 2015; 242 in 2016; and 259 in 2017. *Id.*

116. *Id.*

117. *See Closed Doors, supra* note 92.

118. *Id.* at 98 (suggesting that foster care is a possibility that should be explored).

have family in the U.S. who they are seeking to rejoin.<sup>119</sup> Yet they may have no other choice beyond seeking asylum in Mexico in order to avoid deportation back to a country where they may face extreme danger.

#### IV. CONCLUSION

The issues facing Mexico's international protection system examined in this Article signal serious challenges for effective access to the asylum system and fair adjudication of asylum claims. Throughout the process, barriers to receiving information about asylum, effectively presenting asylum petitions, receiving access to the rights and guarantees associated with asylum-seeker and refugee status, and integrating into Mexican society limit the effectiveness of international protection in Mexico. This particularly affects those who are detained and deported summarily without appropriate screening and referral for possible international protection needs, but also those who find themselves unable to get by in the country, whether due to procedural delays and inaccessibility of services in Mexico or because they need support from family in other countries with which they have been unable to reunite. This is particularly the case for unaccompanied children. In this regard, continued efforts to improve governmental and non-governmental aid and services available to asylum-seekers and refugees in Mexico are vitally necessary. By the same token, these realities do not relieve Mexico's migration system of the obligation to ensure access to international protection in Mexico to those who pursue it.

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119. Though they travel alone, unaccompanied children most often have adults in the country of origin who send them, and adults in the country of destination waiting to receive them. This is evident, for example, in the rate of release of unaccompanied children detained by U.S. border enforcement into private custody, as well as from extensive personal testimonies by parents and children who have made the journey to the U.S. For example, in FY 2016, the U.S. Department of Homeland Security (DHS) reported that it apprehended 59,757 unaccompanied children, who are then transferred to the custody of the Office of Refugee Resettlement (ORR); during the same year, ORR reported that it released 52,147 children (87.2 percent of the total apprehended by DHS) to the custody of family members in the U.S. *DHS Releases End of Year Fiscal Year 2016 Statistics*, DHS (Dec. 30, 2016), <https://www.dhs.gov/news/2016/12/30/dhs-releases-end-year-fiscal-year-2016-statistics>; *Unaccompanied Alien Children Released to Sponsors by State*, ORR (June 30, 2017), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>. See also John Bowden, *Federal officials lose track of nearly 1,500 Migrant Children in US*, THE HILL (Apr. 27, 2018), <http://thehill.com/latino/385148-federal-officials-lose-track-of-nearly-1500-migrant-children-in-us>. Although there are certainly cases of children, usually orphaned or abandoned, who flee their countries alone because there is no one in the world to care for them, they are in the minority.