

EXECUTIVE SUMMARY

Mexico: Forced destination for refugees

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CEA(R)

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for Refugees

1. Introduction and Context

The externalisation of the USA's southern border into Mexican territory has had serious effects on the migratory phenomenon in the region. Concentrating on security and militarisation, border control has been justified as a means of halting terrorism, illegal trafficking of people or narcotics, and organised crime, turning the whole of Mexico into the USA's "vertical border".

The comprehensive Southern Border Programme (PFS in Spanish), which forms part of a military strategy to control the border and migration, was first put into practice in July 2014 with the clear aim of externalising the border and shifting most of the responsibility onto Mexico for detaining and deporting people who try to cross to the USA.

Headed by the Secretary of the Navy, the programme has been directly fostered by the United States government via the Merida Initiative, whose main aim, as mentioned above, is to ensure containment of migratory flows of people who are in an irregular administrative situation. Indeed, one of the pillars of the programme "involves U.S. support for securing Mexico's porous and insecure southern borders with Guatemala and Belize."¹ The USA has earmarked at least a hundred million dollars for this purpose.

All of the above has resulted in an increase in strategies to control and detain migrants and deprive them of freedom, when they merit international protection (they have been affected by the generalised violence and organised crime reigning in the region). The increase in border control has led migrants and refugees to seek alternative clandestine migration routes, which they have been using and which are controlled by organised crime and are thus more dangerous.

The types of harassment and violations of human rights that migrants and refugees suffer include robbery, extortion, kidnapping, torture, threats, press-ganging, human trafficking, forced disappearances, assaults, femicides and summary executions, with the appearance of mass graves on migratory routes. Faced with this violence, often committed in collusion with agents of the state, the victims generally do not have access to justice.

In its 2011 Special Report on the Kidnapping of Migrants in Mexico, the National Human Rights Commission (CNDH in Spanish) has 178 witness reports documented. In 8.9% of cases, the witnesses and/or victims refer to collusion from an authority in committing the crime of kidnapping, mainly by municipal police corps, National Migrations Institute (INM in Spanish) personnel, Federal Police or other state public security institutions. From 2014 to 2016, impunity for crimes committed against migrants and refugees is alarming. According to official figures for the period from 2014 to 2016, a total of 5,824 crimes against migrants were recorded in Chiapas, Oaxaca, Tabasco, Sonora and Coahuila.

The total number of migrants and refugees grew by 85% in the first two years that the comprehensive Southern Border Programme was running (July 2014 to June 2016). There were 95,497 people detained in 2017. Of these, 19.2% were minors (7,925 under 12 years of age and 10,375 from 12 to 17 years old). More than 90% of the people affected came from countries in the "northern triangle", in the following order: Guatemala, Honduras and then El Salvador.

Based on the above, it could be said that in Mexico there is systematic violation of the human rights of migrants and refugees, high rates of corruption, ineffectiveness of the judicial system and high levels of impunity. All of this is clearly in contrast to the official discourse of "human rights diplomacy".

¹ <https://fas.org/sgp/crs/row/R41349.pdf>

2. Asylum

Mexico changed its constitution in 2011 to introduce international treaties on human rights into its domestic law. From then on, the Law on Migration was passed, as well as the Law on Refugees, Complementary Protection and Political Asylum; the General Law to Prevent, Punish and Eradicate Crime in Trafficking in Persons; and the General Law on the Rights of Children and Adolescents. However, these regulations are ineffective because they concentrate on security and not on protecting the human rights of migrants and refugees.

In fact, Mexico's migration policy is very contradictory. On the one hand, migrants' rights are recognised, as well as those of trafficking victims, children and adolescents, in order to give the appearance that Mexico is a safe country that observes human rights. On the other, there is growing persecution, detention and deportation of the people whose rights the laws passed are intended to protect.

The effectiveness of the Southern Border Programme has been exposed with the rise in detentions and deportations. It is important to point out that, despite the programme and due to the situation of growing structural and generalised violence in the region, the number of international protection applications has risen notably. Indeed, in 2015 asylum applications rose to 3,424, then in 2016 to 8,796, and in 2017 a total of 14,594 had been presented. The number of people arriving in the country from Venezuela (26.8%), Haiti and Cuba since 2017 has become considerable.

The percentage of recognition throughout 2017 was 63.1%. However, this data does not reflect the totality of migrants potentially in need of international protection, since it is estimated that many of these people who cross the southern border in Mexico are for various reasons outside the system for requesting such protection.

Although the state supposedly allows international bodies to monitor the human rights situation in the country, their work is hampered by the Mexican political discourse and the use of euphemisms in the matter of migratory flows so as to make it harder to see the true legal nature of state practices that violate migrants' fundamental rights. One example of this is seen in the common use of terms such as "securing", "presentation" and "accommodation", which are officially used to refer to the detention of migrants in "migration stations", which in practice are places that deprive them of freedom. This impedes rights and guarantees from being exercised, which should happen in situations where there is deprivation of freedom (because detention is not considered to be such a situation).

The city of Tapachula in the Soconusco Pacific region (Chiapas) has been the gateway for migrants from the Central American countries bordering to Mexico and from other continents (Asia and Africa) to enter since the 1990s. It has the highest percentage of detentions for irregular migrants. This is also because the INM uses the Tapachula detention centre to bring together everybody it deports by land, which means 100,000 people a year. Social violence has risen since 2017 due to an increase in violence in Mexican territory. This is due to the territorial struggle among criminal organisations themselves and against the state security forces, and because of these criminal organisations' involvement in the migration process.

One of the greatest risks for women during migration is sexual violence. Six out of ten suffer sexual assault on the migration route, against a backdrop of mistrust of the judicial institutions, low rates of reporting the crimes and discrimination in access to rights (documents, registering children and more).

As for children and adolescents, it has recently become apparent that Mexico is reluctant to recognise them as asylum applicants since there is a presumption they are linked to the *maras*. This rejection often occurs without documented evidence and without taking into account that the applicants may have been press-ganged into the *mara*, or without understanding that there is an internal flight alternative.

Although Mexican legislation takes into account persecution for gender reasons as an independent reason upon which to base an asylum application, in many requests the status of refugee is recognised under the general classification of belonging to a certain social group. A high number of asylum applicants are LGTB people and other types of sexual and affective diversity, mostly transsexual women, who are occasionally minors and very young people. In these cases, reticence has also been seen in accepting asylum applications and recognising them as refugees.

In any case, Mexico did not make its statistics on asylum separated by gender public until 2017, which has made it difficult to know the percentage of men and women in need of international protection.

Civil society has denounced the difficulties in accessing the asylum procedure, especially for most migrants detained and interned in a detention centre. Some of the main obstacles and problems identified are listed below:

- Short deadline to present the application (30 days as of the date of entry).
- Need for “registered proof” of the asylum application in order to have protection against being returned to the country of origin or habitual residence.
- Need to appear in person every week (at the Mexican Commission for Refugee Assistance, COMAR, or at the INM office) to renew documents (despite a lack of resources to travel from their place of residence to the offices).
- Lack of a gender perspective or greater interest for minors applied in rulings.
- Excessive legalism in the asylum application form with no accompanying judicial guarantees.
- Restriction and obstacles in legal assistance and great lack of interpreters.
- No uniform criteria in granting or denying international protection (discretionary rulings that are different for identical cases).
- Impossible to recognise refugee status in the second instance by means of an administrative review or appeal, with the entire process having to begin again.
- Excessive deadline (from 9 months to a year) to rule on the appeal for annulment or protection by legal means (when the administrative means has been exhausted).
- Deportations made with no possibility of lodging an effective appeal.
- Lack of sufficient basis and reasoning in rulings.

The following difficulties have also been identified:

- Lack of protection for all asylum applicants since 30th October 2017 due to the suspension of the corresponding deadlines and procedures.
- Slight drop in the recognition of international protection in 2017 until September of 59.3% compared to 62% in 2016.
- Lack of information in the detention centres on the possibility of applying for asylum, the obligation to remain in the centres throughout the entire procedure, and dissuasion against presenting the application. Added to this there is the pressure, harassment and misinformation towards people who wish to apply for asylum for them not to do so, or for people who have already done so to desist and accept deportation.

Furthermore, one of the main problems as regards asylum in Mexico is that COMAR is overwhelmed due to the great number requests for asylum it has to process, its lack of staff with excessive job rotation, and their insufficient training to address the needs of the applicants, particularly those who are more vulnerable.

Finally, it has been found that migrants have been returned after having presented their asylum application in airports.

3.- Detention and Related Conditions

Detention and deprivation of freedom for reasons of migration is a generalised, systematic practice in Mexico, justified for reasons of security without observing the basic right to personal freedom as regards human mobility or the principle of the exceptional nature of detainment in the case of asylum seekers and other vulnerable people according to regional and international standards.

The detention of potential asylum applicants is in itself a deterrent to applying for international protection, with a notably high percentage desisting. Of the people detained and interred in a detention centre, 84% are returned to their countries of origin or habitual residence.

The legal basis for a detention is usually general with no express reference to the specific circumstances or individual criteria to justify it. Internment in detention centres is the norm, not an exception. No procedure for assessing alternatives to detention is applied when they are interned. In fact, such alternatives are almost non-existent in practice. Special needs for protection are not evaluated either, nor are the possibilities for regularisation considered, nor the principal of non-refoulement observed.

The main problems that have been found in detention centres are as follows: general overcrowding, problems with sanitary facilities, lack of open leisure areas, restrictions on visits, male guards in areas designated for women, cases of sexual harassment, isolation as punishment, the systematic use of “punishment cells” that did not cover the minimum conditions of dignity, a lack of plans for handling emergencies, very limited mechanisms for monitoring, and a lack of professionals to provide medical and psychological services.

In practice, Mexico’s Migration Law is being contravened. It stipulates a maximum of 15 days, which may be extended to 60 in very specific circumstances, since sometimes the detainment lasts much longer (from six months to a year).

The alternative to detention is to send the migrants to hostels in the Network of Hostels for migrants (REDOMEN). It is notable that there is a scarcity of alternative accommodation available (places in hostels) for the people detained; as already mentioned: 95,497 in 2017. There are no public hostels except for the Colibrí hostel for children and adolescents. Moreover, some asylum applicants do not wish to go to a hospital for fear of coming across those who have perpetrated crimes against them.

4. Administrative Migration Procedure

The administrative migration procedure in Mexico is formally processed to give the appearance of legal compliance with the Law on Migration and its regulations, but the sole purpose of this procedure of “simulating legal guarantees” is deportation.

Many people for whom a migration administrative procedure for detention is opened (generally processed excessively fast without due consular representation) cannot access the corresponding cases. Among the INM staff, there is generally a predominant fraudulent discourse from those who provide legal assistance, while the organisations that defend the human rights of migrants have limited access to the detention centres. Access to translation and interpreting services is scarce.

Moreover, there is a notable lack of access to effective appeal. The Migration Law penalises the lodging of an administrative or judicial appeal against a deportation order with indefinite deprivation of freedom, which acts as a deterrent against lodging these appeals in most cases. As for rulings in which a return is agreed upon, there are complaints that this is based on “standard forms”.

Furthermore, it is noticeable that in many cases of detention, it is seen that the person has waived their rights and guarantees, as well as force being used to make them accept deportation.

5. Integration

The difficulties in integrating people who apply for international protection in Mexico are well-known, especially in Tapachula. Many of the asylum applicants and those recognised as refugees try to travel to the north of the country or to cross into the USA. The official line of the mainstream media criminalises migrants and refugees, with the resulting rise in xenophobic attitudes among the local population, coupled with the general context of lack of work geared towards ensuring their integration.

As for the possibilities of insertion into the job market, these are thin on the ground and mainly found in the informal economy. Moreover, there is recurring reluctance seen in companies towards hiring refugees. The programme for economic aid for asylum seekers and refugees is insufficient and limited to a period of three months that may be extended for a further three months.

Access to health care, education and other economic and social rights is subject to obtaining the Unique Population Registry Code (CURP), which is given to people whose asylum status has been recognised, but not to applicants for such international protection. The latter can only work if they apply for the visitor's card for humanitarian reasons.

6. Children and Adolescents

The *General Law on the Rights of Children and Adolescents* was passed in 2014 to introduce the “best interests of minors” into national legislation. In spite of this advanced legal context as regards children and adolescent migrants, its mechanisms are not applied in practice due to a lack of training and resources.

This law gives children and adolescents the same rights regardless of their nationality and status as migrants, prohibiting them from being detained. When children or adolescents are detected, they are usually referred to the Child Protection System (DIF in Spanish), the national system for Comprehensive Family Development), and the Public Attorney's Office for Child Protection must draw up a plan to reinstate their rights and protection. However, these multi-disciplinary teams do not exist and the necessary measures for protection are not taken; a policy of detention and repatriation is the almost exclusive response given by the state.

The aforementioned Law on the Rights of Children and Adolescents contradicts the Law on Migration. On the one hand, “the best interest of the child” is recognised as the criterion that must guide any measure or decision that may affect the rights of migrant children and adolescents (although there is a lack of clarity on what this concept means, or a procedure to determine it). However, on the other hand it legitimises their detention by regulating the conditions the detention centres should comply with and by not expressly forbidding them from being deprived of freedom for administrative reasons.

Many minors who enter the detention centres are separated from their parents, while for unaccompanied minors (UM) there are only four detention centres in the whole of Mexico with specific modules (Assistance Modules for Migrant Minors in Migration Stations, MAEM in Spanish), which are insufficient. Most unaccompanied children and adolescents are returned to their countries of origin, even if their parents are residing in the USA.

The number of asylum applications from children and adolescents is very low. There were only 259 applications in 2017, of whom 51 (out of 104 proceedings already concluded to date) were recognised as in need of international

protection. This number is insignificant when one considers the total number of minors detained in 2017 (16,162 deportations). Most unaccompanied children and adolescents wish to continue their route to the USA, where their parents are.

7. Sexual violence and human trafficking

The situation as regards sexual violence and human trafficking is found throughout the country, though it particularly affects Tapachula and other border zones and migration routes where there is a greater presence of organised crime controlling the networks with the complicity of the state (police and institutions). Faced with this situation, great impunity reigns.

In 2007, the *Law to Prevent, Suppress and Punish Trafficking in Persons* was published. It contained the definition of trafficking from the Palermo Protocol; i.e. acts, means and purposes, including the requirement to prove subjection on victims by one of the ways considered. Since it is not an easy task to prove this point neither to identify the victims, the number of people sentenced has remained low.

In order to achieve more sentencing, in 2012 a new law on trafficking was passed. Since then, unlike the international definition, in Mexico the use of force, fraud or coercion are not considered essential features of the crime but aggravating factors, which has made it easier to confuse trafficking with all situations in which people suffer some kind of exploitation. Furthermore, this law explicitly criminalises women who are victims as perpetrators of the crime.

With the intention of giving apparently positive results in the fight against human trafficking, migrant women began to be accused and sentenced for this crime, accounting for 24% of the women inmates in the Social Reinsertion Centre no. 4 FEMENIL in Tapachula. Of these, 70% come from Central America. In these procedures, there have been accusations recorded against women who are victims of trafficking, based on false statements obtained under threats or mistreatment inflicted with the intention of obtaining a confession or forcing women to testify against others, as well as other violations of human rights and errors in the judicial system, without the corresponding compensations being paid by the authorities concerned. The limited possibilities for accused women to exercise their right to defence is a result of the migration policy that concentrates on security and seeks above all to detain and deport migrants instead of offering them protection.

Mexico is currently working on modifying the above law to again include the Palermo Protocol's definition with all of its elements, including the commissive acts. In any case, despite formally granting rights to trafficking victims in the aforementioned legislation, in practice there is no effective system of protection for them.

The profile of trafficking victims for sexual exploitation has been changing over the years. In 2014 and 2015 many of them were Ukrainian and Russian women; in 2016 they were Venezuelan, Argentinean and Colombian; and in 2017 women were identified from Cameroon, Sierra Leone and Uganda, coinciding with an increase in difficulties in access to Europe due to policies being applied that concentrate on closing and externalising borders.

Lastly, the link between human trafficking and feminicides should be noted. Five women are murdered in the country every day and only 15% of the crimes are investigated as feminicides, many of which involve foreign women, without the real dealers being tried, but the exploiters or the victims themselves.

MAIN CONCLUSIONS

- Since the Mexican government announced its comprehensive Southern Border Programme in 2014, making the externalisation of the USA's southern border into Mexican territory a reality by increasing military and police security activity, there has been a rise in militarisation throughout Mexico and above all in the state of Chiapas. This affects not only the migrant population but also the locals.
- Nevertheless, applications for asylum in Mexico have increased, which shows the effectiveness of the policy aimed at making the country an obligatory destination. This is expressed through a discourse of fear and justified as a means of stopping terrorism, the illegal trafficking of humans and drugs, and organised crime. . This situation coexists with the deportations of migrants in an irregular administrative situation.
- The migration policy in Mexico concentrates on security but not on protecting the human rights of migrants and refugees. Although their rights are recognised to create the appearance that Mexico is a safe country that observes human rights, in practice there is an increase in strategies geared towards control, persecution, detention, deprivation of freedom and deportation. Human rights are breached systematically in Mexico and this occurs in collusion with the state. The reigning situation is one of corruption, a lack of access to justice and great impunity.
- Most asylum applicants are nationals from Honduras and El Salvador, though the panorama changed slightly in 2017 with the arrival of people in need of protection from Venezuela. Many people flee the violence of the maras. There are also a high number of LGBT IP applicants, especially very young transsexual women, including minors, fleeing the violence and discrimination they suffer in their countries of origin.
- The percentage of recognition throughout 2017 came to 63.1%, though many migrants who cross the southern border but do not apply for international protection would be apt to receive it.
- Countless obstacles have been identified in accessing the international protection application procedure, most notably the generalised practice of detaining migrants and the aforementioned IP applicants, with most applications being processed in a situation of deprivation of freedom in detention centres without the minimum conditions of dignity required and where there is generalised harassment of the people affected in order for them to desist from their applications and accept deportation.
- Other barriers to accessing international protection include: application decisions being made discretionally without adequate reasoning; a glaring lack of interpreters and legal assistance; neither gender perspective nor the best interest of the minor being applied on taking the decision; insufficient COMAR staff with scarce training; and more.
- Many irregularities and breaches of due process have also been identified in the processing of the Migration Administrative Procedure: the reasons for detaining people are not explained, nor the time they are going to remain in that situation; they are not informed of their rights and not allowed access to their cases. Access to an effective appeal is questionable given that the Migration Law penalises the lodging of an administrative or judicial appeal against a deportation order with indefinite deprivation of freedom, which acts as a deterrent against lodging these appeals in most cases.
- One fundamental problem faced by asylum applicants in Mexico is that there is scant possibility of integration due to a rise in xenophobic behaviour in recent years.
- Children and adolescent migrants in Mexico are systematically detained, interred in a detention centre and deported, based on a migration policy that prioritises security over the comprehensive protection of childhood and the best interest of minors. Moreover, there is no suitable assessment of whether there are adults who can take on the responsibility for the minors in the countries to which they are being returned. The numbers of these children and adolescents being returned are alarming: almost 90% of those detained were returned in 2017, a total of 16,162 of whom were aged from newborns to seventeen.

- The situation of sexual violence and human trafficking that exists throughout the country affects Tapachula particularly since there is more organised crime in the border areas. Furthermore, due to the militarisation and migration policies involving persecution and detention, migrants are obliged to use more dangerous routes, thereby increasing the risk of falling into the hands of human trafficking rings.
- In Mexico, human trafficking is controlled by organised crime with the complicity of the state. The lack of safe conditions hampers the CSO's work in this matter, with great impunity rife. Women who are victims of trafficking are criminalised by being accused and sentenced as perpetrators of this crime, based on false evidence in criminal procedure with many irregularities and breaches of their procedural rights. Despite formally granting rights to trafficking victims by law, in practice there is no effective system of protection for such victims.

