

Refugee Protection to Victims of Generalized Violence

MEXICO'S RESPONSE TO CENTRAL AMERICAN ASYLUM SEEKERS

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Approximately 400,000 undocumented migrants flee Central America and attempt to pass through Mexico every year. Yet, only a fraction of them apply for asylum in Mexico. For example, in 2017, only 14,000 applied.¹ The low number reflects the primary desire of the majority to enter the United States.² It also indicates a Mexican refugee system with high barriers of access and concerning rates of refoulement.

Protection for refugees is one of the most heavily legislated areas of international humanitarian law. It is also at the center of contemporary North American politics, mostly due to the large influx of Central American migrants to Mexico and the United States. To assess the effectiveness of refugee status determination processes in Mexico, this research looks at the protection provided at the international level and the subsequent incorporation of international protection norms at the Mexican institutional and implementation levels. This approach considers the relationship between refugee protection and state interests, arguing that utility is maximized when the two converge.

This report begins by providing background on the Central American migratory movement. Then, it presents the rationale behind refugee protection and elaborates on what constitutes an effective refugee protection system. The core of the research assesses developments in international refugee law pertinent to the Central American migratory movement and the

degree to which Mexico complies with these international norms in law, policy, and practice.

The Central American Migratory Movement

Analyzing the causes of the Central American migratory movement is vital to understanding the best mechanisms to address it. Central American migrants are fleeing generalized violence, a concept that refers to “confrontations in the country of origin or habitual residence (of the asylum seeker) of continuous, general, and sustained nature, in which force is used in an indiscriminate manner.”³ The North of Central America (NCA)—consisting of El Salvador, Guatemala, and Honduras—has homicide rates four to eight times higher than what the World Health Organization considers epidemic.⁴

The high homicide rates in the region are mainly caused by gang violence.⁵ Mara Salvatrucha (MS13) and Barrio Dieciocho (M18), the two major gangs, account for nearly 40 percent of homicides in El Salvador, Guatemala, and Honduras.⁶ Gang violence is one of the main reasons people flee the region.

Thousands of Central Americans migrants travel by hitching free transportation on top of a freight train known as *La Bestia* (the beast), a route on which they face far fewer immigration checkpoints than on

vehicle routes. For most, the trip through Mexico by freight train takes from two weeks to several months.⁷ But this route throws migrants further into the dangers of illegality and poor environmental conditions.⁸

Criminals and corrupt authorities in Mexico often subject Central Americans to assault, extortion, homicide, and robbery.⁹ A 2012 study posits that 70,000 Central Americans have disappeared in Mexico, and six out of 10 women en route have been raped.¹⁰ Their “illegality” is in itself a major risk. When kidnapped, they are more easily intimidated by extortion. And they are less likely to report robbery, rape, and other crimes due to fear of deportation.

Three important aspects of violence in Central America need to be emphasized because of how they affect the migratory movement and refugee status determination. First, the governments in the region do not have the strength to uphold the rule of law. Impunity reigns, and political instability is constant. Weak Central American states struggle to respond to gangs that exercise a degree of coercive and infra-structural power in their own right and that challenge state authority.¹¹ Gangs exert strong territorial control that the state often cannot stop.

A 2005 study identified 14 municipalities near the Salvadoran capital that were controlled by gangs and 300 families that had fled the gang-concentrated city of Soyapango.¹² Fourteen years later, the gangs’ territorial control has dramatically increased. Citizens have reported in recent years that they must go through informal security checkpoints to enter different areas on their way to work or school.¹³ Even politicians and government authorities must ask for permission from local gang structures, known as *clicas*, to enter certain areas.¹⁴

In sum, street gangs are powerful enough to resist the state’s attempt to enforce compliance.¹⁵ At times, government structures and institutions have even been complicit in gang activity; a report by InSight Crime and American University found that gangs have managed to infiltrate the NCA’s political systems, negotiating with candidates by trading electoral support for various benefits.¹⁶

Second, gang violence is concentrated along socioeconomic lines, geographical location, and age.

Most violence in the region involves poor people extorting, threatening, assaulting, and killing other poor people.¹⁷ Ordinary people may be exposed to violence simply by being residents of gang-controlled areas. Gang members may subject individuals, local businesses, buses, and taxis to demands for *renta* and violent threats if they refuse to comply.¹⁸ The primary victims of gang-related violence are young people, regardless of gang affiliation.¹⁹

Third, the NCA experiences a normalization of violence, which is a phenomenon that a UN Office on Drugs and Crime report identifies as happening “in communities where many people were exposed to brutality, and [violence] may be tacitly accepted as a legitimate way of settling disputes, particularly where the conflict resolution mechanisms of the state are viewed as incompetent, corrupt, or biased.”²⁰ The normalization of violence happens as a consequence of daily bloodshed and affects the population at large, which becomes strongly desensitized.

An Office of the United Nations High Commissioner for Refugees (UNHCR) officer in Honduras expressed that this factor affects refugee hearings. Asylum seekers who are not aware of refugee eligibility criteria and have normalized their own experience of violence might cite economic aspirations or family unification as their main reason to flee, even though they were persecuted by gangs.²¹ This gives leeway to Mexican immigration authorities to categorize them as economic migrants instead of refugees.

The violence in the NCA can be summarized as affecting the poorest more acutely in societies that have normalized violence, while their states have insufficient strength to uphold the rule of law. Seeing the lack of protection from their own state, asylum seekers face a trade-off between the violence suffered at home and the violence suffered en route. Thousands still decide that the risk of staying is greater than the risk of fleeing.

Why Refugee Protection Is Important

The refugee category is necessary for acknowledging humanitarian need, a reality of scarce resources, and

the pressure on governments to restrict migration.²² Unlike other forms of migration that consider skill, professional development, and the needs of the host nation, the refugee category is humanitarian. Refugee protection is inherently outward facing, while immigration is inward. It happens as a result of a state institutionalizing external categories of protection, integrating them into the domestic realm.²³

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The international refugee regime was created to ensure that when the state is unable or unwilling to provide protection and no other means are available to access those rights in the state, people can seek surrogate protection in another country.²⁴ The right to seek asylum is stipulated in Article 14 of the Universal Declaration of Human Rights,²⁵ which enumerates rights related to all three pillars of the United Nations: peace and security, development, and human rights. It serves as a foundation for subsequent developments in international and human rights law. From this initial foundation arise the Convention Relating to the Status of Refugees (the 1951 Convention) and its Protocol Relating to the Status of Refugees (the 1967 Protocol), which focus on refugee rights.

A proper refugee status determination (RSD) process guarantees the principle of non-refoulement and requires nation-states to provide the conditions for effective enforcement of the rights of individuals

seeking asylum.²⁶ An asylum seeker must go through an RSD process to receive refugee protection. The process has three main parts. The first examines the applicant's eligibility by checking four major exclusion clauses: The refugee is not a national of the host country, is fleeing from a country where the applicant is facing a recognized threat, has not committed any crimes that violate human rights, and is a civilian. Second, the agents in charge assess the refugee's credibility to determine if the individual is legitimately fleeing from a personal threat to his or her security that is recognized in refugee law. Lastly, an RSD system must include the right to recourse, which is to challenge a negative decision.²⁷ Therefore, an effective RSD system will give access to everyone who wishes to apply and grant refugee status to everyone who meets the criteria stipulated by international law.

Discussing effective RSD systems is difficult because every asylum system produces inconsistent outcomes.²⁸ Domestic and international politics have created an incentive structure that causes national refugee regimes to sometimes be too broad and other times too narrow in their interpretations of who is a refugee.²⁹ International agreements do little if they do not permeate into the domestic realm.

Alexander Betts, a world-renowned forced migration scholar, highlights the importance of the process of institutionalizing and implementing existing norms and international organization at the national level.³⁰ Borrowing his theoretical framework, this report analyzes international and regional refugee protection provided to Central Americans fleeing generalized violence and its institutionalization and implementation at the Mexican state level. It contends that an effective RSD process is achieved by establishing international mechanisms for protection and adopting that protection to a greater degree at the national level.

International Agreements

The 1951 Convention and the 1967 Protocol (or New York Protocol) are the central elements for the international protection of refugees. The 1951 Convention,

which entered into force in 1954, includes the definition of a refugee and specifies the various factors through which an asylum application may be considered legitimate. It was originally limited to persons in Europe fleeing events that happened before 1951. The 1967 Protocol, which entered into force on October 4, 1967, removed the time and geographical limitations of the 1951 Convention, giving it universal coverage.

The convention defines a refugee as someone who has

well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³¹

The definition establishes three criteria: First, refugee status arises from a state of persecution—therefore, forced migration. Second, five grounds can be given for protection: persecution for race, religion, nationality, membership of a particular social group, or political opinion. Third, to qualify for refugee status, the refugee must be outside the country of nationality.

International refugee protection has continuously evolved to respond to contemporary realities, such as the current situation in NCA. Legal scholars agree that the 1951 Convention was conceived as a living document and that its drafters envisaged it would adapt over time and be interpreted in its historical context.³² The UNHCR introductory note of December 2010 to *Convention and Protocol Relating to the Status of Refugees* recognizes that the convention “has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law.”³³

The introductory note explicitly recognizes the Cartagena Declaration of 1984 as a milestone document that sets out additional regional standards

for refugees in Central America and Mexico. The Cartagena Declaration is known for widening the definition of refugees to include those “who have fled 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.”³⁴ This widening is vital in the context of the NCA crisis because refugees are fleeing from non-state violence perpetuated by gangs, which falls under the category of generalized violence.

However, the Cartagena Declaration has two significant weaknesses. The first is that an international declaration, by its very nature, is nonbinding and does not require any immediate action by the signatories.³⁵ The second is that, while the Cartagena Declaration mentions the generalized violence at the regional level, it does not elaborate.³⁶

Perhaps the only directly relevant document connecting generalized violence to refugee eligibility is the *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* (“Guidance Note”) published by the UNHCR in March 2010. The Guidance Note assists adjudicators when considering refugee claims related to gangs and organized crime: For such a claim of refugee status to succeed, the key question is whether a causal link can be established “between the persecution feared and one or more of the grounds enumerated in the 1951 Convention.”³⁷ That is, proof of persecution at the hands of gang violence is not enough, since it has to be linked to the grounds of the Geneva Convention. The UNHCR document further states that the causal link can be satisfied:

- (1) where there is a real risk of being persecuted at the hands of a non-State actor for reasons which are related to one of the Convention grounds, whether or not the failure of the State to protect the claimant is Convention related; or (2) where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for a Convention reason.³⁸

On the first causal link, the Guidance Note outlines how gang violence can be connected to Geneva Convention grounds. Specifically, “Jurisprudential developments suggest that gang-related asylum claims have most frequently been analysed within the 1951 Convention ground of ‘membership of a particular social group’ and/or ‘political opinion.’”³⁹ However, the “link to the 1951 Convention ground ‘membership of a particular social group’ has sometimes been dismissed because the possible ‘group’ is merely defined by the persecution feared.”⁴⁰ Political opinion is not representative, as there have been few occasions in which gangs have taken a political stance in the past few years.

There is also the possibility to connect it to the ground of religion, “where the applicant’s religious beliefs are incompatible with gang life style.”⁴¹ While, in theory, gang activity likely goes against religious beliefs since it involves drug trafficking, homicide, and rape, it is also important to remember that in the NCA, the majority of the population is Christian. Religion is deeply engrained in culture, and it would not be the main reason for persecution. It is a stronger claim when connected to “a gang member who experiences religious conversion [and] wants to exit the gang.”⁴² In this case, persecution can be understood to be strongly linked to religious grounds.

The second causal link provides stronger grounds for protection in the NCA. Victims of gang violence would normally not be eligible for refugee status where the state is able or willing to provide effective protection. But given that many of the Central American gangs have countrywide and regional reach and organization, internal flight may generally not be an alternative in claims relating to these gangs.⁴³ Moreover, “relocation is normally not considered relevant where the feared persecution emanates from, or is condoned or tolerated by, State agents, as State agents are presumed to exercise authority in all parts of the country.”⁴⁴ With gangs involved at the federal and local levels of governments and institutions, reallocation is not a strong option to gain protection, especially considering the small size of NCA countries.

The Guidance Note recognizes that more legal development is needed in this regard. In many cases, “the claimant is targeted because of his/her own money or for reasons of retribution by an organized gang.”⁴⁵ They are often persecuted as “gang-resisters”; in other words, they are exercising their right not to associate with the gangs. Significantly, “At the core of gang resistance is the individual’s attempt to respect the rule of law.”⁴⁶ Jurisprudence, which in this regard is far from uniform, must be developed to provide a stronger protection to NCA refugee claimants.

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Where the law is ambiguous, discretion enables politics to define what happens in practice.⁴⁷ While international law on refugees needs to be developed further, it is even more vital that the already stipulated protections become part of the domestic legal system, especially when the most recent developments, such as the Cartagena Declaration, are nonbinding.⁴⁸

The Integration of International Protection Norms in Mexico

At the core of the argument for institutionalization and implementation is the belief that, if host states fully incorporate in their policies the international refugee law and human rights law standards to which

they are signatories, then a much higher proportion of asylum seekers will receive access to protection.⁴⁹ By connecting refugee law with immigration law, theory can be brought more closely in line with practice.⁵⁰ To achieve this, the process of national adoption has to focus on the interactions between institutionalized norms and state interests over time.⁵¹

State interests are influenced by incentives. These incentives can be domestic, such as those related to public opinion, electoral politics, and business interests. Or they can be international, such as international financial assistance, the importance of international legitimacy, and international burden sharing to support the cost of hosting refugees.⁵² Policymaking that seriously considers the role of humanitarian norms and institutions does not require abandoning an interest-based, rational-actor model of policy analysis.⁵³ That is, the adoption of external norms does not necessarily hinder state sovereignty, but it can reach an optimal level when humanitarian protection converges with state interest.

To understand the complex dynamic between humanitarian protection and state interest, it is useful to analyze Mexico's protection of refugees over time, contrasting state interest and the adoption of humanitarian norms at three key periods: the Chinese immigration of the early 20th century, Guatemalan refugees in the 1980s, and, the focus of this report, contemporary Central American asylum seekers. These cases illustrate the incentives that the state has to provide protection. The first happened in the context of no institutionalized international protection for refugees. The second represented a transition for Mexico from no domestic protection to some alignment with international norms. The last is happening in the context of robustly stipulated international and regional protection that has been gradually incorporated in to Mexican domestic law.

Chinese migration to Mexico started at the end of the 19th century. At the time, President Porfirio Díaz had catapulted Mexico through a rate of capital development and state formation that actively encouraged foreign immigration (from Europe and the US) and capital investment.⁵⁴ Immigrants answered the call, and Mexico's immigrant population of 48,000

in 1895 increased 242 percent by 1910.⁵⁵ Chinese nationals were not contemplated within this expansionary plan. Nonetheless, they were protected through the Treaty of Amity, Commerce, and Navigation (1899) guaranteeing the right of "free and voluntary movement" between Mexico and China and assuring Chinese immigrants would enjoy the same legal rights as Mexican nationals.⁵⁶

State interests dramatically changed with the Mexican Revolution. Revolutionary leaders pitted the "foreigner" against the "national," associating foreigners with the economic and social inequities that Díaz's dictatorship had brought to rural Mexicans.⁵⁷ This attitude was institutionalized with the *Junto Manifesto* of 1916, which established Chinese immigrants as antithetical to Mexican nationalism.⁵⁸ This policy change resulted, among other things, in the murder of more than 800 Chinese in Mexico between 1911 and 1919.⁵⁹ With no set parameters for protection at the international or national levels, the treatment of Chinese immigrants largely depended on current state interest.

Sixty-two years later, Mexico faced a new large influx of foreigners. By 1981, tens of thousands of Guatemalan peasants had fled to Mexico to escape government anti-insurgency campaigns in northern Guatemala.⁶⁰ Mexico had a long tradition of granting asylum to middle-class Europeans and South American intellectuals, but it had never faced such an influx of impoverished indigenous peoples from Central America.⁶¹ At the time, even though the Convention on Refugees had been active for almost three decades, Mexico had no previous contact with the UNHCR or international refugee protection norms.⁶² It had not signed the convention nor incorporated refugee protection in its domestic laws.⁶³

Mexico had three main disincentives to complying with protection norms. First, refugee protection at the time had a high political cost, with oil prices falling and the country's debt burden increasing. Second, the US refused to recognize refugees from Guatemala; providing protection in Mexico would have further encouraged the US to deport Central Americans to Mexico. Third, Mexico was seeking improved relations with the Guatemalan government,

which actively called for the refugees' return. As a result, Mexico resorted to mass refoulement.⁶⁴

However, despite the state's best efforts, its deportations could not keep up with new arrivals. Motivated by national interest, Mexico accepted the intervention of the UNHCR, which offered Mexico a solution, including its own personnel and financing.⁶⁵ The UNHCR's plan for refugee camps promised the containment and depoliticization of refugee populations. Within the Mexican government, those supporting the UNHCR program argued that by not recognizing refugees Mexico ran a greater risk of their dispersion: The UNHCR plan enabled Mexico to take a census of the refugees and contain them geographically.⁶⁶

The UNHCR did not persuade Mexico to respect humanitarian norms *despite* its national interests. Instead, the UNHCR provided government officials with a ready policy option and institutional support to pursue their existing interests in security, stability, and international legitimacy through refugee protection.⁶⁷ As a result, by the late 1980s, Mexico was protecting nearly 50,000 Guatemalan refugees and working toward their permanent resettlement.⁶⁸ They went from refoulement to some protection norms.

But the protection was still weak and subject to sudden changes in the interests of policymakers. To guarantee a long-term stable protection, international refugee law needed to permeate into the Mexican legal system and institutions.

Mexican Refugee Protection to North Central Americans

The third case study is NCA asylum seekers, which is the core of this report. I first consider refugee protection at the institutional level and then implementation. Mexican developments in jurisprudence are "part of a reaction to the forces of globalization, which are placing increasing pressure on the different domestic branches of government to conform to global standards."⁶⁹ The Mexican state has increasingly institutionalized international refugee norms over the past few decades. (See Table 1.)

Incentives in this process matter. For Mexico, international legitimacy has been a driving factor. Mexico is one of the co-facilitators of the UN Global Compact for Migration (2018)⁷⁰ and has been harshly criticized for its desire to be a model state while having widespread violations of human rights toward migrants domestically.⁷¹

A second incentive is that, faced with complicated crises such as the Central American migratory movement, governments seeking policy solutions tend to first consider internationally institutionalized options. Original policies, derived from analysis of a state's particular interests, are difficult to develop; they also place excessive responsibility for failure on their creators. Policymakers find it safer and less costly to adapt norm-guided policy options to their interests.⁷² As illustrated in the case of Guatemalan refugees in the 1980s, the incentives to adopt international norms encouraged policymakers to pursue existing interests in security, stability, and international legitimacy through refugee protection.⁷³

A third incentive, which has not been studied in-depth, is the ability to enhance overall security through increased refugee protection. Mexican policies that criminalize asylum seeking effectively provide the cartels with an income stream from human smuggling, enabling them to subsidize other operations that undermine the state's regional security goals.⁷⁴ Providing a monopoly on protection through safe and fair asylum-seeking processes incentivizes asylum seekers to pursue legal pathways and reduces the dangers of illegality for them and for the Mexican state.

As a result of these incentives and others, important developments have occurred in Mexican refugee protection. Most notably, the *Ley de Migración* (Law of Migration) of 2011 replaced the previous *Ley General de Población* (General Law of Population) of 1974, which criminalized both irregular migration and aid to irregular migrants.⁷⁵ The *Ley de Migración* recognizes the human rights of migrants, regardless of their undocumented status, and decriminalizes irregular migration by classifying it as an administrative infraction rather than a crime. It also aims to strengthen order and security, provides for

Table 1. Chronological Overview of Mexican Migratory Law and Policy

Year	Migratory Law or Policy
1974	General Law of Population is signed into law.
1984	Mexico becomes party to the Cartagena Declaration on Refugees.
1994	Mexico becomes party to the San Jose Declaration.
2000	Mexico signs the 1951 Refugee Convention and 1967 Protocol.
2008	Mexico and the United States sign the Mérida Initiative.
2011	Law on Refugees, Complementary Protection, and Political Asylum is signed into law.
2011	Law of Migration is signed into law.
2013	The National Plan of Development 13-18 is signed, with Article 5 focused on protecting immigrants and refugees in Mexico.
2014	For the first time, the federal state elaborates a program aimed at migration, the Special Program of Migration 2014–18.
2014	The controversial Southern Border Plan is ratified.
2014	The General Law of Children and Adolescents is approved, widening the protection to unaccompanied child migrants.
2016	The Programme of Alternatives to Detention is ratified.

Source: Author.

heightened and advanced technological surveillance, and enforces the practice of secondary revision of status.⁷⁶ The Ley de Migración states in its objectives a respect for the human rights of migrants even before mentioning national security. Its first two governing principles are listed as “unrestricted respect for human rights” and an end to the “criminalization of the irregular migrant.”⁷⁷ Thus, the law should significantly reshape Mexico’s efforts to guarantee refugee protection.

The previous requirements for Central Americans to enter the country through legal means remain in place, and they are required to demonstrate steady, decently paid work and strong ties to their home country.⁷⁸ Evidently, these requirements block legal

transit access to the socioeconomic class of people who are fleeing from violence, which makes it essential to have complementary legislation that focuses on irregular migration.

The Ley Sobre Refugiados, Protección Complementary, y Asilo Político (Law of Refugees, Complementary Protection, and Political Asylum), ratified in January 2011, effectively incorporates principles of humanitarian protection such as non-refoulement. Article 13 cites the 1951 Convention’s definition of a refugee and includes the developments from the Cartagena Declaration, explicitly granting protection to victims of generalized violence.

The RSD process in Mexico is carried out primarily by two institutions: the National Institute of

Migration (INM) and the Mexican Commission for Refugee Assistance (COMAR). The INM is a federal entity, overseen by the Interior Ministry, responsible for regulating borders, travel, and residence documents and the flow of regular and irregular migration throughout the country.⁷⁹ The INM is also responsible for apprehending and deporting irregular migrants. With a staff of close to 6,000, the INM officials who have direct contact with people seeking asylum generally fall into two categories: INM field agents, who carry out a first stage of interception and apprehensions in field areas such as highways or checkpoints, and INM officials assigned to one of the 54 migration detention centers throughout the country.⁸⁰

The Mexican Commission for Aid to Refugees (COMAR) is an interministerial body with representatives from the Ministries of Interior, Foreign Affairs, and Labor and Social Welfare.⁸¹ It oversees the recognition of refugee status. UNHCR and civil society previously had greater involvement, but the Refugee and Complementary Protection Act in 2011 gave COMAR this function.⁸² COMAR performs the procedure for recognition of refugee status, and therefore COMAR prepares and protects the case files, while the INM keeps the migratory records for asylum seekers in detention.⁸³ If a migrant accesses the COMAR or approaches the INM directly, their cases can be processed without detention.⁸⁴ However, if migrants are first apprehended by the INM and then voice their desire to apply for asylum, they are subject to detention, but in accordance with international law, they must receive due process.

Other positive features in the Mexican legal system include issuance of permanent residence to refugees, the support from the Ministry of the Interior (through COMAR) to the refugee population in processing their regular permanence documents, no requirement for refugees to present identity documents (such as a passport) to further immigration proceedings, an exemption for the refugee population from the naturalization test examining Mexican cultural knowledge and history, and inclusion as beneficiaries of health care.⁸⁵

While these are positive developments in Mexican refugee law and policy toward recognizing

fundamental human rights, coexisting interests push Mexico to develop an immigration policy conceived first and foremost in terms of border security. Some of this pressure comes from the Mérida Initiative, which focuses on the drug war.⁸⁶ The relationship between irregular migration and illicit drug trade is complex and perhaps the main factor that leads to the criminalization of asylum seeking. They are somewhat intertwined, but the asylum-seeking population should be handled differently from the security measures targeting transnational drug cartels.

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Policy agreements such as the Mérida Initiative that attempt to curtail the development of drug cartels have negative externalities for the asylum-seeking population. Mexico's apprehension of more than 150,000 Central American migrants in 2015 and 2016⁸⁷ is cited as a goal achieved from the Mérida Initiative, which is a sign that the program has been geared toward criminalizing irregular migration. Such an approach directly violates the two governing principles in the Mexican Migratory Law and international goals of reducing the apprehension of asylum seekers.⁸⁸

Another perceived success of the Mérida Initiative is the increase in quantity and quality of border patrols.⁸⁹ However, if such an increase in border security is paired with a neglect for due process and a fundamental legal culture that believes the rights of asylum seekers are not a priority, it leads to further

marginalization. Asylum seekers see this increase in border patrols as a threat—and rightly so, considering the reality of unscrupulous deportation.

Malpractices in the Implementation

Implementation is a process mediated by politics and bureaucracy that lies between the adoption of agreements and practice.⁹⁰ While the Mexican state has an appropriate institutional framework for protection, it has serious shortcomings in its implementation. Three types of malpractices are common at the implementation level: refoulement, inefficient channeling of refugee claimants to COMAR by INM agents, and detention. These are implementation problems because national and international law clearly stipulate that they should not be present in the asylum proceedings.

Refoulement is the forced deportation of asylum seekers to their home countries without due process. The non-refoulement principle is strongly present in international law as it pertains to refugee protection. The UNHCR reported that “in 2001, State parties issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol, and they recognized in particular that the core principle of non-refoulement is embedded in customary international law.”⁹¹ In addition, the Cartagena Declaration expresses “unrestricted respect” for non-refoulement and expands on the basic definition found in the 1951 Refugee Convention by specifying that it includes “non-rejection at the border and indirect non-refoulement” and the “non-penalization of illegal entry, and non-discrimination.”⁹² Mexican refugee law is quite firm on the issue, which is discussed in Article 5 of the Law on Refugees.⁹³

Even while stipulated at the institutional and legal level, Mexican RSD processes lack respect for non-refoulement. A thorough report by Amnesty International demonstrates that “the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the non-refoulement principle.”⁹⁴ Amnesty

International found that 75 percent of those people detained by the INM were not informed of their right to seek asylum in Mexico.⁹⁵ In 297 apprehension cases, only in 10 instances did INM field agents act according to the law by explaining to asylum seekers their right to seek protection in Mexico and informing them of the COMAR procedure.⁹⁶ Amnesty International also found that 69 percent of those apprehended by INM noted that the field agent never asked them their reasons for leaving their countries,⁹⁷ even though the Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Populations⁹⁸ state that asylum seekers should be asked this preliminary question.

The INM informed Amnesty International that each migrant or asylum seeker who enters a detention center is given at least one hour individually when they are interviewed and explained their rights. Nevertheless, only 68 percent of responses from people who passed through detention centers indicated to Amnesty International they were given an interview when they entered.⁹⁹ Of those, 57 percent said it lasted less than 10 minutes, 35 percent said their interview lasted less than 30 minutes, and only 8 percent reported that it lasted more than half an hour.¹⁰⁰ The UNHCR notes that the recommended time for screening interviews is between 30 minutes and a few hours per person. The US Committee for Refugees and Migrants includes a recommendation that “accelerated procedures must comply with internationally established due process.”¹⁰¹ This is specifically stipulated to prevent the risk of refoulement, which is incurred in the malpractice of not providing enough time to conduct the credibility assessment.

The second type of malpractice relates to INM agents channeling refugee claimants to COMAR. Mexican law requires that people seeking asylum be channeled to COMAR without delay and shielded from deportation. Article 21 of Mexico’s Law of Refugees reads:

Any authority that becomes aware of the intention of a foreigner to seek refugee status, must immediately advise in writing the Ministry of the Interior [to which

the COMAR pertains]. The failure to comply with the requirement will be sanctioned in line with the legal stipulations on responsibility of public servants.¹⁰²

However, that is not always the case. One person told Amnesty International that, when she asked an INM agent how to receive refugee protection, the agent told her it did not exist in Mexico.¹⁰³ Also of concern are numerous cases in which INM officers told asylum seekers that their consul was the person in charge of explaining to them their rights to asylum in Mexico, thereby indirectly pushing them to contact their consular authorities.¹⁰⁴ International practice tends to shield asylum seekers from contact with their consular authorities to protect them against the risk of identification, retaliation, and human rights violations at the hands of state agents.¹⁰⁵ Article 21 of Mexico's Refugee Law prohibits informing consuls of their citizens' asylum claim, unless the person gives express consent.¹⁰⁶ These inefficiencies in the channeling of refugees to COMAR are a significant barrier to access.

The third type of malpractice is detention, which has become the Mexican state's automatic response. All irregular migrants apprehended by the INM are detained, even if they express a wish to seek asylum. More than 90,000 people were detained in 2017.¹⁰⁷ Even though the Mexican legal framework prohibits it, 18,000 children and adolescents were detained in the same year for their migratory status.¹⁰⁸

According to the Amnesty International report, 68 percent of those 116 responses that detailed a detention by the police described their treatment as "bad" or "very bad," with some testimonies noting torture or ill treatment by officials.¹⁰⁹ Amnesty International also found the existence of solitary confinement cells that, according to immigration officials, are used as punishment cells to segregate certain individuals.¹¹⁰

The use of punishment cells is excessive according to international standards on the deprivation of liberty and rights of detainees and is prohibited by the United Nations Standard Minimum Rules for the Treatment of Prisoners.¹¹¹ Detention itself is a malpractice: It leaves the asylum seeker almost

completely devoid of any individual assessment, and it contradicts national law, which stipulates that migrating illegally is not a crime.

Positive Developments

There have been several positive developments at the institutional and implementation level to address the malpractices of detention and difficulty of access to the asylum-seeking process. In February 2019, COMAR and the INM signed a convention to guarantee migrants access to humanitarian aid, first aid, orientation, and information about rights, regardless of nationality or migratory status, during their stay at the migratory stations or during their processes in INM offices.¹¹² These are all things stipulated in the Refugee Law of Mexico, specifically in Article 23, but the convention takes further steps and proposes tangible mechanisms to fulfill them. One stipulation is that the INM must provide a physical space for COMAR in its stations to protect and provide assistance to asylum seekers.¹¹³ This kind of interministerial agreement strengthens refugee protection at the implementation level.

Even though the Mexican legal framework prohibits it, 18,000 children and adolescents were detained in the same year for their migratory status.

A promising development from the INM has been the implementation of the Programme of Alternatives to Detention (Programa de Alternativas a la Detención) since August 2016, as a

result of an agreement among COMAR, INM, and UNCHR. Before August 2016, asylum seekers making claims from inside a detention center remained in detention for three months or more. Since late 2016, most asylum seekers in detention centers are being released within weeks due to the Programme of Alternatives to Detention, which places them in migrant shelters run by civil society organizations.¹¹⁴ This program is a clear example of a policy that protects migrants' human rights without jeopardizing state goals.

In 2016, 24 percent of asylum claims initiated with COMAR were abandoned by the asylum seeker before the procedure was concluded. The 2017 abandonment rate dropped to 16 percent by August, according to COMAR figures. These figures suggest that shorter periods of detention could be affecting asylum seekers' adherence to the asylum procedure in Mexico, leading them to trust more in the possibility of obtaining protection rather than being returned to their country.¹¹⁵

Another positive development is the approval of the General Law of Children and Adolescents (2014), which prohibits detention of unaccompanied children for migratory motives. The main goals are to continue strengthening the alternatives to detention that already exist and strengthening the processes of identification, channeling, and management of cases.¹¹⁶ Detention should never be inflicted on children, adolescents, or other vulnerable people and only implemented as a last resort with other migrants.¹¹⁷

In general, this ongoing process of positive developments up to the beginning of 2019 showed a possible convergence between state interests and refugee protection, and it demonstrates the impact of civil society organizations, think tanks, and intergovernmental organizations advocating for stronger refugee protection.

Policy Recommendations

Two main policy recommendations emerge from this report. The first is aimed at developments in academia and the second at interagency cooperation.

As noted, the jurisprudence that protects asylum seekers fleeing generalized violence needs to be further developed. While the *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* offers a useful framework for connecting generalized violence cases to one of the 1951 Convention grounds, it needs more clarity in application. Gang violence has generally fallen under the category of a particular social group, but the social group cannot be defined exclusively by the persecution that members of the group suffer or by a common fear of being persecuted.¹¹⁸

A particular social group is defined by an immutable characteristic: one that either is beyond the power of an individual to change or is so fundamental to the individual's identity or conscience that it ought not be required to change.¹¹⁹ Obvious examples of immutable characteristics are sex, kinship ties, and shared past experiences.¹²⁰ Similar connections can be made to the case of victims of generalized violence in Central America. While persecutory conduct cannot define the social group, the actions of the persecutors may serve to identify or even create a particular social group.¹²¹ Gang activity in Central America does target certain groups more acutely.

Therefore, a better understanding of the realities in Central America, in light of these legal categories, would aid COMAR staff in the credibility assessment part of the process. Incorporating UNHCR reports, such as the "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras,"¹²² will be vital in understanding the local realities of NCA, which leads to more accurate assessments of refugee eligibility. More jurisprudential and academic developments that bridge the gap between generalized violence and the 1951 Convention grounds will provide further stability and guard against sudden swings in attitude toward refugee protection.

The second policy recommendation focuses on fostering interagency responses to Central American refugee movements. One main argument that this research advances is that recognition of international protection norms should be tied to benefits, such as increased institutional strength, better legal frameworks, and increased funding.

The recent Central American caravans offer a good case study of the benefits of interagency responses. The response to the caravans has involved the collaboration of the UNCHR, International Organization for Migration (IOM), UNICEF, and, of course, COMAR and the INM, as well as a variety of civil society and religious organizations. The IOM has provided support to migrants who want to return voluntarily and information about immigration procedures.¹²³ The UNHCR has sheltered thousands of people, an average of 1,500 per day in Tecun Uman and Petén.¹²⁴ UNICEF has focused on children, supporting child-friendly spaces, and providing daily psychosocial support in Suchiate and Tapachula.¹²⁵

These efforts offer significant logistical and financial support to the Mexican government, while facilitating effective RSD procedures by COMAR. The involvement of these agencies increases transparency with the creation of carefully documented reports that help track the refugee population demographically. They also focus on self-sufficiency, which starts by allowing asylum seekers to work while their cases are processed.

Steps toward legal recognition will always contribute to greater protection and avoid the dangers of illegality and marginalization. The UNHCR supports an approach that intrinsically links a registration of asylum claims to providing employment and relocation to areas where local integration is more promising, creating paths to long-term solutions from the beginning.¹²⁶ A reduction in Guatemalan deportations since 2013 has been partly attributed to the changes in migratory policy that provides migratory permits to work, which is reducing the irregular migratory influxes and taking an economic strain off the Mexican state.¹²⁷

Conclusion

Effective refugee protection for Central Americans, which guarantees a fair and accessible RSD process, requires an approach that recognizes the complexities of adopting international norms and seeks to institutionalize and implement protection at the

Mexican domestic level. At the international level, refugee protection for Central Americans finds support in several regional and international agreements, especially in the Refugee Convention and Protocol on Refugees, Cartagena Declaration, and Guidance Note. Strength at this level is hindered by the ambiguity in establishing a causal relationship between generalized violence and one of the five grounds of the Convention on Refugees.

At the institutional level, Mexico has taken significant steps with the new Migration Law, which decriminalizes asylum seeking; the Refugee Law, which incorporates international standards; and efforts to strengthen COMAR, which oversees RSD processes. The challenge is to continue fostering a legal culture that prioritizes the protection of the rights of asylum seekers as opposed to policies primarily conceived in terms of border security, which have negative externalities for asylum seekers.

At the implementation level, the INM and COMAR need to take steps to avoid the malpractices of refoulement, ineffective interministerial channeling, and detention, which are against national and international refugee law. To further incentivize the development of refugee protection, it must not be seen as antithetical to state interest. Refugee protection and state goals can be harmonized and even assist each other. This was the case with UNHCR support to Mexico with Guatemalan refugees in the 1980s. And it is the case now with the interagency responses provided to the Central American caravans in 2019.

Further research needs to focus on the credibility assessment part of the RSD process, analyzing how COMAR establishes causal connections between the victims of generalized violence and one of the five grounds. A greater awareness of how this works in practice will guide new jurisprudential developments that give stronger protection to gang resisters. Research should also focus on the population that has been granted refugee status in the past few years, analyzing its adaptation to Mexican society and degree of self-sufficiency. If results in the adaptation of the refugee population are satisfactory, they can strengthen the argument that refugee protection is not antithetical to national interest.

A study of refugee protection that considers the interactions between international and domestic interests is closer to reality and practice. The more refugee protection aligns with national interests, the stronger the incentives will be to widen it. A similar framework of analysis can be applied to other countries in the Americas, such as Canada and Costa Rica, which are also experiencing a growing influx of Central American asylum seekers. Moreover, the case of generalized-violence victims tests

the effectiveness of regional legal developments, such as the Cartagena Declaration, that go beyond the scope of the 1951 Convention. It is useful in the study of other threats that cause forced migration and that are not directly linked to the five convention grounds, such as environmental degradation. The framework applied in this research could guide the pragmatic Mexican policymaker in discerning key areas in which refugee protection can increase without abandoning state goals.

Notes

1. Maya Averbuch, “Mexico Can’t Handle Your Tired, Poor, and Huddled Masses,” *Foreign Policy*, July 30, 2018, <https://foreignpolicy.com/2018/07/30/mexico-cant-handle-your-tired-poor-and-huddled-masses/>.
2. Amelia Frank-Vitale, “Central American Migrants in Mexico: Implications for U.S. Security and Immigration Policy” (working paper, Institute of Current World Affairs, Washington, DC, March 2013), <http://ssrn.com/abstract=2412769>.
3. Comisión Nacional de Derechos Humanos, “Ley Sobre Refugiados, Protección Complementaria y Asilo Político,” January 27, 2011, http://www.cndh.org.mx/sites/all/doc/Programas/migrantes/Ley_RPCAP.pdf.
4. The World Health Organization considers rates of 10 homicides per 100,000 inhabitants as epidemic homicide levels. In 2015, El Salvador had a rate of 104 homicides per 100,000 inhabitants. See Jonathan Watts, “One Murder Every Hour: How El Salvador Became the Homicide Capital of the World,” *Guardian*, August 22, 2015, <https://www.theguardian.com/world/2015/aug/22/el-salvador-worlds-most-homicidal-place>.
5. The term “gang” is recognized in UNHCR documents as “a group of two or more members which carries out criminal activities as its primary or secondary objective.” See UN High Commissioner for Refugees, Division of International Protection, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, March 31, 2010, <https://www.refworld.org/docid/4bb21fa02.html>. More elaborated definitions recognize gangs as “complexly organized, sometimes cohesive and often have established leaders and rules. These groups engage in a wide variety of significantly more violent crime, conflict with other gangs and often demonstrate a tradition of possessing distinctive territory, or turf, colors and hand signs.” See G. David Curry and Irving A. Spengel, “Gang Homicide, Delinquency, and Community,” *Criminology* 26, no. 3 (August 1998): 177–204, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.1988.tb00847.x>.
6. InSight Crime and American University Center for Latin American & Latino Studies, *MS13 in the Americas: How the World’s Most Notorious Gang Defies Logic, Resists Destruction*, 2018, <https://www.insightcrime.org/wp-content/uploads/2018/02/MS13-in-the-Americas-InSight-Crime-English.pdf>.
7. InSight Crime and American University Center for Latin American & Latino Studies, *MS13 in the Americas*.
8. InSight Crime and American University Center for Latin American & Latino Studies, *MS13 in the Americas*, 4.
9. Frank-Vitale, “Central American Migrants in Mexico,” 3.
10. Amnesty International, *Invisible Victims: Migrants on the Move in Mexico*, April 2010, <https://www.amnesty.org/download/Documents/36000/amr410142010eng.pdf>.
11. Richard Jackson, “Regime Security,” in *Contemporary Security Studies*, ed. Alan Collins (Oxford, UK: Oxford University Press, 2015), 148–201, <https://www.oxfordpoliticstrove.com/view/10.1093/hepl/9780198708315.001.0001/hepl-9780198708315-chapter-14>.
12. Ana Arana, “How Street Gangs Took Central America,” *Foreign Affairs* 84, no. 3 (June 2005): 98–110, <http://www.jstor.org/stable/20034353>.
13. Óscar Martínez, “Los Salvadoreños Cruzan Fronteras de Guerra a Diario,” *El Faro*, January 4, 2016, <https://elfaro.net/es/201601/salanegra/17702/Los-salvadore%C3%B1os-cruzan-fronteras-de-guerra-a-diario.htm>.
14. Nelson Rauda Zablah, “La MS-13 ahuyenta a Jackeline Rivera en su cierre de campaña,” *El Faro*, March 1, 2018, <https://elfaro.net/es/201803/el-salvador/21548/La-MS-13-ahuyenta-a-Jackeline-Rivera-en-su-cierre-de-campa%C3%B1a.htm>. *Clica* refers to subgroups of the gangs that dominate a territory and have their own leaders.
15. Jackson, “Regime Security,” 148.
16. InSight Crime and American University Center for Latin American & Latino Studies, *MS13 in the Americas*, 34.
17. Frank-Vitale, “Central American Migrants in Mexico,” 7.
18. UN High Commissioner for Refugees, Division of International Protection, *Guidance Note on Refugee Claims Relating to Victims of Organized Crime*, 2. *Renta*, directly translated as “rent,” is a monetary quota that local gang structures require individuals to pay regularly to avoid retaliation.

19. UN High Commissioner for Refugees, Division of International Protection, *Guidance Note on Refugee Claims Relating to Victims of Organized Crime*.
20. UN Office on Drugs and Crime, *Crime and Development in Central America: Caught in the Crossfire*, May 2007, <https://www.unodc.org/documents/data-and-analysis/Central-america-study-en.pdf>.
21. Luca Guanziroli (child protection officer, UN High Commissioner for Refugees, Honduras), in discussion with the author, November 17, 2018.
22. Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford, UK: Oxford University Press, 1989).
23. Julian Lim, "Immigration, Asylum, and Citizenship: A More Holistic Approach," *California Law Review* 101, no. 4 (August 2013): 1013–77, <http://www.jstor.org/stable/23784324>.
24. Alexander Betts, "Improving the Refugee Protection Regime," in *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell University Press, 2013): 173–87.
25. UN High Commissioner for Human Rights, "Universal Declaration on Human Rights," December 10, 1948, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.
26. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America: Regional Challenges & Opportunities: The National Systems of Brazil, Colombia, Costa Rica, Ecuador, and Mexico*, January 2013, <https://www.refworld.org/pdfile/51704a564.pdf>. The Mexican state provides 15 days after the notice of a negative answer for recourse.
27. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 5.
28. Kate Jastram, "Looking to Human Rights and Humanitarian Law to Determine Refugee Status," *Proceedings of the American Society of International Law Annual Meeting* 106, no. 1 (2012): 436–39, <https://www.cambridge.org/core/journals/proceedings-of-the-asil-annual-meeting/article/looking-to-human-rights-and-humanitarian-law-to-determine-refugee-status/86E9A4CF86360BDA42F44306E1179062>. It is well-documented in the United States and Europe. For example, on March 20, 2012, the High Commissioner for Refugees called the European asylum system "extremely dysfunctional," illustrating his point by noting that acceptance rates for Afghan asylum seekers varied in 2011 from 8 to 91 percent depending on the country in which the claim was lodged.
29. Betts, "Improving the Refugee Protection Regime," 176.
30. Betts, "Improving the Refugee Protection Regime," 174.
31. UN High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, December 2010, <https://www.unhcr.org/3b66c2aa10>.
32. Guy S. Goodwin-Gill, "The International Law of Refugee Protection," in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmiyeh et al. (New York: Oxford University Press, 2014).
33. UN High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, 6.
34. UN High Commissioner for Refugees, *Cartagena Declaration on Refugees*, November 22, 1984, 36, <https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>.
35. Daniel Costa, "Introductory Note to the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas," *International Legal Materials* 50, no. 3 (2011): 357–63, <https://www.jstor.org/stable/10.5305/intelegamate.50.3.0357>.
36. Costa, "Introductory Note to the Brasilia Declaration on the Protection of Refugees and Stateless Persons in America," 358.
37. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 8.
38. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*.
39. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 10.
40. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 21.
41. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 11.
42. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 11.
43. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 18.
44. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 18.

45. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 21.
46. UN High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 13.
47. Betts, “Improving the Refugee Protection Regime,” 175.
48. Costa, “Introductory Note to the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas,” 360.
49. Betts, “Improving the Refugee Protection Regime,” 178.
50. Lim, “Immigration, Asylum, and Citizenship,” 1044.
51. Kevin Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests: The Making of Refugee Policies in Mexico and Honduras, 1980–89,” *International Organization* 46, no. 3 (Summer 1992): 709, <http://www.jstor.org/stable/2706993>.
52. Betts, “Improving the Refugee Protection Regime,” 177.
53. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 710.
54. Lim, “Immigration, Asylum, and Citizenship,” 1031.
55. Lim, “Immigration, Asylum, and Citizenship.”
56. Lim, “Immigration, Asylum, and Citizenship,” 1031.
57. Lim, “Immigration, Asylum, and Citizenship,” 1047.
58. Lim, “Immigration, Asylum, and Citizenship,” 1049.
59. Lim, “Immigration, Asylum, and Citizenship,” 1049.
60. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 713.
61. Lim, “Immigration, Asylum, and Citizenship,” 1047.
62. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 712.
63. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 712.
64. Article 33 of the 1951 Convention stipulates that refoulement means “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” See UN High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*.
65. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 718.
66. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 719.
67. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 720.
68. Hartigan, “Matching Humanitarian Norms with Cold, Hard Interests,” 716.
69. Eyal Benvenisti, “Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts,” *American Journal of International Law* 102, no. 2 (April 2008): 241–74, <https://www.jstor.org/stable/30034538>.
70. UN Member States, “Global Compact for Safe, Orderly and Regular Migration,” July 11, 2018, <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>.
71. Jose Knippen, “¿De qué migrantes habla el gobierno mexicano?,” *Animal Político*, October 19, 2017, <https://www.animalpolitico.com/blogueros-res-publica/2017/10/19/migrantes-habla-gobierno-mexicano-ante-la-onu/>.
72. Lim, “Immigration, Asylum, and Citizenship,” 730.
73. Lim, “Immigration, Asylum, and Citizenship,” 720.
74. Frank-Vitale, “Central American Migration in Mexico,” 12.
75. Irregular migration is a movement that takes place outside the regulatory norms of sending, transiting, and receiving countries. From the perspective of destination countries, it is entry, stay, or work in a country without the necessary authorization or documents required under immigration regulations. See International Organization for Migration, “Key Migration Terms,” April 12, 2018, <https://www.iom.int/key-migration-terms>.
76. Cámara de Diputados del H. Congreso de la Unión, “Ley de Migración,” October 30, 2014, <https://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf>.
77. Cámara de Diputados del H. Congreso de la Unión, “Ley de Migración,” 20.
78. Cámara de Diputados del H. Congreso de la Unión, “Ley de Migración,” 10.

79. Amnesty International, *Overlooked, Under-Protected: Mexico's Deadly Refoulement of Central Americans Seeking Asylum*, January 23, 2018, <http://www.refworld.org/docid/5a69e3c34.html>.
80. Amnesty International, *Overlooked, Under-Protected*, 8.
81. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 18.
82. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 20.
83. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 23.
84. UN High Commissioner for Refugees, *Beyond Detention: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers and Refugees—2014–2019*, August 2016, <https://www.unhcr.org/57b579e47.pdf>.
85. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 12.
86. Frank-Vitale, “Central American Migration in Mexico,” 12.
87. Clare Ribando Seelke and Kristin Finklea, “U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond,” Congressional Research Service, June 29, 2017, <https://fas.org/sgp/crs/row/R41349.pdf>.
88. UN High Commissioner for Refugees, *Beyond Detention*, 4.
89. Seelke and Finklea, “U.S.-Mexican Security Cooperation,” 20.
90. Betts, “Improving the Refugee Protection Regime,” 175.
91. UN High Commissioner for Refugees, *Convention and Protocol Relating to the Status of Refugees*, 3.
92. UN High Commissioner for Refugees, *Cartagena Declaration on Refugees*, 4.
93. Comisión Nacional de Derechos Humanos, “Ley Sobre Refugiados, Protección Complementaria y Asilo Político,” 2.
94. Amnesty International, *Overlooked, Under-Protected*, 9.
95. Amnesty International, *Overlooked, Under-Protected*.
96. Amnesty International, *Overlooked, Under-Protected*, 10.
97. Amnesty International, *Overlooked, Under-Protected*, 9–10.
98. Regional Conference on Migration, “Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations,” June 2013, <https://rosanjose.iom.int/site/sites/default/files/LINEAMIENTOS%20ingles.pdf>.
99. Amnesty International, *Overlooked, Under-Protected*, 11.
100. Amnesty International, *Overlooked, Under-Protected*, 11.
101. Asylum Access Ecuador and US Committee for Refugees and Immigrants, *Refugee Status Determination in Latin America*, 6.
102. Comisión Nacional de Derechos Humanos, “Ley Sobre Refugiados, Protección Complementaria y Asilo Político,” 4.
103. Amnesty International, *Overlooked, Under-Protected*, 10.
104. Amnesty International, *Overlooked, Under-Protected*, 19.
105. Amnesty International, *Overlooked, Under-Protected*, 10, 19, and 21.
106. Comisión Nacional de Derechos Humanos, “Ley Sobre Refugiados, Protección Complementaria y Asilo Político,” 11.
107. International Detention Coalition, “Las Alternativas A La Detención, Una Oportunidad Para La Nueva Administración En México,” September 2018, https://idcoalition.org/wp-content/uploads/2018/10/Propuestas_Alternativas_MEX_2018-2024_25oct.pdf.
108. International Detention Coalition, “Las Alternativas A La Detención,” 3.
109. Amnesty International, *Overlooked, Under-Protected*, 18.
110. Amnesty International, *Overlooked, Under-Protected*, 18.
111. UN Office on Drugs and Crimes, “Standard Minimum Rules for the Treatment of Prisoners,” May 13, 1977, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.
112. Carlos Lara, “Firman Convenio Para Reforzar Atención A Refugiados En México,” *El Sol De México*, February 26, 2019, <https://www.elsoldemexico.com.mx/mexico/sociedad/segob-instituto-nacional-de-migracion-firma-convenio-refugiados-mexico-3113848.html>.
113. Lara, “Firman Convenio Para Reforzar Atención A Refugiados En México.”
114. UN Office on Drugs and Crimes, “Standard Minimum Rules for the Treatment of Prisoners,” 12.
115. UN Office on Drugs and Crimes, “Standard Minimum Rules for the Treatment of Prisoners.”

116. International Detention Coalition, “Las Alternativas A La Detención,” 10.
117. International Detention Coalition, “Las Alternativas A La Detención,” 10–11.
118. UN High Commissioner for Refugees, “Guidelines on International Protection: ‘Membership of a Particular Social Group’ Within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees,” May 7, 2002, <https://www.unhcr.org/3d58de2da.pdf>.
119. UN High Commissioner for Refugees, “Guidelines on International Protection,” 14.
120. UN High Commissioner for Refugees, “Guidelines on International Protection,” 14.
121. UN High Commissioner for Refugees, “Guidelines on International Protection,” 5.
122. UN High Commissioner for Refugees, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras,” July 27, 2016, <https://www.refworld.org/pdfid/579767434.pdf>.
123. UN High Commissioner for Refugees, International Organization for Migration, and UN International Children’s Emergency Fund, “Inter-Agency Response: Mixed Movements from North of Central America,” January 2019, https://www.acnur.org/op/op_fs/5c5cb6c14/inter-agency-response-to-mixed-movements-from-the-north-of-central-america.html.
124. UN High Commissioner for Refugees, International Organization for Migration, and UN International Children’s Emergency Fund, “Inter-Agency Response.”
125. UN High Commissioner for Refugees, International Organization for Migration, and UN International Children’s Emergency Fund, “Inter-Agency Response.”
126. UN High Commissioner for Refugees, International Organization for Migration, and UN International Children’s Emergency Fund, “Inter-Agency Response,” 3.
127. UN High Commissioner for Refugees, International Organization for Migration, and UN International Children’s Emergency Fund, “Inter-Agency Response,” 3.