



Migration enforcement & access to asylum at Mexico's southern border September 2019

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Under the administration of Mexican president Andres Manuel Lopez Obrador (AMLO), the Mexican government has had a shifting migration policy. While initially prioritizing the protection of migrant rights, the Mexican government's policies have gradually taken an enforcement-centric approach. The U.S. government has pressured Mexico to stem migration and threatened to impose tariffs on products imported from Mexico if Mexico did not decrease migration through its borders.ⁱ Under U.S. pressure, the Mexican government agreed to take significant measures to step up its migration enforcement in a joint declaration in early June 2019. Since then, the United States has continued to pressure Mexico to enter into a "Safe Third Country" agreement that would force asylum seekers who traveled through Mexican territory on their way to the United States to return to Mexico to seek asylum there.

This memo summarizes the recent situation of migration enforcement and access to asylum at Mexico's southern border, including existing national-level policies and their impacts on migrants and asylum seekers, and concludes with recommendations for U.S. policymakers. This report is based on first-hand information gathered from a civil society observation mission at the end of May 2019ⁱⁱ in which participating organizations held meetings with governmental and nongovernmental stakeholders in the city of Tapachula along Mexico's southern border, as well as updated research and reports shared by migrant rights organizations based in this region since then. The conditions outlined in this memo, including the severely limited capacity of Mexico's national refugee agency (COMAR) to process and decide asylum claims and the dangerous conditions and lack of access to shelter and basic services at Mexico's southern border,ⁱⁱⁱ demonstrate the inability of Mexico to serve as a "Safe Third Country" where refugees can access safety and due process in their asylum claims.

Topics covered:

- Militarized migration enforcement and poor conditions in detention facilities
- Lack of institutional resources & extensive delays in asylum processing
- Lack of clarity around migration regularization options available to migrants
- Lack of access to protections for unaccompanied children
- Recommendations for the U.S. government

Militarized migration enforcement and poor conditions in detention facilities

Since May 2019, the Mexican government has taken an increasingly repressive and militarized approach to the arrival of large groups of migrants, including mass detentions and deportations of migrants from the southern border region. National figures demonstrate a dramatic increase in detentions and deportations of migrants from Mexico. In the first seven months of 2019, 128,485 migrants were apprehended in Mexico, a 76 percent increase from the same period in 2018.^{iv} A total of 84,029 migrants were deported from Mexico in the first seven months of this year, a 38 percent increase from the same period in 2018.^v More migrants were detained and deported from Chiapas than any other state in Mexico.^{vi}

In June 2019, in response to pressure from the United States to stem migration flows, the Mexican government deployed 6,000 members of the newly formed National Guard to southern Mexico.^{vii} National Guard troops have been stationed on highways in and around Tapachula and as well as outside of the Siglo XXI migrant detention center and on the Mexican side of the border with Guatemala.^{viii} Under Mexican law, National Guard troops are allowed to accompany migration enforcement operations though clarity around these responsibilities is still lacking and troops have received insufficient training for engagement with migrants.^{ix}

Immigration enforcement within the city of Tapachula has also increased dramatically since May, with numerous raids targeting places that migrants frequent including the public parks and hotels, some with the participation of the National Guard.^x In these raids asylum applicants carrying official paperwork demonstrating they had filed for asylum and had claims pending with COMAR have been detained, and in some cases deported, in violation of Mexican law.

Checkpoints have been set up in and around Tapachula and National Migration Institute (INM) agents, along with federal police, military police, and marines, frequently stop buses to check the identification documents of those on board.^{xi} The June 5th detention of a group of approximately 400 migrants, including several families and young children, near Tapachula is exemplary of the current militarized approach. The group was confronted by approximately 300 security forces, including members of the National Guard and INM agents. The migrants detained were transported to the Siglo XXI migrant detention center in Tapachula and many were deported the next day without being screened for protection needs in Mexico.^{xii} These types of actions have created an environment of fear and insecurity among migrants and refugees in Tapachula and surrounding areas, leading many to utilize more clandestine and dangerous routes to move on from there, out of desperation and despite the risks involved.

With increasing numbers of migrants detained in Chiapas, the already poor conditions in INM-run migrant detention centers have worsened. In the largest detention facility in Mexico, the Siglo XXI migrant detention center in Tapachula, migrants are held in substandard conditions with a lack of access to adequate food, sanitary conditions, and health care services, and with grave deficiencies in access to due process.^{xiii} The facility has the capacity to hold 900 people but has recently held as many as 2,700 migrants at a time.^{xiv} A Haitian migrant died within this facility in early August, reportedly due to lack of medical attention.^{xv}

In response to the arrival of migrant caravans in late 2018, INM created a temporary migrant detention center on the grounds of the “Mesoamerican Fair,” an open-air space in Tapachula. It has been used to house up to 2,000 migrants at a time, including families and children,^{xvi} and in May 2019 was used to house approximately 700 “extracontinental migrants,” mainly from Haiti and western Africa.^{xvii} Migrants housed in the facility have reported poor conditions, lack of access to adequate food, shelter, and medical care, and mistreatment by INM agents.^{xviii} While the facility has been closed since July 2019, civil society organizations have expressed concerns that such facilities will be used in the future in response to the arrival of large numbers of migrants and that they may not have access to monitor the treatment of migrants inside.

Lack of institutional resources & extensive delays in asylum processing

Mexico continues to be on a path to double the numbers of asylum applications received last year, while its refugee agency (COMAR) remains overwhelmed and underfunded. Mexico received a total of 48,254 asylum applications through the end of August, which already surpasses its total for 2018 and is over three times the number of applications it received during the same time period last year.^{xix} The COMAR office in Tapachula, one of only four offices in the entire country, and the one with the closest proximity to the Mexico-Guatemala border, received over 30,000 individuals applying at this office through the end of August 2019, or more than half of the national total of asylum applications.^{xx} Despite having such a high volume of applications, the Tapachula office is severely under-staffed, with only 9 asylum officers. While more staff were recently hired with the support of the UN Refugee agency, the agency’s long-term commitment to support COMAR with staffing increases is unclear. Under the AMLO Administration, COMAR’s overall budget was cut by nineteen percent compared to its budget in 2018 and there are no signs of a reversal in this policy to date.^{xxi} The AMLO Administration’s prioritization of immigration enforcement over protection is clear from the fact that the 2019 budget for the National Guard is almost three times that of COMAR’s.^{xxii}

During monitoring in May 2019, extensive wait lines circling around the corner of the Tapachula COMAR office were observed. Individuals, including families and children, sleep overnight outside of the office to hold their place in line or because they have nowhere else to go. COMAR staff reported insufficient space for interviewing migrants and a lack of translation services for extra-continental migrants. Migrants must often visit the COMAR office multiple times and endure long waits in order to submit an application and are then required to check in at the COMAR office every 10 days during the application process. While COMAR is required by Mexican law to provide a response to an application in 45 business days, some migrants interviewed reported that they had still not received a response after four months. Multiple visits to the COMAR office make asylum seekers highly visible and vulnerable to extortion and other crimes in Tapachula. Migrants waiting in Tapachula for the resolution of their cases also face numerous challenges in finding housing, employment and access to other basic services.

The vast majority of the asylum applications received in 2019 are still being processed as are some applications from 2017 and 2018. In 2018 29,634 asylum applications were submitted to

COMAR and in that year only 3,000 asylum seekers were recognized as refugees and 1,433 received complementary protection.^{xxiii}

Lack of clarity around migration regularization options other than asylum

Since the entry of large groups of Central Americans at the beginning of 2019 there have been multiple shifts in the options that the Mexican government has offered to migrants to regularize their status. These changes have caused confusion among migrants and the organizations offering them assistance. In January 2019, the Mexican government offered migrants in the caravans a “humanitarian visa card” allowing them to remain in the country temporarily for between six months to one year without deportation and with to access employment. The humanitarian visas offered to migrant caravans ended abruptly after 13,000 such visas were issued at Mexico’s southern border^{xxiv}, but was briefly offered again to migrants in early April before ceasing again. The separate category of a “humanitarian visa” which always existed under Mexican law, remains a legal option to migrants entering Mexico and is a complementary process to seeking asylum.

Migrant shelters reported the lack of information on regularization options and existing policies on humanitarian visas as one of the main obstacles they faced in assisting migrants. Migrants who did begin their visa applications reported that they were not given clear information by INM on the application process and some reported being contacted via email by INM, including about negative resolutions. This lack of clarity on policies has caused migrants to give up on their cases and to move on from Tapachula.

Employment opportunities for migrants and refugees in southern Mexico are extremely limited. While there have been reports of small posts at the border crossing with Guatemala run by the federal and local Mexican government offering jobs to migrants there is little information about their impact or scale, and there is no evidence to date of sustained, large scale efforts by the Mexican government to help migrants and refugees to access employment.

In January 2019 the U.S. government implemented the Migrant Protection Protocols (MPP) program, also known as “Remain in Mexico,” which forces people seeking asylum in the United States to wait in Mexico during their asylum application process, crossing the border to attend court hearings for their case. As of August, over 30,000 asylum seekers have been returned to Mexico,^{xxv} including families with young children, to wait in Mexican border towns where they face a lack of shelter and basic services as well as violence and human rights violations. In early August the Mexican government began bussing some of these migrants to Tapachula, a 35-hour drive from the U.S.-Mexico border. These migrants reported being confused about where they had been taken and why, and the majority have no way to make it back to the United States for their asylum court hearings, placing them at risk of receiving an in absentia removal order and a bar from future entry to the United States.^{xxvi} In Tapachula, they face precarious conditions including insufficient shelter, high levels of crime and violence, and few work opportunities and many were in danger of being forced to return to their countries of origin despite having protection concerns. Civil society organizations reported that this practice

compounded the already chaotic and confusing nature of migration regularization policies and ongoing enforcement in Tapachula, and has also fueled growing sentiments of xenophobia in the area.

Lack of access to protections for unaccompanied children^{xxvii}

Every year thousands of Central American children are forced to flee their countries due to high levels of violence, including gang violence and sexual and gender-based violence, and their governments' failure to provide them with access to justice and protection.^{xxviii} Whether they plan to stay in Mexico or to transit through Mexico to seek protection in another country, children face multiple barriers to accessing protection and support in southern Mexico. Migration and child protection system agents discourage children from seeking asylum by telling them they will be detained for long periods in migration stations or closed-door shelter. Children who begin the asylum process often grow desperate in detention and abandon their asylum applications, returning to danger in their countries.

In many cases children are not provided with accurate and child-friendly information on their rights in Mexico, including the right to seek asylum, and children do not have access to substantive legal representation in their asylum cases. Despite the fact that Mexico's Children's Rights Law requires that all migrant children receive a best interest determination, Mexico's child protection agency (DIF), has extremely limited capacity to conduct these determinations. Most migrant children are deported without a substantive evaluation of their best interest and possible protection needs.

Mexico's asylum agency COMAR has insufficient capacity to process the applications of the growing number of child asylum seekers and to provide them with the specialized attention that they need, leading to extended periods of uncertainty as children await decisions on their cases.

The prospect of extended detention during the asylum process, either in INM detention centers or closed-door shelters run by Mexico's child protection agency DIF, prevents many children from seeking asylum in Mexico or causes them to abandon their asylum case. Child migrants and asylum seekers who are not detained face highly precarious conditions in Tapachula, often living on the street or with unrelated adults. This leaves them very vulnerable to the high levels of violence, including sexual violence and human trafficking, in Tapachula. Increased immigration enforcement and raids in Tapachula in recent months have forced children to move from the center of Tapachula to peripheral areas where they are at even greater risk of suffering violence and cannot access essential services.

These barriers to accessing protection and support put children at great risk while they are in Tapachula, and they cause many to either decide not to seek asylum or abandon their asylum claims and return to situations of danger. Unable to remain safely in their countries, these children often immediately attempt to re-migrate, exposing them to the danger of violence, exploitation, and human trafficking on the migration journey.

Recommendations for the U.S. government

1. **Cease pressure on the Mexican government to increase migration enforcement** along its southern and northern borders in an attempt to stop those fleeing their countries in search of safety, including with the participation of the National Guard. The United States should also cease pressure on Mexico to sign a “Safe Third Country” agreement.
2. **Immediately end the Migrant Protection Protocol (MPP) program** and cease efforts to block access to protection in the United States.
3. **Commit U.S. support to strengthen Mexico’s asylum system.** Funding should support the work of the UN Refugee Agency to strengthen Mexico’s asylum system including increasing personnel in COMAR offices, as well as increased support staff. It should also support training for COMAR personnel in how to interview children and other vulnerable groups as well as on up-to-date country conditions in Central America.
4. **Commit U.S. support to strengthen Mexico’s child protection system.** Support should go towards hiring and training child protection personnel dedicated to carrying out best interests determinations for migrant and refugee children and coordinating the application of appropriate protection mechanisms based on those determinations.
5. **Ensure that the work of Customs & Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents deployed to the border between Mexico and Guatemala** does not inhibit individuals’ right to migrate and seek international protection.
6. **Support a rights-based approach to addressing the root causes of migration from the Northern Triangle countries and release existing assistance currently being withheld,** including aid focusing on violence prevention and response, poverty alleviation, and programs to address corruption, strengthen human rights, and promote the rule of law. Funds should be conditioned on each government’s demonstrated respect for human rights and efforts to combat corruption and should not be conditioned on any action by Central American governments to prevent or repress migration.
7. **Implement and expand pathways to protection for migrants from the region to access protection from their home country** without having to migrate to the United States such as in country processing programs like the Protection Transfer Agreement (PTA) and through reinstating an expanded version of the Central American Minors (CAM) refugee and parole processing program.

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