Mexico’s Use of Differentiated Asylum Procedures: An Innovative Approach to Asylum Processing

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July 2021

PHOTO CAPTION: A worker at the Mexican Commission for Refugee Assistance (COMAR) reaches out for documents as migrants wait in line on June 21, 2019 in Tapachula, Mexico. (Photo by Toya Sarno Jordan/Getty Images)
Introduction

In Latin America, more people are on the move than ever before. Over 4 million forcibly displaced Venezuelans have fled to countries within the region, where their welcome has been mixed. Some countries have adopted more flexible, short-term regularization options, others choosing more traditional means of protection such as having Venezuelans apply for asylum. In Central and North America, thousands of displaced people have left Honduras, Guatemala, and El Salvador to neighboring Mexico and to the United States to seek asylum. Throughout the region, governments are seeking solutions to displacement and crafting various policies for protection and migration management. Mexico is one such country, and its experiences hold important lessons for other countries in the region.

On June 1, 2021, Andres Ramirez, the head of the Mexican Commission for Refugee Assistance (COMAR for its Spanish acronym) tweeted “For the third consecutive month, the statistics surpass 9,000 asylum applications in Mexico. In May, the COMAR registered 9,327 asylum applications, the highest monthly statistic in COMAR’s history since the inception of a registry.”

For the first five months of 2021, 41,195 people applied for asylum, which surpasses the total number of claims for all of 2020. The increase in asylum applications in Mexico is not a new trend. Indeed, from 2013 to 2021, the monthly average of asylum applications in the country increased from just 108 claims in 2013 to 7,961 in 2021.

Mexico’s role in regional migration is perhaps more significant than ever. Mexico is a key partner to the United States in migration management and a principal destination for Central American asylum seekers. It is also a principal destination for Venezuelan, Cuban, and Haitian asylum seekers. U.S. Vice President Kamala Harris has engaged early and regularly with Mexican President Andrés Manuel López Obrador on the topic of migration. The rollout of the Collaborative Migration Management Strategy—part of President Biden’s Executive Order focused on migration from Central America—provides fresh opportunities for collaboration between the U.S., Mexican, and Central American governments. While early engagement between the Biden administration and Mexico has been tense at times, migration issues will continue to be an issue of importance to both countries.

Mexican President López Obrador is also working to expand his own migration agenda through the promotion and implementation of projects that aim to address the root causes of migration from the countries of northern Central America—although these programs have had little reach thus far. Furthermore, Mexico is deeply engaged in the
Comprehensive Regional Protection and Solutions Framework (MIRPS)—a regional migration mechanism also involving countries in Central America. The COMAR relies heavily on the support of United Nations High Commissioner for Refugees (UNCHR) to carry out its asylum functions and coordinates with the National Migration Institute (INM for is Spanish acronym)—the agency tasked with managing migrant flows.

Governments throughout Latin America are looking for ways to better manage displacement. In doing so, they should examine practices in the region that work well and can be scaled up or replicated. Thus far, engagement between Mexico and the United States has been focused on several topics, including a strong emphasis on containment, as Mexico and the United States reach informal agreements to deter migrants from entering Mexican territory. However, protection and the right to seek asylum must be at the center of Mexico’s migration management strategy. There are many areas in which Mexico’s asylum system can be improved, including several practical fixes that Refugees International has recommended.

Beyond practical enhancements, COMAR, with the support of UNHCR, has provided protection using the 1984 Cartagena Declaration definition to individuals from several countries, primarily applicants from Venezuela, Honduras, and El Salvador. In addition, with respect to certain categories of applicants from these three countries, COMAR has implemented special procedures, which differ from the traditional asylum process. These procedures are worth highlighting, strengthening, and replicating by other countries in Latin America.

The Cartagena Declaration

The Cartagena Declaration is a regional instrument adopted in 1984 by ten Latin American countries in response to massive displacements from Central America resulting from the civil wars of the previous decades. The Cartagena Declaration’s refugee definition broadens that of the 1951 Refuge Convention relating to the Status of Refugees. The Convention offers protection to those whose lives, freedom, and security are at risk of persecution due to race, religion, nationality, political opinion, or membership in a particular social group. However, the Cartagena Declaration’s refugee definition also offers protection to those whose home countries face “generalized violence, foreign aggression, internal conflicts, massive human rights violations, and other circumstances that have seriously disturbed public order.”

The Cartagena Declaration does not discount the importance of an individual’s particular circumstances. But as a practical matter, the Declaration’s broader definition
effectively enables decision-makers to focus in large measure on a situation that has impacted a considerable portion of the population from a given country.

Although the Cartagena Declaration is not legally binding, in the last three decades most Latin American countries have gradually adopted and incorporated its content—in some case with modifications—in the practice of reviewing asylum claims or in their domestic laws. The Cartagena Declaration has been referred to by the Interamerican Court of Human Rights when interpreting the human right to seek and receive asylum, as well as by the General Assembly of the OAS in its resolutions, reflecting that its broader refugee definition is considered at the regional level as evolving international refugee law and best practices recognized within the region.

The Cartagena Declaration recognizes a basic reality: that people who must flee their countries of origin due to “generalized violence, foreign aggression, internal conflicts, massive human rights violations, and other circumstances that have seriously disturbed public order” should not be forced to return to such dangers. They also merit protection and the enjoyment of human rights. Thus, the adoption and the application of the Declaration should be warmly endorsed by governments in the region—and the protection given to people fleeing the circumstances contained in its refugee definition should be replicated well beyond Latin America.

The Application of the Cartagena Declaration’s Refugee Definition in Mexico

Mexico was one of the ten Latin American countries that participated in the endorsement of the Cartagena Declaration in 1984. In 1990, it became the first country in the region to incorporate the Declaration’s refugee definition with no modifications into its domestic legislation. Later, in 2011, Mexico adopted its first and current refugee law, which contains the 1951 Convention and the Cartagena Declaration refugee definitions.

Under Mexican refugee law, a regular asylum procedure starts with the asylum request submitted before COMAR or INM. In the case of applications to COMAR, once the claim is determined to be admissible, COMAR will issue a certificate that shows the status of the claimant as an asylum seeker. Later, COMAR will conduct the eligibility interview in which it will address the reasons why the asylum seeker left the country of origin. With this testimony and an analysis of the context in the country of origin, the COMAR official first assesses whether the applicant’s individual account of persecution fits the
traditional definition of refugee in the 1951 Convention. If not, they determine if the applicant’s country of origin is experiencing one of the five circumstances described in the Cartagena Declaration’s expanded refugee definition. In fact, as a general matter for the country in question, a judgment is likely to have already been made by the General Head of Office of the COMAR. This does not ensure guaranteed access to asylum but does increase the probability of being recognized as a refugee.

There is little public information about the initial implementation and application of the broader refugee definition of the Cartagena Declaration in Mexico. And there is little public information about the rationale and the decision-making process around a determination that a particular country is confronting circumstances described in the Cartagena Declaration’s refugee definition.

However, some studies show that COMAR has granted refugee status under this broader refugee definition to nationals from many countries in the last two decades. According to *Sin Fronteras*, a Mexican civil society organization, at least 88 people were recognized as refugees under the broader refugee definition in 2006 and 2007, which included, among other countries, people from Colombia, Sudan, Iraq, and Somalia. According to official figures, from 2013 to 2016 the COMAR also granted refugee status under the Cartagena Declaration’s refugee definition to people from *Syria, Iraq, Ukraine, Nigeria, Colombia, Guatemala, and Haiti*. We have no indication that this consideration under Cartagena of applicants from a broader group of countries was systematic and have little additional information regarding these cases. In any event, since 2016, nationals from Venezuela have also been recognized under the broader
refugee definition. Beginning in 2018, the COMAR started to grant the refugee status under Cartagena standards to nationals from El Salvador and Honduras.

According to official figures, more than 14,000 Venezuelan people have been granted refugee status under the broader refugee definition, more specifically under the “massive human rights violations” ground.¹ In May 2021, the recognition rate of Venezuelan asylum seekers was 97 percent.

The high recognition rate for Venezuelan people in Mexico is widely recognized as a successful application of the Cartagena Declaration. In the past three years, COMAR has also granted refugee status under the broader refugee definition to more than 10,000 asylum seekers from Honduras and El Salvador, by considering that these countries face “circumstances that have seriously disturbed public order.”

**Differentiated Refugee Status Determination (RSD) Procedures**

In response to the exponential growth of asylum claims in Mexico by asylum seekers from Venezuela, Honduras, and El Salvador, and the urgent need to improve Mexican processing capacity and reduce the backlog of unresolved asylum claims, the COMAR started in 2018 to implement differentiated refugee status determination (RSD) procedures—that is different and effectively expedited processes.² In doing so, it received support from the Quality Assurance Initiative (QAI)—a program launched by the UNHCR to support states to improve their asylum systems and legal frameworks. With the technical advice of the QAI, and the training and assistance in monitoring of the UNHCR, the COMAR started operating in 2019 a simplified RSD procedure and later, a merged asylum procedure. Both procedures apply the broader refugee definition of the Cartagena Declaration to individuals from Venezuela, Honduras, and El Salvador.

**Simplified Procedure:** As stated above, in a regular RSD, the eligibility analysis made by COMAR starts with the applicability of the traditional definition of the 1951 Refugee Convention and later, the COMAR may consider whether the broader refugee definition of the Cartagena Declaration is applicable to the case. According to stakeholder analysis, the simplified RSD procedure inverts the eligibility analysis by first considering the applicability of the broader refugee definition and, if not applicable, then analyzing whether the individual fits the elements of the traditional refugee definition of the 1951 Convention.

¹ According to information obtained through a public information request to the COMAR from Refugees International.
Simplified RSD procedures are usually used for caseloads with a high degree of homogeneity. COMAR uses three tools to determine if an individual from a particular country can access this differentiated procedure: 1) a *country-of-origin information* document that contains deep and specialized research; 2) an *interviewing guideline* that allows the COMAR to easily identify legal and factual elements to assess the asylum claim; 3) *and a resolution*, or effectively a template, that contains common elements which can be easily applied to many cases and shortens the time of decision-making.\(^3\)

**Merged Procedure:** The merged RSD procedure aims to capture in one interview (1) bio data and other information normally collected during a registration interview, and (2) information relating to the eligibility of the applicant for international protection that goes beyond the usual dataset collected at registration, with the aim of recognition of refugee status.\(^4\) In March 2020, the COMAR introduced a pilot program of *merged asylum procedures* for applicants with specific profiles from Venezuela, Honduras, and El Salvador. In fact, the merged procedure is, in essence, an accelerated procedure for those with a high probability of being granted refugee status. In a single day, the individual’s case is reviewed, the eligibility interview for asylum takes place, and the asylum seeker is informed about public services according to their specific needs. The person will receive the response to the asylum request within 20 days. By comparison, during the traditional asylum process, the individual receives a response in anywhere between eight months and one year, and in some cases, even longer.

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4 *Ibid*
This procedure began as a pilot program in March 2020 and was intended to operate systematically in Mexico City and in Tapachula, Chiapas. However, the national contingency to prevent the spread of COVID-19 forced COMAR to suspend this pilot a couple of weeks after its implementation. According to official figures during the first three weeks of implementation, 55 people benefited from this procedure. The pilot continued to operate in October 2020 with a series of operational modifications due to the pandemic. The pilot was extended to Tapachula from November to December 2020, and 227 people were recognized. Between January and March 2021, 294 cases have been resolved under these procedures.

How many people from Honduras and El Salvador have been given refuge under Cartagena?

According to official figures, between January 2018 and December 2020, the COMAR granted refugee status under Cartagena’s broader refugee definition to 14,218 people from Honduras and El Salvador (79 percent from Honduras and 21 percent from El Salvador).

Of the total of 14,218 refugees, 57.2 percent were recognized in 2020, 42.5 percent in 2019, and 0.3 percent in 2018. The figures show a particular increase in the case of Honduras, going from 23 people recognized as refugees in 2018 to 5,053 people in
2019. Of the total of 14,218 people 82 percent were recognized by the office of COMAR in Chiapas; 8 percent in Tabasco; 6 percent in Mexico City, and 4 percent in Veracruz.\(^5\)

Total of people from Honduras and El Salvador granted Refugee status under the broader refugee definition of the Cartagena Declaration by COMAR, 2018-2020

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>%</th>
<th>2019</th>
<th>%</th>
<th>2020</th>
<th>%</th>
<th>Total</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Salvador</td>
<td>20</td>
<td>0.14%</td>
<td>984</td>
<td>6.9%</td>
<td>1926</td>
<td>13.5%</td>
<td>2930</td>
<td>20.5%</td>
</tr>
<tr>
<td>Honduras</td>
<td>23</td>
<td>0.16%</td>
<td>5053</td>
<td>35.5%</td>
<td>6212</td>
<td>43.7%</td>
<td>11288</td>
<td>79.4%</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
<td>0.30%</td>
<td>6037</td>
<td>42.4%</td>
<td>8138</td>
<td>57.2%</td>
<td>14218</td>
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**Benefits of Differentiated Procedures**

Applying differentiated procedures using Cartagena standards to these three countries has many benefits. For the Mexican asylum system, which has struggled in recent years to keep up with the exponential increase in asylum claims, the faster processing times of the simplified and merged applications helped reduce the backlog. According to stakeholder interviews,\(^6\) COMAR officials can make an asylum determination under this process in a day, with the asylum seeker receiving an official notification within roughly two weeks. Compared to asylum processing in the traditional procedure, where registration, eligibility interviews, processing, and notification of a determination can take anywhere from months to years, this merged and simplified process represents a considerable decrease in processing times.

The simplified RSD procedures began in 2019, and within one year of implementation, the rates of approval increased of these three countries, and processing times were reduced. While the number of Hondurans and Salvadorans who have undergone the simplified and merged process is not publicly available, there is a correlation between when these practices were implemented and the decrease in the backlog. An examination of asylum case resolution shows this merged procedure has successfully reduced the backlog of unresolved asylum claims. In 2018, 78 percent of the total

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\(^5\) The percentages in the table refer to the number of people from each country recognized as refugees under the Cartagena Declaration each year divided by the total of people from both nationalities recognized as refugees that same year. The totals refer to the number of people from both nationalities recognized as refugees under the Cartagena Declaration, divided by the total of people from both nationalities recognized as refugees over the three years.

\(^6\) Interview conducted by Refugees International on May 11, 2021.
unresolved claims were from Honduran nationals. This number decreased to 45 percent in 2020. In the case of asylum applications from El Salvador, 63 percent of those filed in 2018 were not resolved in that year, while in 2020 that figure had been reduced to 30 percent.\(^7\)

Official figures suggest that both application of Cartagena and implementation of the simplified and merged procedures for Salvadorans have resulted in increased refugee recognition rates. For Hondurans, the recognition rate by the COMAR was 25 percent in 2018, while in April 2021, more than two years after the simplified and merged procedures were applied, it reached 88 percent. In the case of El Salvador, the recognition rate increased from 32 percent in 2019 to 87 percent in February 2021.\(^8\)

Rates of abandoned claims are also important to assess the success of this program, but in recent years COMAR has significantly limited the data that it makes publicly available, including data on abandoned cases.

Higher approval rates and faster resolutions allow refugees to begin the integration process in Mexico much faster. Speedier processing allows those with refugee status to move to their destination state quickly. Under Mexican law, asylum seekers must remain in the state of their asylum application until its resolution. For many asylum seekers, the state in which they apply to the COMAR is not their final destination. For example, over 60 percent of asylum cases are processed in Chiapas as it is the first entry point into Mexican territory for most asylum seekers. However, border states like Chiapas do not have as many job opportunities as other states in Mexico. Faster processing reduces the amount of time asylum seekers must wait before moving to their destination communities.

Accelerated integration has numerous advantages for refugees and their host communities. It allows refugees to apply for jobs and receive healthcare and education sooner than they would have in previous years. This means refugees can begin to provide for themselves and their families and contribute to their communities.

**Implementation Challenges of the Procedures**

The application of differentiated asylum procedures is not without costs. Applying the Cartagena standards through differentiated procedures to Venezuelans, Hondurans, and Salvadorans is not enough to reduce the backlog sufficiently. While the backlog reduced significantly from 2019 to 2020, in part due to the application of the simplified and

\(^7\) These percentages were obtained using available public information published by COMAR.

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merged procedures, the exponential rate of growth of asylum claims requires sufficient personnel from COMAR to resolve claims efficiently. The UNHCR supported COMAR’s 2020 addition of 146 new staff members for registry and procedure support, which was very promising. However, even with the small increase in personnel and the improved efficiency of processing claims from Venezuela, Honduras, and El Salvador at faster rates, the backlog for these groups for 2021 is growing.

A second shortcoming of the current system is that the Cartagena standards are not widely applied to other countries with high numbers of asylum claims, such as Haiti or Cuba. Nor can the nationals of these countries access the simplified and merged asylum procedures that some Venezuelans, Hondurans, and Salvadoreans receive. Countries of origin receive rigorous reviews and evaluations by the COMAR, but such country evaluations were delayed because of the COVID-19 pandemic. According to the official data obtained by Refugees International,⁹ in 2019 and 2020, the COMAR recognized as refugees under the Cartagena Declaration’s refugee definition some isolated cases of people from Belize (2 persons), Cuba (3 persons), the United States (5 persons), Nicaragua (3 persons), Haiti (1 person), and Panama (1 person).

Third, COMAR does not include Guatemalan applicants in its simplified and merged asylum processes; nor does it typically apply the Cartagena Declaration to Guatemalan applicants, which is important given the similarities of Guatemalan displacement to that of displacement from Honduras and El Salvador. According to official figures, in the first four months of 2021, the number of asylum claims made by Guatemalan citizens in Mexico reached more than the half of the total claims made by Guatemalans in all of 2020. Despite this increase, the recognition rate has not shown any increase since 2019, remaining between 47 percent and 53 percent. COMAR also faces a high percentage of unresolved asylum claims of Guatemalan citizens, at 74 percent as of April 2021.

Fourth, the Cartagena Declaration standards and the merged and simplified asylum processes are not accompanied by robust and comprehensive integration measures. The Mexican refugee system boasts few programs that provide meaningful and long-term integration for refugees. One exception is the UNHCR’s innovative pilot program that works to relocate asylum seekers away from southern states to central and northern states with better work opportunities. Access to refugee status only can provide meaningful protection if refugees are able to access dignified work and social services and build community ties. Programs like that of the UNHCR should be scaled

⁹ Ibid
up and made more widely accessible to all refugees, including those who have gone through the merged asylum process.

Fifth, many people with international protection concerns are often barred from accessing the asylum system in Mexico. While the INM is Mexico’s immigration agency, its primary focus is not asylum. Moreover, in states where COMAR is not present, INM channels asylum applications to the COMAR in states where COMAR is not present. Several reports cite problematic practices undertaken by the INM that impede people from knowing about the asylum process or from being able to apply. These practices include rapid deportations before a person with international protection concerns can apply for asylum, extensive detention periods, lack of a COMAR presence in airports, and withholding information from detained migrants regarding the asylum process. Many who would qualify for the simplified and merged asylum procedure are not able to even apply for asylum in the first place. The INM must take actions that provide broader accessibility for people with international protection concerns to access the asylum system.

A final challenge involves the limitations of the profiles for accessing the merged procedure. While COMAR officials apply the Cartagena standards to most Honduran and Salvadoran applications, only those who are deemed especially vulnerable and fit into one of the designated profiles can access the merged asylum process. This exclusion may leave out people who do not fall under the vulnerability profiles but are at risk, could benefit from the merged asylum procedure, and are likely to merit protection.

Where Else in Latin America Could Differentiated Asylum Procedures Apply?

There are several countries in Latin America who have endorsed the declaration and/or have enshrined it in their domestic law, have high numbers of asylum claims, and have large backlogs and low approval rates for asylum. Such countries could benefit from applying simplified or merged procedures like those in Mexico to improve the effectiveness of their asylum systems.

For example, Panama, among the countries that supported adoption of the Cartagena Declaration, has both high denial rates and a mounting backlog according to research by Migration Policy Institute (MPI). MPI found that “From 2014 to 2019, 28,366 asylum applications were filed, and 17,048 remained pending at the end of 2019...”. While Panama is not a principal destination in the region for asylum seekers compared to
neighboring Costa Rica or Colombia, asylum applications in Panama from Venezuelans, Nicaraguans, Cubans, and the northern countries of Central America are increasing, and Panama’s protection system is in dire need of upgrading.

Peru, a country that has enshrined the Cartagena refugee definition into law, has the highest number of asylum claims in the region, mostly from Venezuelan applicants, but has very high denial rates and an extensive backlog of cases. These barriers to protection leave many Venezuelans to live in precarity. While Peru is in the process of providing a short-term regularization option for Venezuelans, it will only last for one year and does not provide the same benefits as refugee status. Advocates have called on Peru to provide more avenues to long term regularization, including applying the Cartagena standards to Venezuelans and accepting them on a prima facie basis. However, various Peruvian administrations have declined to do so, and Venezuelans must go through an arduous asylum process that typically results in a denial, if a decision is even received.

Implementing simplified or fast track asylum processes along the lines of those described in this brief could greatly improve the efficiency, quality, and effectiveness of these asylum systems, and better ensure meaningful protection.

**Conclusion**

Mexico’s decision to apply the Cartagena standards, and to do so through simplified and merged asylum process has resulted in greater protection for those fleeing generalized violence, conflict, and massive human rights violations. While the Mexican asylum system is far from perfect, these procedures provide examples of best practice es that provide significant benefits with manageable challenges. Host countries that have endorsed the Declaration or which have incorporated Cartagena standards into their laws can look to Mexico as an example of an innovative practice that can provide increased protection to those who need it most.

**Recommendations**

To the COMAR:

- Strengthen integration programs in tandem with simplified and merged asylum process so that refugees can successfully integrate into their communities.
• Provide public information on asylum statistics including the full data on approved claims, denied claims, and resolved claims disaggregated by year, country, gender, and age. Reestablish statistics bulletins (*boletines estadisticos*) published prior to 2019 and which provided far more robust information than what is currently available.

• Prioritize applying the Cartagena Declaration to and completing the country-of-origin information for Guatemala, Haiti, and Cuba to ensure people from these countries can access simplified and merged asylum procedures to reduce the high volume of claims from these countries.

• Work with UNCHR to scale up integration programs and make them more accessible to all refugees, including those who went through simplified and merged procedures.

• Increase COMAR staff to reduce backlogs in accordance with the increase in asylum applications.

**To the INM:**

• Ensure access to the asylum process by eliminating barriers to asylum and unnecessary detentions as outlined in *Refugees International’s prior reporting*. The INM must continue to strengthen its programs for alternatives to detention, reduce detention times and include accessible information for detained migrants regarding the asylum system, and forgo practices of rapid deportation before an asylum screening can take place.

**To the U.S. government:**

• Broaden dialogue with Mexico beyond containment measures and make a strong, public show of support for Mexico’s asylum system. Reduce diplomatic pressure on Mexico to deter migration by those who may be in need of protection and focus on processes that address protection needs.

**To the international donor community:**

• Provide funding to the UNHCR, COMAR, and civil society organizations to support Mexico to continue implementing and improving upon the use of simplified and merged procedures and apply it to more countries.

• Provide resources and technical support to other countries in the region that wish to update and enhance their asylum capabilities through processes like that of Mexico.

**To Panama, Peru, and other countries in Latin America with large backlogs and low approval rates for refugee status:**
• Implement practices like Mexico’s differentiated RSD procedures to improve efficiency in asylum case processing, reduce their backlogs, and provide protection to displaced people in their countries.