



The situation of Asylum Seekers and Refugees in Mexico¹

1. Migratory Policies and Its Connection with Asylum

In recent years migration flows have increased and diversified in several ways, including in its composition, such that the migration of women, children and adolescents, including unaccompanied minors, becomes more visible each year. There is also increasing evidence of a variety of problems and human rights violations that migrants face since their departure from their country of origin, during their transit journey, in the country of destination, on their journey back home, and even in their reintegration process after return or deportation.

In addition, as a result of the worldwide tendency to toughen migration policies and to connect these to the issue of security, some countries have also toughened their asylum policies and eligibility for refugee status. Far from being considered by the State as people who need international protection², both migrants and asylum-seekers in this context are perceived by the governments as a menace to the security of a State. This has manifested in more serious violations of their rights, including the right to seek asylum, as well as in the increase of migration-related risks, such as the illicit smuggling of migrants and trafficking in persons. Some of the resulting effects include imprisoning asylum seekers and delaying the evaluation of their applications.

Also of concern on a global scale is the increasing application of discriminatory criteria for access to and implementation of the asylum eligibility procedure. In certain cases, based on nationality or religion, asylum seekers are detained by exception in illegal detention centers in violation of the right to non discrimination, legality and access to justice.

Mexico has a complicated role in the migration process, owing to its being a country of origin, transit, destination and return, due to the diversity of its migration flows. Within this framework, faced with ever-increasing flows and regional pressure to tighten security, Mexico too is toughening up on its migration policy. Since the past administration, there has been a tendency to give priority to the detection of undocumented migrants, their detention and, in particular, their expedited deportation³.

Simultaneously, several migrant protection programs have been instituted, such as the well-known *Grupos Beta*, the *Programa Paisano* (Countryman Program), and the Immigration Regularization Programs. Although these represent positive steps, these programs have had an uneven and limited impact due to the fact that they do not form part of an integrated State migration policy.

¹ Document issued by *Sin Fronteras, I.A.P.* in July, 2007.

² International protection as understood in accordance with International Refugee Law and the right to seek asylum in International Human Rights Law.

³ Also known as “voluntary repatriation” within the scope of the agreements signed by several Central American countries.

Within this context, it is obviously necessary and essential that immigration personnel are trained in human rights⁴, including the right to seek and to obtain asylum. Owing to the fact that the flows into the Mexican territory are mixed (there are migrant workers⁵ traveling, as well as asylum seekers and refugees⁶), it is important that the authorities recognize the latter in order to be able to guarantee their right to seek asylum and to give them appropriate protection.

Within the framework of Mexican law, there is no special asylum legislation. The subject is inserted into the General Law of Population (GLP), which regulates migration and administrative procedures for foreigners in Mexico. This sometimes results in incorrect perceptions on asylum matters, and is also the reason for some gaps in the procedure of recognizing refugee status, as well as in the protection and attention available for asylum seekers in Mexico, giving rise to a chain of human rights violations faced by the refugee population.

It should be mentioned that timely detection of asylum seekers and refugees avoids the person's becoming a victim of human rights violation again, as well as being exposed to the risk of being deported to the country where his life or freedom are in danger. In this regard, the United Nations High Commissioner for Refugees (UNHCR) has appealed to the States as follows: "In the context of mixed displacements, [...] the measures taken to hinder irregular migration shall not limit the access of refugees to the territory and to the asylum procedure in another State"⁷.

In Mexico, normally asylum seekers are not detected until they are detained in migration detention centers. This complicates their situation, because it means that most asylum-seekers are imprisoned and, pursuant to Mexican law, they are usually kept within the detention center until a resolution is adopted on their asylum application, which often implies a prolonged detention. Furthermore, they have access neither to a fair procedure, for the detention center does provide them with information about the procedure they are subject to, nor to a lawyer to advise them during the eligibility process⁸.

⁴ It is important to note that the National Migration Institute does not have a professional public service, nor an integral and institutional curricular system for training its personnel. Even when the INM reports training events in human rights, these are short courses attended in isolation and without any follow-up nor evaluation, and as such cannot be considered part of a professional training system.

⁵ According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a migrant worker is a person who may realize, who realizes or who has realized any remunerated activity in a State of which he is not a citizen.

⁶ An asylum seeker is a person who, owing to a fear of persecution based on specific grounds, applies for protection in a State of which he is not a citizen (according to the 1951 Convention on the Status of Refugees and the 1967 Protocol), or whose life, freedom and security are in danger as a result of specific country conditions (pursuant to the 1984 Cartagena Declaration on Refugees). A refugee is a person who meets the requirements of these definitions and is recognized as such (refugee status is declaratory) and who obtains international protection or the protection of another State of which he is not a citizen.

⁷ ACNUR. High Level Dialogue on International Migration and Development.. UNHCR Observations and Recommendations. 28 June 2006.

⁸ Arias, Karina. "Los solicitantes de asilo y los refugiados en la normatividad mexicana, una propuesta para mejorar la protección brindada a esta población". Proyecto de Investigación Aplicada, Maestría en Derecho Internacional, EGAP, ITESM-CCM. México, 2007.

In many cases, the long wait for the recognition of refugee status; the lack of any document of legal status in the country that may permit the asylum seeker to have access to work, education or health; and the lack of clear, efficient and effective legal procedure for the recognition of their status, manifest in adverse conditions that put asylum seekers in a particularly vulnerable position, complicate their integration in the new environment and make it impossible for them to reconstruct their life projects and affective ties, as well as aggravate the emotional, psychological and moral damage which accompanies them during the exile period⁹.

Mexican migration policy and regulations also have a negative impact on other rights of the asylum seekers by limiting, in different ways, their rights as foreigners. Most of all, foreigners' access to economic, social and cultural rights are limited¹⁰.

As a result, the Mexican State faces a challenge: to establish laws, as well as public policies appropriate to comply with its asylum-related international commitments that guarantee human rights of asylum seekers and refugees and provide this population with the protection and attention it needs.

II. Asylum Seekers and Refugees in Mexico: Statistical Data.

At present in Mexico there are refugees of the most diverse nationalities. Initially, refugees came to Mexico fleeing the dictatorship of Spain, and later Chile. Since the civil wars in Central America, refugees came mostly from Guatemala, Honduras and El Salvador; nevertheless, in recent years Colombia, Haiti, Eritrea, Ethiopia, the Democratic Republic of Congo and Somalia stand out as countries of origin.

According to the UNHCR data, in Mexico by 2004, there were 4,343 persons recognized as refugees. By 2006, the number decreased to 3,319. Most of this refugee population consists of Central Americans who, although they have been living in Mexico for about 10-20 years, have not obtained citizenship.

While this number of medium and long term refugees decreases, the number of new applications grows year after year, as well as the diversity of their countries of origin. It is noteworthy that the number of applications admitted is very low compared to other transit and destination countries, if we consider particularly the high migration flows in the region. Yearly, the National Institute of Migration (NIM) in Mexico carries out about two hundred thousand returns of refugees, about 90% of which are Central Americans¹¹. The diversity of nationalities reflects the fact that the asylum seekers are also searching for social, cultural, political and economic opportunities, perceiving these are better in the United States and Canada¹². It also reflects the tightening of migration regimes in

⁹ Coria, Elba. "El procedimiento de reconocimiento de la condición de refugiado en México". México. 2006.

¹⁰ Ibid.

¹¹ Migration statistics available at www.inami.gob.mx

¹² Diaz, Gabriela; Kuhner, Gretchen. Globalization, International Security and Human Security. Experiences of Women Migrants Detained in Mexico, 2006.

Europe, the United States and Australia, and the resulting change in transit routes for asylum-seekers.

Table 1. Asylum Seekers and Refugees in Mexico

	2003	2004	2005	2006
Applications	275	404	687	514
Applications Rejected	154	160	191	113
Applications Admitted	40	72	131	81
Cases Closed			364	320
Refugee Population	5,758	4,343	3,229	3,319

Source: Sin Fronteras, I.A.P.

According to the Mexican Commission for Refugees (COMAR), during the period between March 2002 and March 2006, a total of 1,739 asylum applications were received, of which the Eligibility Committee admitted 317 for the motives stated in the 1951 Convention on the Status of Refugees, and 5 were recommended with other protection instruments (namely, the motives stipulated by the 1984 Cartagena Declaration). The number of applications rejected was 613, and of closed cases 687¹³.

By analyzing the numbers shown in Table 1, one can see that during 2005 and 2006, only 17.5% of the total number of applications were admitted, while 25.2% were rejected and up to 57.2% were closed cases. The issue of most concern is the high percentage of closed cases, since this is clear evidence that the asylum procedure simply does not work. Cases can be closed mostly owing either to withdrawal (when the asylum seeker manifests his wish not to continue the procedure) or to abandonment (when the asylum seeker does not appeal to the COMAR in order to follow up on his application in a certain period of time). The reasons for withdrawing from or abandoning the application are multiple, and they are related mostly to the lack of an asylum procedure that guarantees the principle of due process and the right of access to clear, precise, appropriate and trustworthy information.

During the period between January and December, 2006¹⁴, Sin Fronteras offered psycho-socio-economic services to promote the integration process of 294 refugees, 67 persons of whom are minors. Using a net of service providers, assistance was offered to improve their physical and emotional health, as well as Spanish lessons, cultural orientation, job training programs and job search. In addition, Sin Fronteras offered migration services to 125 medium and long term refugees; it also assured legal defense services to 30 asylum seekers and studied a total of 200 cases of asylum applications.

¹³ Data obtained from the COMAR web site: www.segob.gob.mx, viewed in April, 2007.

¹⁴ Sin Fronteras. "Informe de control del subproyecto de ACNUR, Asistencia Legal y Material a Refugiados en México", 2007.

III. Current Issues in Asylum

3.1 The Procedure for Refugee Status Determination in Mexico

From 1982 to 2002, refugees in Mexico were recognized under the UNHCR Mandate; and after the ratification (in 2000) of the 1951 Convention on the Status of Refugees and its 1967 Protocol, the Mexican Government assumed the responsibility of refugee status determination. In one of those legislative anomalies common to our country, even before Mexico signed the Convention it had included the essential part¹⁵ of the definition of refugee as stated in the 1984 Cartagena Declaration on Refugees into its domestic regulations. Although for the purposes of refugee status recognition, in practice both definitions are taken into consideration within the procedure, until now the internal legislation does not contain any refugee definition that coincides with both protection instruments adopted by the Mexican State.¹⁶

Under Mexican law, asylum seekers and refugees in Mexico are subject to individual guarantees and rights as stated, particularly, in Title 1, Chapter 1, of the Political Constitution of the United Mexican States. The following rights are especially relevant: non-discrimination (Article 1), information (Article 6), petition (Article 8), equality before the law (Article 13), the right to a hearing (Article 14), legality (Article 16) and administration of justice (Article 17).¹⁷ Specifically, there are only four provisions of the General Law of Population and its Regulations that regulate the procedure for refugee status recognition in Mexico:

- *Article 35 of the General Law of Population*, relating to guaranteeing the entry of asylum seekers until their application is processed.
- *Article 42, section VI of the General Law of Population*, which establishes the definition of a refugee.
- *Article 166 of the General Law of Population*, which regulates the procedure to be followed for asylum seekers.
- *Article 167 of the General Law of Population*, under which the Eligibility Committee is created as an authority entitled to issue recommendations on the recognition of refugee status.¹⁸

¹⁵ Although the refugee definition in the Cartagena Declaration specifically includes the Convention definition, Mexican legislation only adopted the extended part of the definition, since at the time it was not yet party to the 1951 Convention.

¹⁶ Article 133 of the Political Constitution of the United Mexican States that makes applicable international human rights treaties and international refugee law, allowing for the adoption and inclusion of the definition of refugee into the criteria, procedures and mechanisms established for the recognition thereof.

¹⁷ Coria, Elba. Op.cit.

¹⁸ Article 167 reads as follows: “[the] Eligibility Committee shall aim to study, to analyze and to issue recommendations on asylum applications, and it shall consist in the following public service providers who have the right to voice and vote: I. Deputy Secretary, who shall act as President; II. A representative from the Ministry of Foreign Affairs; III. A representative from the Ministry of Labor and Social Security; IV. A representative from the Institute, who shall act as Technical Secretary, and V. A representative from the Office of General Coordination of the Mexican Commission for Refugees, who shall act as Executive Secretary.” It also provides for participation of UNHCR and civil society by invitation of the Committee.

Pursuant to Article 166 of the Regulations of the General Law of Population (RLGP), the procedure starts with the application submitted to the migration authorities by the person concerned, within 15 days of his having entered the country.¹⁹ Then, the Eligibility Committee is summoned to examine and to vote on the applications; and a 30-day term is established to issue a resolution. The resolution is sent to the National Institute of Migration, which if it accepts the positive resolution of the Eligibility Committee, proceeds to issue the corresponding migration document. In case of refusal, theoretically, the person concerned may have access to the courts, in an administrative appeal or a constitutional action (*amparo*).

It is noteworthy that during the procedure, the regulations establish that the person shall be placed “at the disposal” of the National Institute of Migration, which implies a restriction on freedom of movement without specifying the methods, and which usually manifests in the person’s detention at a migration detention center for an indefinite period until the application has been processed.

As a consequence of the lack of specific asylum-related regulations, there is also no detailed description of the eligibility procedure; consequently, since 2002, when the Office of General Coordination of the Mexican Commission for Refugees (CGCOMAR) started determining refugee eligibility, an *ad hoc* procedure has been adopted, in recognition of the fact that the existing regulatory provisions are neither realistic nor functional.

In practice, the CGCOMAR protection officers interview asylum seekers and prepare a report with a preliminary recommendation. At this moment, for the admitted applications, information relating to the person concerned is delivered to the Center for Investigation and National Security (CISEN) to verify the information given by the asylum seeker and to locate criminal record if any. Then the report is submitted by the COMAR to an *ad hoc* working group, which analyzes the applications and issues a recommendation for the Eligibility Committee. This group is comprised of representatives from the Interior Ministry, the Foreign Ministry, the National Institute of Migration, and the COMAR. It also includes representatives from the UNHCR and Sin Fronteras, as technical consultants with experience in asylum and human rights. The working group gathers every 15 days to examine cases and to issue recommendations. The Eligibility Committee gathers approximately every two months, and no participation of the UNHCR and Sin Fronteras is permitted, nor are these organizations officially informed of the outcome of the applications.

3.2. Violations Related to the Lack of Asylum Set of Norms

In Mexico, asylum seekers and refugees face various violations of their human rights. All can be related to the noncompliance of the Mexican State with its international commitments with regards to asylum as well as to human rights. The right to seek and obtain asylum requires due and specific regulation and it must be kept separate from migration matters; nevertheless, Mexico continues

¹⁹ As a matter of fact, most of the asylum applications are received after the detention.

to include asylum under the General Law of Population and the Regulations thereunder, resulting in partial and inadequate treatment of the subject. This implies that asylum seekers and refugees are subject to a regime that cannot provide appropriate protection respectful of human rights, nor encompasses the humanitarian approach required, and finally which cannot provide them with long-term solutions.²⁰ In effect, in Mexico they are treated as migrants, in complete violation of the humanitarian spirit intrinsic in asylum protection.

(i) The Right to Seek Asylum and Access to the Procedure

Our point of departure must be the State's violation of the right to seek asylum, since asylum applications are not always detected.²¹ First of all, anyone who enters Mexican territory expressing his fear to go back to his country of origin or any third country becomes an irregular migrant and, therefore, must prove his claim, notwithstanding the principles of *bona fides* and the presumption of innocence that should apply.²² Owing to the lack of mechanisms for detecting asylum seekers, some people may be in danger of being returned to their country of origin, failing to observe the principle of *non-refoulement*.²³

Usually, in ports of entry and detention points, no information is given to the persons as to their right to seek asylum, and the procedures to be followed to exercise this right effectively are not clear, and depend on the discretion of the migration officer in charge.²⁴ Even if the person manifests his fear to be returned, not all the staff of the National Institute for Migration are duly trained as to the right to seek asylum and applicable procedure if an asylum seeker is detected.

The lack of such mechanisms gives rise to discretionary acts and abuse of power, sometimes manifested in nationality- or religion-based discrimination. Sin Fronteras has information on cases of Cuban asylum seekers who could not obtain access to the asylum procedure, and also an event of *refoulement* of 17 Cuban citizens during 2006.²⁵ Recently, the organization has started documenting asylum cases from Middle East (particularly, Iraqi Muslims and Christians), who are practically isolated during their detention and sent directly to federal investigation agents before having received any information in a

²⁰ Foro Migraciones. Informe presentado a la Comisión Interamericana de Derechos Humanos, 2007.

²¹ At present, the Mexican Commission for Refugees has only four offices in the whole Republic: Mexico City, Chiapas, Campeche and Quintana Roo. Only the first two of them have the capacity of processing asylum applications.

²² Foro Migraciones. Op.cit.

²³ The principle of *Non Refoulement* or no return is the most important principle in international refugee law. It aims to guarantee, on the one hand, the right to seek asylum, and on the other, that asylum seekers and refugees are protected from return to a country in which their life or liberty are in danger.

²⁴ Recently, with the UNHCR assistance, posters that contain asylum-related information in English, Spanish and French have been installed at the migration stations in Mexico City and Tapachula, Chiapas. It a step forward, but it set aside a considerable population that does not understand said languages, as well as a lot of Mexican states which are ports of entry and migrant detention points (such as Quintana Roo, Campeche, Tabasco, Veracruz, Coahuila, Sonora, Sinaloa etc.), where there is no representation of the COMAR, the UNHCR or any civil organization that might supervise detention and deportation procedures.

²⁵ Information of cases documented by Sin Fronteras, I.A.P.

language they understand with respect to the right to seek asylum. Consequently, in its work with asylum seekers and refugees, Sin Fronteras has identified the proper detection and referral of asylum seekers as one of the principal challenges for the future, taking into consideration the migration context in which refugees move around. The restrictions on the access of lawyers and civil society to the migration detention centers are becoming more and more severe, although with no legal basis for such restrictions. Such obstacles make it impossible to distribute information to detained persons and to detect vulnerable cases, as well as to monitor such centers for detention conditions and torture prevention.

This challenge becomes even more intense owing to the increasing population of unaccompanied minors who enter the country through the southern border and are usually returned to their countries by the procedure of expedited “repatriation”. The procedure is not based on the minors’ voluntary decision to being repatriated and it does not provide any basic guarantees for minors, thus increasing the risk of returning children and adolescents who might be in need of international protection.

(ii) Asylum Seekers and Detention

Mexican law states that migration authorities shall take measures to keep asylum seekers at their disposal²⁶, which in practice means their stay in a detention center. “When the person applies for asylum while in detention, it implies that the person is kept detained during the process of refugee status recognition. That implies a violation of asylum principles, which mention that the asylum seeker shall not be detained and that detention of asylum seekers shall be the last resort. In this regard, Mexico must search for alternatives for detention, primarily where children and teenagers or families applying for asylum are concerned.”²⁷

Migration detention centers for foreigners have been the object of constant concern for human rights organizations, particularly since the National Institute for Migration was linked to the National Security Council in 2005. Since then, by and by, migration control has tightened; discretionary acts have increased, as well as the number of foreigners detained at the detention centers.²⁸

In this regard, owing to the present proposal to reform the Regulations for the Functioning of Migration Detention Centers²⁹, the situation of asylum seekers

²⁶ Article 166 of the RLGP.

²⁷ Arias, Karina. Op.cit.

²⁸ Sin Fronteras, IAP; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.; Centro de Derechos Humanos Fray Francisco de Victoria O.P., A.C.; Colectivo Contra la Tortura y la Impunidad; CENCOS; Amnistía Internacional, México; Programa de Derechos Humanos, Universidad Iberoamericana; PRODESC; Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.; Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todos”. Los Derechos de la Población Migrante Asegurada ante la Propuesta de Cambios en las Normas de Funcionamiento de las Estaciones Migratorias; 2007.

²⁹ Since late 2006, the Mexican government began a process, which is still underway, to reform the Regulations for the Functioning of Migration Detention Centre. For further information, please refer to Sin Fronteras, I.A.P, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. et all. Op. Cit.

becomes more and more difficult, for according to the proposal, applying for asylum is one of the reasons for which the detention period may be extended. The maximum detention period established by law for undocumented persons shall not exceed 90 days. Nevertheless, if a person applies for asylum or institutes a legal action against the authorities, their detention period may be extended indefinitely. Neither equitable nor justifiable, indefinite migration detention becomes an arbitrary detention or even worse, a punishment for exercising the right to seek asylum.³⁰

Alternatives to detention must be offered within a framework of temporary protection, in which the applicant may have a document identifying him as asylum seeker and providing him with measures of protection corresponding to this status. At present, owing to the context of mixed migration flows, it is scarcely probable that Mexican Government will eliminate compulsory detention for undocumented persons, including without exception, persons fleeing their country in search of asylum.

(iii) The Legality of the Eligibility Procedure and the Right to Due Process³¹

As to the procedure of refugee status recognition, there are two situations that constitute serious human rights violations. Firstly, although the RGLP loosely describe the eligibility procedure, they are so vague as to infringe on legal certainty and equality before the law. For example, the procedure includes both the National Institute for Migration and the CGCOMAR and it is not clear which authority is in charge of actually recognizing refugee status. Notwithstanding the existence of an Eligibility Committee that analyzes asylum applications, such Committee only issues recommendations, and it is the migration authority, INM, that makes the final decision.

One of the problems that this confusion causes, is that, in practice, an *ad hoc* procedure has been created, in which the CGCOMAR takes a lead role, although this is not what is set out in the law. This implies that the authority that hears and studies the claim for asylum, as well as carries out the procedure, is different from that in charge of issuing status determination. For asylum-seekers, this constitutes serious legal uncertainty, for there is no clear authority against which to appeal the legal act.³²

Secondly, it should be mentioned that during the whole procedure the right to due process is not respected and legality is not guaranteed. The applicant does not have access either to the procedure-related information or to his own legal situation. When the application processing is over, the authority does not issue any formal resolution, based on legal criteria and showing the motivation for recognition; so the person does not know the reason his or her application has

³⁰ Many asylum seekers perceive prolonged detention as punishment for applying for asylum, which also explains the high number of application withdrawals.

³¹ For more information see Coria, Elba. Op. cit.

³² In the few cases where legal action has been attempted (3 in total to date) in Mexican courts, the existence of diverse authorities participating in refugee status recognition at different levels has resulted in confusion with respect to the faculties each one legally has, and serious problems have arisen in determining which authority is in charge.

been accepted or rejected. In addition, the procedure does not consider the possibility of having a lawyer or a person to confide in, who could be present during the procedure, and no legal advice is considered in this respect.³³ Except for one or two interviews with a protection officer, the applicant is not entitled either to a hearing or to present evidence and arguments in his own defense, at any stage during the eligibility procedure.

On the other hand, even if the procedure in practice is considered non-adversarial and the inclusion of the UNHCR and Sin Fronteras brings an element of plurality and social participation³⁴, these cannot remedy the persistence of serious human rights violations as a result of the absence of due process guarantees and prolonged detention. This implies that the continuation of an *ad hoc* working group is not sustainable and must be formally established, in accordance with Mexico's obligations under international refugee law and international human rights law.

Notwithstanding, it is notable that this working group has been instrumental in the development of asylum practice in Mexico. The experience in analyzing claims and in decision-making has necessarily involved discussion of international refugee law concepts (for example, exclusion) and consequently has resulted in the training of the participants in adjudicating claims. For this reason, it is a serious concern that this group continues to exist without legal status nor basis its operation, without rules of operation, without a formal voting system, without follow-up of agreements, with no system of transparency and accountability and, above all, without any system of recording and applying legal precedents.

The present system for refugee status determination in Mexico under domestic legislation thus follows a theoretical path that coincides with reality in some aspects, but is far from being the same. This gives rise to real legal and practical problems for applicants, especially when they try to appeal against a refused claim using administrative or judicial remedies. As mentioned previously, the asylum system is not inserted integrally as part of Mexican law; which is why it is impossible to ensure the appropriate and effective protection of the asylum seekers and refugees, in spite of the fact that the State has undertaken such commitment. Legal reform is undoubtedly urgent and necessary, in order to set out clearly the competencies, faculties and attributions of the authorities with respect to refugee status determination.³⁵

³³ As a part of its work in defending human rights, Sin Fronteras offers procedure-related information, as well as limited legal advice; however, access to asylum seekers is extremely limited owing to the fact that in general they have access to the organization only after being recognized as refugees. Since 2006 an internal policy decision has been made not to litigate cases of rejected applicants in order not to affect the organization's position as participant in the Working Group.

³⁴ Diaz, Gabriela; Kuhner, Gretchen. Op. Cit.

³⁵ Coria, Elba. Op. cit

(iv) *The Lack of Legal Certainty in a Migration Procedure for Asylum Seekers and Refugees*³⁶

During the asylum recognition process, asylum seekers are completely defenseless – even if they are not in detention, the law does not allow for issuing a document to certify status as an asylum-seeker. Besides, in numerous cases asylum seekers do not have any document issued in their country of origin which certifies their identity, and this increases the legal uncertainty.

Taken this into consideration, the lack of document that certified the identity of a person as asylum seeker constitutes a considerable infringement on his right to freedom of movement, of access to justice, as well as to health, education and housing services, in addition to his right to work in order to meet his basic needs, while the application is being processed. At present, there is no right to work without recognition of refugee status and without a migration document duly issued; but these procedures may last for months and sometimes even more.

Once recognized, refugees face other problems, because the migration law does not consider refugee status as recognition of the condition of the person – it is considered simply as a migration categorization. This implies that in order to sustain the legal certainty and legal right to stay, a refugee only obtains a migration document that regulates his stay and confers him a migrant condition– that of *non immigrant refugee*, for a one year period.³⁷

The lack of legislation that could give asylum law its proper place, separate from migration law, means that refugees living in the country are not given the appropriate protection their status merits. A refugee must renew his migration document every year, like any foreigner in Mexico, and if he does not do so, he becomes an undocumented migrant at risk of being detained and returned to his country of origin. This constitutes one more violation of the principle of non-refoulement, for it does not recognize the fact that a person retains his refugee status and cannot become a migrant with irregular status, even if his permission to stay in the country has expired. When renewing the document the migration authority can then reevaluate every refugee's case – this time without the Eligibility Committee and leaving the decision at the discretion of the migration authority.

In addition, the fact that refugee status is catalogued only as a migration status implies that this may conflict with other applicable migration categories. In practice, it means that a refugee may neither study legally nor have a religion-based profession, as these refer to other migration categories. There is no explanation or specification concerning their refugee status, the refugees must comply with the general requirements the law applies to all foreigners; and thus

³⁶ For more information see the following document: Sin Fronteras, IAP. y ACNUR. “La población refugiada en México y sus documentos de identidad”. México, 2007.

³⁷ It is noteworthy that there are some divergence in migration treatment among the refugees recognized by the Eligibility Committee and those recognized under the UNHCR mandate before 2002, owing to the lack of harmony in this matter.

their rights to work, to educational development and to free procession are limited.

At the same time, a refugee that leaves the country without requesting permission from the migration authorities, loses his migration rights and is not allowed to reenter the country. As a matter of fact, this means that he loses his refugee status in Mexico, for there is no evidence other than his migration document, of his being recognized as refugee.³⁸ As to obtaining residency in Mexico, refugees are not able to access this; so their only option is to start a process of citizenship naturalization, which is very long, expensive and has some nationality-related restrictions. And finally, it is also worth mentioning that the existing system does not allow for any procedure to determine cessation, cancellation or revocation of refugee status.

It is noteworthy that in 2007 an important effort has been made on the part of the Office for Coordination of Migration Regulation at the National Institute for Migration in order to solve some practical problems created by the gaps in the General Law of Population, by means of internal circulars for the Institute's staff in all its regional departments. Although the circulars could provide useful interpretation tools in the development and implementation of the law, they are still severely limited by the applicable legislation framework and they do not have the authority and legal independence of law.

3.3 Local Integration³⁹

Local integration is one of the three long-term solutions the UNHCR promotes for refugees. In Mexico the COMAR "has the mission to comply with well-considered recommendations with regards to asylum, and to propose solutions that may lead to voluntary repatriation, resettlement or definitive integration of the refugee into Mexican society".⁴⁰

At the same time its attributions include "[...] IV. To coordinate assistance programs offered by the Commission, and to meet immediate needs of the refugees, as well as to search for convenient solutions; [...] VI. To establish relations with other branches and bodies in order to ensure their cooperation in realizing the Commission's objectives; [...] VIII. To coordinate the establishment and functioning of projects to bring a permanent solution to the problems of the refugees, whether it is repatriation, integration, moving out to a third country or other alternatives."⁴¹

Nevertheless, the COMAR does not have agreements with other agencies, any programs of its own, or an appropriate budget to ensure pertinent protection

³⁸ Article 167 of the Regulations, section VIII, paragraph (c). This restriction applies only to the refugees recognized by the Eligibility Committee, though there are also documents showing that the situation of the refugees recognized under the UNHCR mandate is not clear owing to the lack of procedures to determine cessation of refugee status.

³⁹ For more information see the following document: Sin Fronteras, IAP. y ACNUR. "Propuesta para impulsar la integración local de la población refugiada en México". México, 2007.

⁴⁰ Web site of the Ministry of the Interior: www.segob.gob.mx, viewed in April, 2007.

⁴¹ Chapter VI, Section VII, Article 79. Reglamento Interior de la Secretaría de Gobernación.

and attention to the asylum seekers and refugees in Mexico. For this purpose the UNHCR has a program in the country, carried out in partnership with Sin Fronteras, I.A.P.⁴², with some participation of Amnesty International, Mexico Chapter, and a the Belén Shelter in Tapachula, Chiapas.

Among the main needs of refugees in the process of local integration, is certainly safe and dignified housing, as well as appropriate nourishment, medical care, psychological and psychiatric assistance, access to job and education, professional tuition. The lack of access to these rights is primarily associated with a lack of financial means, legal or administrative procedures that limit them, lack of information and structural discrimination. In this regard, more concrete studies must be carried out in order to establish programs and projects that, taking into account the local population, may be favorable for the refugees' self-sufficiency and promote more dynamic and productive mechanisms for their integration into the labor market.

Sin Fronteras has documented cases of harassment, xenophobia and racial discrimination against refugees in Mexico, particularly against Africans and people of African descent, especially Haitians. With respect to the authorities, we know of cases of arbitrary detentions and interrogations of such persons based on their racial origin. We have documented cases in which Africans people of African descent assisted by the organization have reported having been detained, visited or interrogated by policemen and federal agents of investigations, in relation to the crime of fraud, money forgery or by unofficial request of the National Institute for Migration. These events have led to a considerable deterioration in their integration process.

Unfortunately, in Mexico people of African descent constitute an identifiable minority; for this reason, they easily suffer racial discrimination in Mexican society. Besides, there are no policies created by Mexican government in order to promote protection and integration of the refugee population; and the integration itself of the refugees from Africa and of people of African descent in Mexican society is very difficult; in general, except refugees from Haiti and Congo, who easily learn the language, most of them stay in the country for a short period.

Other cases documented by the organization show that the discrimination suffered by refugees in their daily life is closely related to barriers to the exercise of their economic, social and cultural rights. Every day, refugees are being discriminated for different reasons, including for professing a religion other than Catholicism, for not speaking Mexican Spanish or for their race or national origin. The most determinant factor for integration into a new country is economic solvency, which is seriously affected by the discrimination they suffer when they search for a job and do not get it because of their age, language or nationality, explicitly or, sometimes, implicitly expressed as limiting factors. There is also discrimination when children or teenagers are not admitted to school because they do not have national documents; and when they ask for protection of the State through social security programs and can not obtain access thereto due to the fact they are foreigners.

⁴² In addition, the Civil Organization obtains financial and material means from diverse sources in order to help the refugees integrate into Mexican society.

The discrimination faced by the refugee population face is not uncommon in a country where, according to the National Opinion Poll in Housing Parameters, four of every ten Mexicans considered that complexion affects the treatment people get; and the number is high in Mexico City, where 51% of the inhabitants said this kind of discrimination is present in the society.⁴³ The Economic Commission for Latin America and the Caribbean (CEPAL), in its research “Ethnic-racial discrimination and xenophobia in Latin America and the Caribbean”, indicates (...) that people of African descent are even more excluded and discriminated than Mexican Indians.⁴⁴ Available research demonstrate that over 90% of people of African descent are poor, have access only to the less-remunerated jobs, have low level of education and are subject to strong discrimination for their complexion.⁴⁵

In the framework of the CEPAL Meeting of Experts for the Construction of Gender Indicators in the Analysis of Poverty, held in La Paz, Bolivia, in the section of Racism and Poverty for Women of African descent in Latin America, the experts explain the situation in Latin America, where women of African descent historically have had to assume both productive and reproductive work, although the first one in historical conditions of discrimination. Many women of African descent have entered the informal economy owing to the market segmentation. Nevertheless, it is evident that their economic and family responsibilities make them carry out diverse productive activities in extended working days and in marginalized conditions and exploitation. They conclude that the informal sector in Latin America is characterized by the lack of labor protection and by the lack of conditions for social mobility.

With respect to the local integration process, the social and economic context of Mexico shows that the COMAR needs to have the human and financial resources to be able to promote programs and mechanisms in order to make this process easier for the refugees in our country. The fact that Mexico has few civil organizations that work with refugees, and that no social network exists to support this population’s socio-economic integration – all this shows that support must be ensured starting with the governmental authorities, through various public social security programs.

In part, the responsibilities of the Mexican State in this respect are related to the spreading information in society about the situation of asylum seekers and refugees, sensitizing the local population, promoting solidarity and assistance within the society itself.

IV. The Challenges⁴⁶

- To create an asylum policy that guarantees the right to seek and obtain asylum, as well as the principles of equality, non-discrimination and non-

⁴³ [http:// www.parametria.com.mx/es_basdat.php](http://www.parametria.com.mx/es_basdat.php)

⁴⁴ <http://www.global.info/iepala/global/fichas/ficha.php?id=989&entidad=Noticias&html>

⁴⁵ Ibid

⁴⁶ Presented by Sin Fronteras, IAP, at the Forum “Propuestas para el Plan Nacional de Desarrollo sobre Migración y Refugiados” (23-04.07)

refoulement. Such policy must include the gender and age perspective, and take into consideration Mexico's international obligations with respect to human rights, asylum and humanitarian law, as well as those recently established under the Mexico Plan of Action entitled "For the Strengthening of International Protection for Refugees in Latin America"⁴⁷. The policy must concentrate on the protection and security of the population recognized as refugee. Protection mechanisms must be considered too for those people whose applications are rejected, but who need international protection because they cannot go back to their countries of origin or of habitual residence owing to the fact that their life or freedom are in danger, or they might be subjected to torture.

For this purpose it is necessary to include the following elements:

- A procedure including due process guarantees, which may allow asylum seekers to have access to free legal advice and representation, to get the assistance and protection they need.
- Federal budget assigned to ensure assistance, including medical and psychological care, and to promote the integration and protection of asylum seekers and refugees.
- Agreement between the COMAR and the pertinent Ministries, such as Ministry of Health, Public Education and other bodies, such as public universities, to guarantee access to basic services and to promote social and economic integration.
- Reception mechanisms and support for the arrival of families and family reunifications.
- To promote the access of asylum seekers and refugees to federal services whatever their nationality or migration status might be. To eliminate those requirements which do not allow them to have access to the federal programs of social security.
- To establish agreements between the Federal authorities and the governments of the states, especially in border zones, to provide asylum seekers and refugees with health care, education service, administration of justice and housing.
- It is necessary to search for alternatives to meet as soon as possible the vital need for education and training for the refugee population. The programs must be based on their needs; artistic and cultural aspects are also very important to facilitate the relationship between both populations, facilitating an exchange that surpasses all economic differences and strengthens relationships based on diversity and mutual respect.
- To follow up with compliance of the recommendations issued in Mexico on migration and asylum by pertinent expert groups from the UN and the OAS, as well as from various conventional committees.
- To strengthen mechanisms of social participation and dialogue between the government and civil society, to develop, follow up and evaluate policies, programs and practices respect to international migration and asylum.

⁴⁷ Adopted by the Latin American States at the 20th Anniversary of the Cartagena Declaration, 2004

- Asylum policy must be also connected to foreign policy in order to promote protection and human rights for this population. In its relationship to other countries, Mexico must establish alternatives to resettlement of refugees if required in specific circumstances.