



# Safe Third Country?

## Refugee Processing in Guatemala and Mexico

PROFESSOR JAYESH RATHOD  
AMERICAN UNIVERSITY

# OVERVIEW OF PRESENTATION

- ▶ Background: Regional Politics and Legal Norms
- ▶ Refugee Processing in Guatemala
- ▶ Refugee Processing in Mexico
- ▶ Implications & Prospects for the Future

# BACKGROUND:

## Regional Politics

- ▶ DHS Agreements with Guatemala, Honduras, and El Salvador (Asylum Cooperative Agreements)
- ▶ Third-Country Transit Asylum Ban (injunction stayed by USSC)
- ▶ Migrant Protection Protocols (“Remain in Mexico”)
- ▶ Complex inter-state political dynamics

# BACKGROUND: LEGAL NORMS

- ▶ More expansive refugee definition in Latin America - **Cartagena Declaration**
- ▶ Theorizing South-South migration and challenging framing of legal regimes in the Global South
- ▶ Deconstructing “migration power” in the context of countries that are both sending and receiving countries (Betts)
- ▶ Counter-narrative to dominant discourses regarding migrants in the Global North?

# ASYLUM PROCESS: GUATEMALA

1. Request refugee protection orally or in writing at the Guatemalan Institute of Migration (IGM), any migrant control post, or with the National Civil Police.
2. Complete an initial application, which will be transmitted to the National Commission of Refugees (CONARE), which will guide the applicant in preparing a formal application.
3. IGM will issue a record of the application process, which can be used as an ID document. Must be renewed every 30 days.

# ASYLUM PROCESS: GUATEMALA

4. Per law, interview to be scheduled within 15 days of presenting a formal request. After the interview and a process of verification, CONARE has 30 days to send its recommendation to the National Migration Authority, which will decide whether to accept or deny the request. CONARE notifies the applicant of the decision.
5. In reality, processing tends to take longer. An applicant who receives a denial may file an appeal within 10 days.

# GUATEMALA: RIGHTS OF ASYLUM-SEEKERS

- ▶ Non-refoulement and non-discrimination
- ▶ Right to work / apply for work permit
- ▶ Right to education
- ▶ Right to travel document
- ▶ Right to family reunification

# GUATEMALA: KEY FACTS

- ▶ Between 2002 and 2014 CONARE analyzed an average of 7 cases per year
- ▶ In the first 8 months of 2019, it received 226 asylum applications
- ▶ As of summer 2019, only 12 government officials were working on the asylum process; just 3 interviewed asylum applicants.



# GUATEMALA: KEY FACTS

- ▶ Between 2002 and 2014 CONARE analyzed an average of 7 cases per year
- ▶ In the first 8 months of 2019, it received 226 asylum applications
- ▶ As of summer 2019, only 12 government officials were working on the asylum process; just 3 interviewed asylum applicants.

# GUATEMALA: KEY FACTS

- ▶ The U.S. has sent 558 asylum-seekers to Guatemala, including 222 children, 206 women, and 130 men.
- ▶ Fewer than 20 are pursuing asylum claims in Guatemala. The rest have requested help returning to their countries of origin (Honduras and El Salvador)
- ▶ Accord to some reporting, asylum seekers arrive in Guatemala without being told it is their destination and have minutes to decide if they want to leave Guatemala or apply for asylum there.
- ▶ A UN-funded non-profit is offering some orientation to asylum-seekers.

# US Government Visit

## Michael Kozak, USDOS



# ASYLUM PROCESS: MEXICO

1. Asylum petitions should be presented to COMAR (Mexico's refugee commission) or INM (Mexico's immigration institution) – the latter being an intermediary for COMAR. **NOTE:** Must apply within 30 days or show good cause for failing to do so.
2. Applicants should receive a *constancia*, proving legal status and protecting against deportation. They should also be issued an ID called a *Clave Único de Registro de Población* (CURP) that permits them to access employment, education, and healthcare. Administrative delays and issues result in non-issuance and denial of rights.
3. COMAR interviews asylum applicants. Attorneys may be present but are not provided.

# ASYLUM PROCESS: MEXICO

4. COMAR has 45-90 days to make a decision, but in practice it is taking much longer (6 months to a year)
5. COMAR is required to issue a reasoned, written decision, laying out its justifications. A grant results in permanent residence. Denials may be appealed administratively and then before a court.

# MEXICO: RIGHTS OF ASYLUM-SEEKERS

- ▶ Non-refoulement and non-discrimination
- ▶ Right to an interpreter (often violated) and your own attorney
- ▶ Right to work, education, and health care
- ▶ Right to family reunification

# MEXICO: KEY FACTS

- ▶ The 2019 asylum grant rate averaged 71%. There was a disparity in grant rates for Venezuelans (99%) and Guatemalans (34%). In 2019, 70,302 individuals applied for asylum (41,244 cases)
- ▶ COMAR is under-resourced: 48 protection staff handling cases of tens of thousands of asylum seekers. UNHCR has loaned contractors to COMAR. COMAR's budget is US \$1.4M

# MEXICO: ASYLUM DELAYS

- ▶ In 2019, 70,302 individuals applied for asylum (41,244 cases)
- ▶ At the COMAR office in Tapachula, Chiapas, the opportunity to seek an interview with COMAR staff has reached such a premium that migrants told Reuters on a recent visit that night-time sidewalk spots beside the gate can sell for \$11 (200 pesos) to give people a headstart in lines that stretch three blocks



# MEXICO: ASYLUM STATISTICS

- ▶ As of October 2019, 63,860 people are waiting for asylum in Mexico. 13,089 people who applied in 2018 were still waiting in October 2019, which is 44% of the total applicants in 2018.
- ▶ At the COMAR office in Tapachula, Chiapas, the opportunity to seek an interview with COMAR staff has reached such a premium that migrants told Reuters on a recent visit that night-time sidewalk spots beside the gate can sell for \$11 (200 pesos) to give people a headstart in lines that stretch three blocks

# COMAR en números

## Solicitantes de la condición de refugiado en México

Enero, 2020

**5,936\***

Solicitantes de refugio

**1,125**

niños, niñas y Adolescentes

**67**

HNA NO acompañados

**50%**

más que en enero del 2019

**65%**

de solicitudes presentadas en Chiapas, equivalentes a 3,874



### Nacionalidades con mayor número de solicitudes



\*Estas cifras son dinámicas

# APPLICATION STATISTICS BY COUNTRY OF ORIGIN, 2018-2019

\*\*SOLICITANTES X NACIONALIDAD 2018 Y 2019, (personas).

TOP 10	NACIONALIDAD	2018 PERSONAS	TOP 10	NACIONALIDAD	2019 PERSONAS
1-	HONDURAS	13,678	1-	HONDURAS	30,045
2-	VENEZUELA	6,527	2-	EL SALVADOR	8,991
3-	EL SALVADOR	6,193	3-	CUBA	8,677
4-	GUATEMALA	1,547	4-	VENEZUELA	7,662
5-	NICARAGUA	1,271	5-	HAITI	5,338
6-	CUBA	214	6-	GUATEMALA	3,758
7-	COLOMBIA	210	7-	NICARAGUA	2,327
8-	HAITI	78	8-	COLOMBIA	558
9-	EE. UU.	33	9-	BRASIL	352
10-	YEMEN	29	10-	CAMERUN	312
	OTROS PAISES	248		OTROS PAISES	1,782
	TOTAL	29,630		TOTAL	78,302

# GRANT RATES, 2019

PAIS	RESUELTOS: Positivo, PC, Negativo.	POSITIVOS	TASA DE <u>POSITIVOS</u>
HONDURAS	4,109	2,956	72%
VENEZUELA	3,601	3,561	99%
EL SALVADOR	1,977	1,198	61%
CUBA	639	101	16%
GUATEMALA	509	194	38%
TOT./RESUELTOS TOP 5	10,835	8,010	74%

# REFUGEES RECOGNIZED, 2013-2019

## 4.- RECONOCIDOS COMO REFUGIADOS, 2013-2019 (TOP 7)

\* REFUGIADOS RECONOCIDOS, POR NACIONALIDAD TOTAL (2013-2019).

PAIS	RESUELTOS: Positivo, P.C, Negativo.	RECONOCIDOS POSITIVOS	RECONOCIDOS P.C.	NO RECONOCIDOS (Negativo)
HONDURAS	13,678	6,308	2,457	5,113
EL SALVADOR	10,204	4,671	2,338	3,195
VENEZUELA	8,850	8,779	15	156
CUBA	872	393	38	703
GUATEMALA	1,639	539	351	749
HAITI	253	25	13	177
NICARAGUA	688	266	274	148
OTROS	832	349	63	420
TOTAL	37,076	20,866	3,549	10,661

# MEXICO: CHALLENGES FOR MIGRANTS

- ▶ An asylum seeker must remain in the state where they first applied throughout the pendency of their claim and must sign a form in the state's COMAR or INM office weekly to prove that they have not left the state
- ▶ 6,000 members of the National Guard were deployed to the Southern border, making it more difficult for migrants. Those detained are frequently deported without an opportunity to claim asylum. Detention centers are overcrowded, with poor conditions. In the first 5 months of 2019, Mexico detained more than 74,000 migrants, up 35% from the prior year.

# IMPLICATIONS AND PROSECTS FOR THE FUTURE

- ▶ Regional cooperation and information-sharing; UNHCR, OAS
- ▶ Cross-issue persuasion; restoring U.S. leadership role
- ▶ Resources and training
- ▶ Investing in the potential and innovation of Latin American legal systems