

MEXICO

Mexico is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, and its First but not Second Optional Protocol. Mexico ratified the 1951 Refugee Convention and the 1967 Protocol in April 2000 and issued new regulations with new asylum procedures.¹ The previous regulations had received wide criticism from NGOs.²

Under these new regulations, there is a strict fifteen-day deadline to submit an asylum application, and administrative review of the asylum decision by the reviewing officer's superior.³ If the *recurso de revisión* (administrative review) fails, the refugee applicant can appeal to the *Tribunal Federal de Justicia Fiscal y Administrativa* (Federal Tribunal for Fiscal and Administrative Justice). This decision can be challenged by an *amparo* (constitutional lawsuit) as being contrary to law.⁴ Prior to March of 2002, the UNHCR Regional Office in Mexico City recognized refugees under the UNCHR mandate, but after that date, the government began the transitional process of taking over the adjudication of asylum claims from the UNHCR.⁵

In 2001, approximately 85 percent of the 432 people seeking asylum were detained in immigration detention.⁶ Detention conditions deteriorated in 2001. After September 11, Mexico detained an increasing number of immigrants from other regions, including the

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 289, *available at* <http://preview.refugees.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² For a critical review of the 1992 regulations, Susan Gzesh, *So Close to the United States, So Far From God*, USCR World Refugee Survey 1995, *available at* http://www.refugees.org/world/articles/mexicanlaw_wrs95.htm (last accessed Aug. 29, 2002).

³ USCR WORLD REFUGEE SURVEY 2001, *supra* note **Error! Bookmark not defined.**, at 289-90. E-mail from Gretchen Kuhner, Sin Fronteras, to Min Jung Lee, Debevoise & Plimpton (Feb. 25, 2002) [hereinafter Sin Fronteras Correspondence (Feb. 25, 2002)].

⁴ Gretchen Kuhner, *Detention of Asylum Seekers in Mexico*, 20 REFUGEE 58, 60 (May 2002).

⁵ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 58.

⁶ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 262, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

arrest and detention of eighty-seven Iraqi Chaldeans in Tijuana who were filing for asylum in the United States.⁷

Under the Mexican Constitution the government may deport immigrants whose stay is considered “inconvenient,” without providing a hearing. However, in practice, an asylum seeker will generally not be deported until the refugee determination process has concluded.⁸

Until March 2002, Sin Fronteras, a Mexican NGO, and UNHCR would track the health of detainees, request custody when a detainee’s health was at risk, and then provide accommodations for the detainee.⁹

The U.S. has reportedly provided support to authorities at the Mexico/Guatemala border to return Central American migrants traveling north with the suspected intention of attempting entry into the United States.¹⁰

The immigration authorities and other police authorities detain asylum seekers without proper travel documents. Once detained, they may apply for asylum at the nearest office of the Mexican National Migration Institute (INM).¹¹ It is unclear, however, whether detainees in places other than Mexico City and Comitán Chiapas (the UNHCR office in Chiapas in 2001 received more applications than in previous years) are informed of their right to apply for asylum.¹²

Is there an independent review of the detention decision? No.

⁷ *Id.*

⁸ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 60.

⁹ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 60.

¹⁰ Melanie Nezer, *The Puebla Process: U.S. Migration Controls Move South of the Border*, USCR WORLD REFUGEE SURVEY 1999, available at http://www.refugees.org/world/articles/wrs99_migrationcontrols.htm (last accessed Aug. 29, 2002).

¹¹ E-mail from Gretchen Kuhner, Sin Fronteras, to Marjorie Menza, Debevoise & Plimpton (June 22, 2001) (on file with Debevoise & Plimpton). [hereinafter Sin Fronteras Correspondence (June 22, 2001)]; Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 60.

¹² Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 3.

Although the Constitution provides for judicial review of wrongful detention, such a case is unlikely to succeed because Mexican law permits detention of undocumented asylum seekers.¹³

Is there a limit on period of detention? No.

On November 26, 2001, new regulations for detention centers were published in the *Diario Oficial de la Federación*. Article 7 of the regulations state the general rule that detention cannot exceed 90 days although there are various exceptions, including one for detention justified by the Coordinator of Migration Control and Verification and another when at the request of national or international organizations.¹⁴ Through a constitutional lawsuit, these exceptions could be challenged since the limit for administrative detention as established by the Constitution is 36 hours.¹⁵ There is a Supreme Court decision establishing a limit of 36 hours for administrative arrest, but in practice immigration officers prolong the detention, arguing that “arrest” is different from “*aseguramiento*” (administrative detention).¹⁶

As of 2001 Sin Fronteras is not aware of any asylum seeker held for longer than 6 months¹⁷ and reports that asylum seekers typically remain in detention for 1-2 months.¹⁸

Is there periodic review of detention? No.

Under the new regulations, there is a 15 day limit for the INM to resolve the legal situation of the foreigner in detention. Detainees in detention for more than three months have their cases periodically reviewed by a committee within the INM, although this process is not regulated.¹⁹

Is there access to government-funded legal aid? No.

¹³ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 61.

¹⁴ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 61.

¹⁵ Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 3.

¹⁶ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 61.

¹⁷ Sin Fronteras Correspondence (June 22, 2001), *supra* note 11.

¹⁸ Sin Fronteras, *Notes on Asylum Seekers in Detention in Mexico*, I.A.P., Section IIE (Sept. 2001).

¹⁹ Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 61.

There is no state-funded legal aid for asylum seekers. Under the refugee determination procedure run by the UNHCR, interviews were “non-adversarial.”²⁰ It remains to be seen whether representation will be necessary under the new procedures.

Alternatives to detention: Refugees in poor physical and mental health may be released to the care of NGOs.²¹ There are migrant shelters throughout Mexico, particularly along the southern and northern borders where refugees and refugee applicants may stay at no cost. The majority of the shelters are run by religious organizations. Although there are no migrant shelters in Mexico City, Sin Fronteras has service agreements with several religious shelters where vulnerable applicants may remain while awaiting a decision on asylum.²²

Vulnerable groups: The *Departamento de Integración Familiar* (Department of Family Integration) assists and holds unaccompanied minors in its custody throughout the asylum proceeding. In practice, there have been no recent requests for asylum by unaccompanied minors. If the mother is present, the minor is placed with her in the women’s section of the detention center. In the past, the UNHCR has occasionally requested custody so that mothers and children can remain in a shelter during the eligibility determination.²³

²⁰ Sin Fronteras Correspondence (June 22, 2001), *supra* note 11.

²¹ Sin Fronteras Correspondence (June 22, 2001), *supra* note 11.

²² Kuhner, *Detention of Asylum Seekers in Mexico*, *supra* note 4, at 60.

²³ Sin Fronteras Correspondence (Feb. 25, 2002), *supra* note 3.