

2021

## Transit States to Destination Nations: Mexican and Moroccan Asylum Policies

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### Recommended Citation

Stephanie Euans, *Transit States to Destination Nations: Mexican and Moroccan Asylum Policies*, 54 *Vanderbilt Law Review* 207 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol54/iss1/5>

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# Transit States to Destination Nations: Mexican and Moroccan Asylum Policies

## ABSTRACT

*Much of the literature surrounding immigration and asylum analyzes the policies adopted by highly developed nations like the United States and countries in the European Union. However, as these nations' policies become increasingly restrictive, more migrants are turning towards neighboring nations that are easier to access but that have less developed immigration and asylum systems. Mexico and Morocco are two such nations. Historically, each has been a transit state—a nation that migrants traveled through in order to reach other states. However, both Mexico and Morocco are becoming destination nations. Social science scholarship has analyzed and compared changes in Mexico's and Morocco's immigration and emigration trends; however, little analysis exists comparing the legal mechanisms and structures of these nations' asylum systems. This Note seeks to fill that gap in the literature by providing an overview of (1) the United States' impact on Mexican immigration policy, (2) Spain's and the EU's impact on Moroccan emigration and immigration policy, (3) Mexico's and Morocco's current asylum system structures, and (4) the international framework driving asylum policy. This Note then provides a series of recommendations and analyzes their effectiveness for altering the international conventions, statutory law, and agencies so Mexico and Morocco can better protect vulnerable migrants as each becomes a destination nation.*

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## I. INTRODUCTION

Immigration reform ignites debate. Each presidential administration advocates its view about how to regulate those who can enter, seek asylum, and live in the United States. While Central American and Mexican migrants seeking nonhumanitarian forms of immigration are on the decline, those seeking asylum are at an all-time high.<sup>1</sup> An immigrant is an individual who enters another country for permanent residence, while an asylum seeker is an individual who asserts refugee status and awaits a legal determination granting them residency.<sup>2</sup> The Refugee Convention defines a refugee as an individual who is unable to return to their country of origin due to a well-founded fear of persecution on account of race, religion, nationality, social group

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1. See Miriam Jordan & Simon Romero, *Spring Brings Surge of Migrants, Stretching Border Facilities Far Beyond Capacity*, N.Y. TIMES (Mar. 30, 2019), <https://www.nytimes.com/2019/03/30/us/border-migrants-el-paso-bridge-spring-surge.html?rref=collection%2Fbyline%2Fmiriam-jordan&action=click&contentCollection=undefined&region=stream&module=inline&version=latest&contentPlacement=2&pgtype=collection> [<https://perma.cc/XJS9-LD89>] (archived Sept. 27, 2020) (discussing the surge of migrant families seeking asylum at the southern border); Sabrina Tavernise, *Immigrant Population Growth in the U.S. Slows to a Trickle*, N.Y. TIMES (Sept. 26, 2019), <https://www.nytimes.com/2019/09/26/us/census-immigration.html> [<https://perma.cc/DW5X-MMPP>] (archived Sept. 27, 2020) (discussing President Trump's approach to immigration has likely reduced immigration numbers); Frank Jack Daniel & Ted Hesson, *U.S. Detained Nearly 100,000 Migrants at Mexico Border in February*, SOURCES SAY, REUTERS (Mar. 5, 2021), <https://www.reuters.com/article/us-usa-immigration-border/u-s-detained-nearly-100000-migrants-at-mexico-border-in-february-sources-say-idUSKCN2AX2FE> [<https://perma.cc/K53Y-RYBR>] (archived Mar. 24, 2021) (discussing the surge of migrants, especially unaccompanied minors, at the US border since President Biden has taken office).

2. See Karla McKanders, *Morocco at the Crossroads: The Intersection of Race, Gender, and Refugee Status*, in WOMEN AND SOCIAL CHANGE IN NORTH AFRICA: WHAT COUNTS AS REVOLUTIONARY? 189, 191 (Doris H. Gray & Nadia Sonneveld eds., 2018).

membership, or political opinion.<sup>3</sup> The United States has adopted restrictive immigration and asylum policies<sup>4</sup> and, as a result, denies most asylum claims.<sup>5</sup> These denials have serious effects felt beyond US borders, in countries such as Mexico.

Many countries' refugee and asylum policies are formulated based on obligations assumed under the 1951 Refugee Convention and 1967 Protocol (Refugee Convention), which outline the treatment of refugees. States adopted the 1951 Refugee Convention after World War II.<sup>6</sup> The 1967 Protocol expanded the general definition of refugee to include the categories previously described.<sup>7</sup> States party to the agreement accept several obligations, including not returning refugees to any country where they will face a risk of persecution (i.e., nonrefoulement principle).<sup>8</sup> Other obligations include facilitating naturalization and providing administrative assistance, identity papers, and travel documents to refugees.<sup>9</sup> However, the distinction between refugees and other migrants who leave their countries of origin is controversial and not thoroughly addressed by the Refugee Convention.<sup>10</sup> Many countries have struggled with defining who is eligible for relief and determining what evidence is necessary to support an asylum claim.<sup>11</sup> The lack of a uniform definition and

3. Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 606 U.N.T.S. 267.

4. See Jeanne Batalova, Brittany Blizzard & Jessica Bolter, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION INFO. SOURCE (Feb. 14, 2020), [https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states?gclid=CjwKCAjwkdL6BRAREiwa-kiczG2QlbRGNavzOoYyWGdTT-VEwePMjmFQRjSAXFNrkghtaHGqGNcDaBoCntsQAvD\\_BwE#Refugees%20and%20Asylum%20Seekers](https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states?gclid=CjwKCAjwkdL6BRAREiwa-kiczG2QlbRGNavzOoYyWGdTT-VEwePMjmFQRjSAXFNrkghtaHGqGNcDaBoCntsQAvD_BwE#Refugees%20and%20Asylum%20Seekers) [https://perma.cc/845K-XBMM] (archived Sept. 27, 2020) (For example, for Fiscal Year 2020 the annual refugee admission ceiling was set at 18,000. In Fiscal Year 2019, the ceiling was set at 30,000. Both of these admissions ceilings are “the lowest levels since the resettlement program was formally created in 1980.”).

5. See *Record Number of Asylum Cases in FY 2019*, TRAC IMMIGRATION (Jan. 8, 2020), <https://trac.syr.edu/immigration/reports/588/> [https://perma.cc/K5ZV-PA3T] (archived Sept. 27, 2020) (in 2019, 69 percent of asylum seekers in the United States were denied asylum or other relief); *Asylum Outcome Continues to Depend on the Judge Assigned*, TRAC IMMIGRATION (Nov. 20, 2017), <https://trac.syr.edu/immigration/reports/490/> [https://perma.cc/6TLY-JRKM] (archived Sept. 27, 2020) (asylum claims brought by asylum seekers not represented by an attorney are denied 91 percent of the time).

6. Guy S. Goodwin-Gill, *Convention Relating to the Status of Refugees: Protocol Relating to the Status of Refugees*, 2008 U.N. AUDIOVISUAL LIBR. INT'L L. 1, 1.

7. *Id.* at 3; see *supra* text accompanying note 3.

8. Goodwin-Gill, *supra* note 6, at 4–5.

9. *Id.* at 5.

10. McKanders, *supra* note 2, at 193.

11. *Id.*; see Kate Smith, *Asylum Denials Hit Record-High in 2018 As Trump Administration Tightens Immigration Policy*, CBS NEWS (Dec. 4, 2018, 10:45 AM), <https://www.cbsnews.com/news/asylum-seekers-asylum-denials-hit-record-high-in-2018>

accepted evidence impacts the rates at which asylum applications are granted.<sup>12</sup> In the United States, this lack of uniformity makes an asylum seeker's odds of being granted asylum highly dependent upon the immigration judge hearing the case.<sup>13</sup> Similar discrepancies in asylum grant rates are also present in the EU.<sup>14</sup>

The United States and Mexico share a long and complex history surrounding immigration policies and procedures. However, this relationship is not unique. Immigration trends between Morocco and Spain closely parallel those of Mexico and the United States.<sup>15</sup> Historically, many Central American asylum seekers have used Mexico as a gateway into the United States; African asylum seekers have used Morocco as a gateway into Spain and the European Union (EU).<sup>16</sup> Both Morocco and Mexico are significantly impacted by their

-as-trump-administration-tightens-immigration-policy-as-the-caravan-arrives/ [https://perma.cc/7A5G-DFQ5] (archived Sept. 28, 2020) (comparing asylum approval rates over a period of several years).

12. See *Asylum Outcome Continues to Depend on the Judge Assigned*, TRAC IMMIGRATION (Nov. 20, 2017), <https://trac.syr.edu/immigration/reports/490/> [https://perma.cc/6TLY-JRKM] (archived Sept. 27, 2020) (The granting of asylum status depends on a multitude of factors, and it is "natural for asylum decisions to vary since the merits of individual cases differ." However, large disparities in denial rates, as later discussed, are likely not solely to differences in cases).

13. See *Asylum Outcome Continues to Depend on the Judge Assigned*, TRAC IMMIGRATION (Nov. 20, 2017), <https://trac.syr.edu/immigration/reports/490/> [https://perma.cc/6TLY-JRKM] (archived Sept. 27, 2020) (The New York Immigration Court and the Los Angeles Immigration Court hear the greatest number of asylum cases. They also have large judge-to-judge difference denial odds. In New York, denial rates range from 3 percent to 58.5 percent, and in Los Angeles they range from 29.4 percent to 97.5 percent depending on the judge.).

14. See *Asylum Statistics*, EUROSTAT (Sept. 2, 2020, 8:29 AM), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Decision\\_s\\_on\\_asylum\\_applications](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Decision_s_on_asylum_applications) [https://perma.cc/46NE-K8YT] (archived Sept. 28, 2020) (In 2019, Spain, Luxembourg, Austria, Greece, Ireland, and Denmark had over a 50 percent positive decision grants of refugee or subsidiary protection status, or an authorization to stay for humanitarian reasons where Italy, Croatia, Poland, and Hungary ranged from 19.7 percent and 8.5 percent.).

15. Douglas S. Massey, Philip Connor & Jorge Durand, *Emigration from Two Labor Frontier Nations: A Comparison of Moroccans in Spain and Mexicans in the United States*, 96 PAPERS 781, 782 (2011).

16. *Id.* However, it is worth noting that asylum policy restrictions are leading to increased numbers of South American asylum seekers applying for asylum in the EU and an increased number of Africans using the US as a gateway. In the first quarter of 2020, Venezuelans were third largest group of asylum seekers in the EU, and there was a 173 percent increase in asylum seekers from Peru and a 126 percent increase in asylum seekers from Colombia (increase from the first quarter of 2020 as compared to the first quarter of 2019). *Asylum Quarterly Report*, EUROSTAT (Sept. 22, 2020, 9:53 AM), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_quarterly\\_report#Where\\_do\\_asylum\\_applicants\\_come\\_from.3F](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Where_do_asylum_applicants_come_from.3F) [perma.cc/56RR-LGJG] (archived Sept. 28, 2020). While these are not Central American asylum seekers, it is worth noting as asylum cases from Peru, Venezuela, and Colombia have decreased in the United States over the last several years—these countries numbers fell by 64 percent, 72 percent, and 87 percent, respectively, from FY 2005–2010 as compared to FY 2011–2016. See

northern neighbors' immigration policies and their southern neighbors' political and economic turmoil. This Note compares the current refugee and asylum policies in Mexico and Morocco.

Part II of this Note examines the impacts of Mexico's and Morocco's northern neighbors' immigration policy on each nation's internal policy developments. Part III of this Note analyzes current aspects of Mexico's and Morocco's refugee and asylum policies. Part IV concludes with a series of recommendations for how Mexico and Morocco can alter current refugee and asylum policies and practices.

## II. BACKGROUND

Historically, the United States has indirectly impacted and directly attempted to alter Mexico's immigration policies. This pattern continues today, as each administration's policies further impact Mexico's current asylum and refugee system.<sup>17</sup> To aid in this discussion, this Part includes an overview of Mexico's and the United States' migration trends, along with US policy currently impacting Mexico. This Part also provides an overview of the emigration and immigration trends experienced by Morocco. Morocco's colonial history has shaped its immigration and emigration trends, which also impacts Spain and, more broadly, the EU. These impacts cause Spain and the EU to be highly invested in Moroccan immigration and asylum policy because they desire to reduce the flow of transmigrants attempting to enter Europe.

Within this Note, several terms are used to describe those who move or travel between nations. An "immigrant" is a "person who moves into a country other than that of his or her nationality or usual residence, so that the country of destination effectively becomes his or

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*Continued Rise in Asylum Denial Rates: Impact of Representation and Nationality*, TRAC IMMIGRATION (Dec. 13, 2016), <https://trac.syr.edu/immigration/reports/448/> [<https://perma.cc/7ZSR-QG9Z>] (archived Sept. 28, 2020).

In addition, more African migrants are entering Mexico or Central American countries for refuge and also attempted to cross the US—Mexico border. See *Surge of African Migrants Brave Latin America Jungle Trek for US Dream*, VOA (Jan. 16, 2017, 9:29 AM), <https://www.voanews.com/africa/surge-african-migrants-brave-latin-america-jungle-trek-us-dream> [<https://perma.cc/3F6U-ACR7>] (archived Sept. 28, 2020); Nancy Adossi, Tadios Belay, Carl Lipscome & Benjamin Ndugga-Kabuye, *Black Lives at the Border*, 2018 BLACK ALL. FOR JUST IMMIGRATION 1, 3, <http://baji.org/wp-content/uploads/2020/03/black-lives-at-the-borderfinal-2.pdf> (last visited Sept. 28, 2020) [<https://perma.cc/W675-SLT8>] (archived Sept. 28, 2020).

17. See KIRSTJEN M. NIELSEN, U.S. DEP'T OF HOMELAND SEC., POLICY GUIDANCE FOR IMPLEMENTATION OF MIGRANT PROTECTION PROTOCOLS (2019); Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017); Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13,209 (March 6, 2017).

her new country of usual residence.”<sup>18</sup> The term “migrant” is used to describe a “person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.”<sup>19</sup> This definition includes both those with legal authorization to reside in a nation and those without. “Irregular migrant” or “irregular migration” is used to refer specifically to those individuals whose movement occurs “outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.”<sup>20</sup> This Note uses the term “refugee” to describe those who have been recognized by their host country as a refugee, in most cases, because they qualify for protection under the Refugee Convention. Lastly, “asylum seeker” refers to an individual who is “seeking international protection”<sup>21</sup> but has not yet been recognized as a refugee. There are no universally accepted definitions of many of these terms—often nations, international organizations, and scholarship use these terms to encompass different groups of people—so the meaning of these terms can vary across works, resulting in differing norms and legal rights.

### A. US Impact on Mexican Immigration Policy

The United States’ immigration policy has a profound effect on Mexico and influences Mexico’s immigration policy.<sup>22</sup> Mexico’s restrictive immigration policies often do “the dirty work for the United States,” by restricting transmigrants from entering the United States.<sup>23</sup> Prior to 2014, a majority of individuals apprehended at the

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18. *Key Migration Terms*, INTERNATIONAL ORGANIZATION FOR MIGRATION, <https://www.iom.int/key-migration-terms#Asylum-Seeker> (last visited March 6, 2021) [<https://perma.cc/RBX9-HXGG>] (archived March 6, 2021).

19. *Id.*

20. *Id.*

21. *Id.*

22. See Steven W. Bender & William F. Arrocha, *Introduction to COMPASSIONATE MIGRATION AND REGIONAL POLICY IN THE AMERICAS* 1, 7–8 (Steven W. Bender & William F. Arrocha eds., 2017) (discussing the various migration policies of nations in the Americas).

23. *Id.* (citing David R. K. Adler, *Mexico Is Doing the Dirty Work’: Mexican Government Cracks Down on Immigration on US Behalf*, HUFFPOST (Dec. 6, 2017), [https://www.huffpost.com/entry/mexico-is-doing-the-dirty\\_b\\_7111954](https://www.huffpost.com/entry/mexico-is-doing-the-dirty_b_7111954) [<https://perma.cc/4VEK-JPVM>] (archived Sept. 28, 2020); see NIELSEN, *supra* note 17; Agreement Between the Government of the United States and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims, 85 Fed. Reg. 25,462 (Sept. 25, 2019); Agreement Between the Government of the United States and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims, 85 Fed. Reg. 83597-01 (Sept. 20, 2019); Agreement Between the Government of the United States and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64095-01 (July 26, 2019). The Act of March 3, 1891 required immigrants to undergo health inspections before departure and upon arriving at a United States port of entry, steamship companies also had to certify

southwest US border were of Mexican nationality.<sup>24</sup> By 2019, Mexican nationals only made up approximately 20 percent of those apprehended at the southwest US border, while most other migrants were from Central America.<sup>25</sup>

The increased number of Central Americans at the US border means that Mexico is also experiencing increasing numbers of Central American migrants and transmigrants both at and within its borders. From January 2020 to March 2020, prior to the spread of Covid-19 and accompanying restrictions, Mexico received nearly 17,800 asylum claims—a 33 percent increase from the same period in the prior year.<sup>26</sup> A majority of the asylum seekers in the beginning of 2020 were from Honduras, Haiti, Cuba, El Salvador, and Venezuela.<sup>27</sup> As a result of border closures in Central America, in April 2020, UNHCR reported a 90 percent decline in average weekly asylum claims.<sup>28</sup>

Three recent US policies that have greatly impacted Mexico are metering, Migrant Protection Protocols (MPP), and safe third-country agreements. These policies were put into place under the Trump Administration, and the Biden Administration is currently taking action to dismantle and alter the effects of some of these programs. In fact, one of the first actions President Biden took when he assumed

the heath of their passengers and faced fines and fees for detained passengers. These companies learned to evade the new law by using ports of entry, like Veracruz, Mexico, which did not have such rigorous standards. Once in Mexico, the immigrants, who likely would have been denied entrance at seaports, could travel and enter the United States at El Paso or other border towns. The US government exercised pressure to stop these immigrants from entering the United States. However, Mexican policymakers had their own national interests to support, as highlighted by a US Immigrant Inspector: “The Mexican Government fears . . . the accumulation of diseased persons within the borders of that country, but such condition prevails at the present time, as hundreds of aliens who have been excluded at boundary ports upon account of their afflictions, are harbored at points in Mexico and are proving a menace to the population.” Theresa Alfaro-Velcamp & Robert H. McLaughlin, *Immigration and Techniques of Governance in Mexico and the United States: Recalibrating National Narratives Through Comparative Immigration Histories*, 29 L. & HIST. REV. 573, 592–94 (2011).

24. See U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL APPREHENSIONS FROM MEXICO AND COUNTRIES OTHER THAN MEXICO (FY 2000–2019) (2019), [https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Total%20Monthly%20Family%20Unit%20Apprehensions%20by%20Sector%20%28FY%202013%20-%20FY%202019%29\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Total%20Monthly%20Family%20Unit%20Apprehensions%20by%20Sector%20%28FY%202013%20-%20FY%202019%29_0.pdf) [<https://perma.cc/C7NN-8VXK>] (archived May 6, 2020) (in 2013, of the 414, 397 individuals apprehended at the southwest border, 265,409 were Mexican Nationals).

25. See *id.* (of the 851,508 individuals apprehended at the southwest border in 2018, only 166,458 were of Mexican nationality).

26. Briefing Notes, UNHCR, Despite Pandemic Restrictions, People Fleeing Violence and Persecution Continue to Seek Asylum in Mexico (Apr. 28, 2020), <https://www.unhcr.org/en-us/news/briefing/2020/4/5ea7dc144/despite-pandemic-restrictions-people-fleeing-violence-persecution-continue.html> [<https://perma.cc/8HZF-44A>] (archived Mar. 8, 2021) [hereinafter Briefing Notes].

27. *Id.*

28. *Id.*



office was to end the MPP.<sup>29</sup> However, during his presidency, President Trump issued over 400 Executive Orders pertaining to immigration<sup>30</sup>—the undoing of which will neither be easy nor quick. Many of these programs and actions have had profound impacts on Mexico, which are still felt today. A description of the policies as designed and used under the Trump Administration is below.

Before asylum seekers are able to access any US immigration processes, they must first go through a system known as “metering.” The U.S. Customs and Border Protection (CBP) metering process limits the number of individuals who are permitted to access the asylum system. The process works as follows:

Asylum seekers turned away by CBP must place themselves on a “list” maintained by a person or group on the Mexican side of the border. Each day, CBP contacts the person or entity in charge of the list and informs them of how many people can be admitted and processed in order to request asylum. At that point . . . CBP may then subject the asylum seeker to the Migrant Protection Protocols program and send them back to Mexico.<sup>31</sup>

President Biden has maintained the metering process and will likely continue to do so in the future.<sup>32</sup>

Under the Trump Administration, after metering—when an individual is finally given access to the immigration system—a migrant becomes subject to the MPP. Under the MPP, migrants, including asylum seekers, are forced to remain in Mexico and wait outside the United States during their immigration proceedings.<sup>33</sup> Migrants currently in Mexico often stay in tent encampments on the streets of cities.<sup>34</sup> From February 2019 to February 2021, CBP sent

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29. Alana Wise, *Biden Team Unveils New Asylum System to Replace Trump's Remain In Mexico*, NPR (Feb. 12, 2021, 6:00 AM), <https://www.npr.org/2021/02/12/967201293/biden-team-unveils-new-asylum-system-to-replace-trumps-remain-in-mexico> [https://perma.cc/FK44-F3AP] (archived Mar. 6, 2021).

30. Sarah Pierce & Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalogue of Changes Under the Trump Presidency*, MIGRATION POLICY INSTITUTE (July 2020), <https://www.migrationpolicy.org/research/us-immigration-system-changes-trump-presidency> [https://perma.cc/EP37-9TNN] (archived Mar. 6, 2021).

31. *Policies Affecting Asylum Seekers at the Border*, AM. IMMIGR. COUNCIL (Jan. 29, 2020), <https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border> [https://perma.cc/VRL5-4NF4] (archived Sept. 28, 2020).

32. David Bier, *Biden's Closed Door Immigration Policies Are Not 'Open Borders'*, CATO INST. (Feb. 18, 2021) <https://www.cato.org/commentary/bidens-closed-door-immigration-policies-are-not-open-borders> [https://perma.cc/T3LS-WGWE] (archived Mar. 6, 2021).

33. *Press Release for Migrant Protection Protocols*, U.S. DEP'T OF HOMELAND SEC. (Jan. 24, 2019) <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> [https://perma.cc/54XE-WTLY] (archived Sept. 28, 2020).

34. Jasmine Aguilera, *They Are Screaming for Help.' See Drawings from Children Stuck in Mexico As They Seek U.S. Asylum*, TIME (Oct. 31, 2019, 5:04 PM),

over sixty-eight thousand migrants to Mexico to await their hearings.<sup>35</sup> While President Biden has since ended this policy, those sent back to Mexico to await a hearing date under the Trump Administration still remain—to an extent.

The Department of Homeland Security estimates there are twenty-five thousand people in Mexico as a result of the MPP with “active cases,”<sup>36</sup> a stark contrast to the sixty-eight thousand sent back to Mexico during the prior two-year period. Covid-19, the closing of the US border, and the indefinite postponement of MPP proceedings<sup>37</sup> have caused many of those remaining in Mexico to leave encampments, with individuals deciding to return home, attempting to cross the border, seeking out shelters, or staying in other areas along the Mexico–US border.<sup>38</sup> Now, each day about three hundred asylum seekers—who were forced to remain in Mexico under this policy—are allowed to enter the United States to move forward with their asylum claims.<sup>39</sup>

Safe third country agreements were also used to limit access to asylum in the United States. Under the Immigration and Nationality Act, those seeking asylum who are traveling through a safe third country, with whom the United States has an agreement, must apply for asylum in that country first and be denied in order to apply for asylum in the United States.<sup>40</sup> The Immigration and Nationality Act lays out two requirements for safe third-country agreements: (1) the asylum seeker’s “life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion” and (2) the third country must give the asylum seeker “access to a full and fair procedure for determining a claim to asylum

<https://time.com/5713317/migrant-children-drawings-remain-in-mexico-policy/> [<https://perma.cc/S5F5-K2J5>] (archived Sept. 28, 2020).

35. *Delivered to Danger*, HUMAN RIGHTS FIRST (Feb. 19, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico> [<https://perma.cc/7ZT2-H3F7>] (archived Mar. 8, 2021).

36. Wise, *supra* note 29.

37. Jorge Loweree, Aaron Reichlin-Melnick & Walter A. Ewing, *The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System*, AM. IMMIGR. COUNCIL (Mar.–Sept. 2020), [https://www.americanimmigrationcouncil.org/sites/default/files/research/the\\_impact\\_of\\_covid-19\\_on\\_noncitizens\\_and\\_across\\_the\\_us\\_immigration\\_system.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_impact_of_covid-19_on_noncitizens_and_across_the_us_immigration_system.pdf) [<https://perma.cc/ZR8U-48EK>] (archived Mar. 6, 2021).

38. *See Mexico: Asylum Seekers Face Daily Threats to their Health and Safety*, DOCTORS WITHOUT BORDERS (Nov. 18, 2020), <https://www.doctorswithoutborders.org/what-we-do/news-stories/story/mexico-asylum-seekers-face-daily-threats-their-health-and-safety> [<https://perma.cc/QD9Q-Z6F3>] (archived Mar. 6, 2021) [hereinafter DOCTORS] (when COVID-19 was first reported, one camp in Matamoros had over 2,000 people waiting for their hearings in the United States—as of November 2020, only about 700 remain).

39. *See* Wise, *supra* note 29 (migrants must test negative for COVID-19 before being allowed to enter the US).

40. 8 U.S.C.A. § 1158 (West 2009).

or equivalent temporary protection.”<sup>41</sup> The United States, during the Trump Presidency, entered into such agreements with El Salvador, Honduras, and Guatemala.<sup>42</sup> The Biden Administration has since suspended these asylum agreements and has initiated the process to terminate the agreements.<sup>43</sup>

The problems and strains on Mexico’s immigration and asylum system are compounded by pressure and policies adopted by the United States. Mexico itself faces an increased number of asylum seekers and migrants at its borders (prior to Covid-19) and migration and human rights concerns during the Covid-19 pandemic. These concerns are only amplified by US policies that have forced Mexico to house and regulate migrants looking for access to the US immigration system. Part III analyzes the efficacy of Mexican institutions and policies in an attempt to help identify solutions for the ever-changing migration trends Mexico is experiencing. This Note does not address nor does it provide solutions to the issues and concerns plaguing the United States’ immigration system—of which there are many—but rather seeks to analyze Mexico’s asylum system, which is becoming increasingly attractive to asylum seekers as the United States turns them away.

### B. *EU Impact on Moroccan Migration*

Morocco’s history as a colony has a significant impact on its historical migration and immigration trends.<sup>44</sup> Colonial migration links, migration networks, and proximity to Europe have given rise to many of the migration patterns seen today.<sup>45</sup> For much of Morocco’s history, France was the primary destination for migrants.<sup>46</sup> This trend

41. *Id.*

42. Agreement Between the Government of the United States and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims, 85 Fed. Reg. 25,462 (May 1, 2020) (signed Sept. 25, 2019); Agreement Between the Government of the United States and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims, 85 Fed. Reg. 83,597 (Dec. 22, 2020) (signed Sept. 20, 2019); Agreement between the Government of the United States and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64,095-01 (Nov. 20, 2019) (signed July 26, 2019).

43. Reuters Staff, *Biden Administration Suspends Trump Asylum Deals with El Salvador, Guatemala, Honduras*, REUTERS (Feb. 6, 2021, 9:26 PM), <https://www.reuters.com/article/us-usa-immigration-centralamerica/biden-administrati-on-suspends-trump-asylum-deals-with-el-salvador-guatemala-honduras-idUSKBN2A702Q> [<https://perma.cc/4XYG-FXYT>] (archived Mar. 6, 2020).

44. See AYSELIN GÖZDE YILDIZ, *THE EU’S IMMIGRATION POLICY: MANAGING MIGRATION IN TURKEY AND MOROCCO* 151 (2016).

45. *See id.* at 152.

46. *See id.* at 154. Migration patterns changed when Morocco became a protectorate of France and Spain in 1912, leading to future waves of migration during World War I and World War II when Moroccan men joined the French army. Algeria had an impact on Moroccan emigration patters, when migration from Morocco to France

changed in the 1980s when Moroccan migration began to increase to other destinations, primarily Spain.<sup>47</sup> The EU's only land borders with the continent of Africa are the Spanish territories Ceuta and Melilla, which are located on Morocco's Mediterranean coast—this geographical feature impacts both migration patterns and policy.

Pressure from the EU significantly impacts Spain's immigration and asylum policies. The EU is concerned with Spain's immigration policy because those who obtain Spanish national status have the ability to move freely throughout the EU.<sup>48</sup> Up until the 1980s, Spain had a nonexistent immigration policy.<sup>49</sup> This is because Spain, and other European countries, had gone from being net-emigration countries to net-immigration countries.<sup>50</sup> In 1984, Spain passed the first law regulating asylum rights.<sup>51</sup> This act was later revised to coordinate Spanish standards with EU asylum laws, the Schengen Treaty, and the Dublin Convention.<sup>52</sup> Spain passed new legislation focused on the guidance and coordination of immigration, the "integration of foreign residents," the "management of migration flows," and an asylum system.<sup>53</sup>

Moroccans are the largest emigrant group in Europe.<sup>54</sup> Morocco also serves as a transit gate to Europe for many migrants coming from Northern Africa, and Morocco itself is increasingly becoming a destination country for many African migrants and asylum seekers.<sup>55</sup> Labor migrants, asylum seekers, and irregular migrants predominately make up those who travel through and to Morocco.<sup>56</sup>

increased during the Algerian War of Independence. These migration patterns have continued to persist despite Morocco gaining independence from France in 1956.

47. *See id.*

48. Lydia Esteve Gonzalez & Richard Mac Bride, *Fortress Europe's Fear of Immigration? Present and Future Immigration Law and Policy in Spain*, 6 U.C. DAVIS J. INT'L L. & POL'Y 155, 159 (2000).

49. Trián Urban, *Distant Shores? Evaluating Spain's Immigration Policy*, 9 CENT. EUR. J. INT'L & SEC. STUD. 192, 200 (2015).

50. Gonzalez & Mac Bride, *supra* note 48, at 157–58.

51. Reguladora del Derecho de Asilo y de la Condición de Refugiado (B.O.E. 1984, 5) (Spain).

52. Urban, *supra* note 49, at 201–02; *see* Modification de la Reguladora del Derecho de Asilo y de la Condición de Refugiado arts. XXIV, XXXI (B.O.E. 1994, 9) (Spain).

53. Urban, *supra* note 49, at 203; *see* Programa Global de Regulación y Coordinación de la Extranjería y la Inmigración (B.O.E. 2001, 101) (Spain).

54. YILDIZ, *supra* note 44, at 151.

55. As of September 2020, 11,960 asylum seekers and refugees were in Morocco. UNHC, MOROCCO FACT SHEET (Sept. 2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Morocco%20Factsheet%20September%202020%20ENG.pdf> [<https://perma.cc/T29J-LTFK>] (archived Mar. 6, 2021) [hereinafter MOROCCO FACT SHEET I].

56. YILDIZ, *supra* note 44, at 157.

Most migrants view Morocco as a country through which they can enter Spain or the Canary Islands.<sup>57</sup>

Morocco works with Spain, Italy, Germany, and Belgium on border control measures. These measures aim to limit the number of irregular migrants using Morocco as a transit state in order to reach the EU. As a result of this collaboration, Morocco is often able to secure legal migration benefits—including employment and work experience—for Moroccan nationals in Europe. In 2019, the EU and Morocco formed a partnership addressing a broad range of issues, including “the prevention of and fight against irregular migration.”<sup>58</sup> The agreement seeks to carry this goal in three main ways: (1) by raising awareness of the risks tied to irregular migration; (2) stepping up the management of the sea and land borders; and (3) improving mobility through legal migration, return, readmission and reintegration, and visa facilitation processes.<sup>59</sup> This cooperation could be one of the reasons why Morocco has not yet adopted an asylum law, as doing so could cause the EU to consider Morocco a safe third country, resulting in EU “demands to return third country nationals to Morocco”<sup>60</sup>—much like the Trump Administration’s safe third-country agreements. These concerns, and lack of a national asylum law, will be discussed further in Part III.

Morocco is seeing an increased flow of refugees and immigrants.<sup>61</sup> Almost eight thousand registered refugees and asylum seekers are living in Morocco, about half of which are from Syria.<sup>62</sup> Additionally, there are approximately one hundred thousand migrants—individuals who have entered another country but not gone through the formal process to become a refugee—living in Morocco.<sup>63</sup> There are also large numbers of irregular migrants in Morocco—some estimate up to

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57. *Id.*

58. Press Release, Council of the European Union, Joint Declaration by the European Union and Morocco for the Fourteenth Meeting of the Association Council (June 27, 2019), <https://www.consilium.europa.eu/en/press/press-releases/2019/06/27/joint-declaration-by-the-european-union-and-the-kingdom-of-morocco-for-the-fourteenth-meeting-of-the-association-council/#:~:text=The%20joint%20political%20declaration%20is,European%20Union's%20agencies%20and%20programmes> [https://perma.cc/BUS4-G4ZJ] (archived Mar. 8, 2021).

59. *Id.*

60. Anna Knoll & Chloe Teevan, *Protecting Migrants and Refugees in North Africa: Challenges and Opportunities for Reform*, EUR. CTR. DEV. POL'Y MGMT. 17 (Oct. 2020), <https://ecdpm.org/wp-content/uploads/Protecting-Migrants-Refugees-North-Africa-Challenges-Opportunities-Reform-Discussion-Paper-281-October-2020-ECDFM.pdf> [https://perma.cc/U2WQ-4ZHD] (archived Mar. 6, 2021).

61. Megan Pierce, *Between the Desert and the Sea: The Plight of Refugees in Morocco*, PULITZER CTR. (Mar. 19, 2019), <https://pulitzercenter.org/reporting/between-desert-and-sea-plight-refugees-morocco> [https://perma.cc/MWC4-9AZS] (archived Sept. 28, 2020).

62. Knoll & Teevan, *supra* note 60, at 3.

63. *Id.* at 2.

several hundred thousand—although there are no official estimates of the number.<sup>64</sup>

There are different channels for entry and authorization for these migrants depending on the migrant's nationality. Morocco has visa facilitation agreements with Gbaon, Niger, Senegal, and Cote d'Ivoire, allowing nationals of these nations to stay in Morocco for three months without a visa.<sup>65</sup> Some migrants use this method to overstay their visa; others enter Morocco through the Algerian border.<sup>66</sup> While approximately 50 percent of the migrants registered with UNHCR are from Syria,<sup>67</sup> many migrants living in Morocco come from other nations. In 2014 and 2016, Morocco granted fifty thousand residence permits to refugees and migrants, 25 percent of whom were of Senegalese nationality.<sup>68</sup>

Migrants are staying in Morocco for a variety of reasons; some perceive Morocco as a safe-haven, while others view it as a stepping stone to Europe, offering better opportunities than other North African countries.<sup>69</sup> Other migrants end up in Morocco after being promised passage to Europe by smugglers who then abandon them.<sup>70</sup> Some move to Morocco for work, commercial purposes, or school.<sup>71</sup> Lastly, some migrants fail to enter Europe but prefer Morocco to their home country.<sup>72</sup> In response to the increased numbers of migrants staying in Morocco, the Moroccan police have carried out raids in neighborhoods where refugees and migrants live—primarily northern provinces of Morocco, which neighbor the Spanish territories.<sup>73</sup> Critics have described this crackdown as “cruel and unlawful,” representing “a worrying backslide for a government that in 2013 introduced new asylum and migration policy commitments to bring Morocco into compliance with international standards.”<sup>74</sup>

Like Mexico, Morocco immigration trends and practices have been impacted by Covid-19. Morocco closed its borders to prevent the spread of Covid-19, making it difficult for migrants to enter. The pandemic has caused many unauthorized Moroccans located in Spain to return to

64. *Id.*

65. *Id.* at 3.

66. *Id.*

67. *Id.*

68. *Id.* at 2.

69. YILDIZ, *supra* note 44, at 157.

70. *Id.*

71. Knoll & Teevan, *supra* note 60, at 3.

72. YILDIZ, *supra* note 44, at 157.

73. Amnesty International, *Morocco: Relentless Crackdown on Thousands of Sub-Saharan Migrants and Refugees is Unlawful*, AMNESTY INT'L (Sept. 7, 2018), <https://www.amnesty.org/en/latest/news/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/> [https://perma.cc/9CKK-UG65] (archived Sept. 28, 2020) [hereinafter AMNESTY INT'L].

74. *Id.*

Morocco.<sup>75</sup> This return was sparked by high spread of the virus in Spain and a subsequent decrease in employment opportunities.<sup>76</sup> Historically, unauthorized migration flows occurred from Morocco to Spain, however, during early 2020, the illegal flow of migrants was from Spain to Morocco—largely due to the spread of Covid-19.<sup>77</sup>

The Covid-19 pandemic has also caused migrants residing in Morocco to become stranded—unable to access services or travel within or out of Morocco. Many migrants living in Morocco do not have residency, meaning they are unable to claim government aid, obtain authorization to carry out daily tasks or errands,<sup>78</sup> or obtain employment.<sup>79</sup> Organizations such as UNHCR have been working with the Moroccan government to ensure the asylum seekers and refugees are able to access services and receive information about the Covid-19 pandemic.<sup>80</sup> The analysis in Part III will analyze the efficacy of Moroccan institutions and policies as supplemented by international organizations in an attempt to identify solutions for the migration waves Morocco is experiencing.

### C. Similarities and Differences

It is important to note the similarities that make the comparisons between Mexico's and Morocco's immigration trends relevant. Geographically, both nations are near developing nations—only separated by land and “thin water” borders. In addition, Mexico and Morocco are each closely situated to developed nations, the United

75. Mohamed Mamouni al-Alawi, *Pandemic Sparks Reverse Migration from Spain to Morocco*, ARAB WEEKLY (Apr. 29, 2020), <https://the arabweekly.com/pandemic-sparks-reverse-migration-spain-morocco> [https://perma.cc/WT2K-V9V2] (archived Mar. 6, 2021).

76. *Id.*

77. *Id.*

78. See MOROCCO FACT SHEET I, *supra* note 55; Marc Ferrà, *El Coronavirus Complica la Dura Vida de los Migrantes en Marruecos*, LA VANGUARDIA (Apr. 16, 2020), <https://www.lavanguardia.com/internacional/20200416/48549805163/el-coronavirus-complica-la-dura-vida-de-los-migrantes-en-marruecos.html> [https://perma.cc/AT75-EMNG] (archived Mar. 6, 2021) (during the first several months of the Covid-19 pandemic, the Moroccan government issued stay at home orders, requiring those in Morocco to obtain authorization before leaving their homes); Jario Argas and Rosa Soto, *Morocco Abandons Migrants Detained During the Covid in the Desert: “We Walked 6 days Without Water or Food”*, PÚBLICO (May 14, 2020), <https://www.publico.es/sociedad/deportados-marruecos-argelia-marruecos-abandona-desierto-argelino-migrantes-detenido-covid-andamos-6-dias-agua-comida.html> [https://perma.cc/8FT5-3GM3] (archived Mar. 6, 2021).

79. Ferrà, *supra* note 78.

80. UNHCR, *UNHCR Morocco's Response to the Covid-19 Situation*, UNHCR (June 2020), [https://reporting.unhcr.org/sites/default/files/UNHCR%20Morocco%20Response%20to%20COVID-19\\_June%202020\\_0.pdf](https://reporting.unhcr.org/sites/default/files/UNHCR%20Morocco%20Response%20to%20COVID-19_June%202020_0.pdf) [https://perma.cc/C8CA-ZQE2] (archived Mar. 8, 2021).

States and Spain, respectively.<sup>81</sup> Approximately 10 percent of each nation's population has emigrated and now lives abroad.<sup>82</sup> Lastly, both the United States and the EU have constructed border walls to keep migrants out.<sup>83</sup>

However, these countries also have noteworthy differences that impact emigration. First, Morocco has a lower GDP per capita than Mexico.<sup>84</sup> Second, Morocco is much more economically distant from Spain than Mexico is from the United States.<sup>85</sup> Third, Moroccan "migrants are also more culturally distinct" from Spain, and the EU generally, than Mexican migrants are from the United States.<sup>86</sup> Mexico and the United States are both "multiracial settler societies" that are largely Christian in religion, whereas Morocco is overwhelming Muslim in religion and Arabic in its culture—making it both religiously and culturally distinct from Spain and the EU.<sup>87</sup> Fourth, undocumented status plays a more significant role in emigration from Mexico to the United States than from Morocco to Spain; 60 percent of Mexicans in the United States were undocumented in 2008, compared to 7 percent of Moroccans in Spain.<sup>88</sup> These similarities and differences impact not only emigrants' outcomes when emigrating, but also shape each nation's immigration policy.

### III. ANALYSIS

This Part analyzes actions taken by the Mexican and Moroccan governments to regulate asylum proceedings, secure international borders, and protect human rights. First, this Part will focus on relevant Mexican law and governmental agencies; these include the 2011 Human Rights Amendment,<sup>89</sup> the 2011 Law on Refugees,<sup>90</sup> the *Comisión Mexicana de Ayuda a Refugiados* (COMAR),<sup>91</sup> and the *Instituto Nacional de Migración* (INM).<sup>92</sup> Next, this Part will discuss

81. Massey, Connor & Durand, *supra* note 15, at 784.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* (Morocco's GDP per capita is \$4,500, just 13 percent of Spain's \$34,600, while Mexico's GDP per capita is \$14,300, 30 percent of the United States' \$47,500).

86. *Id.*

87. *Id.* at 785.

88. *Id.*

89. Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, reformas DOF 10-06-2011 (Human Rights Amendments), últimas reformas DOF 10-02-2014 (Mex.).

90. Ley de Migración [LM] [Law of Migration], Diario Oficial de la Federación [DOF] 25-05-2011 (Mex.).

91. ¿Qué hacemos?, GOBIERNO DE MEX., <https://www.gob.mx/comar/que-hacemos> (last visited Sept. 28, 2020) [<https://perma.cc/8AGY-NL6J>] (archived Sept. 28, 2020) [hereinafter ¿Qué hacemos?].

92. *Id.*



relevant Moroccan law, policies, and governmental agencies, including the 2003 Migration Law,<sup>93</sup> the Moroccan Constitution adopted in 2011,<sup>94</sup> a humanitarian policy adopted in 2013,<sup>95</sup> and the *Bureau des Réfugiés et Apatrides*.<sup>96</sup> Lastly, this Part presents an evaluation of the 1951 Convention and 1967 Protocol.

### A. Seeking Asylum in Mexico

Mexico did not start systematically quantifying migration until it began receiving large numbers of refugees fleeing Central America in the 1970–90s, after which Mexico started to develop its immigration policies regarding documented transmigration.<sup>97</sup> Mexico signed the 1951 Refugee Convention and its 1967 Protocol in 2000.<sup>98</sup> Mexico is also a party to the 1984 Cartagena Declaration on Refugees (Cartagena Declaration).<sup>99</sup> This declaration expands on the Refugee Convention's definition of "refugee" by including those who have been "threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."<sup>100</sup> Mexico drafted its law concerning refugees and asylum in 2009 with help from the Office of the United Nations High Commissioner for Refugees and passed it into law in 2011.<sup>101</sup> This law incorporates the expanded definition of "refugee" established in the Cartagena Declaration.<sup>102</sup> The law gives all foreigners the right to apply for refugee status and guarantees the individual the right to a

93. Decree no. 1-03-196 of November 11, 2003 Adopting Law no. 02-03 (Morocco) (addressing the entry and stay of foreigners).

94. *Morocco's Constitution of 2011*, CONSTITUTE PROJECT (2011), [https://constituteproject.org/constitution/Morocco\\_2011?lang=en](https://constituteproject.org/constitution/Morocco_2011?lang=en) [ <https://perma.cc/2D9M-U6MT?type=image>] (archived Mar. 10, 2021).

95. Circulaire no. 8303: Circulaire Régissant L'opération Exceptionnelle de Régularisation de la Situation de Séjour des Étrangers, (Dec. 16, 2013) (Morocco).

96. *UNHCR Calls Opening of Refugee and Stateless Office in Morocco "Great" Achievement*, RYAUME DU MAROC (Sept. 26, 2013), <http://www.maroc.ma/fr/actualites/le-hcr-qualifie-de-grande-realisation-louverture-dun-bureau-des-refugiés-et-apatrides-au> [<https://perma.cc/NT49-NYHP>] (archived Sept. 28, 2020).

97. Rodolfo Casillas, *Visible and Invisible: Undocumented Migrants in Transit Through Mexico*, in COMPASSIONATE MIGRATION AND REGIONAL POLICY IN THE AMERICAS 143, 144 (Steven W. Bender & William F. Arrocha eds., 2017).

98. See *supra* note 3.

99. *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, UN REFUGEE AGENCY (Nov. 22, 1984), <https://www.refworld.org/docid/3ae6b36ec.html> [<https://perma.cc/97CQ-9BRM>] (archived Sept. 28, 2020) [hereinafter Cartagena Declaration].

100. *Id.*

101. Kausha Luna, *Mexico's Refugee Law*, CTR. FOR IMMIGR. STUD. (June 24, 2018), <https://cis.org/Luna/Mexicos-Refugee-Law> [<https://perma.cc/599S-6EZ8>] (archived Sept. 28, 2020).

102. Ley de Migración [LM] [Law of Migration], Diario Oficial de la Federación [DOF], 25-05-2011.

hearing.<sup>103</sup> Despite Mexico's expansion of the protections provided to refugees, asylum seekers and refugees are not experiencing the full protection of these laws due to inconsistent application of these protections by the many agencies involved in Mexico's refugee and asylum claim process.

## 1. Constitutional and Statutory Reforms

In 2011, Mexico adopted a Human Rights Amendment to its Constitution, granting foreign citizens the right to a hearing before their expulsion and eliminating discretionary expulsions with no legal basis.<sup>104</sup> In addition, in 2011, the Law on Refugees and Additional Protection and its implementing regulations took effect. This law grants any person the right to request asylum and refugee status.<sup>105</sup> This law also recognizes gendered violence and discrimination as valid grounds for asylum, which is a significant and welcome departure from the Refugee Convention.<sup>106</sup> In this law, the Mexican government also acknowledged the large-scale transit migration occurring from Central America, through Mexico, to the United States.<sup>107</sup> This Act designated the institutions charged with regulating migration, which include the *Secretaría de la Gobernación*, the *Instituto Nacional de Migración* (INM) and the *Secretaría de Relaciones Exteriores*.<sup>108</sup> The effectiveness of the agencies under this law will be analyzed further in this Part.

Another positive attribute of Mexico's immigration policy is that the executive branch is required—by constitutional mandate—to put forward a national migration plan every six years. The national plan must guarantee the human rights of migrants and refugees and make commitments to assist vulnerable populations such as minors, women, crime victims, and the elderly.<sup>109</sup> Mexico is transforming its migration policy from a focus on security and control to one guided by human rights, protection, and regional cooperation.<sup>110</sup> However, while the law

103. *See Procedure to Be Recognized as a Refugee in Mexico*, GOBIERNO DE MEX. (Feb. 29, 2016), <https://www.gob.mx/comar/acciones-y-programas/procedimiento-para-ser-reconocido-como-refugiado-en-mexico> [<https://perma.cc/38S5-NAC7>] (archived Sept. 28, 2020) (describing the process asylum seekers go through to become a refugee).

104. Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, reformas DOF 10-06-2011 Human Rights Amendments, últimas reformas DOF 10-02-2014 (Mex.).

105. Ley de Migración [LM] [Law of Migration], Diario Oficial de la Federación [DOF] 25-05-2011 (Mex.).

106. *Id.*

107. *Id.*

108. *Id.*

109. Evelyn Cruz, *Challenges in Building Institutions to Protect Transmigrants' Human Rights: The Mexican Case*, in COMPASSIONATE MIGRATION AND REGIONAL POLICY IN THE AMERICAS 160–61 (2017).

110. UN REFUGEE AGENCY, MEXICO FACT SHEET (Apr. 2019) [hereinafter MEXICO FACT SHEET], <https://reporting.unhcr.org/sites/default/files/UNHCR%20Factsheet>

in Mexico changes, the agencies charged with carrying out the law—COMAR and INM—are unable to adapt to the law.

## 2. Commission for Refugee Assistance

While Mexico has policies and programs in place for refugees and asylum seekers, Mexico lacks the capacity to offer humanitarian aid to those remaining in Mexico during their immigration proceedings.<sup>111</sup> COMAR is responsible for conducting and managing refugee protection, policies, and procedures.<sup>112</sup> COMAR processes all asylum applications and trains its staff on asylum practice.<sup>113</sup> However, due to the limited staffing and office locations, INM acts as an intermediary in many parts of the country.<sup>114</sup> When applying for asylum, COMAR should issue asylum seekers a *constancia*—a document certifying the individual is an asylum seeker, protecting them against deportation—immediately.<sup>115</sup> In practice, it can take COMAR weeks to months to issue these certificates.<sup>116</sup> This delay in administrative process leaves these individuals at risk of deportation and hinders their ability to access healthcare, services, and employment.<sup>117</sup> The asylum process is an administrative process, so there is no judge.<sup>118</sup> Under the law, COMAR must issue a decision in fifty-five business days.<sup>119</sup> However, COMAR has suspended this time requirement due to a lack of

%20Mexico%20-%20April%202019.pdf [https://perma.cc/DEC7-WC7N] (archived Apr. 7, 2021).

111. See James Fredrick, *Mexico is Overwhelmed by Asylum Claims as it Ramps up Immigration Enforcement*, NPR (June 14, 2019), <https://perma.cc/8WXG-KPZX> (discussing the number of increased migrants Mexico is receiving on top of budget cuts).

112. *¿Qué hacemos?*, *supra* note 91.

113. Asylum Access Mexico, *Mexican Asylum System for U.S. Immigration Lawyers FAQ*, ASYLUM ACCESS (Nov. 2019), <https://asylumaccess.org/wp-content/uploads/2019/11/Mexican-Asylum-FAQ-for-US-Immigration-Lawyers.pdf> [https://perma.cc/6L9B-X92V] (archived Sept. 28, 2020) [hereinafter ASYLUM ACCESS].

114. *Id.*

115. *Id.*

116. *Id.*

117. Rachel Schmidtke, *A New Way Forward: Strengthening the Protection Landscape in Mexico*, REFUGEES INT'L (Nov. 12, 2020), <https://www.refugeesinternational.org/reports/2020/11/9/a-new-way-forward-strengthening-the-protection-landscape-in-mexico> [https://perma.cc/YJ6Q-LV6K] (archived Mar. 6, 2021).

118. Wendy Fry, *U.N. Reps Give Migrants Information on Applying for Asylum in Mexico*, SAN DIEGO UNION-TRIBUNE (Sept. 22, 2019, 12:01 AM), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-09-20/u-n-reps-give-migrants-information-on-applying-for-asylum-in-mexico> [https://perma.cc/NX97-MG4A] (archived Sept. 28, 2020).

119. Dan Kosten, *Mexico's Asylum System Is Inadequate*, NATIONAL IMMIGRATION FORUM (Oct. 28, 2019), <https://immigrationforum.org/article/mexicos-asylum-system-is-inadequate/> [https://perma.cc/N736-UGW7] (archived Sept. 28, 2020).

resources and backlog.<sup>120</sup> Now, considerations on average take six months to a year, and in some cases up to two years.<sup>121</sup>

Mexico received 70,302 applications for asylum in 2019, over double the amount it received in 2018.<sup>122</sup> While Mexico established procedures for processing asylum seekers, it does not have the resources to accommodate such numbers; COMAR only has forty-eight staff members nationwide.<sup>123</sup> Additionally, there are only four offices that accept applicants for refugee status.<sup>124</sup> While the UN Refugee Agency (UNHCR) works worldwide to assist nations, including Mexico, in protecting refugees and forcibly displaced individuals, this help does not alleviate underlying structural issues.<sup>125</sup> One way in which UNHCR has provided assistance to Mexico is by loaning thirty-nine contractors to support with registration; these contractors were still on loan as of April 2019.<sup>126</sup>

COMAR's lack of staffing and resources contribute to an asylum system that is mostly inaccessible to those seeking international protection.<sup>127</sup> UNCHR estimates that the number of people needing protection—and not formally seeking asylum—is much higher than those formally requesting asylum.<sup>128</sup> Furthermore, there is a high abandonment rate of asylum claims.<sup>129</sup> Mexican authorities have used threats and intimidation to dissuade or take advantage of asylum seekers.<sup>130</sup> INM often warns migrants that they will face lengthy detentions if they seek asylum, which is untrue.<sup>131</sup> These intimidation methods cause many potential asylum seekers to sign documents stating they would prefer to be voluntarily deported by Mexico.<sup>132</sup>

120. *Id.*

121. ASYLUM ACCESS, *supra* note 113; Kosten, *supra* note 119.

122. COMISIÓN MEXICANA DE AYUDA A REFUGIADOS, LA COMAR EN NUMEROS, ACTUALIZACION AL MES DE DICIEMBRE DE 2019 (Jan. 7, 2020), [https://www.gob.mx/cms/uploads/attachment/file/522537/CIERRE\\_DICIEMBRE\\_2019\\_07-ene\\_.pdf](https://www.gob.mx/cms/uploads/attachment/file/522537/CIERRE_DICIEMBRE_2019_07-ene_.pdf) [<https://perma.cc/X3FG-MDVF>] (Sept. 28, 2020) (Mexico received 29,623 asylum applications in 2018 representing a 105 percent increase from 2017 when 14, 596 applications were received); MEXICO FACT SHEET, *supra* note 110.

123. Fredrick, *supra* note 111.

124. Comisión Mexicana de Ayuda a Refugiados, *COMAR: Oficinas, Presencia y Accnes*, GOBIERNO DE MEXICO (Jan. 10, 2020), <https://www.gob.mx/comar/articulos/comar-oficinas-presencia-y-acciones?idiom=es> [<https://perma.cc/Y3U8-PW5H>] (archived Sept. 28, 2020).

125. UNHCR, *About Us*, UNCHR, <https://www.unhcr.org/en-us/about-us.html> (last visited Sept. 28, 2020) [[perma.cc/GL8M-KMLW](https://perma.cc/GL8M-KMLW)] (archived Sept. 28, 2020).

126. MEXICO FACT SHEET, *supra* note 110.

127. *Id.*

128. *Id.*

129. *Id.*

130. Kosten, *supra* note 119; *see infra* note 226.

131. Kosten, *supra* note 119.

132. *Id.*

There are additional issues that limit COMAR's efficiency. First, there is an absence of uniform screening protocols.<sup>133</sup> Second, asylum seekers lack information and access to the asylum procedure in Mexico.<sup>134</sup> Third, COMAR has a limited presence in the South, providing few opportunities for individuals to apply for asylum at the southern border.<sup>135</sup> COMAR has taken steps to address the second issue of information deficiency by creating a Facebook platform and a hotline to provide relevant information to asylum seekers.<sup>136</sup> This program is targeting those seeking asylum; Facebook is the main form of communication used by asylum seekers and, therefore, one of the best ways to provide information.<sup>137</sup> However, the dissemination of this information is not enough to counter COMAR's lack of presence along the southern border and the problematic screening protocols implemented by INM.

In addition to these concerns, COMAR has been impacted by the Covid-19 pandemic. In March 2020, Mexican authorities suspended the legally mandated processing times for asylum claims.<sup>138</sup> As of December 2020, processing times are still suspended.<sup>139</sup> However, UNHCR has been assisting COMAR to utilize both remote registration and remote processing of asylum claims—which should continue to increase agency efficiency even after the pandemic and social distance guidelines cease.<sup>140</sup>

### 3. National Institute for Migration

INM applies and enforces immigration legislation.<sup>141</sup> Its mission is to protect the rights and security of national and foreign migrants and, through efficient migration policy, recognize them as subjects of law.<sup>142</sup> While INM does not process or directly handle asylum applications, its operations have a direct impact on those who attempt to enter Mexico. While INM states that it considers human mobility to be a migrant's right, its recent operations emphasize security values

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133. MEXICO FACT SHEET, *supra* note 110.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Comisión Mexicana de Ayuda a Refugiados, *INFORMACIÓN IMPORTANTE para las Personas Solicitantes de la Condición de Refugiado*, GOBIERNO DE MEXICO, <https://www.gob.mx/comar/galerias/informacion-importante-para-las-personas-solicitan-tes-de-la-condicion-de-refugiado?idiom=es> (last visited Mar. 6, 2021) [<https://perma.cc/F5AW-426F>] (archived Mar. 6, 2021).

139. *Id.*

140. Briefing Notes, *supra* note 26.

141. *¿Qué hacemos?*, *supra* note 91.

142. *Id.*

over human mobility concerns.<sup>143</sup> INM increased security measures and details at border crossings, train routes, bus stations, and on the highway—attempting to restrict entrants and remove those who do succeed in entering.<sup>144</sup>

INM agents are some of the first government representatives to interact with migrants entering Mexico. Therefore, INM's actions have an enormous impact on the accessibility of the asylum system to asylum seekers. Activists report that INM agents often do not inform migrants of their right to request asylum and even intimidate potential asylum seekers from pursuing an asylum claim.<sup>145</sup> While Mexico experienced a dramatic increase in asylum applications prior to Covid-19,<sup>146</sup> the increase in applications does not mean that intimidation was no longer occurring. There are many reasons why asylum applications may be on the rise. First, migrants are increasingly viewing Mexico as a destination nation—rather than a transit state—due to increased work opportunities in many areas.<sup>147</sup> Second, COMAR has worked, as previously discussed, to increase information dissemination among asylum seekers.<sup>148</sup> Third, changes in US policy are further restricting access to the United States' asylum procedures, forcing asylum seekers to turn to other countries for protection.<sup>149</sup> The harsh economic and social realities migrants face is likely the cause of Mexico's increased asylum applicants.

INM also acts as an intermediary for COMAR in areas where there are no COMAR offices, which creates further problems of access to the asylum system.<sup>150</sup> First, this system slows down the processing of asylum claims, as INM has to send applications to COMAR for the issuance of documents and decisions.<sup>151</sup> Second, INM does not train its officers to work with asylum seekers and vulnerable populations.<sup>152</sup> Third, INM agents often provide erroneous legal advice to asylum seekers.<sup>153</sup>

143. *Id.*

144. CLARE RIBANDO SEELKE, CONG. RSCH. SERV., IF10215, MEXICO'S IMMIGRATION CONTROL EFFORTS (2019).

145. *Id.* In addition, intimidating asylum seekers and migrants INM agents have committed human rights and criminal violations. In 2012, INM representatives assaulted a 15-year-old who refused to have sexual relations with an INM agent in exchange for legal status. After the incident, according to the Intra-American Commission on Human Rights, as of 2013, some of those officials were still INM employees. Inter-Am. Comm'n H.R., *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, at 40–43, OEA/Ser.L/V/II. Doc. 48/13 (Dec. 30, 2013).

146. Briefing Notes, *supra* note 26.

147. SEELKE, *supra* note 144.

148. *Id.*

149. *See, e.g.*, ASYLUM ACCESS, *supra* note 113; Fry, *supra* note 118.

150. ASYLUM ACCESS, *supra* note 113.

151. *Id.*

152. *Id.*

153. *Id.*

In addition to assisting with the asylum process, INM carries out the Southern Border Migration Program, implemented in 2014.<sup>154</sup> This program established naval bases on Mexico's rivers, security bases near its borders with Guatemala and Belize, and a drone surveillance program.<sup>155</sup> Under this program, INM increased operations along train and bus routes to increase apprehensions.<sup>156</sup> INM also increased infrastructure at border crossings and created highway checkpoints.<sup>157</sup> While the program was put in place to help protect and guarantee migrant rights,<sup>158</sup> studies have shown that this program instead created "belts of control," increasing detentions, deportations, crimes, and human rights violations committed by authorities.<sup>159</sup> Migrants now take more dangerous routes, relying on smugglers, because of the Southern Border Plan.<sup>160</sup> Migrants in Mexico are often unable to gain access to immigration relief, as government agencies have failed to safeguard the human rights of migrants and provide migrants with avenues to redress violations of their asylum rights.<sup>161</sup>

Lastly, INM also detains migrants and asylum seekers. Covid-19 has altered INM's detention practices. Many of those detained have been released due to fears of spreading the virus within migratory stations. This release is partly influenced by outside organizations and an administrative judge's order.<sup>162</sup> In March 2020, 3,759 migrants were detained across the country, and at the end of April 2020, this number was reduced to 106 migrants.<sup>163</sup> However, INM continues to make arrests of migrants who are then detained—often in migratory stations where there is not access to hygiene products, Covid-19 prevention, or testing measures.<sup>164</sup> This detainment includes

154. Cruz, *supra* note 109, at 160–61; SEELKE, *supra* note 144.

155. SEELKE, *supra* note 144.

156. *Id.*

157. *Id.*

158. Cruz, *supra* note 109, at 160–61; SEELKE, *supra* note 144.

159. Cruz, *supra* note 109, at 160–61.

160. See SEELKE, *supra* note 144 (the Southern Border Plan increased surveillance along train routes and bus stations, checkpoints along highways, established naval bases on borders with Guatemala and Belize, and created a drone surveillance program to increase apprehensions of migrants).

161. Cruz, *supra* note 109, at 160–61.

162. *Ordenan Liberar a Migrantes Detenidos en Mexico por Contingencia Sanitaria*, EL IMPARCIAL (Apr. 19, 2020), <https://imparcialoaxaca.mx/nacional/426361/ordenan-liberar-a-migrantes-detenidos-en-mexico-por-contingencia-sanitaria/> [<https://perma.cc/F8FJ-9EHC>] (archived Mar. 8, 2021).

163. Jorge Monroy, *Segob Confirma El Desalojo de 3,759 Migrantes de las Estaciones Migratorias Para Evitar Brotes de Covid-19*, EL ECONOMISTA (Apr. 28, 2020), <https://www.economista.com.mx/politica/Segob-confirma-el-desalojo-de-3759-migrantes-de-las-estaciones-migratorias-para-evitar-brotes-de-covid-19-20200428-0102.html> [<https://perma.cc/9SBT-VJSP>] (archived Mar. 6, 2021).

164. Manu Ureste, *Pese a Contagios, no se Hacennpruebas COVID a Migrantes, Denuncian OSC: "Cumplimos con Medidas", Dice el INM*, ANIMAL POLITICO (Oct. 15, 2020), <https://www.animalpolitico.com/2020/10/pese-a-contagios-no-se-hacen-pruebas->

individuals returned from the United States originating from third countries—raising a myriad of concerns surrounding human rights violations on the part of both nations.<sup>165</sup>

### B. Seeking Asylum in Morocco

Morocco is a party to the 1951 Refugee Convention and its 1967 Protocol.<sup>166</sup> The Moroccan Constitution recognizes many of the principles within the Refugee Convention, in attempting to preserve fundamental freedoms for non-nationals residing in Morocco.<sup>167</sup> Morocco has a migration law that contains the conditions for granting residency cards to asylum seekers and the procedures surrounding deportation and treatment of those awaiting asylum determination.<sup>168</sup> Within this current system, UNHCR is responsible for refugee status determinations, relying on Morocco to carry out its promises in honoring and continuing to issue or renew residency cards for those approved.<sup>169</sup> There are concerns that the Moroccan government reneges on these promises, deporting those with residency cards or failing to renew such cards despite making statements to the contrary, creating discrepancies between Moroccan law and Moroccan actions. This subpart will analyze the efficacy of Morocco's 2011 Constitution,<sup>170</sup> 2003 Migration Law,<sup>171</sup> National Strategy on Immigration and Asylum (the humanitarian approach), the Office for Refugees and Stateless Persons, and the role of UNHCR.

#### 1. Constitutional and Statutory Reforms

In response to the Arab Spring—a series of prodemocracy protests across the Middle East and North Africa—Morocco adopted a new constitution reaffirming its commitments to ratified international human rights conventions.<sup>172</sup> In doing so, Morocco affirmed human

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covid-a-migrantes-denuncian-osc-cumplimos-con-medidas-dice-el-inm/ [https://perma.cc/MVJ4-SS9G] (archived Mar. 6, 2021).

165. See *Mexico*, GLOBAL DETENTION PROJECT, <https://www.globaldetentionproject.org/countries/americas/mexico> (last updated Nov. 2, 2020) [https://perma.cc/NX9E-8PQC] (archived Mar. 8, 2021).

166. See *supra* note 3.

167. Moroccan Const., art. 30 (2011); see Knoll & Teevan, *supra* note 60, at 4.

168. Decree no. 1-03-196 of 11 November 2003 Adopting Law no. 02-03 (Morocco); see McKanders, *supra* note 2, at 193.

169. See Knoll & Teevan, *supra* note 60, at 2–3.

170. Moroccan Const. (2011).

171. Decree no. 1-03-196.

172. See Editors of Encyclopaedia Britannica, *Arab Spring*, BRITANNICA, <https://www.britannica.com/event/Arab-Spring> (last visited Sept. 28, 2020) [https://perma.cc/FAT6-BVZ6] (archived Sept. 28, 2020); EURO-MEDITERRANEAN HUMAN



rights by giving foreigners the same fundamental freedoms as Moroccan citizens and further detailing asylum rights.<sup>173</sup> Given that the Moroccan Constitution declares and establishes those protections, it seems as though Morocco would provide robust human rights and asylum protections. However, Moroccan law does not carry out or restate many of these protections and ideals. Instead, procedures and practices erode these protections, failing to uphold such rights.

The 2003 Migration Law regulates the entry and stay of foreigners in Morocco and speaks mostly to illegal emigration and immigration.<sup>174</sup> Under this law, migrants can request asylum at the Moroccan border, seek residency rights, and be protected from removal when applicable.<sup>175</sup> It also sets out the conditions for granting asylum seekers and refugees a residence card, defines the criteria for deportation, and determines the procedures for the treatment of asylum seekers waiting for determination.<sup>176</sup> It defines the right to stay, the ability to request asylum following a denial of entry, and protection against expulsion for specific individuals.<sup>177</sup> Parties in the Moroccan Parliament have drafted three bills on separate occasions to replace the Migration Law of 2003 and address asylum more in-depth, but have not yet adopted any of the bills.<sup>178</sup>

A critique of Moroccan asylum policy is its lack of a stand-alone law or policy. One hypothesis for why attempts to update or create more specific legislation pertaining to asylum have been unsuccessful to date cites Morocco's relationship with the EU. Moroccan authorities fear that, after the adoption of an asylum law, the EU might consider Morocco a first country of asylum or a safe third country causing the EU to return third-country nationals to Morocco—something Morocco wishes to avoid.<sup>179</sup>

As discussed in Part II, Morocco is greatly influenced by, and cooperates with, European countries such as Spain, Italy, Germany, and Belgium.<sup>180</sup> Morocco has a partnership with the EU, addressing a

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RIGHTS NETWORK, ASYLUM AND MIGRATION IN MAGHREB COUNTRY FACT SHEET: MOROCCO (2012) [hereinafter EURO-MEDITERRANEAN].

173. Moroccan Const., art. 30 (2011).

174. Decree no. 1-03-196.

175. McKanders, *supra* note 2, at 193.

176. EURO-MEDITERRANEAN, *supra* note 172.

177. *Id.*

178. Kirsten Schuettler, *A Second Regularization Campaign for Irregular Immigrants in Morocco: When Emigration Countries Become Immigration Countries*, WORLD BANK BLOGS (Jan. 13, 2017), <https://blogs.worldbank.org/peoplemove/second-regularization-campaign-irregular-immigrants-morocco-when-emigration-countries-become> [https://perma.cc/QS8L-7XKS] (archived Sept. 16, 2020); U.N. High Commissioner for Human Rights, *Compilation Report Morocco*, U.N. Doc. A/HRC/WG.6/27/MAR/2 (Feb. 20, 2017) [hereinafter High Commissioner].

179. Knoll & Teevan, *supra* note 60, at 17.

180. *Id.* at 16.

range of issues—including migration.<sup>181</sup> The implementation of policy within Morocco does not exist within a vacuum and the effects of a national asylum policy could limit Morocco's ability to secure protections for its nationals abroad and migrants' access to asylum in other nations. Furthermore, lack of a stand-alone asylum law does not mean that the law pertaining to asylum is incomplete or not addressed. For example, the United States does not have a stand-alone asylum and refugee law—rather it has the Immigration and Nationality Act—which encompasses immigration, nationality, naturalization, and refugee assistance.

## 2. The Humanitarian Approach

Asylum seekers, migrants, and refugees were dissatisfied with Morocco's migration plan and actions taken by the Moroccan government; in 2013, they organized outside of UNHCR offices to protest their mistreatment.<sup>182</sup> Following this protest, the Moroccan National Council of Human Rights released a negative report, criticizing the nation's migration policy.<sup>183</sup> The Council also made recommendations on how the Moroccan government could improve its refugee policy.<sup>184</sup> In response to these actions and over a decade of civil lobbying efforts, Morocco announced its National Policy on Immigration and Asylum in 2013<sup>185</sup> and its National Strategy on Immigration and Asylum in 2014.<sup>186</sup> These plans adopted a "humanitarian approach" to all aspects of migration, including asylum.<sup>187</sup> As part of the policy, the government planned to distribute asylum cards, launch a regularization program for undocumented individuals, and create a ministerial department devoted to migrant affairs.<sup>188</sup> Under this plan, the government issued an increased number of residency cards for asylum seekers and refugees.<sup>189</sup>

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181. *Id.* at 17.

182. McKanders, *supra* note 2, at 194.

183. *Id.*

184. *Id.*

185. *Id.* at 195; Anna Jacobs, *Morocco's Migration Policy: Understanding the Contradiction Between Policy and Reality*, MOROCCAN INST. FOR POL'Y ANALYSIS (Jun. 30, 2019), <https://mipa.institute/6872> [<https://perma.cc/75QT-J42U>] (archived Sept. 16, 2020).

186. Knoll & Teevan, *supra* note 60, at 5.

187. Jacobs, *supra* note 185.

188. *Id.* Moroccan regularization programs give migrants the opportunity to apply for legal work permits, limited legal status, and in some cases, residency permits, which then allow for greater access to social services. See Driss El Ghazouani, *A Growing Destination for Sub-Saharan Africans, Morocco Wrestles with Immigrant Integration*, MIGRATION POL'Y INST. (July 2, 2019), <https://www.migrationpolicy.org/article/growing-destination-sub-saharan-africans-morocco> [<https://perma.cc/4JCC-EDAA>] (archived Mar. 6, 2021).

189. Jacobs, *supra* note 185.

However, the residency cards issued were temporary—only certain migrants could apply for one-year permits authorizing them to work and access social benefits.<sup>190</sup> It is also unclear whether those regularized under the program have been able to maintain their status. In recent years, authorities have destroyed migrant camps, rounded up migrants and refugees, and suspended some asylum processes.<sup>191</sup>

While the Moroccan government claims these reforms bring Morocco into compliance with international standards, scholars and activists have criticized the reforms as a political move to gain power and influence in Western Africa—positioning Morocco for economic gain—rather than to reinforce refugee and migrant rights.<sup>192</sup> This migration plan was one of many actions taken by Morocco impacting African nations. Other actions taken include rejoining the African Union, increasing exports to African countries, and offering sizable investment and business deals to African countries—resulting in fifty bilateral agreements.<sup>193</sup> Discussions about migration policy reform and free movement of people were vital in the formation of these deals.<sup>194</sup> While this migration policy helped Morocco gain influence in Africa, it has not helped migrants and asylum seekers to the degree promised because it lacks implementation and permanent infrastructure to assist asylum seekers.<sup>195</sup>

Since announcing the policy, lawmakers have not passed any laws replacing the 2003 Migration law.<sup>196</sup> Morocco's policy contradicts its actual migration statute, which takes more of a security approach than a humanitarian one.<sup>197</sup> The policies and programs put into place remain only procedural, with no actual legislation giving rights or laying out an institutional structure.<sup>198</sup>

### 3. Agency Action and UNHCR

In 1957, the *Bureau des Réfugiés et Apatrides* (BRA) was established by decree to recognize and grant rights to those classified as refugees.<sup>199</sup> However, the decree does not set out the rules relating

190. McKanders, *supra* note 2, at 194. The migrants eligible to apply included spouses of Moroccan citizens, foreign couples who have lived together in Morocco, children from the marriage of couples, immigrants with work permits, and individuals with serious illnesses.

191. Knoll & Teevan, *supra* note 60, at 7.

192. McKanders, *supra* note 2, at 195; AMNESTY INT'L, *supra* note 73.

193. See Jacobs, *supra* note 185 (Moroccan exports to African countries have increased about 9 percent every year from 2008 to 2016).

194. *Id.*

195. *Id.*

196. *Id.*; Knoll & Teevan, *supra* note 60, at 5–6.

197. Jacobs, *supra* note 185; Knoll & Teevan, *supra* note 60, at 5–6.

198. Jacobs, *supra* note 185.

199. High Commissioner, *supra* note 178, at 1.

to the procedure and evaluation of such requests.<sup>200</sup> Morocco suspended the decree creating the BRA in 2003, and, therefore, the agency did not issue status documents or residence permits to refugees.<sup>201</sup> During this time, those who attempted to enter Morocco and claim asylum were unable to do so, as migrants were unable to have their request registered or contact agency officials.<sup>202</sup>

In 2007, Morocco and UNHCR signed an agreement—the *accord de siege*—outlining the process asylum seekers can use to apply for refugee status.<sup>203</sup> Under this agreement, the UNHCR was solely responsible for Refugee Status Determinations until 2013.<sup>204</sup> This agreement did result in some improvements for asylum seekers, as previously the Moroccan government assumed that all migrants were economic migrants on their way to Europe, a migrant category not covered under the Refugee Convention.<sup>205</sup> A few years after the signing of the agreement, the Moroccan government reactivated the BRA and established the Commission for the Regularization of Refugees (Commission).<sup>206</sup> Together, UNHCR and Morocco implemented a refugee status determination process that requires the following: (1) submission of an application or registration with the *Bureau des Refugies et Apatrides* or the UNHCR office, (2) a preliminary interview with a UNHCR officer, and (3) a secondary interview if the officer found a preliminary claim to refugee status.<sup>207</sup> If the asylum seeker completes all these steps, they will receive a UNHCR refugee certificate to be honored by the Moroccan government, preventing deportation.<sup>208</sup> However, human rights organizations and journalists have documented that government actors are not honoring these certificates and are deporting African refugees regardless of their status.<sup>209</sup> Another issue limiting the efficacy of refugee status determinations is that UNHCR does not have access to individuals

200. *Id.*

201. EURO-MEDITERRANEAN, *supra* note 172, at 18.

202. *Id.*

203. *Morocco and UN Refugee Agency Sign Agreement to Strengthen Cooperation*, UNHCR (July 20, 2007), <https://www.unhcr.org/en-us/news/latest/2007/7/46a0ccb14/morocco-un-refugee-agency-sign-agreement-strengthen-cooperation.html#:~:text=Morocco%20announced%20its%20intention%20to,UNHCR%20operation%20in%20the%20country> [<https://perma.cc/6N3H-VGUF>] (archived Sept. 28, 2020).

204. McKanders, *supra* note 2, at 195.

205. Hein de Haas, *Morocco: Setting the Stage for Becoming a Migration Transition Country?*, MIGRATION POLY INST. (Mar. 19, 2014), <https://www.migrationpolicy.org/article/morocco-setting-stage-becoming-migration-transition-country> [<https://perma.cc/Q5FF-SMCB>] (archived Sept. 28, 2020).

206. High Commissioner, *supra* note 178, at 2.

207. de Haas, *supra* note 205.

208. *Id.*

209. *Id.*

detained by border authorities.<sup>210</sup> Practices related to the expulsion of migrants who seek access to asylum is contrary to Morocco's migration law—even absent a specific asylum law.<sup>211</sup>

After issuance of a refugee certificate, the Commission is supposed to issue refugee cards and renewable residency permits.<sup>212</sup> The residency certificates allow refugees to find employment in the formal economy and rent an apartment.<sup>213</sup> These permits, while secondary to the initial refugee certificate, are key for refugees and migrants living in Morocco. Until March 2017, the commission met and held hearings for those referred to them by UNHCR.<sup>214</sup> From March 2017 to December 4, 2018 the Commission did not hold any hearings, which was blamed on the office's inability to locate those on the list received from UNHCR.<sup>215</sup> During this period of suspension "thousands of asylum seekers have been refused their residence permit[s]," hindering the asylum process and limiting migrants' rights.<sup>216</sup> It is unclear how the pandemic has impacted the operation of BRA and if hearings are being held. During the pandemic, UNHCR has taken many actions, including utilizing remote preregistration, to accommodate and support those seeking asylum.<sup>217</sup>

### C. *The Refugee Convention*

The Refugee Convention was initially adopted after WWII to address the aftermath of the war in Europe. The 1967 Protocol removes the geographical and time limitations defining those who are eligible for refugee status.<sup>218</sup> The Refugee Convention aims to protect those individuals who fear persecution and are in need of protection.

210. McKanders, *supra* note 2, at 195; EURO-MEDITERRANEAN, *supra* note 172, at 20.

211. EURO-MEDITERRANEAN, *supra* note 172, at 26.

212. Zaïna Aboulfaraj & Mehdi Mahmoud, *Les Réfugiés Peuvent à Nouveau Obtenir des Titres de Séjour au Maroc*, TELQUEL (Dec. 12, 2018), [https://telquel.ma/2018/12/12/les-refugies-peuvent-a-nouveau-obtenir-des-titres-de-sejour-au-maroc\\_1621607](https://telquel.ma/2018/12/12/les-refugies-peuvent-a-nouveau-obtenir-des-titres-de-sejour-au-maroc_1621607) [<https://perma.cc/3G6T-96U4>] (archived Mar. 6, 2021).

213. Zaïna Aboulfaraj, *Les Réfugiés au Maroc ne Peuvent Obtenir la Carte de Séjour Depuis Mars 2017*, YABILADI (Aug. 3, 2018), <https://www.yabiladi.com/articles/details/62583/refugies-maroc-peuvent-obtenir-carte.html> [<https://perma.cc/Y36M-YGYB>] (archived Mar. 6, 2021); Aboulfaraj and Mahmoud, *supra* note 212.

214. Aboulfaraj, *supra* note 213; Aboulfaraj and Mahmoud, *supra* note 212.

215. Aboulfaraj and Mahmoud, *supra* note 212; MOROCCO FACT SHEET I, *supra* note 55.

216. *Id.*

217. UNHCR, *Morocco's Response to the COVID-19 Situation*, UNHCR (June 2020), [https://reporting.unhcr.org/sites/default/files/UNHCR%20Morocco%20Response%20to%20COVID-19\\_June%202020\\_0.pdf](https://reporting.unhcr.org/sites/default/files/UNHCR%20Morocco%20Response%20to%20COVID-19_June%202020_0.pdf) [<https://perma.cc/V2KC-N6L4>] (archived Mar. 6, 2021).

218. Protocol Relating to the Status of Refugees, *supra* note 3.

Normally, a country of origin provides protection to its citizens through enforcement of its laws. However, when a government is unable or unwilling to do so individuals may flee seeking protection elsewhere.

Parties to the Refugee Convention are obligated to carry out its provisions—grant refugees’ asylum and not return individuals to countries where they may be persecuted.<sup>219</sup> The Refugee Convention has been used to protect an estimated 50 million people who have experienced persecution.<sup>220</sup> In providing this protection, it distinguishes between economic migrants and refugees. Economic migrants are considered to be those who experience economic hardship and have voluntarily left a country to seek a better life, rather than leaving to flee life-threatening persecution.<sup>221</sup> However, in practice this distinction can be challenging to make, creating inconsistencies across and within governments.

Both Mexico and Morocco have ratified the 1951 Convention and its 1967 Protocol, protecting and giving rights to refugees.<sup>222</sup> Mexico even expanded upon some of the protections provided.<sup>223</sup> Despite these actions, asylum seekers and those fleeing violence in their home countries are still left vulnerable. While this vulnerability is partly due to these countries’ lack of policy and agency procedures, some issues exist due to flaws in the Refugee Convention itself.

Critics of the Refugee Convention point to gaps and weaknesses that a state could use to decrease its potential responsibilities. First, the Refugee Convention is silent on the procedure that states should use to recognize refugee status.<sup>224</sup> Lack of a procedural structure leads to many asylum systems that are ineffective or unresponsive. Second, some states look to the grey areas of the Refugee Convention to confine and restrict their responsibilities, rather than using it to take on responsibility and provide protection.<sup>225</sup> Third, there is a “responsibility deficit,” in that states do not have to commit to receive any number of refugees.<sup>226</sup>

219. Convention Relating to the Status of Refugees, *supra* note 3; Protocol Relating to the Status of Refugees, *supra* note 3.

220. *Frequently Asked Questions about the 1951 Refugee Convention*, UNHCR (Jun. 1, 2001), [https://www.unhcr.org/en-us/news/stories/2001/6/3b4c06578/frequently-asked-questions-1951-refugee-convention.html#\\_Toc519482137](https://www.unhcr.org/en-us/news/stories/2001/6/3b4c06578/frequently-asked-questions-1951-refugee-convention.html#_Toc519482137) [<https://perma.cc/8NNT-TL78>] (archived Mar. 7, 2021).

221. *Id.*

222. Convention Relating to the Status of Refugees, *supra* note 3; Protocol Relating to the Status of Refugees, *supra* note 3.

223. Ley de Migración [LM] [Law of Migration], Diario Oficial de la Federación [DOF] 25-05-2011 (Mex.).

224. Jane McAdam, *The Enduring Relevance of the 1951 Convention*, 29 INT. J. REFUGEE L. 1 (2017).

225. *Id.*

226. *Id.*

Another common criticism is of the Refugee Convention's definition of "refugee." Some argue its definition of "refugee" is underinclusive.<sup>227</sup> As discussed previously, a refugee is an individual with a well-founded fear of persecution "due to race, religion, nationality, membership in a particular social group, or political opinion."<sup>228</sup> One absent category is gender, which leads many to believe that the Refugee Convention does not protect gender-related persecution.<sup>229</sup> However, individuals with gender-based claims have used the social group category to establish refugee status in most countries.<sup>230</sup> Mexico is one country that expanded upon protections by specifically providing protections to asylum seekers who experienced gender-based persecution or violence in their country of origin.<sup>231</sup>

Under Article 33 of the Refugee Convention, a state agrees to the principle of nonrefoulement—not to return individuals to a state where they may be persecuted.<sup>232</sup> There are two concerns surrounding this concept: (1) when is it triggered and (2) why does it lack affirmative protections for refugees? It is unclear what triggers the duty of nonrefoulement. Some states apply the principle to asylum seekers; others apply it only to those who have formally received refugee status.<sup>233</sup> The nonrefoulement principle only requires states to commit to a negative obligation not to contribute to harm, rather than a positive obligation to provide aid.<sup>234</sup> This means that the Refugee Convention does not provide affirmative protection to refugees; instead, it only requires that states do not return refugees to states where they would suffer persecution.<sup>235</sup> Therefore, it does not require States to allow refugees access to formal immigration proceedings, and if the state determines an individual's fear of persecution no longer exists, it can return the refugee to their country of origin.<sup>236</sup> This structure can lead to the placement of refugees in refugee camps and granting only certain temporary protections—not allowing refugees to participate in society fully.<sup>237</sup> The implications of such a structure can

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227. Luara Ferraciolo, *The Appeal and Danger of a New Refugee Convention*, 40 SOC. THEORY AND PRAC. 123, 125, 129–30 (2014).

228. Convention Relating to the Status of Refugees, *supra* note 3; Protocol Relating to the Status of Refugees, *supra* note 3.

229. McKanders, *supra* note 2, at 196–97.

230. *Id.*

231. Ley de Migración [LM] [Law of Migration], Diario Oficial de la Federación [DOF] 25-05-2011 (Mex.).

232. Convention Relating to the Status of Refugees, *supra* note 3; Protocol Relating to the Status of Refugees, *supra* note 3.

233. Tamas Molnar, *The Principle of Non-Refoulement Under International Law: Its Inception and Evolution in a Nutshell*, 1 CORVINUS J. INT'L AFF. 51, 57–58 (2016).

234. Convention Relating to the Status of Refugees, *supra* note 3; Protocol Relating to the Status of Refugees, *supra* note 3.

235. Ferraciolo, *supra* note 227, at 129–30.

236. *Id.*

237. *Id.*

be seen in Morocco, where refugees are granted temporary residence cards.<sup>238</sup> However, requiring affirmative aid would posit difficult challenges, because such protections could require a country to open its borders to individuals who qualify, even if it may not have the resources to do so.

#### IV. SOLUTION

Mexico's and Morocco's immigration and asylum systems are strained, allowing asylum seekers to fall through the cracks. This Part will propose and analyze a variety of approaches that can be taken together or individually in each country to improve outcomes. First, the most relevant proposed changes to the Refugee Convention for Mexico and Morocco will be analyzed. Second, this Part will consider whether Mexico and Morocco should join any applicable regional agreements that aim to fill some of the gaps created by the Refugee Convention—rather than trying to change or alter the convention itself. Third, gaps in current national law will be addressed and this Part suggests changes that increase protections provided under statute. Lastly, this Part will provide a series of internal and external changes to agencies that carry out asylum law.

##### A. *Altering the Refugee Convention*

Given the criticisms of the Refugee Convention analyzed in Part III, scholars across different fields of study have called for reforms.<sup>239</sup> Some suggestions relevant to asylum seekers in Mexico and Morocco include (1) expanding the definition of “refugee” to include discrimination and violence based on gender, generalized violence, and internal conflicts and (2) expanding the principle of nonrefoulement to provide affirmative protection to refugees.<sup>240</sup>

While a possible option, altering the Refugee Convention to include a more expansive definition of “refugee” and to provide clarity on the nonrefoulement principle and its application would not solve the current asylum issues in Mexico and Morocco. During renegotiation, states have incentives to narrow the protections granted and further

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238. See *supra* text accompanying notes 190–91.

239. See discussion *supra* Part III.D; see, e.g., B.S. Chimni, *Reforming the International Refugee Regime: A Dialogic Model*, 14 J. OF REFUGEE STUD. 151 (2001); Ferraciolo, *supra* note 227, at 123; Colin Harvey, *Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law*, 34 REFUGEE SURV. Q. 43 (2014); James C. Hathaway, *Reconceiving Refugee Law as Human Rights Protection*, 4 J. OF REFUGEE STUD. 113 (1991); Bret Thiele, *Persecution on Account of Gender: A Need for Refugee Law Reform*, 11 HASTINGS WOMEN'S L.J. 221 (2000).

240. For a discussion of these two approaches see Ferraciolo, *supra* note 227, at 128–29; Thiele, *supra* note 239, at 237–38.



restrict protections for refugees.<sup>241</sup> These restrictions could even come under the guise of expansions. For example, countries could commit to accepting a certain number of refugees per year and then accept no more than that number.<sup>242</sup> Furthermore, international agreements do not provide the protection or enforcement mechanisms necessary to incentivize countries to make an actual legislative or administrative change. In its early history, Mexico ratified three separate conventions about asylum and immigration, but none of them ever led to any changes in the law.<sup>243</sup> Therefore, it would be more beneficial to asylum seekers and refugees for advocates to seek changes to laws and agency policies in each country or adopt more specific regional agreements discussed in the next subpart.

### B. Regional Refugee Agreements

While altering the Refugee Convention may not be the most feasible option, regional agreements exist that expand on its protections. In fact, Mexico has adopted the Cartagena Declaration, which provides protections to those who have experienced both generalized violence and to those who experience gender-based discrimination.<sup>244</sup> The Cartagena Declaration is an agreement providing international protection for refugees in Central America, Mexico, and Panama.<sup>245</sup> A similar agreement exists among members of the African Union (AU), formerly known as the Organization of African Unity (OAU). While Morocco recently rejoined the AU in 2017 after withdrawing in 1984,<sup>246</sup> it is not a party to the OAU Convention

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241. See Ferraciolo, *supra* note 227, at 126 (citing Michael Dummett, ON IMMIGRATION AND REFUGEES 37 (2001) (pointing out that many states party to the Convention find its terms too generous today)).

242. *Id.*

243. See Amsterdam Inst. for Soc. Sci. Research, *DEMIG (2015) DEMIG POLICY - Mexico, Version 1.3, Online Edition*, INT'L MIGRATION INST. U. OXFORD (June 2015), <https://www.migrationinstitute.org/data/demig-data/demig-policy-1/download-the-data/demig-policy-data-downloads> [<https://perma.cc/5Z9P-AYQ4>] (archived Sept. 28, 2020). The first significant action Mexico took on asylum and refugee issues occurred in 1936 when Mexico ratified the Convention on Political Asylum. However, the ratification of this Convention did not lead to the reform of local laws. Twenty years later, Mexico adopted the Convention on Diplomatic Asylum, which again did not lead to any change in the law. However, in 1980, a significant structural change occurred when a presidential decree created the Mexican Commission for Aid to Refugees. One year later, Mexico ratified the Convention on Territorial Asylum, but its ratification did not lead to changes in national law.

244. See Cartagena Declaration, *supra* note 99.

245. *Id.*

246. *Member States*, AFRICAN UNION, [https://au.int/en/member\\_states/countryprofiles2](https://au.int/en/member_states/countryprofiles2) (last visited Mar. 7, 2021) [<https://perma.cc/R2QJ-3NZF>] (archived Mar. 7, 2021).

Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention).<sup>247</sup>

The OAU Convention expands the definition of “refugee” to include “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order.”<sup>248</sup> UNHCR considers the OAU to be “the most generous and flexible international agreement on refugee protection.”<sup>249</sup> Morocco should join as a signatory to the OAU Convention and use it as an opportunity to update its migration and asylum laws.

However, adoption of the OAU Convention, thereby expanding the definition of refugee and the number of individuals entitled to refugee status in Morocco, will not alone be enough to fully safeguard and protect asylum seekers. For example, although Mexico recognizes discrimination based on gender in its definition of refugee, its asylum system is still largely inaccessible. This is not to say that recognizing refugee status based on persecution due to gender or other categories is not important or that adoption of the OAU Convention is futile. It is a necessary step that Morocco should take to further symbolize and embody the humanitarian policies they adopted in 2013. However, it is not an action that can be taken in a vacuum, and other changes would need to take place at the statutory and agency levels as well.

### C. Statutory Reform

Mexico has an expansive definition of “refugee,” including persecution based on gender, providing the opportunity for a broader group of individuals to qualify than under the Refugee Convention.<sup>250</sup> Morocco should also expand its definition of refugee statutorily to include individuals persecuted for reasons such as gender. Gender-related claims would include sexual violence, domestic violence, punishment for transgression of social norms, and discrimination for identifying as LGBTQ.<sup>251</sup> By not adopting this category, Morocco is letting those who have gender-related claims fall through the cracks if they are not categorically determined to be a refugee based upon their country of origin. As part of statutory reform, Morocco should adopt a

247. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, U.N.T.S 14691.

248. *Id.*

249. Fatoumata Lejeune-Kaba, *Q&A: OAU Convention Remains a Key Plank of Refugee Protection in Africa after 40 Years*, UNHCR (Sept. 9, 2009), <https://www.unhcr.org/en-us/news/latest/2009/9/4aa7b80c6/qa-oau-convention-remains-key-plank-refugee-protection-africa-40-years.html> [https://perma.cc/MS6X-VFTB] (archived Mar. 7, 2021).

250. Ley General de la Poblacion [LGP], Diario Oficial de la Federación [DOF] 07-01-1974, últimas reformas DOF 12-07-2018 (Mex.); McKanders, *supra* note 2, at 197–99.

251. McKanders, *supra* note 2, at 197–99.

more expansive definition of the term “refugee”—perhaps the OAU Convention’s definition discussed subpart B.<sup>252</sup> Mexico could also take note of the definition of “refugee” used in the OAU Convention, since it is regarded as a generous agreement providing international protection for refugees and creating a more inclusive law.<sup>253</sup>

Another critique of Moroccan law is the lack of structure and procedure in place for evaluating and addressing asylum claims. The main feature of the 2003 Migration law was its criminalization of irregular migrants and those who provide them with support.<sup>254</sup> Morocco needs to adopt an asylum law that embodies the humanitarian principles outlined in their Constitution.<sup>255</sup> There is a great disconnect between a constitution that recognizes asylum rights and a statute that aggressively criminalizes irregular migrants and those who assist them. Although current law provides some asylum-determination criteria, any new law should implement a formalized refugee determination procedure. This law should also encompass the nonrefoulement principle that Morocco has agreed to under the Refugee Convention. Multiple bills on asylum have been drafted, yet none have been adopted by the Moroccan parliament.<sup>256</sup> New legislation is crucial to developing a comprehensive and humanitarian asylum system—however, politics may impede any such adoption. The lack of momentum of prior bills indicates that it is unlikely that new legislation will be adopted, especially after new policies were adopted in 2013 and 2014.<sup>257</sup> During the early 2010s there was a lot of momentum surrounding immigration and asylum measures and it is unfortunate that the momentum was unable to be used to change the law. Since Morocco recently joined the AU again, signing onto the OAU Convention could be a great first step leading to statutory change by placing newfound pressure on Parliament to adopt an updated law.

#### D. Agency Reform & Funding Sources

On paper, the laws of Mexico and the Moroccan Constitution provide many protections for asylum seekers. However, the implementation of these laws leads to the erosion of protections for vulnerable migrant populations. Both countries lack the infrastructure, funding, and resources to adequately handle the volume of asylum claims it receives.<sup>258</sup> Any new laws, regulations, or

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252. See *supra* text accompanying notes 248–49.

253. See *supra* text accompanying note 249.

254. See *supra* text accompanying note 174.

255. See *supra* text accompanying note 173.

256. See *supra* text accompanying note 178.

257. See discussion *supra* Part III.B.2.

258. See ASYLUM ACCESS, *supra* note 113 (In 2019, COMAR’s budget was 1 million USD, while they had to process over 70 thousand applications. Their 2020 budget is 1.4

international agreements will be futile if additional funding for more humanitarian efforts is not made available to the agencies that carry out the asylum laws and protections.

In Mexico, COMAR lacks offices, personnel, and adequate training.<sup>259</sup> Furthermore, funding and aid from the United States often goes towards security measures that further the US immigration agenda, rather than easing burdens on the Mexican immigration system.<sup>260</sup> For example, in June 2019, when the Trump Administration and Mexico came to an immigration agreement to avoid the enactment of tariffs, Mexico agreed to “deploy its National Guard to its borders, dismantle human smuggling networks, and accept the expansion of the MPP across the entire border.”<sup>261</sup> As part of the MPP expansion, Mexico agreed to provide “jobs, healthcare, and education,” to those who are a part of the program.<sup>262</sup> While the United States agreed to “spe[e]d up adjudication of asylum claims” and to “prioritize the court proceedings of migrants in the MPP program” these promises have not eased the burden placed on Mexico—rather, they have forced Mexican cities to support tens of thousands of migrants without assistance.<sup>263</sup> Similarly, the Moroccan government worked with Spain and the EU to gain assistance in funding its migration and border programs; however, this funding is geared towards security measures and limiting mobility rather than ensuring access to asylum.<sup>264</sup> Increased access to funds is not useful when they are used to address immigration strains caused and exacerbated by the United States or the EU.

Police, agents tasked with border patrol duties, and those who process asylum claims need better training to ensure both Mexico and Morocco are fulfilling current obligations under the Refugee

million USD.); Kosten, *supra* note 119; *Immigration, Refugees and Citizenship Canada Departmental Plan 2017–2018*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-plan-2017-2018/departmental-plan.html#sec06-4> (last visited Sept. 27, 2020) [<https://perma.cc/EN9C-Z79A>] (archived Sept. 27, 2020) (in 2017, Canada received slightly over 50 thousand asylum claims, and its department had a budget of over 24 million USD).

259. Kosten, *supra* note 119.

260. See SEELKE, *supra* note 144 (since 2014 the U.S. State Department has provided over \$200 million in funding to support immigration control and security efforts, including inspection equipment, mobile kiosks, canine teams, and vehicles).

261. *Id.*

262. *Id.*

263. *Id.*

264. Jesús Aguado & Isla Binnie, *EU to Support Spain, Morocco on Migration, but Funds Limited*, REUTERS (Aug. 1, 2018), <https://www.investing.com/news/world-news/eu-to-support-spain-morocco-on-migration-but-funds-limited-1555609> [<https://perma.cc/V7K2-9R96>] (archived Sept. 26, 2020); Maria Martin, *Spain Will Give Morocco €30 Million to Curb Irregular Immigration*, EL PAIS (July 19, 2019), [https://english.elpais.com/elpais/2019/07/19/inenglish/1563521682\\_999175.html](https://english.elpais.com/elpais/2019/07/19/inenglish/1563521682_999175.html) [<https://perma.cc/UU8T-PWKN>] (archived Sept. 26, 2020).

Convention. In Mexico, INM agents and officials have given potential asylum seekers incorrect information about seeking asylum and have even abused their positions of power to exploit migrants in vulnerable situations.<sup>265</sup> In Morocco, police raids of migrant camps have led to the deportation of migrants who have authorization cards from UNHCR, which is a violation of the nonrefoulement principle.<sup>266</sup> Comprehensive training, institution of disciplinary systems, and increased pay will help to alleviate some of these systemic issues as well as reduce employee turnover.

In Morocco, the BRA does not consistently hold hearings, causing refugees to lack documentation.<sup>267</sup> Additionally, Morocco relies on UNHCR to complete refugee status determinations,<sup>268</sup> something that many nations—including Mexico—complete through agencies, occasionally with the help of UNHCR. However, many of these issues stem from the absence of a national asylum law; the BRA could greatly benefit from additional statutory language providing guidance and procedures for the asylum process.

## V. CONCLUSION

Mexico and Morocco each have a long and complex history with immigration and emigration. As developed neighboring countries are adopting more restrictive immigration and asylum policies, an increasing number of migrants are seeking refuge elsewhere—causing Mexico and Morocco to adapt. The best way to ensure asylum seekers in Mexico and Morocco can access and fully gain the protection of each country's asylum system is to ensure that the agencies tasked with overseeing these claims and interacting with migrants have the necessary resources, training, and personnel. There are also improvements needed under each country's laws to ensure that both fulfill and expand upon current obligations under the Refugee Convention. Broad changes to international law are also needed to fully recognize the struggles that migrants face in their countries of origin, which force them to seek refuge in other nations.

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265. See *supra* text accompanying notes 131–32, 145.

266. See *supra* text accompanying note 73.

267. See *supra* text accompanying notes 215–16.

268. See *supra* discussion Part III.B.3.

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