

Asylum in North America: Women Asylum Seekers and Refugees from the Northern Triangle^{1 2}

¹ Information part of a larger research project done in partnership with ITAM in Mexico

² Presented to the Mexico's Consul General to New York Jorge Islas Lopez

Introduction:

The Northern Triangle of Central America (NTCA) produces women refugees that are fleeing because of root causes related to gender-based violence. A long history of civil wars, *machismo*, and crime organizations contribute to the dangerous environment women currently endure in the Northern Triangle. A lack of protection against domestic and sexual violence, a lack of rights in health care, and the propagation of a sexist culture led many women to escape society in this region, where the rates of femicides are the highest in the world.³

Many women refugees flee to Mexico and the U.S. but somehow remain as unprotected as they were in their homeland. Many are subjected to more inhumane treatment in direct violation of human rights in these transit and destination countries. An analysis of U.S. policies towards this group has been conducted to come to a solution on how women refugees and their rights could be better protected.

The United States and the Northern Triangle: Their Changing Relationship

While Mexico is mainly a transition country for women fleeing from the NTCA, the United States serves as a destination country. The Northern Triangle is an unstable region for many reasons including years of civil war and an unstable government. Something that the U.S has admitted their intervention during the Arbenz administration contributed to. Prior administrations have tried to mitigate the ramifications of their action in the region through various aid packages. However, under the Trump administration and because of the global pandemic, this situation has been exacerbated and previous initiatives undermined. Strict deterrence policies, a lack of support for the region, and a blatant disregard for human rights

³UNHCR, “Women on the Run.”

towards immigrants that do enter the U.S. have meant that women's struggle for life away from violence is tumultuous and uncertain even after they reach their destination.

The issue of cartels and *maras* has also contributed to the violence against women in the region. However, it must be noted that the "war on drugs" also played a role in increasing the deportation of Central Americans involved with gangs or drugs in the 1990s and 2000s. This increasingly transported the issue of street violence from the U.S. to Central America. Despite the crackdown on drugs during this time, the United States' continued consumption of illicit drugs has supported, not deterred the revenues of these organizations.

Furthermore, the trafficking of firearms from the U.S. to the Northern Triangle also contributes to the consistent presence of criminal violence against women.⁴ Thus, the pull factors of the United States including the lower crime rates, better protections for women subjected to violence through stable organizational structures and the rule of law, as well as better economic opportunities have caused a consistent flow of women from this region to attempt to seek asylum. In response to these migrant flows, previous government administrations have tried to balance their security concerns with humanitarian obligations as laid out through various international agreements.

To achieve this balance, administrations have contributed large sums of money and organizational assistance to this region. For instance, The Central America Regional Security Initiative (CARSI) began as the Mérida Initiative or the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) under the Bush administration. The Bush administration asked for \$1.4 billion for Mexico and Central America. With an initial \$500 million going to Mexico and \$50 million to Central America. Further, Obama increased this aid

⁴ Ibid.

to \$3.7 billion when he separated Central America from the Bush CAFTA-DR policy relabeling it as CARSI.⁵ These funds were allocated to cover increases in border security, better detention facilities and to combat drug-related violence and organized crime.⁶

Moreover, Trump initially supported the U.S. Strategy for Engagement in Central America as set up by the Obama administration. However, the administration suspended aid in March 2019. Congress has increased the conditions on aid, requiring the Northern Triangle governments to address specific concerns such as corruption, human rights, and border security to receive assistance.⁷ Two bills introduced into Congress H.R. 2615 and S. 1445, would authorize over \$2 billion to the region but have not yet been authorized. While not entirely effective, these policies did create some success.

For example, with aid, the homicide rate in El Salvador dropped by 42% between 2015 and 2017.⁸ However, many view these strategies as reactionary and criticize the government for only focusing on this region when increases in migration occur. The Trump administration, however, is the exception. Instead of the typical mitigation policies used by previous administrations Trump's government suspended aid because of these increased flows from the region and instead began focusing on stifling immigration into the United States through deterrence strategies. The change in tactic by the administration and the impacts this has had on migratory flows will be discussed below. However, the known effects, such as the decrease in security improvements, are causing homicide rates to increase already.⁹ Further, it has also been proven by organizations like the UN that because of COVID-19 "all types of violence against

⁵ Meyer, P., U.S. Strategy for Engagement in Central America: Policy Issues for Congress (Rep. No. R44812)

⁶ Ingram, M., et. al. "Crime and Violence in Central America's Northern Triangle: How U.S Policy Responses are Helping Hurting, and Can be Improved," 3.

⁷ Meyer, P., U.S. Strategy for Engagement in Central America: Policy Issues for Congress (Rep. No. R44812).

⁸ Francis, I., "Can US Aid Slow Down Migration from Central America?"

⁹ Ibid.

women and girls, particularly domestic violence, has intensified.”¹⁰ Thus, policy changes are needed as quickly as possible.

Before recommendations can be made about the current U.S. policies, the lack of recognition of women’s rights despite international and domestic precedent must be dissected. Under the realist approach to state rights which emphasizes state security, migrants have been criminalized and their lives and international human rights ignored. Those who do overcome barriers to U.S. entry and go through the process of making an asylum claim based on gender-based violence in their origin country may not receive protection as the U.S. policies on asylum seekers do not largely benefit women subjected to violence.

Furthermore, the United States has not ratified the New York Declaration for Refugees and Migrants, or the Cartagena Declaration. The U.S. has in fact, not ratified any international human rights treaties since 2002. This includes the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹¹ The Violence Against Women Act (VAWA), a domestic bill that dramatically decreased the rates of violence against women from 1993 to 2010 by 64%, has also expired and has not been prioritized to renew.¹²

Historically, the United States has a varied past with recognizing domestic violence against women as valid asylum claims. In 1996, the U.S. began taking the suggestions of the UN special rapporteur dedicated to violence against women. For instance, The Board of Immigration Appeals recognized Female Genital Mutilation (FGM) as an extreme form of persecution in the *Kasinga* case. A specific reference to the United Nations High Commissioner for Refugees is noted in the decision regarding the application of extending the "particular social group"

¹⁰ UN Women. “The Shadow Pandemic: Violence against Women during COVID-19.”

¹¹ Human Rights Watch. “United States Ratification of International Human Rights Treaties.”

¹² Law, T. “What to Know on Joe Biden and the Violence Against Women Act.”

category to female asylum as laid out in the 1951 Refugee Convention.¹³ This would allow protection to be granted to those who would not otherwise fall under the other refuge definitions.

However, just 3 years later in *re-RA*, the Attorney General denied a Guatemalan woman, Rodi Alvarado Pena, asylum despite threats on her life and a pattern of spousal abuse.¹⁴ Rodi Alvarado Pena was finally granted asylum in 2009. However, she had to wait over 14 years for a decision in her favor, had to leave two children in Guatemala with her parents during this time, and was one of the few immigrants who was able to get a lawyer familiar enough with the process.¹⁵ This indifferent attitude of the United States' government changed to an outright attack under the Trump administration.

This is best demonstrated in 2018, when the Former Attorney General Jeff Sessions tried to place a sweeping ban on domestic violence as a valid asylum claim.¹⁶ In this decision, he specifically stated that the asylum claim application process was too broad and should not include "private violence." He included domestic violence and gang violence in this assessment. Sessions used the increase of those claiming credible fear as the reason for asylum from 5,000 in 2009 to 94,000 in 2016 to substantiate his argument.¹⁷

In *Grace v. Whitaker*, the court ruled this decision did not have a legal basis.¹⁸ A claim that is supported if the expanded definition of refugee that is found in the Cartagena Declaration and New York Convention are considered. However, the U.S. did ratify the 1951 Refugee Convention. This allows any person "physically present in the United States or who arrives in the

¹³ Binder, A, *Gender and the Membership in a Particular Social Group Category of the 1951 Refugee Convention*, 167.

¹⁴ Annitto, M., "Asylum for Victims of Domestic Violence: Is Protection Possible After In Re R-A-?"

¹⁵ Preston, J., "U.S. May Be Open to Asylum for Spouse Abuse."

¹⁶ Benner, K., and Dickerson, K., "Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum."

¹⁷ Ibid.

¹⁸ Human Rights Watch. "US: Protect Right to Asylum for Domestic Violence."

United States ... irrespective of such [person's] status, [to] apply for asylum..."¹⁹ Therefore, the deterrence strategies put into place by the Trump administration are in direct violation of these principles.

Moreover, the Trump administration increased the barriers to entry for asylum seekers in many ways during his four years. The various policies will be discussed below with an emphasis placed on his "Zero-Tolerance" policy and his "Safe Third Country" policy. The "Zero-Tolerance" policy criminalized any entry into the United States that did not go through pre-determined legal channels, such as the Customs and Border Control ports of entry or "wait their turn" through the metering process to citizenship. He also put undue pressure on Mexico and Central America through his "Safe Third Country" agreements as shown in the previous section.²⁰

The Trump Administration began emphasizing state security over humanitarian obligations as early as 2017. In his Executive Order 13767, "Border Security and Immigration Enforcement Improvements", Trump made his efforts to secure the southern border clear.²¹ This contributed to the "Zero Tolerance" criminality of asylum seekers. Additionally, U.S. Citizenship and Immigration Services increased the threshold for credible fear in asylum interviews in February of 2017 in Section VI of its Executive Summary of Changes to Credible Fear Lesson Plan. Section VII also removed the opportunity for asylum seekers to be removed to a country other than that of their citizenship.²² These decisions directly impact those subjected to violence by making their claims more difficult to prove and by forcing them to return to the NTCA where they will most likely endure more violence or be killed.

¹⁹ National Immigrant Justice Center. "Asylum Seekers & Refugees."

²⁰ Ibe, P., "The Dangers Of Trump's "Safe Third Country" Agreements In Central America."

²¹ National Immigrant Justice Center. "Asylum Seekers & Refugees."

²² Ibid.

Countries in the Northern Triangle and Mexico have also been tasked with ensuring that those trying to reach the United States have first tried to seek asylum in the regions they are passing through before reaching the United States in the application of the “Safe Third Country” policy. However, the NTCA countries all suffer from very similar economic and security issues. Thus, they are not prepared to provide a safe haven for those fleeing violence due to both security and infrastructural issues.

Mexico, as a transit country for many of these women, has better infrastructure but has not traditionally experienced such an influx of migrants and still suffers from a culture of *machismo* as can be seen by the assessment by Susan Gze and the information from *Women on the Run*. This policy is related to the “Remain in Mexico” policy which returns women coming through Mexico back to Mexico while they await their asylum cases if they are not returned directly to their country of citizenship. Therefore, women fleeing this region have another burden placed on them. They must now prove they have a legitimate fear of violence, a task made almost impossible after the USCIS change in credible fear requirements; further, they must somehow demonstrate that they have tried to seek asylum elsewhere despite the other countries’ inability to safely harbor them.

The “Zero Tolerance” policy requires all migrants and asylum seekers to be sent to the Department of Justice to be prosecuted criminally for illegal entry, or reentry.²³ This policy has led to children being separated from their parents and re-enforced the return of women to Mexico or their country of origin. They have, therefore, been subjected to more violence and instability. Some have an additional economic burden and trauma placed on them through the use of smugglers or “coyotes” to circumvent the additional border security.

²³ National Immigrant Justice Center. “Asylum Seekers & Refugees.”

Once in the U.S., women are criminalized for the means through which they entered instead of being placed in facilities to help them begin anew. Furthermore, reports came out this year that women in detention centers were receiving hysterectomies without their knowledge or consent. These claims come from the Irwin Detention Center in Georgia in which Spanish-speaking women undergoing these operations are not told about the procedure in their native language. At least 17 cases of hysterectomies performed at this center have been found to date.²⁴

As the rational hurdle choice as put forth by Emily Ryo argues, women fleeing this region evaluate the net cost hurdles of the journey to the United States and their possible treatment upon arrival and still decide it is better to “leave the devil they know.” Many also do not have a solid understanding of U.S. immigration law.²⁵ Therefore, these deterrence strategies are unlikely to discourage those whose lives are already at risk. What these policies do, instead, is cost the country money by keeping women in detention facilities, force them into countries in which they are not safe while awaiting their asylum decisions, or cause them to repeat their difficult journeys from their origin countries.

Consequently, these policies have also increased the issues in processing asylum applications. As many of these women do not enter through legal ports, they are processed through what is called a “defensive asylum process”. The average wait time for this type of case was 721 days, with the backlogs increasing in recent years.²⁶ Thus, these women are subjected to unsettling circumstances for long periods even after making their journeys.

²⁴ Bryant, M. “Allegations of Unwanted Ice Hysterectomies Recall Grim Time in US History.”

²⁵ Ryo, E., *Detention as Deterrence*, 243

²⁶ National Immigration Forum. “Fact Sheet: U.S. Asylum Process.”

Recommendations and Proposals:

The United States' policies must also be rectified. While aid to NTCA countries has not solved the economic issues nor eliminated the violence in the region, it has helped lower crime. Therefore, it cannot be entirely discounted and should be reinstated. Requirements on how the aid is used should be given but must be realistic and not prevent funds from getting to the region; instead, part of the aid should entail assistance to fulfill these requirements.

An example of necessary requirements is training for security forces in the NTCA by the U.S. This should include sensitivity training or workshops on how officers can assist those fleeing violence in a way that does not undermine their fears or the women's difficult situations. Systems should be required to be in place to ensure gender-based violence is dealt with by security forces consistently as well. Shelters for women should also be established in the NTCA and the United States that employ those trained on the particular traumas that these women face and provide security and health care to women that meet their specific needs. U.S. Border Protection and ICE agents must be held to the same or higher standards and receive training in trauma-informed care as women have suffered physical abuses with psychological ramifications that will be made worse by being treated as a criminal instead of a potential citizen seeking protection.

Since the Trump administration was able to easily roll back previous administration policies, systemic change solidified in writing and law are necessary. The U.S. should ratify agreements like the New York Convention, CEDAW, and the more recent Global Compacts to show the government recognizes gender-based violence as a pervasive issue and create a precedent for how asylum cases should be treated moving forward. The local Violence Against

Women Acts should also be renewed. As Joe Biden is now the President, this issue may be treated through a more humanitarian lens. Migrants from the Northern Triangle are counting on this to be able to stay in the United States while seeking asylum.²⁷

For instance, Biden was responsible for the U.S. Senate Judiciary Committee which was first introduced VAWA due to his concern for the U.S. attitude towards violence against women.²⁸ Biden states, on his website he will focus on reducing gender-based violence in the NTCA, increase the number of refugees allowed in the country, and restore eligibility for domestic violence survivors. While these plans give hope to women of the Northern Triangle, more is needed from the U.S. A consistent and humane approach to this issue must be maintained to ensure the atrocities such as family separation and the hysterectomies that were performed in Georgia are not repeated. Lastly, due to the increases in violence because of the pandemic this issue must be made a priority with the recommendations being implemented as quickly as possible to mitigate increases in women refugees from the region as well as to prevent the inhumane treatment of these women from continuing.

²⁷ Kahn, C. "Joe Biden Has Plans To Reverse Many Of Trump's Immigration Policies."

²⁸ Law, T. "What to Know on Joe Biden and the Violence Against Women Act."

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