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extreme droughts and unpredictable weather grow more frequent.<sup>35</sup> If Australia fails to take action, there will undoubtedly be more communities like Laramba. The Australian government is violating the right to life, delineated in the ICCPR, ICESCR, and UDNRIP, by failing to provide safe drinking water to all peoples. In NT, where a significant percent of the population is rural and of First Nations descent, it is imperative that the NT government takes further action by enacting legislation to comply with the NTA and ensure that all persons have equal access to safe, clean drinking water.<sup>36</sup> Australia has violated international and domestic law by failing to address the issue of contaminated water for over a decade. The Australian government needs to prioritize the needs of First Nations communities to find a sustainable, safe solution to protect every Australian's right to water.

## U.S. "ASYLUM COOPERATIVE AGREEMENTS" WITH CENTRAL AMERICAN COUNTRIES ARE UNLAWFUL

*by María Alejandra  
Torres\**

At the beginning of 2020, the Trump administration announced that it would begin deporting Mexican asylum seekers to Guatemala to claim asylum there, as part of a bilateral agreement with Guatemala.<sup>1</sup> The United States is working on similar agreements with Honduras and El Salvador.<sup>2</sup> Although the media has referred to these agreements as "Safe Third Country" agreements, the U.S. government calls them "Asylum Cooperative Agreements" ("ACAs") insofar as the government has negotiated cooperation with these states

<sup>35</sup> U.N. Water, *Water and Climate Change*, U.N., <https://www.unwater.org/water-facts/climate-change/> (last visited Sept. 20, 2020); *State of the Climate Report 2018: Australia's Changing Climate*, CSIRO & AUSTRALIAN BUREAU OF METEOROLOGY, <https://www.csiro.au/en/Research/OandA/Areas/Assessing-our-climate/State-of-the-Climate-2018/Report-at-a-glance> (last updated Dec. 20, 2019).

<sup>36</sup> 2016 Census QuickStats, *supra* note 16; Royce Kurmelovs, *High Levels of Uranium in Drinking Water of NT Community*, NITV (Jul. 31, 2020), <https://www.sbs.com.au/nitv/article/2020/07/31/high-levels-uranium-drinking-water-nt-community> (noting that NT does not have a law setting a minimum standard for drinking water, unlike other states and territories).

\* María Alejandra Torres was born in Bogotá, Colombia, and has lived in the United States since she was three years old. Being a Latin American immigrant has greatly shaped her worldview, as well as her academic and career interests. After completing her 1L year at American University Washington College of Law, she transferred to New York University School of Law. She aspires to work in civil rights and international human rights law. Alejandra wants to thank the Human Rights Brief for introducing her to the world of human rights scholarship so early in her career. She is grateful that the Brief has continued to provide her with the opportunity to explore her interests and share her ideas. She wishes the Brief continued success.

<sup>1</sup> Priscilla Alvarez & Geneva Sands, *US to Send Mexican Asylum Seekers to Guatemala*, CNN POL. (Jan. 7, 2020), <https://www.cnn.com/2020/01/07/politics/us-sending-mexican-asylum-seekers-guatemala/index.html>.

<sup>2</sup> Geneva Sands et al., *Trump Administration Begins Deporting Asylum Seekers to Guatemala*, CNN POL. (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/politics/guatemala-asylum-agreement/index.html>.

to divert asylum seekers from the United States.<sup>3</sup> The ACAs are an attempt by the current administration to prevent asylum seekers who transit through the Northern Triangle (Guatemala, Honduras, and El Salvador) and Mexico from reaching the United States. However, these ACAs violate the U.S. Refugee Act of 1980 and the UN Convention and Protocol Relating to the Status of Refugees, which both protect refugees and asylum seekers.<sup>4</sup>

People from Mexico and Central America migrate to and seek asylum in the United States to escape gang violence, pervasive poverty, domestic violence, economic inequality, political turmoil, the aftermath of civil wars, narco-trafficking, and natural disasters caused by climate change.<sup>5</sup> The immigration debate in the United States is mostly centered on curtailing immigration to the U.S. because some politicians frame immigration as individual decisions to take advantage of asylum relief, instead of analyzing how the United States has sent troops to the region, bribed governments there, and supported elites who protect U.S. business interests, thereby playing a role in engendering systemic issues.<sup>6</sup> Despite the history of U.S. involvement in the region, the Trump administration has not addressed the role of U.S. foreign policy in contributing to violence and destabilization in the region. Rather, it has sought to vilify immigrants,

particularly those from Mexico, who are seeking refuge in the United States.<sup>7</sup>

The United States acceded to the 1967 Protocol to the Refugee Convention (Protocol) in 1968, and then Congress enacted the Refugee Act in 1980.<sup>8</sup> Article 33 of the Protocol states that “no Contracting State shall expel . . . a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or opinion.”<sup>9</sup> Similarly, pursuant to the Immigration and Nationality Act, a Safe Third Country is one in which the life or freedom of a removed person “would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where [that person] would have access to a full and fair procedure for determining a claim to asylum.”<sup>10</sup> That is, the country must demonstrate that it is capable of providing safety, security, and due process for asylum seekers who flee persecution because of their identities, where they will not be subjected to identical or further persecution.<sup>11</sup>

Guatemala, Honduras, and El Salvador do not qualify as Safe Third Countries under U.S. law. The U.S. Department of State recognizes that Central American migrants face danger in both Mexico and Guatemala because government officials and criminal gangs see them as “vulnerable prey,” susceptible to extortion and violence.<sup>12</sup> Further, the United Nations High Commissioner for Refugees (UNHCR) reported that referral mechanisms in these countries for asylum seekers are inadequate and that authorities—police

<sup>3</sup> JUSTICE FOR IMMIGRANTS, *Asylum Cooperative Agreement Backgrounder* (Jan. 24, 2020), <https://justiceforimmigrants.org/what-we-are-working-on/asylum/asylum-cooperative-agreement-backgrounder/>.

<sup>4</sup> Susan Gzesh, “Safe Third Country” Agreements with Mexico and Guatemala Would Be Unlawful, JUST SECURITY (Jul. 15, 2019), <https://www.justsecurity.org/64918/safe-third-country-agreements-with-mexico-and-guatemala-would-be-unlawful/>; *The Refugee Act*, OFFICE OF REFUGEE RESETTLEMENT (Aug. 29, 2012), <https://www.acf.hhs.gov/orr/resource/the-refugee-act>; Convention Relating to the Status of Refugees [hereinafter “Refugee Convention”], Apr. 22, 1954, 189 U.N.T.S. 137.

<sup>5</sup> Alisson O’Connor et al., *Central American Immigrants in the United States*, MIGRATION POL. INST. (Aug. 15, 2019), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states>.

<sup>6</sup> Jeff Faux, *How US Foreign Policy Helped Create the Immigration Crisis*, THE NATION (Oct. 18, 2017), <https://www.thenation.com/article/archive/how-us-foreign-policy-helped-create-the-immigration-crisis/>.

<sup>7</sup> See, e.g., Michelle Mark, *Trump Just Referred to One of His Most Infamous Campaign Comments: Calling Mexicans ‘Rapists’*, BUS. INSIDER (Apr. 5, 2018), <https://www.businessinsider.com/trump-mexicans-rapists-remark-reference-2018-4>.

<sup>8</sup> Refugee Convention, *supra* note 4; *The Refugee Act*, *supra* note 4; UNHCR, *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, <https://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

<sup>9</sup> See Refugee Convention, *supra* note 4, art. 33.

<sup>10</sup> 8 U.S.C. § 1158(a)(2)(A) (2018).

<sup>11</sup> See Gzesh, *supra* note 4.

<sup>12</sup> *Id.*

and migration officers—lack adequate training on refugee law.<sup>13</sup>

The UNHCR defines a “safe country” as a non-refugee-producing country in which refugees can enjoy asylum without danger.<sup>14</sup> The Northern Triangle produces large numbers of refugees. According to the UNHCR, in 2018, over 30,000 Guatemalans, over 33,000 Salvadorians, and over 24,000 Hondurans filed claims for asylum in the United States.<sup>15</sup> If people are fleeing these countries because of pervasive violence, Mexican asylum seekers deported to these countries, as foreigners, would also see their livelihood and freedom threatened. The multifaceted violence that would threaten their livelihood and freedom contravenes Article 33 of the Protocol, which prohibits refoulement.<sup>16</sup> For example, Mexican asylum seekers would not have access to a full and fair procedure in Guatemala because Guatemala does not have a system in place capable of both granting asylum and protecting asylum-seekers given that it does not have sufficient interview personnel or shelters.<sup>17</sup> Guatemala created its own asylum system in 2001 but the commission that adjudicates cases rarely even meets because it receives very few applications.<sup>18</sup> Moreover, only high level officials can approve claims in Guatemala’s limited asylum system, causing “massive bottlenecks” in a system that is now just beginning to function, in part

because of the ACA transferees.<sup>19</sup> The Trump Administration’s proposed ACAs with these Central American countries are not only contradictory to the reality of the region, but also unlawful under both domestic and international law. *UT. v. Barr* is currently pending in federal court, a case challenging the ACAs with Guatemala and other states under U.S. law as a senseless policy that makes a “mockery of the United States’ obligations to protect the persecuted.”<sup>20</sup>

Seeking asylum is a fundamental human right expressed in Article 14 of the Universal Declaration of Human Rights (UDHR).<sup>21</sup> However, these circumstances demonstrate how the Trump Administration is circumventing existing law to prevent awarding asylum status to people who are fleeing persecution, exacerbated partly by U.S. foreign policy. Furthermore, under the Immigration and Nationality Act, all asylum seekers who arrive in the United States may apply for asylum, whether at a designated port of arrival or not.<sup>22</sup> The U.S. government must cease negotiating these bilateral negotiations with Central American countries and only create “Safe Third Country” agreements with countries that have the resources to provide safety and thorough administrative processes to deported asylum seekers.

<sup>13</sup> U.S. Dep’t of State, *Guatemala 2018 Human Rights Report* (2018), <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>

<sup>14</sup> UNHCR, *Background Note on the Safe Country Concept & Refugee Status EC/SCP/68* (Jul. 26, 1991), <https://www.unhcr.org/en-us/excom/scip/3ae68ccce/background-note-safe-country-concept-refugee-status.html>.

<sup>15</sup> UNHCR, *Global Trends: Forced Displacement in 2018*, <https://www.unhcr.org/en-us/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>.

<sup>16</sup> See Refugee Convention, *supra* note 4, art. 33.

<sup>17</sup> Ashoka Mukpo, *Asylum-Seekers Are Being Abandoned in Guatemala in a New Policy Officials Call a “Total Disaster,”* ACLU (Jan. 28, 2020), <https://www.aclu.org/news/human-rights/asylum-seekers-are-being-abandoned-in-guatemala-in-a-new-policy-officials-call-a-total-disaster/>.

<sup>18</sup> David C Adams, *Guatemala’s “Embryonic” Asylum System Lacks Capacity to Serve as Safe U.S. Partner, Experts Say*, UNIVISION (Aug. 2, 2019), <https://www.univision.com/univision-news/immigration/guatemalas-embryonic-asylum-system-lacks-capacity-to-serve-as-safe-u-s-partner-experts-say>.

<sup>19</sup> *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*, HUMAN RIGHTS WATCH (May 19, 2020), <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative#>.

<sup>20</sup> *Groups File Federal Lawsuit Challenging Trump Administration’s So-Called ‘Safe Third Country’ Asylum Policy*, ACLU (Jan. 15, 2020), <https://www.aclu.org/press-releases/groups-file-federal-lawsuit-challenging-trump-administrations-so-called-safe-third>.

<sup>21</sup> G.A. Res. 217 (III) A, Universal Declaration on Human Rights, art. 14 (Dec. 10, 1948).

<sup>22</sup> 8 U.S.C. § 1158(a)(1) (2018).

*The Regional Systems section follows the decisions and conclusions of both the Inter-American Commission for Human Rights and the Inter-American Court of Human Rights. The following articles examine some of the issues that the Inter-American Commission addressed at its most recent hearings.*

## FORCED PREGNANCY AND GENDER BASED VIOLENCE IN LATIN AMERICA

*by Miranda Carnes\**

Under international human rights law, women and girls have a right to equality, life, non-discrimination, and a life free from sexual violence.<sup>1</sup> In particular, the American Convention on Human Rights guarantees the right to life, the right to humane treatment, and the right to equal protection under the law.<sup>2</sup> Additionally, because teenage girls are children, they require a heightened level of protection from their government and the international legal framework.

On October 8, 2020, civil society organizations from the Latin American region discussed *Sexual Violence, Forced Pregnancy, and Access to Health Services during the COVID-19 Pandemic*.<sup>3</sup> The organizations represented the rights of women in Peru, Ecuador, Guatemala, Colombia, Nicaragua, El Salvador, and Latin America, in general. In their opening remarks, the civil society organizations highlighted the dire situation of young girls in the Latin American region, noting that Latin America is the only region in the world where pregnancies of girls under fourteen

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<sup>1</sup> IACHR, *Violence and Discrimination against Women and Girls*, ¶ 1, OAS/Ser.L/V/II Doc 233 (November 2019).

<sup>2</sup> See American Convention on Human Rights “Pact of San Jose, Costa Rica”, Nov. 22, 1969 S. Treaty Doc. No. 95-21; 1144 U.N.T.S.123; O.A.S.T.S. No. 36; 9 I.L.M. 99 (1970) at art. 4, 5, 6.

<sup>3</sup> *Sexual violence forced pregnancy and access to health services in the context of the COVID-19 pandemic*, 177 Session Period Public Hearings, IACHR (October 8, 2020).