

Why the US Third Safe Country Agreement with Guatemala is Problematic

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In July, much to the surprise of those familiar with the region, the President of the United States announced the signature of a safe third country agreement between the United States and Guatemala. Persons working on migration issues in the Northern Triangle countries (Honduras, El Salvador and Guatemala) and more generally human rights practitioners have pointed out that this agreement is problematic on many levels.

To begin with, human rights advocates lament the absence of consultation in the process which led to the determination of Guatemala as a safe third country. In fact, apart from the US President's eagerness to significantly reduce migration from Northern Triangle countries to the US border, the criteria used to make such a designation remains unclear.

Since the announcement made by the US President, questions have been raised around the robustness of Guatemala's asylum system. International law stipulates that a country that receives an asylum application is responsible for examining that person's request for protection and in the case of a positive decision providing that person with protection. Best practice dictates that should the country where an asylum application is made transfer this responsibility to a third safe country that said safe country should have at least a comparable asylum system. Given Guatemala's human rights record and the current socio-economic challenges, one may argue that Guatemala would be unable to fulfil these criteria.

International Human Rights Challenges

Guatemala is a country which has a long history of human rights violations and it has been demonstrated that the country has been unable to fulfil even the most basic requirements for the security of its own citizens. It would therefore be unreasonable to expect the country to meet the protection and security needs of asylum seekers transferred to their care from the US.

Under International Human Rights Law it is a clear violation to remove an asylum seeker from a territory where the right to freedom from torture or cruel, inhumane or degrading treatment is guaranteed to a third country where it is not guaranteed.

The United States' third safe country agreement with Guatemala is a veiled attempt by the Trump administration to prevent migrants from the Northern Triangle from claiming asylum in the US. At best, it constitutes a procedural barrier which would result in refugees being unable to make their asylum claims in a country of their choice, at worst, it will result in *refoulement* and/or human rights violations in the third country.

When selecting a third safe country it should be noted that UNHCR guidance states that it is not enough that refugees or asylum seekers are safe from persecution but that all requirements of the convention must be met including access to essential services such as healthcare, social assistance and education.

It is expected that women and children will be disproportionately affected by this change and thus far no indications as to what provisions are included in the agreement for special needs groups have been shared. Of particular concern are unaccompanied children, victims of gender-based violence and trafficked persons.

Guatemala: a country in turmoil

Guatemala, the most populous country in Central America is plagued with high incidences of violent crime, with statistics showing that 95% of which go unsolved. The country is a hotbed of insecurity and gang violence with high rates of murder and gender-based violence. Political instability and high levels of poverty, widespread corruption and weak government institutions compound these problems and contribute to making Guatemala one of the most unstable countries in Central America. Experts anticipate that the transfer of tens if not hundreds of thousands of asylum seekers to Guatemala may exacerbate the tenuous situation in Guatemala even further, placing undue stress on the country's already scarce and mismanaged resources.

Between 2016 and the present some 1.2 million migrants seeking asylum from Northern Triangle countries have been apprehended at the US-Mexican border. Were these persons to be relocated to Guatemala this would represent an enormous stress on Guatemalan resources. Furthermore, it would be disingenuous to assume that they would benefit from a level of protection

from human rights violations and social assistance that would be comparable to that provided by the US given that the Guatemalan state faces difficulties providing that same level of care and services to its own citizens.

Nothing New in the Region

This is not the first time that the US administration has implemented policies that have been detrimental to human rights in the region. Prior to signing the third safe country agreement with Guatemala, the US tried to do the same with Mexico. The latter refused. However, over the years, the US stance on immigration from the Northern Triangle influenced Mexican policy on migration from that region.

During the years of ex-President Calderon a decade ago to the present, Mexico turned its attention to enforcing controls along its southern border with Guatemala in an attempt to assist in the management of the northbound flow of migrants to the US border. This contributed to increasing regional tensions and translated into terrible consequences for migrants who desperate to escape their circumstances became even more vulnerable and dependent on unscrupulous middlemen to facilitate their journeys northward.

On July 2, the Associated Press reported that dozens of asylum seekers were sent to Mexico from the United States pending the outcome of their asylum applications in US courts. In addition, it was reported that the Mexican authorities supported by an IOM assisted voluntary return program funded by the US, were responsible for transporting 69 of those people back to their home countries. This occurred among reservations about the "voluntary" nature of these "returns". It can be argued that by supporting these actions, the US and Mexican administrations could be in contravention of the principle of *non-refoulement*, in addition to denying people the opportunity to be present while processing their asylum claims. The precedent created in the region by these flagrant acts of contempt for human rights is not without consequences and will make migrants even more vulnerable to what is an increasingly hostile environment for the enjoyment of Human Rights in the region.