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A CALL TO STRENGTHEN CANADA'S PROTECTION TO CENTRAL AMERICAN SURVIVORS OF GENDER-BASED VIOLENCE



PREPARED AND PRESENTED BY

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INTRODUCTION

This policy brief by Citizens for Public Justice (CPJ) and International Justice Mission (IJM) Canada addresses the barriers to access protection for Central American survivors of Gender-Based Violence (GBV). Through the unique collaboration between CPJ's expertise in Canadian national policies, and IJM's work and expertise internationally, specifically in the Northern Triangle of Central America (NTCA), we are able to address the issue from multiple fronts.

In the report, we discuss the context and prevalence of GBV in the NTCA, and the challenges that asylum seekers face in Mexico and the US. Some of the barriers we investigate are impunity in the NTCA for cases of GBV, violence faced by asylum seekers in Mexico and the US, and policy-related barriers to accessing protection in Canada, most notably the Safe Third Country Agreement (STCA). Finally, we analyze Canada's role in supporting initiatives to address the root causes of displacement in the region, and the provision of refugee protection to those who flee.

CPJ and IJM call on the Federal Government to exercise leadership on this issue, in line with commitments for gender equality and refugee rights. Specifically, we call for:

- Global Affairs Canada to prioritize programming in the NTCA that addresses the root causes of GBV and pervasive impunity in public justice systems that allow GBV to continue unchecked.
- Immigration, Refugees, and Citizenship Canada to repeal the STCA with the US, which severely limits the ability of Central Americans survivors of GBV to access protection in the country.

We begin the report by providing context around GBV in the region. Then, we provide an overview of the barriers to protection that Central Americans seeking asylum in Mexico, the US, and Canada face. Finally, we explain why Canada is well-positioned to act on this issue, due to its international leadership through the Feminist International Assistance Policy, and its legal tradition of providing refugee protection to survivors of GBV.

GENDER-BASED VIOLENCE IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA (NTCA)

The countries of the Northern Triangle of Central America (NTCA) have some of the highest femicide and domestic violence rates in the world.[i] The most prevalent forms of gender-based violence seen in the region include femicide, sexual assault and abuse, and human trafficking. The significant underreporting of sexual assault and domestic abuse, as well as the lack of disaggregated data for violent crimes, makes it difficult to measure the extent of femicide and other forms of gender-based violence.[ii] The data available shows that the three highest rates of femicide in Latin America for 2021 occurred in Honduras (4.7 per 100,000 women), the Dominican Republic (2.4 per 100,000 women) and El Salvador (2.1 per 100,000 women).[iii]

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Additionally, The Honduran National Human Rights Commission reported in 2018 that ninety percent of the femicides committed in the prior sixteen years brought no one to account.[iv] According to a 2017 national survey by DIGESTYC in El Salvador, sixty-seven percent of women have suffered some form of gender-based violence in their lifetime.[v] Yet only six percent of victims had reported the abuses and assaults to authorities.[vi]

Many of the women did not think the police would believe them, were threatened to not report, or did not know where to go or had difficulty accessing needed services. Ten percent of interviewees state that their abusers were police officers themselves or colluding with criminal groups.[vii] The following year, it was reported by Salvadoran newspapers that only five percent of the complaints made about crimes against women went to trial, meaning that should a woman take the risk of denouncing her offender, it is far more likely that she will be punished for speaking out than it is that the perpetrator would be held accountable.[viii]

In terms of the impacts of impunity, a 2015 UNHCR study on the firsthand accounts of refugees fleeing the Northern Triangle and Mexico conducted interviews in which sixty percent of women who were interviewed reported the violence they had experienced to the police or other authorities.[ix] Not one of the women who reported the violence felt that they received adequate protection; many received no protection at all.

Forty per cent of the women who did not report to the police explained that they viewed the process of reporting as futile. Many had witnessed the police failing to provide sufficient responses to others they knew who had reported. Others felt that criminal armed groups maintained such tight control of their neighborhoods that the police were unable to intervene. These interviews highlight the impact that impunity can have on the vulnerability of survivors of GBV.[x]

Another study conducted in 2017 revealed strong intersections among political, social, and economic exclusion, as well as gender inequality, exacerbating conditions of gender-based violence and impunity in Honduras.[xi] Though further data is needed to establish causal links, the region suffers from high rates of generalized violence (including gang violence), corruption, poverty, and deep-rooted patriarchal attitudes, which may be contributing factors to the crisis of gender-based violence.[xii] [xiii]

Some countries such as El Salvador have made legislative progress towards preventing gender-based violence, such as enacting a “femicide suicide” law in 2012, which criminalizes someone for driving a woman or girl to suicide by abusing them.[xiv] Additionally, in 2018, El Salvador’s Attorney General inaugurated a special group to oversee violent crimes against women, girls, LGBTQ+, and other vulnerable groups to provide more standardization and strategy for investigations and prosecutions.[xv] However, despite these advancements in policy, implementation and law enforcement remain severely lacking, making the reality of such progress much slower. This is partly due to impunity, low funding, systemic resistance, and persistent patriarchal attitudes.[xvi]

According to the UNHCR in 2015, eighty-five percent of women from the NTCA seeking asylum in the US described living in communities that are controlled by armed crime groups such as gangs.[xvii] Through interviews, the women described how they faced sexual assault and abuse and lived amidst threats of death. Sixty-four percent of interviewees stated that one of the primary reasons for their fleeing was direct threats and attacks by criminal armed groups. Many (sixty-nine percent of interviewees) sought safety within their own country, but found similar violence in other locations or were unable to flee their perpetrators.[xviii]



**THE JOURNEY NORTH IN SEARCH OF ASYLUM AND
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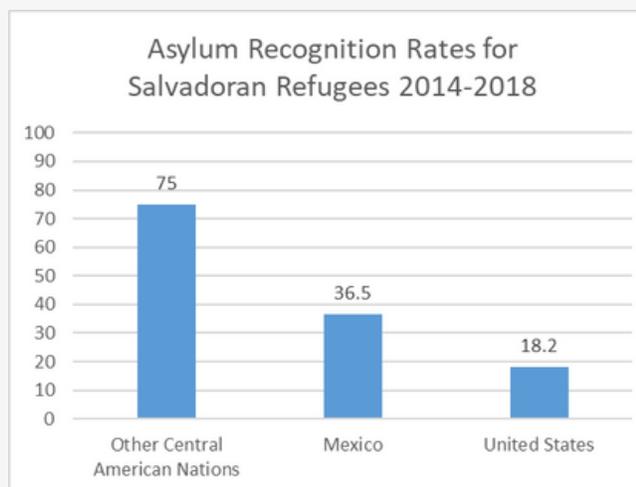


Data from US Border Patrol shows that the number of women crossing the US-Mexico border more than tripled from 2018 to 2019; the proportion of women versus men rose from 24.2 percent to 35.1 percent.[xix] [xx] The journey north in search of asylum and refuge is full of dangers and risks for migrants, particularly women. Many of the women who flee violence from the NTCA face further sexual violence, extortion and human trafficking on their migration journey.[xxi]

PROTECTION GAPS IN THE US AND MEXICO

The management of migratory flows has been a central component of the bilateral relationship between Mexico and the United States. Though migrants and asylum seekers have been subjected to criminalization in the region for decades, the Trump administration marked a distinct period of hard-line immigration policies. This included the Migrant Protection Protocols (MPP) – also known as the “Remain in Mexico” policy, which has seen tens of thousands of asylum seekers forced to wait for their long application procedures in the US from Mexico.[xxii] The US has also implemented a system referred to as “metering,” consisting of limiting the daily number of asylum seekers processed at points of entry.

Though Mexico has a strong legal framework for refugee protection, the conditions are often dangerous for asylum seekers, with increasingly high levels of violence and poverty. Many are targeted by cartels or corrupt government officers while being more vulnerable due to their lack of local support networks and precarious immigration status.[xxiii] In 2019, eighty percent of migrants treated by Doctors without Borders in Nuevo Laredo, Mexico, reported being victims of at least one violent incident in Mexico. Another 43.7 percent of patients said they had been victims of violence in just the seven days prior to the consultation.[xxiv]



For Central Americans filing asylum claims in the US, a significant barrier is the arbitrary nature of the decisions made. For example, in 2016 in New York City, the denial rate for asylum cases ranged from 2.2 percent for some judges to ninety-five percent for others. Even more concerning are the consistently high rates of refusal in certain regions. In Oakdale, Louisiana, the denial rate ranges from 93.1 percent to 100 percent, and in cities such as Los Angeles and San Francisco, some judges deny asylum cases at rates of seventy-seven percent.[xxv] [xxvi] While Salvadorans have asylum recognition rates up to seventy-five percent in other Central American nations, and 36.5 percent in Mexico, the US recognized only 18.2 percent of Salvadorans as qualifying for asylum from 2014 to 2018. [xxvii]

Between 2014-2018, the US and Mexico have deported about 213,000 Salvadorans (102,000 from Mexico and 111,000 from the United States). These deportees are then faced with the exact danger they were fleeing in the first place, and many of them are killed after their deportations.[xxviii]

For example, Human Rights Watch identified or investigated 138 cases of Salvadorans killed since 2013 after being deported from the US.[xxix] There is no official tally, however, and research suggests that the number of those killed is likely greater. This data shows the high rates of refoulement of both the US and Mexican asylum systems, and the different barriers that exist in Refugee Status Determination processes for Central Americans. Additionally, asylum seekers are routinely placed in detention in Mexico and the United States, often under conditions that violate the Convention Against Torture and the International Covenant on Civil and Political Rights.[xxx] In Mexico, migrants who are apprehended by the National Migration Institute (INM) are immediately placed in immigration detention, and in the majority of cases are not informed of their right to seek asylum, as demonstrated by a 2017 survey by Amnesty International.[xxxi] In the US, thirty-nine adults died in Immigration and Customs Enforcement (ICE) custody or immediately after being released between 2017 and 2020, twelve of them from suicide.[xxxii]

BARRIERS TO ACCESS PROTECTION IN CANADA

As demonstrated above, there are significant dangers for Central American asylum seekers in the United States and Mexico. But these challenges are also extended to those seeking refuge in Canada. The Safe Third Country Agreement (STCA) between Canada and the United States is one of the most significant barriers for Central American asylum seekers to reach protection in Canada. The Government of Canada's website states that the STCA is still in effect and therefore, "individuals entering Canada at a land port of entry continue to be ineligible to make a refugee claim, and will be returned to the U.S." [xxxiii] As argued by the Canadian Council for Refugees, Amnesty International, and The Canadian Council of Churches, the United States does not fully comply with its obligations towards refugees and is an unsafe country for them on several grounds.[xxxiv]

UNHCR Canada reports that at the end of 2021, there were around 600,000 refugees and asylum-seekers from the NTCA worldwide.[.] They also reported that in 2021, Mexico alone received over 130,000 new asylum applications and nearly triple that number of people were internally displaced in their countries of origin in the Northern Triangle.

Yet, the 2021 refugee claims data from inside Canada collected by the Immigration and Refugee Board (IRB) shows only 719 applications from El Salvador, 560 from Honduras, and 353 from Guatemala.[xxxvi] Further, in 2019, Canada only allocated 0.5% of their resettlement spots for Central American refugees.[xxxvii]

These statistics show significantly lower numbers of refugee claims from Central Americans than those seen in Mexico and the United States. While a degree of difference is expected, given Canada's geographic position, the current gap is disproportionate. This is caused, at least in part, by the STCA with the US, which severely limits the ability of asylum seekers in the US from submitting a refugee claim in Canada.[xxxviii]

It is also caused by a dramatic reduction in the allocation of resettlement spots for Central American refugees. Historical data shows that between 1983 and 1993, 22,940 Salvadoran refugees were resettled to Canada, in response to the displacement caused by the Salvadoran Civil War.[xxxix] In contrast, 180 Salvadoran refugees have been resettled in Canada from 2015 to 2022, even though rampant violence in this period has caused thousands to flee.[xl] The need for protection remains, but Canada's resettlement commitments to the region have dwindled.

CANADIAN GOVERNMENT INVESTMENTS IN NTCA

Initiatives to address the root causes of GBV in the region are often highlighted as ways to decrease forced displacement. There are several gender-focused programs in the NTCA, some funded by Global Affairs Canada. Yet, more sustained investments are needed to strengthen the performance of judicial systems, and other forms of institutional and community responses to GBV specifically. As the data indicates, the lack of trust in systemic responses is one of the factors that lead many to under-report instances of GBV and to flee the region.[xli]

The three countries in the region already have laws that protect victims of GBV. Rape, domestic violence, and sexual harassment are all illegal under Salvadoran law and punishable by six to ten years in prison, one to three years in prison, and five to eight years in prison respectively.[xlii] Honduras criminalizes acts of GBV such as domestic abuse, sexual assault and femicide,[xliii] and Guatemala incorporates provisions in their Law Against Femicide and Criminal Code,[xliv] which include a criminalization for psychological and economic abuse. Yet, the rates of impunity are concerning: The United Nations estimated in 2018 that eighty-three percent of crimes against women in Guatemala go unpunished.[xlv]

An increased access to reporting, investigating, and prosecuting crimes are key areas of focus, as well as trauma-informed practices that help address GBV before it reaches the level of sex trafficking and femicides.[xlvi] Civil society organizations, faith-based communities, and international partners like International Justice Mission have a role to play in these responses. In Guatemala, IJM has worked with the office of the Attorney General, and established linkages with NGOs and faith-based communities to improve the access of women and children to the justice system. Moreover, recent data from IJM's evaluations show that in the Salvadoran districts where IJM provides training and technical assistance, police investigators have improved their ability to investigate crimes.

While Global Affairs Canada funds some projects in the NTCA, there are still gaps that need to be addressed. Current programming funded by Canada seeks to support survivors of GBV, empower women and girls, and conduct awareness training about gender equality. [xlvii] These important investments should be paired with programs specifically aimed at reducing the impunity rates and increasing the ability of governments to effectively implement the protection norms established to address and eradicate GBV.

REFUGEE PROTECTION FOR SURVIVORS OF GBV IN CANADA

Even with these important developments in legislation and programs to address GBV, thousands are still faced with the life-altering decision of fleeing the NTCA region. Canada should be playing a role in providing support to those who flee, given its leadership in the areas of gender equality and refugee protection. Further, Canada has an established legal tradition of providing protection to individuals fleeing GBV. IRB presented the Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board to incorporate gender considerations in refugee claimant's proceedings in 1996. At the time, it was a ground-breaking policy that served as a model internationally.

The recent updates in July 18, 2022 broadened the gender scope while maintaining that women, girls, and LGBTQ2I+ individuals are disproportionately affected by inequality, discrimination, and gender-based violence.[xlviii] It also makes explicit reference to the ongoing application of a trauma-informed and intersectional approach to proceedings involving gender considerations as well as expanded practical guidance on gender as a basis for persecution, state protection, internal flight alternatives and gender-specific considerations for detention reviews, admissibility hearings, and immigration appeals.

These and other sections of Guideline 4 demonstrate a legal tradition that is open to recognizing gender-based violence as grounds for persecution, which builds a strong foundation for the provision of refugee protection and resettlement for survivors of GBV. In response to the conditions that Central Americans fleeing GBV face to access protection in the US and Mexico, Canada has the capacity and infrastructure to increase their contributions in this area. Either through the removal of structural barriers like the STCA, or an increase in the allocation of resettlement spots for Central Americans fleeing GBV.

POLICY RECOMMENDATIONS

Citizens for Public Justice and International Justice Mission Canada present the following policy recommendations:

1

In line with its commitment towards gender equality, and a Feminist Foreign Policy, we call on Global Affairs Canada to increase development aid investments and partnerships aimed at strengthening justice systems in the Northern Triangle. Specifically, we call for programs that increase the confidence of survivors of Gender-Based Violence in accessing justice through their local public justice institutions - specifically law enforcement, judicial systems and social services.

2

The Safe Third Country Agreement with the US severely limits the ability of Central American asylum seekers from submitting refugee claims in-country. Building upon this legal tradition and expressed commitments toward gender equality and refugee rights, we call on Canada to remove this structural barrier that prevents individuals fleeing Gender-Based Violence in the NTCA and other regions from accessing refugee protection in Canada.

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