

Refugees from Central American gangs

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El Salvador, Guatemala and Honduras are among the world's most fragile nations, yet they are largely ignored by refugee agencies who underestimate transnational criminal organisations' abuses and powers of control, while overestimating national governments' ability and willingness to protect their citizens.

Despite the steady stream of thousands fleeing into neighbouring nations, UNHCR's 2011 data show no internal displacement in the Central American region and only a few thousand refugees. Courts in the United States, where most seek asylum, rely on outdated, inaccurate or politically motivated reports that document greater ability or willingness of the state to protect its citizens than exists. 74,449 people from El Salvador, Guatemala and Honduras have applied for asylum in the US since 2007 but only 2,250 applications were granted. Furthermore, the US deported between 22,000 and 41,000 migrants from each of these three nations in 2012 alone.

Recognition of the Central American crisis could impose fewer burdens on receiving nations like Mexico and the US. Overloaded immigration courts spend countless hours on their cases and then their appeals, hundreds of new detention centres have been opened to house them while they await their verdict¹ and millions of dollars are spent on their deportation. Alternatively, if the crisis were acknowledged, resettlement programmes could be offered to those in need and receiving nations could plan for refugees' arrival, introduction into society and productive citizenship, as was done in the 1980s. More importantly, recognising institutional factors in the region that contribute to state fragility would strengthen Central American asylum applications.

In 1996, the US began deporting both citizens and residents who were born elsewhere and convicted of a crime, many of whom had joined gangs in the US's roughest urban neighbourhoods; from 2000 to 2004 alone, more than 20,000 of these were repatriated to Central American nations. This influx

of gang members who often spoke limited Spanish and possessed limited skills arrived in unstable countries barely recovered from the civil wars of the 1970s and 80s. Crime, drug sale and use, and violence increased quickly, and the street gangs spread their network throughout the region.

Today, all three nations are severely challenged by these transnational criminal organisations (TCOs), which wield considerably more arms, money and power than each nation's military. Estimates of government officials who are also on TCOs' payrolls in these three countries are between 40 and 70%. Whole municipalities – and pockets of the federal governments – are controlled by TCOs who mete out education and justice through bribery, bullets, forced recruitment of children as young as nine, rape and torture. The state, compromised as it is with corruption and outnumbered in arms as it is by the TCOs, is critically limited in its ability to protect citizens from TCO terror.

TCOs seek to instil fear of serious and harmful persecution in order to achieve their desired control. Individuals who express fear of such persecution are highly likely to be well-founded in doing so, especially because the state's ability or willingness to protect is severely compromised. Surprisingly then, Central Americans are forcibly repatriated to their countries where they face TCO persecution – a violation of the principle of *non-refoulement*.

To correct current failures and recognise that people are being returned to persecution, four facts must be acknowledged:

Fragility can lead to state inability or unwillingness to protect:² Using arms

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and money, TCOs may exert significant control over such governments through threats and bribery, with the effect that a government may be unable to protect its citizens because of comparatively limited resources; where a government is able, it may be unwilling because of widespread corruption. Nonetheless, asylum courts have been generally remiss in not acknowledging TCOs as non-state actors capable of inflicting actions rising to the level of persecution. Greater weight must be given to the persecution that non-state actors like TCOs inflict, especially in fragile states, where they may with impunity wield significantly greater ability and willingness to punish and protect than the state itself. Some TCOs operate throughout these nations and the region, meaning that internal flight alternatives rarely exist, even though courts sometimes wrongly speculate or assume otherwise.

Persons fleeing crises that have not received international recognition have a right to have their asylum cases taken seriously:

The flight abroad of citizens of these nations may be the best indicator of the extreme risks or persecution they have encountered, despite lack of international recognition of the crises they face. Such large-scale flight may also be considered to be an indicator of state fragility. Yet the refugee regime instead punishes them and allows courts to deem them simply economic migrants in denying their asylum claims. Cases of applicants from as yet unrecognised crisis situations should be considered just as seriously as those with a large humanitarian presence or recognised instability.

Children targeted by TCOs are at risk because of their membership of a 'particular social group' or their political opinion:

TCOs in Central America specifically prey on children to join their ranks or be killed if they refuse, facilitated by the fact that some 100,000 youth in the region are already gang members. The median age of gang members is just 19. In only the first three months of 2012, 920 children were killed in Honduras and girls as young as nine were gang-raped

in all three nations. Most children regularly see murder being committed, some have lost their parents to gang violence and some no longer attend school because gangs actively recruit from school grounds. Former child soldiers in other contexts, forced to join national and guerilla armies, have been recognised as a particular social group; forced conscription into transnational gangs is no different. Those who flee to avoid conscription into gangs exercise a political opinion and would be likely to face immediate persecution if they were returned. Returned or not, their family may face reprisals.

Temporary protection status can be used to uphold non-refoulement principles when persecution for reasons of accepted grounds cannot be established: Asylum courts have repeatedly found that fear of generalised violence does not meet the standard of persecution or return to torture, even though such violence may have targeted detrimental effects on certain groups, especially children whose entire courses of life are likely to shift. TCOs target returnees because of their perceived increase in wealth or knowledge of gang operations in the US and Mexico. The effect is that those repatriated are not safe and frequently find themselves persecuted by state and non-state actors. The US has created Temporary Protection Status for Central Americans fleeing natural disasters like earthquakes, floods and hurricanes in the past two decades but the more pressing issue they face may in fact be targeted violence at gangs' and governments' hands upon return.



Honduran family driven out of Honduras by gang persecution, applying for refugee status in the southern Mexican city of Tapachula.

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Unacknowledged fragile states like El Salvador, Guatemala or Honduras highlight at best the lag in response time in refugee and humanitarian circles and at worst the geopolitical influences determining who is allowed to flee and to where. TCOs specifically choose weakened national bases where they can exert greater control. Arguably nations which contribute to situations creating flight – for example through large consumer demand for drugs – should be responsible for receiving the fleeing citizens.

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1. <http://tinyurl.com/USimmigration-detention>
2. Importantly for this region, legal definitions of 'persecution' and 'refugee' are expanded and already recognise this point in the 1984 Cartagena Declaration, 1994 San Jose Declaration, and 2004 Mexico Declaration and Plan of Action.
3. The act of refusing to join a gang, despite mounting pressure, is at the very least neutrality and often a radical act of support for peace.