

# EXTERNALISATION IN CENTRAL AMERICA



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DEPORTATIONS, MIGRATION  
AGREEMENTS AND HUMANITARIAN  
NEEDS.

# Externalisation in Central America:

## Deportations, migration agreements and humanitarian needs



NRC, Tegucigalpa, 2018

The growing humanitarian needs in the North of Central America (NCA) are pushing increasing numbers of displaced people to the United States seeking protection. In response, instead of working with the region to ensure a long-term solution to the structural causes of violence, climate change and poverty, the United States has strengthened its border and migration policies, making the search for protection essentially impossible or extremely risky, deporting people back to the same conditions from which they fled, and perpetuating the displacement cycle. Over the last two years under the Trump administration, these efforts have increased. One of the most recent and contentious examples of these policies, the Asylum Cooperative Agreements (ACAs, commonly known as Safe Third Country agreements) plan for mass returns of displaced people and could further increase the protection crisis in the region.

More than half of the 21 organisations working with displaced people in the NCA interviewed for this snapshot expressed confusion about the ACAs and their legal and practical implications. This report therefore aims to: consolidate the available public information on the agreements; provide relevant insight from similar arrangements; highlight available legal guidance; and present several recommendations from humanitarian organisations currently working in the reception of deported persons. By doing so, the snapshot intends to provide relevant analysis for strengthening advocacy on the rights of displaced people, as well as for preparing contingency plans for the potential humanitarian impacts of the implementation of these new policies in 2020. To this end, the snapshot provides a brief overview of recent US externalisation policies and their impacts on the region, and then focuses on the current migration agreements.

### The snapshot is divided into the following chapters:

1. An general update on the protection crisis in the NCA
2. The externalisation of borders and asylum systems in the region
3. Asylum Cooperative Agreements: applicable, legal, safe and efficient?
4. Recommendations



This is the seventh snapshot on the protection situation in the North of Central America; an initiative of the REDLAC Regional Protection Group for NCA, led by the Norwegian Refugee Council, and supported by AECID and ECHO. The analysis is based on contributions from 31 people in 21 humanitarian organisations operating in Honduras, Guatemala and El Salvador, through a survey carried out in November 2019, as well as monitoring of official statistics, press, and academic studies. The document includes inputs from various organisations in the Protection Group, but does not reflect messages approved by each organisation.

# 1 A general update on the protection crisis in the NCA

## September to December 2019

### Honduras



3,996 homicides were reported in 2019, 41.2 per 100,000 inhabitants, a 7% increase compared to 2018<sup>1</sup>



In October: a school director was tortured and abandoned next to a river<sup>5</sup>; a land rights activist and farmer in Colon was tortured and killed<sup>6</sup>; as was a member of the LGBTI community in Puerto Cortés<sup>7</sup>. In November a journalist was killed<sup>8</sup>



Between 2004-2018, a total of 247,090 people were internally displaced due to widespread violence. 82% of the displacements happened in the departments of Cortés, Francisco Morazán, Olancho, Atlántida and Yoro. Gangs were identified as the perpetrators behind almost half of the violent acts or persecution, followed by family members, friends or acquaintances (26%). 22% of respondents did not identify the perpetrator<sup>11</sup>



293 feminicides were reported in the first 10 months of the year<sup>2</sup>



At least 16 Garífuna people have been killed in 2019, including two rights activists; an increase in drug trafficking on the Atlantic coast is reported to be the cause<sup>9</sup>. Two environmental leaders from the Tolupán indigenous ethnic group were killed<sup>10</sup>



109,185 people were deported to Honduras in 2019, an increase of 45% compared to 2018<sup>12</sup>



58 massacres killing 204 people were registered between January and November, a 34% increase compared to 2018<sup>3</sup>



The prosecution of the President's brother, proposed changes to the penal code and systematic corruption all led to frequent violent demonstrations throughout 2019. In October, protests were suppressed by riot police<sup>4</sup>

### El Salvador



2,390 homicides were reported in 2019, 36 per 100,000 inhabitants, a 33% decrease compared to 2018<sup>13</sup>



The homicide rate for men in San Miguel, La Paz and Usulután is over 100 per 100,000<sup>15</sup>



The government launched an independent commission to fight corruption<sup>19</sup>



InsightCrime reported that the new government have stopped including violent deaths as a result of confrontations between armed forces and gangs, and any bodies found in mass graves in the homicide rate (artificially reducing the rate)<sup>14</sup>



1 in 6 women report having experienced some type of violence<sup>16</sup>



IDMC estimates that 246,000 people have been displaced in El Salvador<sup>20</sup>



In October and November, three trans women were killed<sup>17</sup>



37,316 people were deported to El Salvador in 2019, an increase of 41% compared to 2018<sup>21</sup>



3,212 people disappeared, with an average of 8 people per day. Only 25% were found alive<sup>18</sup>

## A general update on the protection crisis in the NCA September to December 2019

### Guatemala



3,578 homicides were reported in 2019, 21.5 per 100,000 inhabitants, an 8% decrease compared to 2018<sup>22</sup>



In certain urban areas, or strategic points on the migration and drug trafficking route, homicide rates reach 70 to 100 homicides per 100,000 inhabitants<sup>23</sup>



In a survey of 1,374 people living in the department of Guatemala, 9% reported having been displaced by extortion, insecurity or gang violence, according to a new study by iepades<sup>24</sup>



Between January and October, 13,203 cases of extortion were recorded, an increase of 32% compared to the same period in 2018<sup>25</sup>



The missing children alert (Alba Keneth Alert) was activated about 6,000 times in 2019<sup>26</sup>



Until October, 7,450 medical examinations for sexual crimes were conducted, one third of which were for children between 10 and 14 years old<sup>27</sup>



The Guatemalan Congress reduced the budget of the Integral Support Centres for Women Survivors of Violence (the only available services for women affected by violence) by 97%<sup>28</sup>



The International Commission against Impunity (CICIG) in Guatemala closed due to government pressure<sup>29</sup>



The rains between May and October caused floods and landslides, causing 5,000 evacuations, 12 deaths and affecting 1,285,000 people<sup>30</sup>



Some areas in the centre and east of the country suffered crop reductions of 50 to 75%, and 82% of households are using negative adaptation mechanisms<sup>31</sup>. The National Food and Nutrition Security Information System recorded 14,084 cases of acute malnutrition<sup>32</sup>



According to the Centre for National Economic Research, there were 10,478 reports of extortion between January and September, an increase of 37% compared to 2018<sup>33</sup>



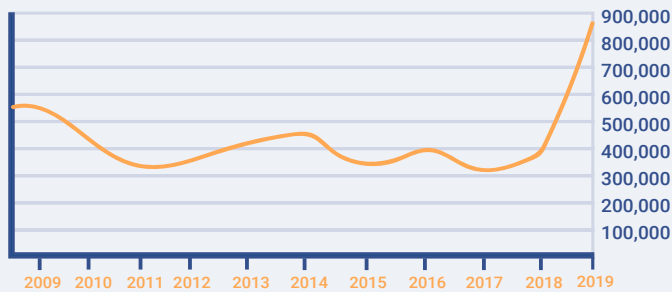
In October, a state of siege was declared in 22 municipalities, due to lethal clashes between the military and drug trafficking groups<sup>34</sup>; about 640 people were arrested<sup>35</sup>



96,740 people were deported to Guatemala between January and November<sup>36</sup>

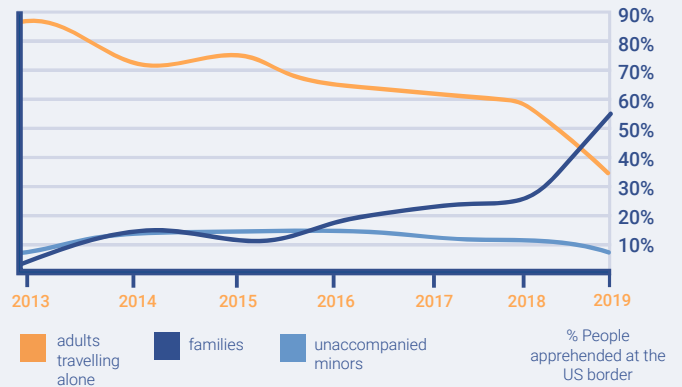
## Trends in 2019

### 1 More people are risking the migration route north<sup>37</sup>



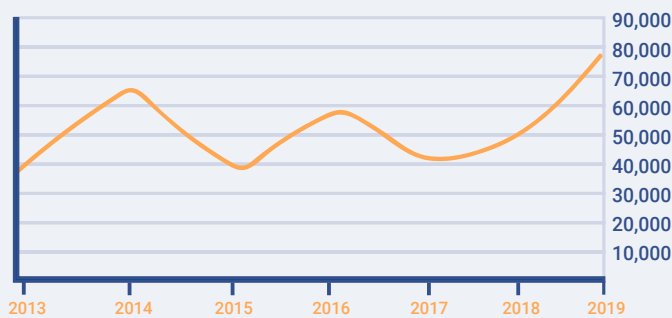
The number of people crossing the U.S. border in 2019 was double that of 2018, and the highest in a decade.

### 2 From a search for opportunities to a search for safety<sup>38</sup>



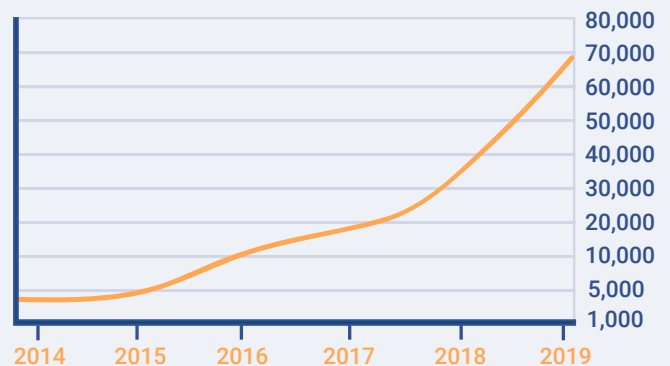
Five years ago, most people crossing the US border were adults travelling alone. Today, the majority are families. The acceptance rate of asylum applications in the US has also increased, reflecting an increase in people with protection needs<sup>39</sup>.

### 3 An unaccompanied minors crisis, without a crisis response<sup>40</sup>



In 2019, the number of unaccompanied minors seeking protection at the US border exceeded that of 2014, when the US government declared a crisis and the protection clusters in Honduras and El Salvador were activated.

### 4 As the US increases entry restrictions at its border, asylum applications are rising in Mexico<sup>41</sup>





## 2 Externalisation of borders and asylum systems in the region

The “Externalisation” of borders and migration controls describes state efforts to prevent asylum seekers from entering their jurisdictions or territories, or to make them legally inadmissible without individually considering the merits of their protection claims<sup>42</sup>. Externalisation of migration controls in the US is not a new or exclusive practice to the current government, as a range of policies have been employed from at least the 1980s to the present day, with the objective of controlling migration and reducing the transit of “drugs, people, weapons and cash”<sup>43</sup>. Immigration detention to deter people from seeking protection in the US, and forced deportations of people to their countries of origin, have been two widely used measures.

toilets<sup>46</sup>. In October, two asylum seekers in a detention centre in New Mexico attempted suicide in protest against these conditions<sup>47</sup>. Furthermore, the CBP currently lacks the institutional capacity to respond to the rise in arrivals, and are unable to comply with their own protocols for attention and care. Over the last year, 6 children have died in detention<sup>48</sup>, including a Guatemalan child, who was seriously unwell and left without medication in a CBP station cell in Texas. Although CBP centres are not equipped to house migrants for more than 72 hours, the child had been detained for 6 days. On a visit to CBP centres in Texas, the Inspector General of the Department of Homeland Security found: dangerous overcrowding (with 900 people in a centre with a maximum capacity of 125), prolonged detention of unaccompanied children, no access to showers, laundry, and hot food<sup>49</sup>. Between 2014 and 2018, 4,500 complaints of sexual abuse of children in immigration detention were reported<sup>50</sup>.

### A. Increased deportations from the US and Mexico to the NCA

In 2019, more than 230,000 Hondurans, Guatemalans and Salvadorans were deported to their countries of origin from the US and Mexico, an increase of 28% compared to 2018<sup>44</sup>. According to the organisations working with deportees in the NCA interviewed for this snapshot, these **deportations do not comply with the principles of dignity, voluntariness and security, and could be violating the principle of non-refoulement.**

*“Many people ask to be deported because of the inhuman conditions they face. We have attended cases of people with severe post-traumatic stress even after months of returning”.*

Humanitarian organisation, Honduras.

### Before deportation: detention and coercion

In both Mexico and the United States, people are often coerced to sign consent forms ahead of their deportations. Reports show that asylum applications are also often denied due to frequent errors and oversights included in asylum application documents, in particular when the US Customs and Border Protection (CBP) agents record applicants’ information and testimonies. As these initial records are very difficult to invalidate, mistakes (for example, regarding stories, names, ages, intentions, criminal records) can have serious impacts<sup>45</sup>. Beyond the issue of documentation, detention conditions for asylum seekers and migrants in the US are coercive and push people to withdraw their asylum applications or sign their deportation documents. Reports highlight the lack of dignity. In CBP processing centres, for example, people are detained in cold rooms (known as ‘freezers’) or in metal cages (described as kennels), and in overcrowded spaces. Recent reports show cases of people unable to sit down due to overcrowded conditions, and people sleeping on

### During deportation: failure to meet minimum standards

The organisations interviewed for this snapshot describe deportations as similar to transportation of convicted criminals. In the United States, where most deportations are conducted via air, people are usually handcuffed, shoelaces are removed as a safety measure, and only one meal is provided for a journey that often takes longer than a day. From Mexico, people are usually deported by land on long distance buses. According to an organisation interviewed: *“The bus journey is 20 hours long with no stops before the Honduran border. Even if there is a problem on the road, people are not allowed to get off the bus. It’s like livestock transportation. We registered several cases where the minimum humanitarian standards for transportation were not respected: people were discharged from hospitals before being deported, without being physically fit to travel, and without the proper medical documentation. Patients have arrived in Honduras in a critical state due to not being fit for travel”.*

## B. Recent changes in migration policies and restrictions to protection

During the last two years, under the Trump administration, a series of measures and policies have been adopted with the clear objective of reducing and weakening the US asylum system, going well beyond previous efforts. Although some of these measures have been frequently blocked by resource constraints, Congress or legal demands, the current government has made progress with different initiatives<sup>51</sup>.

Timeline of policies and practices <sup>52</sup>			
Date	Policy	Update/impact	
2017	<b>February</b>	Raised standards for <b>credible fear interviews</b> , making the asylum application more difficult <sup>53</sup> .	
	<b>February</b>	The end of the <b>Family Case Management programme</b> , providing alternatives to detention, with case management, support and reintegration services <sup>54</sup> .	Programme reinstated in February 2019.
	<b>December</b>	<b>The end of a policy releasing pregnant women from ICE detention</b> <sup>55</sup> .	
2018	<b>January</b>	<b>The end of the Central American Minors (CAM) Refugee and Parole Program</b> , which prevented several minors from risking the migration route, by processing their asylum requests directly from the NCA <sup>56</sup> .	
	<b>April</b>	The <b>Zero Tolerance policy</b> : involving <b>family separations</b> and prosecutions for irregular entry <sup>57</sup> .	Thousands of children are now living with permanent trauma. In June, after a public outcry, an executive order stopped the separation of children from their parents, but did not stop separations of children from other relatives (grandparents, siblings, uncles/aunts). Children who arrive at the border without a parent or legal caregiver are considered unaccompanied and are separated. There is no real mechanism for family reunification, and in many cases, adults are deported without their children <sup>58</sup> .
	<b>April</b>	The imposition of <b>case-completion quotas for immigration judges</b> , requiring judges to rule on 700 cases per year, reducing the time that asylum seekers have to present their cases and restricting their access to due process <sup>59</sup> .	An increase in quick decisions and deportations. However, pending cases remain high at close to 1 million <sup>60</sup> .
	<b>April</b>	<b>4,000 members of the National Guard were deployed</b> to the southern US border <sup>61</sup> .	In September the Defense Department announced that they would maintain 5,500 troops at the border <sup>62</sup> .
	<b>June</b>	Limitation of eligibility for asylum for survivors of domestic violence and gang violence <sup>63</sup> .	Policy blocked by a Federal Court decision. Litigation pending.
<b>September</b>	Proposed regulation to allow for the <b>indefinite detention of families</b> , through the cancellation of the Flores settlement agreement.	Federal judge blocked the implementation of the regulation, the Flores agreement remains in force <sup>64</sup> .	

2018	September	Official confirmation that the "metering" policy was being employed at the southern border, placing limits on the number of people permitted to cross the border each day. Asylum seekers are effectively blocked from crossing the border, put on waiting lists, and made to wait for weeks or months at the border before being allowed to cross and make their claim.	Implementation is ongoing (by August more than 26'000 people were on the waiting list), but the policy is under litigation in California <sup>65</sup> .
	November	<b>First Asylum Ban</b> , banning people who had not crossed the border at official points of entry from seeking asylum <sup>66</sup> .	Rule blocked in Federal Court.
2019	January	The <b>Migrant Protection Protocols (MPP)</b> , the systematic return of asylum seekers to Mexico, to await the resolution of their cases in the US (see next page for more information).	The policy is being challenged but is still being implemented.
	May/June	<b>Militarisation of the Mexican borders.</b> The Trump administration threatened to impose tariffs on Mexican products if the neighbouring country did not cooperate to reduce migration. 6,000 members of the National Guard were mobilised to several strategic points on the southern border with Guatemala.	In June, Mexico promised to increase this deployment; until September 25'000 National Guards had been deployed at its borders <sup>67</sup> .
	June	<b>Cuts to financial assistance for the NCA countries</b> <sup>68</sup> .	
	July	Bilateral agreement with Guatemala, known as a <b>Safe Third Country agreement</b> , involving the transfer / deportation of non-Guatemalan asylum seekers from the US to Guatemala to submit their asylum applications there (see page 11 for more information).	Published in the US Federal Register on November 19, 2019. Implementation underway.
	July	Pilot project allowing CBP officers, rather than trained asylum officers, to conduct credible fear interviews <sup>69</sup> .	Implementation documented in South Texas.
	September	<b>Second Asylum Ban</b> , approved by the Supreme Court. A de facto ban on asylum applications from people who had travelled through a 'third country' before arriving at the southern border of the United States <sup>70</sup> . According to the IACHR: "the IACHR considers this rule to be contrary to the human right to seek and receive asylum, the protection from refoulement and contravenes international and inter-American norms and standards" <sup>71</sup> .	Lawsuit pending, but the Supreme Court has indicated that implementation can continue in the meantime <sup>72</sup> .  An alternative form of protection remains in the US refugee framework, known as withholding of removal, but this protection requires a higher burden of proof than asylum and does not allow for family unification <sup>73</sup> .
	September	<b>Bilateral agreements with El Salvador and Honduras</b> , known as safe third country agreements, involving the transfer / deportation of non-Salvadoran / Honduran people to El Salvador and Honduras to submit their application there. The agreement texts and details on implementation have not been officially published.	
November	Publication of the Interim Final Rule on the safe third country agreements, allowing for the implementation (in the United States) of the agreements with Guatemala, Honduras and El Salvador.	Pending litigation, led by the American Civil Liberties Union, arguing that Guatemala does not meet the definition of a safe third country under US asylum law <sup>74</sup> .	



## A wall with another name: Migrant Protection Protocols



NRC -2018

The Migrant Protection Protocols (MPP), launched in December 2018 by the Department of Homeland Security, stipulate that asylum seekers arriving from Mexico must return to Mexico whilst waiting for their refugee status determination processes to be determined in the US. By October 2019, less than a year after the start of the policy, 51,500 people (including 18,503 minors) had already been returned to Mexico and were waiting near the US border<sup>75</sup>.

**Violence levels in the north of Mexico** are equal or higher than those in countries of origin: Reports show that criminal groups present have seen the increase in people waiting to cross the border as a new business opportunity<sup>79</sup>. According to several organisations working in the region, the levels of kidnapping and extortion have increased significantly. Increasingly common reports are being made of kidnappings of displaced persons, with family members in the US or NCA being contacted for ransoms of thousands of dollars. Displaced people are also vulnerable to sexual violence, trafficking and sexual slavery. Human Rights First has documented more than 340 violent crimes against returnees in Tamaulipas<sup>80</sup>.

### Protection risks and humanitarian needs:

**The lack of hostels in Mexico.** In Ciudad Juarez, 10'000 people have been returned since July 2019 under the MPP, and 5'500 people are still on the waiting list to cross the border under the 'metering' policy. However, estimations show that the 16 available shelters only have capacity for 1,280 people<sup>76</sup>. An informal camp has formed on the international bridge between Matamoros (Tamaulipas) and Brownsville (Texas), with unsanitary conditions and growing needs<sup>77</sup>.

**Lack of access to basic services and livelihoods:** In the June US-Mexico statement, Mexico committed to offer jobs, health services and education for returnees under the MPP. However, according to reports from Ciudad Juarez, Mexicali and Tijuana, there is little evidence that these commitments are being met. In July, a Honduran man who had been returned to Mexico died from hunger<sup>78</sup>.

*In June, a Honduran asylum seeker returned under the MPP was kidnapped by Mexican federal police officers, handed over to a gang that raped her and then extorted her family for \$ 5,000<sup>81</sup>.*

*In August, a pastor was kidnapped from his own shelter, after refusing to hand over Cuban migrants to a criminal group<sup>82</sup>. In December, a Salvadoran father was killed while awaiting the resolution of his asylum application<sup>83</sup>.*

**Lack of due process:** Customs and Border Protection authorities have reportedly received orders to 'not ask asylum seekers if they fear returning to Mexico', are not guaranteeing access to legal assistance, and in some cases, handcuff people whilst conducting interviews<sup>85</sup>. Furthermore, it is extremely difficult for asylum seekers to access legal assistance for their processes underway in the US, especially as they are unable to freely cross the border. There are reports of people unable to return to the US to attend their own hearings, for fear of leaving the shelters, crossing invisible borders between gang territories, being blocked by checkpoints and immigration officials<sup>86</sup>. In these cases where people are unable to attend their own hearings, judges make deportation orders in absentia<sup>87</sup>.

*In June, only 1.3% of MPP returnees had access to a lawyer<sup>88</sup>.*

**Family separations and returns of people with vulnerabilities:** including elderly people, pregnant women, LGBTI people, people with disabilities, and people with illnesses contracted in the custody of the CBP<sup>89</sup>. The CBP has been separating families, returning adults to Mexico and putting children in custody of the Office of Refugee Resettlement<sup>90</sup>.

*Among those returned to Mexico: a woman who was seven-months pregnant, a boy with a prosthetic eye and with ongoing medical needs, a girl with advanced cerebral palsy, a girl with a heart condition, a woman in a wheelchair with wounds suffered in Nicaragua<sup>91</sup>.*

*In one case, a girl collapsed in a camp run by the CBP, due to limited food and heavily chlorinated water. While she was in the hospital with her mother, her brother and father were returned to Mexico<sup>92</sup>.*

**Return and deportation from Mexico:** Reports show that Mexican authorities have been deporting MPP returnees with ongoing asylum claims yet to be resolved. IOM has opened a Voluntary Return Program for people withdrawing their asylum claims under the MPP process in Ciudad Juarez, Tijuana and Matamoros, and reported in November that they were opening operations in Mexicali, Nuevo Laredo, San Luis Río Colorado and Nogales. The main reasons given for deciding to return: the long wait for an appointment to request asylum in the US (32%), their asylum requests were denied (30%), family reunification (25%) and lack of money to stay in Mexico (5%)<sup>93</sup>.

## HOMICIDE RATES IN NORTHERN MEXICO

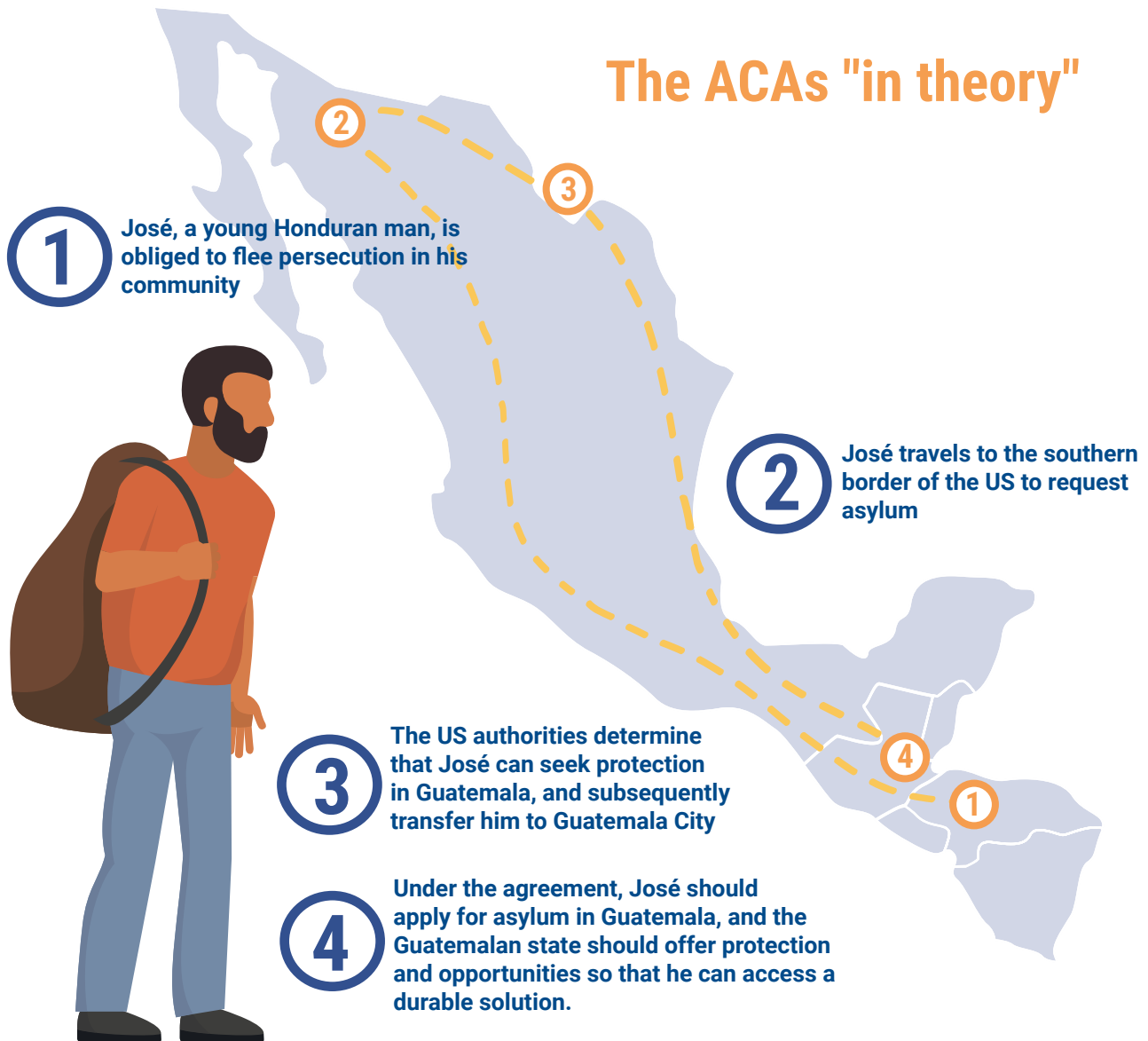
2018 Igarape Homicide Monitor



# 3 The Asylum Cooperative Agreements: Applicable, legal, safe and efficient?

Between May and September 2019, several types of agreements were signed between the US and the three NCA States, including on border security, the exchange of biometric data, and visas for agricultural workers<sup>94</sup>. The **Asylum Cooperative Agreements (ACAs)**, otherwise known as "Safe Third Country agreements", were signed with Guatemala on July 26, 2019<sup>95</sup>, with El Salvador on September 20, 2019, and with Honduras on September 25, 2019. According to the US Department of Homeland Security, these agreements "will allow migrants to seek protection within the region by facilitating cooperation between the U.S. and host nation governments or international organizations to expand their systems for offering humanitarian protections"<sup>96</sup>.

In general, Safe Third Country agreements are bilateral agreements establishing a responsibility sharing mechanism for asylum seekers. These agreements formalise the transfer of asylum seekers from a State receiving asylum seekers to a third State to process their applications and offer protection. This third State is must not be the country of origin of the asylum seekers and must be considered safe.



## A. The current status of the agreements

### The preparation

On November 19, 2019, the Interim Final Rule was adopted to allow the Department of Homeland Security to begin the implementation of current and future ACAs<sup>97</sup>. This rule authorises the transfer of asylum seekers arriving at the southern border of the US to Honduras, El Salvador or Guatemala, provided that the persons transferred are not nationals of the country that will receive them<sup>98</sup>.

Honduran and Salvadoran adults are to be processed in 72 hours, according to notes taken by CBP officers in a training session on the implementation of the agreement<sup>99</sup>. The Interim Final Rule stipulates the conditions that will be applied in order to deny access to the US asylum system and transfer the person to a third state:

- That there is an ACA agreement with a country that corresponds to a third country with respect to the applicant
- The applicant's life or freedom would not be threatened in the third country on account of race, religion, nationality, membership in a particular social group, or political opinion
- That the third country provides a complete and fair procedure to determine an asylum application or equivalent temporary protection<sup>100</sup>

The Interim Final Rule mentions that the current ACAs have been contingent on the signing countries exchanging diplomatic notes certifying that each country has put in place the legal framework necessary to operationalise the agreement<sup>101</sup>. The US Attorney General and the Secretary of National Security must determine that partner States under the ACAs have "complete and fair" asylum processes. However, there is little public information available on how these asylum processes are evaluated and monitored<sup>102</sup>. Under the US Refugee Act of 1980, these types of agreements are not considered treaties, so they can be made without the approval of Congress<sup>103</sup>, and they are not subject to judicial review, so any lawsuit opposing the new rule could face significant obstacles<sup>104</sup>.

Several experts in immigration and refugee law argue that the most challenging part of the implementation of these agreements could be the necessary bilateral cooperation and acceptance within the signing countries<sup>105</sup>. In Guatemala, before the signing of the agreement, the Constitutional Court granted three *amparos* blocking the president from signing the agreement before passing it through Congress. Although these protections were revoked in September, the future of the implementation of the agreement is unknown, since the new president, taking oath in January, has previously declared that he will not comply with the arrangement<sup>106</sup>.



NRC, México, 2019

### First steps

At the end of November 2019, the first asylum seeker transferred under the ACA arrived in Guatemala: a Honduran man, who was deported along with other Guatemalans<sup>107</sup>. According to his testimony, he was obliged to sign his deportation order, and was only informed as to where he was going when boarding the plane<sup>108</sup>. This is explicitly contrary to the Interim Final Rule, which stipulates that people transferred under the ACA must have the opportunity to express if they fear persecution in the safe third country (implying that people must be informed as to where they will be transferred to). Once in Guatemala, the Honduran man was given legal documentation to remain only for three days. He decided not to apply for asylum, opting for assisted transfer under the IOM programme<sup>109</sup>. By the end of December, 44 people had been sent to Guatemala, and only two requested asylum<sup>110</sup>. However, organisations working in the reception of deportees in Guatemala agree that many of these 44 people could have had international protection needs, but decided to return to their countries of origin, because they considered that: Guatemala was too close to their country of origin; their agent of persecution could track them down; there was too much violence or insecurity in Guatemala; or there were no job opportunities. This raises the issue of *'chain refoulement'*: if protection cannot be found in the safe third country, people could be forced to return to their countries of origin.



According to a Department of Homeland Security internal document obtained by the press, a few days before the first transfers, the US authorities were not clear about who in Guatemala was going to provide shelters, food, transportation and other services<sup>111</sup>. In practice, orientation and shelter services is being provided entirely by civil society organisations and UN agencies: the Refugio de la Niñez provides legal assistance and guidance, Casa del Migrante provides shelter, food and health care. UNHCR and its counterparts respond to basic humanitarian needs. Assisted return is facilitated by IOM<sup>112</sup>.

## **B. International obligations**

UNHCR provides guidance for States on these types of agreements, not prohibiting their application in principle, but highlighting the necessary conditions to ensure the consistency of the agreements with refugee law and with protection in general. UNHCR states that *"in line with general state practice and international law, ensuring refugee protection and access to human rights for individual refugees is the responsibility of the state where the refugees are, or which otherwise has jurisdiction over them"*<sup>113</sup>, and that the spirit of the transfers corresponds to *"enhancing burden- and responsibility-sharing and international/regional cooperation, and not be burden shifting. Transfers to third countries need to contribute to the enhancement of the overall protection space in the transferring state, the receiving state and/or the region as a whole"*<sup>114</sup>. Thus, safe third country agreements are not, in principle, against international refugee law but *"the legality and/or appropriateness of any such arrangement need to be assessed on a case-by-case basis, subject to its particular modalities and legal provisions."*<sup>115</sup>.

UNHCR states that individual assessments on the availability of certain objective standards of protection in the third State are essential. Such examinations must contemplate the specificities of each case (therefore not standard, nor collective), and must guarantee certain procedural guarantees, such as the right to appeal<sup>116</sup>. Before each transfer, individual assessments must ensure that the third State will<sup>117</sup>:

- (re) admit the person,
- grant the person access to a fair and efficient procedure for determination of refugee status and other international protection needs,
- permit the person to remain while the determination is made accord the person standards of treatment commensurate the 1951 Convention and with international human rights standards, including, but not limited to, protection from refoulement,
- Where she or he is determined to be a refugee, s/he should be recognised as such and be granted lawful stay.

Therefore, the third country receiving transfers of people must provide certain basic protection conditions. To this end, the State must, at a minimum, adhere to the basic Human Rights instruments, the Convention Relating to the Status of Refugees of 1951, and

the 1967 Protocol relating to the Status of Refugees. These include basic rights such as *non-refoulement*, the right to remain in a State until a final negative decision has been made on the person's asylum application, as well as access to means of subsistence sufficient to maintain an adequate standard of living<sup>118</sup>.

In the absence of safeguarding mechanisms and taking into account the capacities of asylum systems in the region, UNHCR has expressed concern about the recent ACA agreements. In statement in November, the agency commented that *"It is an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers"*<sup>119</sup>.

## **C. Lessons learned from similar agreements**

The concept of a safe third country has been developed and consolidated through the signing of several agreements:

- The Dublin Regulation (based on the Dublin Convention in 1990, revised in 2003 and 2014<sup>120</sup>, now under revision<sup>121</sup>), stipulating that asylum seekers must submit their applications in the first European Union (EU) country that they enter, or run the risk of being returned<sup>122</sup>
- The Safe Third Country Agreement between the United States and Canada, signed in 2002, stipulating that applicants arriving at the US-Canada border are required to apply for asylum in the first country of arrival<sup>123</sup>
- Norway unilaterally declared that Russia was a safe third country in 2015<sup>124</sup>
- In 2016, The EU negotiated an agreement with Turkey, allowing for the return back to Turkey of asylum seekers arriving in Greece, despite serious concerns about whether the country could be considered as a safe third country<sup>125</sup>.

## **The lack of minimum standards of protection**

The Interim Final Rule published in November (allowing for the implementation of the ACAs) refers to the Dublin Regulation as an example of good practice of shared responsibility<sup>126</sup>. In contrast, UNHCR has expressed concern over the years about the consistency between the Dublin Regulation and international refugee law, as well as the lack of minimum standards of protection<sup>127</sup>. On the agreement between the US and Canada, the Canadian Minister of Immigration, Refugees and Citizenship said in March 2019 that the agreement had not work as planned, and that the number of irregular entries to the country had increased<sup>128</sup>. In 2011, the Inter-American Commission on Human Rights decided in a case against Canada that: *"Under Article XXVII of the American Declaration, however, every Member State has the obligation to ensure that every refugee claimant has the right to seek asylum in foreign territory, whether it be in its own territory or a third country to which the Member State removes the refugee claimant. (...) To ensure that a refugee claimant's right to seek*



asylum under Article XXVII is preserved, before removing a refugee claimant to a third country, the Member State must conduct an individualized assessment of a refugee claimant's case, taking into account all the known facts of the claim in light of the third country's refugee laws. If there is any doubt as to the refugee claimant's ability to seek asylum in the third country, then the Member State may not remove the refugee claimant to that third country"<sup>129</sup>.

## Implementation challenges and risks

Analysis published by the Migration Policy Institute shows that: very few people have actually been transferred under the aforementioned agreements<sup>130</sup>; there have been multiple challenges in implementation and compliance; and in general they have increased burdens on asylum systems. In Greece, for example, cases processed under the EU-Turkey agreement have had a high number of appeals, overloading the asylum system and delaying transfers. In addition, the agreement did not have the intended deterrence effect. In fact it was the measures implemented to block people travelling in the first place which reduced the numbers of migrants arriving in Europe<sup>131</sup>; yet these policies in turn restrict rights and leave people without alternatives, pushing them to more dangerous and irregular routes. Indeed, third country agreements, like other externalisation measures, create new risks and unexpected consequences. In Europe, during the implementation of the Dublin Regulation, people trafficking networks were strengthened and applicants were forced to take desperate measures to access asylum, such as destroying their identity documents and fingertips in an attempt to get rid of any evidence about their route or first country of entrance in to the EU<sup>132</sup>. According to a recent interview with Mercy Corps in Guatemala: *"There's many different and completely opposed opinions and rumors about [the agreement], and that's making communities and municipalities very nervous. We hear that it's producing the exact opposite reaction as what the U.S. government is trying to achieve. Since the window of opportunity is closing, people are in a rush to flee"*<sup>133</sup>.

## Shared responsibility

All of these agreements have been criticised by refugee protection organisations for their lack of consistency with international refugee law. In addition, the context in which these ACA agreements have been signed must also be considered. Over the last three years, two simultaneous processes have developed in parallel: the new ACAs agreements and strengthened externalisation efforts in Central America; and, on the other hand, the New York Declaration, the Global Compact on Refugees, and in the same region, the Comprehensive Regional Framework for Protection and Solutions.



### New York Declaration:

*"Underlining the importance of a comprehensive approach to the issues involved, we will ensure a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in our countries, and particularly those in large movements, whether refugees or migrants. We will also ensure full respect and protection for their human rights and fundamental freedoms."*<sup>134</sup>

## D. Practical implications

### Capacities of the ACA receiving countries to provide protection

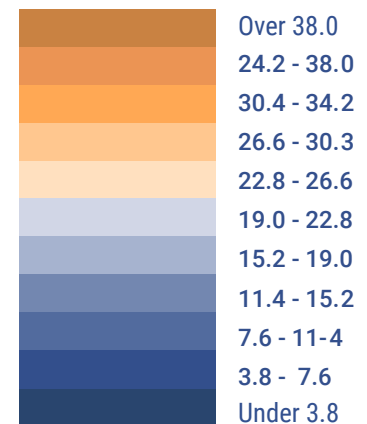
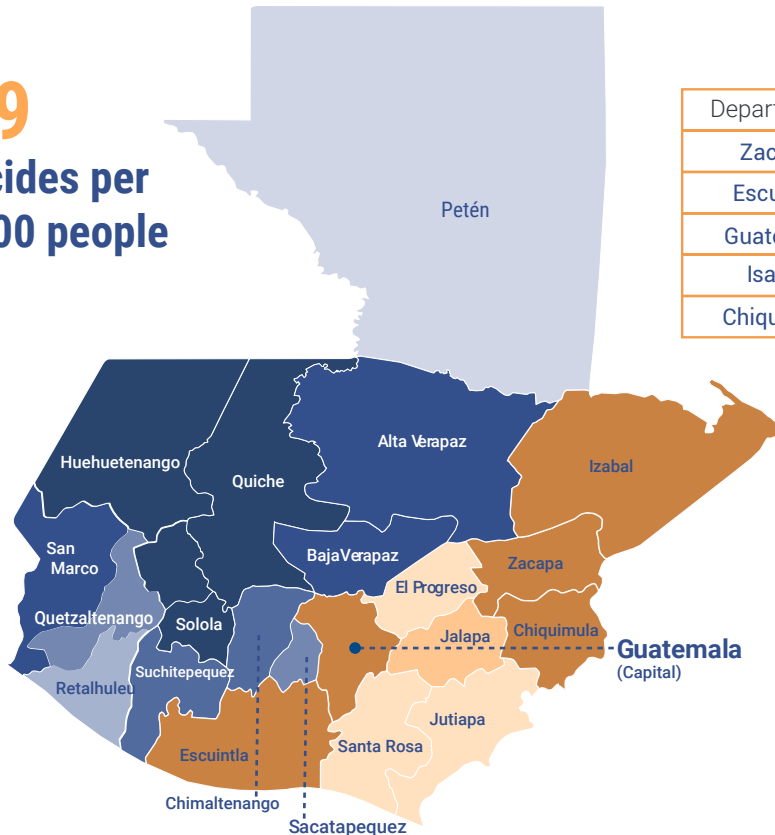
Guatemala is a signatory of the 1951 Convention Relating to the Status of Refugees, and has a national law recognising refugees, as well as a procedure to receive and process asylum applications. However, in practice, there are serious concerns about the country's ability to provide complete and fair asylum procedures. Guatemala has granted refugee status to seven applicants in 2019<sup>135</sup>. According to media reports, the entity responsible for processing asylum applications only has four employees and received a total of 257 asylum applications in 2018<sup>136</sup>. A vocational training programme, established by UNHCR and the government, offered services to eight refugees in 2018<sup>137</sup>. For its part, Honduras received 80 applications in 2018, and is also significantly delayed in processing requests. In El Salvador, local press reported that there is only one asylum officer in the Commission for the Determination of Refugee Status (CODER) processing cases, and according to UNHCR, 30 people applied for asylum in 2018 and 18 requests are still being processed<sup>138</sup>.

Given the high levels of violence (highlighted in the update section on the third page of this and previous snapshots), as well as the numbers of people fleeing Honduras, El Salvador and Guatemala, it is difficult to conceive that any of the three countries could be considered 'safe' countries for accepting and protecting asylum seekers. Displaced people risk exploitation, abuse and discrimination, and all in a context of impunity. In particular, certain vulnerable groups (such as LGBTI asylum seekers) are at greater risk. According to an organisation interviewed for this snapshot, large groups of foreigners in vulnerable situations could attract attention from gangs and drug traffickers. It is unlikely that transferred people will find adequate protection in Guatemala, Honduras or El Salvador, even if they are legally granted asylum. This precarious protection situation raises serious issues related to *non-refoulement*.

## HOMICIDE RATES IN GUATEMALA

October 2018 - October 2019, Diálogos, Informe sobre la violencia homicida en Guatemala

**20.9**  
Homicides per  
100,000 people



### Reception and integration capacity

In addition to capacities related to both asylum applications and protection, there is little information on plans to ensure accommodation, integration, access to livelihoods, employment and basic services for people transferred to the NCA. In a press interview, the project coordinator of FUNDAESPRO, a civil society working with women in marginalised urban areas in Guatemala, said that she was *“concerned about the stress an additional influx of people would place on the Guatemalan education and health systems. She said the country’s test scores in math and language are lower than its regional neighbors, and hospitals don’t have proper supplies and only function during limited hours.”*<sup>139</sup>.

According to the organisations interviewed for this snapshot, there are multiple challenges for the successful implementation of the agreements, in particular: the lack of economic capacity and political will to provide services, including education, labour opportunities and basic needs for applicants, currently insufficient for the needs of the current vulnerable local population; the lack of training for migration agents to ensure that migration processes comply with international human rights standards; and increasing trends of discrimination against migrants.



## The current reception of national deportees

A situation involving the transfer of thousands of people under the ACAs to the NCA could put additional pressure on the current national reception capacities for deportees. The current reception for national deportees is as follows:

### In Guatemala

The General Directorate of Migration and the Ministry of Foreign Affairs are responsible for receiving deportees. Deportations by land arrive at the department of San Marcos, where the General Directorate of Migration records information of people entering, but does not carry out procedures to identify protection needs or referrals to government assistance programmes for returnees. In the case of deportations by area, deportees are received at the premises of the Guatemalan Air Force, where the *"Dignified Reception of Deported Guatemalans Programme"* is coordinated. Only unaccompanied children are assessed for protection needs, and are then delivered to their caregivers; when it comes to adults, identification of needs depends on the civil society organisations that have access to the Air Force facilities<sup>140</sup>. Guatemalan organisations interviewed for this snapshot concur that there are few services offered for deportees. They also highlight that there is no monitoring and / or accompaniment done by the State to ensure the successful reintegration of people in their communities. Civil society and church organisations attempt to fill the gaps in the response, and provide services such as accommodation and legal services. According to a local LGBTI rights organization, although there are programmes for families and children, inclusive programmes, especially for LGBTI people, are few and far between.

### In El Salvador

According to the organisations interviewed, with the help of UN agencies and humanitarian actors, El Salvador has made positive changes in the reception of deportees, especially by improving the coordination between government entities in reception centres. The Attention Centre for Returnees is located in San Salvador and is managed by the Directorate of Migrant Assistance (DAMI) under the General Directorate of Migration and Foreigners, and provides physical and mental health services, legal and food assistance. The organisations interviewed consider these services to be positive, and highlight that the *"El Salvador is Your Home"* programme, working on reintegration for deportees in several municipalities, is a good practice to be replicated. El Salvador has one of the most comprehensive systems for receiving families in the region, as the DAMI refers families to several existing government services. For children, both

accompanied and unaccompanied, the Centre for the Attention of Returned Children, Children and Adolescents (CANAF) of the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA) provides monitoring back to their places of origin. Several civil society organisations support the process of integration of returnees with a range of services.

### In Honduras

In Honduras, the Ministry of Foreign Affairs is responsible for receiving deportees, but it has outsourced assistance to institutions such as the Honduran Red Cross and the Pastoral de Movilidad Humana. The reception is carried out in the Attention Centres for Returned Migrants (CAMR) in San Pedro Sula and Omoa. The Belén Centre, managed by the Directorate for Children, Adolescents and Family, receives unaccompanied minors and families. For unaccompanied minors, a care protocol is implemented, including physical and mental health checks, accommodation (with the capacity to shelter 45), food and family contact. In the CAMRs, the State carries out the migratory processes and offers a brief advisory service on available training programmes, transportation, reactivation into the school system as well as provides a hygiene kit. Other non-governmental organisations offer psychological services, identification of protection needs and referrals to relevant services, legal assistance, food, reestablishment of family contact and accommodation. At the departmental level, the Ministry of Foreign Affairs has opened several Municipal Assistant Units for Returned Migrants (UMAR), with the aim of improving access to services for deportees; however, this initiative is currently underfunded and understaffed.

Organisations in both Honduras and El Salvador agree that although immediate attention is satisfactory, weaknesses in terms of the integration of deportees and follow-up outside the reception centres persist. Especially due to the lack of access to livelihood opportunities and protection, a high percentage of deported people are obliged to set out again on the migration route.

## Capacities of the humanitarian sector

Although civil society organisations in the region and in the US are the first responders to the humanitarian needs of displaced people and deportees, they report not having been consulted on the implementation plans and implications of the agreements<sup>141</sup>. According to interviews for this snapshot with 21 organisations working with displaced people in the NCA, more than half expressed confusion about the content of these agreements and their legal and practical implications. Although United Nations agencies report receiving general information and internal analysis about the agreements, non-governmental organisations have mostly been receiving information from press reports and social media.

According to press reports, the US government released \$47 million for UNHCR and IOM in order to support the strengthening of asylum systems, the construction of shelters,<sup>142</sup> and assisted returns<sup>143</sup>. Although governments have communicated that UN agencies will be implementing the agreements, UNHCR has repeatedly clarified that it is not part of these bilateral agreements and that the funds they receive from donors such as the US are for the implementation of the Comprehensive Regional Protection and Solutions Framework (MIRPS), and not for the bilateral agreements<sup>144</sup>. UNHCR and several organisations interviewed highlight the need to advocate for governments to comply with the fundamental principles of international law, and to provide the necessary information on asylum procedures and international protection. Several organisations mention that any assistance provided to the needs created by externalisation measures must be based on the humanitarian principles.

The organisations interviewed highlight the lack of capacity of the agencies and NGOs working on migration and displacement: *"we are nowhere near ready to respond to the impacts of these agreements"*. There is no pre-positioning for mass or long-term humanitarian assistance, and few organisations have a focus on migration, shelter, asylum or humanitarian assistance in the context of violence. Organisations working on the issue highlight the need for more funding to respond to the situation properly. It is clear to these organisations that, without guarantees of dignity, security and comprehensive assistance, the implementation of these agreements and the increase in externalisation measures in Central America will gravely increase humanitarian needs.





# 4 Recommendations



## For the States of the North of Central America:

- Respect the principle of non-refoulement.
- Ensure that persons transferred under the ACAs are informed on their right to seek asylum.
- Refrain from implementing the agreements before ensuring that they comply with minimum standards and human rights, including the access to functional and efficient asylum systems, as well as comprehensive humanitarian assistance.
- Design plans for reintegrating national deportees and integrating people transferred under the ACAs, without leaving the responsibility to civil society actors.
- Strengthen child protection systems, alternative modes of care for children and families, and ensure adequate processes for determining the best interests of children.
- Ensure openness and coordination with the humanitarian organisations working on the response.



## For the humanitarian sector:

- Coordinate greater advocacy efforts to oppose externalisation measures in the region and uphold the rights of migrants and displaced people.
- Ensure that any assistance provided to the needs created by externalisation measures is based on the humanitarian principles.
- Strengthen the contingency plans for the potential humanitarian impacts of the ACAs in 2020.
- Develop red lines on the use of funds from the United States for assisting deportees and working in migration control.

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