

## An Analysis of the Zero Tolerance Immigration Policy of the United States vis-à-vis UN Conventions

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### ABSTRACT

The immigration issue was at the center-stage of Republican Candidate Donald Trump's Presidential campaign in 2016 US elections. From 2017, the Trump administration began rewriting the US immigration policy to deter immigration. On 7 May 2018, the administration imposed "Zero Tolerance" policy to prosecute all illegal immigrants, including people applying for asylum which led to the separation of families. The bleak logic behind the family separation policy was that separation will act as a deterrent for future immigration. In spite of massive deportations, detention and other harsh measures, USA failed to stem the flow of immigrants from the Central American countries-El Salvador, Guatemala and Honduras. The policy was revoked on 21 June 2018 following an intense backlash from all sides for the violation of human rights and the rights of the children. The research paper seeks to answer the question: Is Zero Tolerance policy adopted by the Trump administration in consonance with the UN Convention on the Rights of the Child and the UN Protocol Relating to the Status of Refugees? In the course of answering this question, the paper also addresses the debate around the identity of people entering the US as identifying them as refugees or immigrants will have different political implications in devising immigration policy. The paper also analyses the implications of the policy on the psychology and identity of the immigrant children.

**Keywords:** US immigration, refugee, rights, zero tolerance, identity

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The immigration issue was at the center-stage of Republican Candidate Donald Trump's Presidential campaign in 2016 United States (US) elections. From 2017, the Trump administration began rewriting the US Immigration policy to deter immigration. It banned nationals from eight countries, mostly Muslim countries, from entering the United States. It ended Temporary Protected Status for nationals of four countries and even attempted to end the Deferred Action for Childhood Arrivals Program. On 7 May 2018, the administration imposed "zero tolerance" policy to arrest all illegal immigrants at the border, including people applying for asylum. The policy led to the separation of children from their parents and families as the latter were referred

for prosecution. The Court documents released in June showed that the government had not put in place any mechanism to reunite children with their parents. The bleak logic behind the "zero tolerance" prosecution policy was that the resultant separation of families will act as a deterrent for future immigration. The policy was revoked on 21 June 2018 following an intense backlash, but the future of more than 2000 children remains in dark. What is unusual is that in spite of massive deportations, detention and harsh policies, the USA have failed to stem the flow of Central Americans from mainly El Salvador, Guatemala and Honduras.

*"Poverty was bearable but you can't live in fear".<sup>1</sup>*

<sup>1</sup>*Undocumented Migration from the Northern Triangle of Central America.*

It is not simply a US immigration crisis but a Central American refugee crisis which worsened after 2013 when tens of thousands, including unaccompanied minors, made their way to the US seeking asylum. Migration from these countries is motivated by fear rather than economic considerations. People are leaving their homelands to escape violence by gangs and drug cartels. According to the United Nations High Commission for Refugees (UNHCR), there has been a tenfold surge in the number of refugees and asylum seekers from the Northern Triangle of Central America (NTCA) since 2011. Historically, Central Americans migrated to the US in pursuit of living the “American Dream”. However, in recent times, the migration is motivated by fear and not economic reasons. The migrant population today, unlike earlier times, comprises of families, new-borne, children and pregnant women fleeing from violence perpetrated by organized criminal groups— gangs and transnational drug mafias. The composition of the migrant population is a testimony to the claim that most of the people entering the US from these countries are fleeing from fear of generalized violence in their home countries. Many scholars and human rights activists feel that the US has a special responsibility towards these immigrants as the crisis is partially a legacy of its intervention in these countries in the second half of the 20<sup>th</sup> century.

In the case of Guatemala, the US ousted the democratically elected government by deposing President Jacobo Árbenz in 1954 and installed a favorable military dictatorship under Carlos Castillo Armas. In the backdrop of the Cold War, Árbenz brought about land reforms in favor of landless peasants in 1951 which led the US to consider his government as Communist. The US was apprehensive that the spread of communism in Central American countries would seclude it from the rest of the region south and thus, instructed the Central Intelligence Agency (CIA) to provide support for military coup d'état. What followed was four decades of dictatorship and civil war

(2017, October 25). Retrieved September 24, 2018, from International Crisis Group: <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/undocumented-migration-northern-triangle-central-america>

during which the military government committed various crimes against humanity, for example, Silent Holocaust or Guatemalan genocide against Maya civilians. In case of El Salvador, the gangs and drug cartels responsible for generalized violence against civilians such as MS-13 first appeared in the US (Los Angeles, California) and then passed on to the Central American countries through its deportation policies. Most of these gang members were teenage immigrants who had fled civil war in their home country. Failure of the US government to rehabilitate these troubled teenagers led them on a criminal path.

While El Salvador and Guatemala were still recovering from the effects of civil war with their economy in ruins, the US hardened its immigration policy in 2000. As a result, numerous people were deported to these countries including convicts from the US prisons without information on their criminal histories. From the 2000s onwards, these gangs began establishing a stronghold in NTCA by recruiting people from local gangs, jails and from the impoverished sections of the society. With the rise in their power, crime across these countries increased and the police system began to crack down. From 2010 onwards, these gangs engaged in turf wars to expand their control which exacerbated the violence in the region. For instance, local street wars between MS-13 and Eighteenth Street Gang in Honduras and Guatemala. In addition, high demands in the US market keep up the drug trade in Honduras.

People in the Northern Triangle countries face extortion, informal curfews and forced recruitments, especially of teenagers at the hands of gangs and drug cartels, resisting which translates into their death. Between 2000-2010, around one and a half million people were killed in these countries in generalized violence making it the most violent region in the world i.e., not at war. According to a United Nations International Children's Emergency Fund (UNICEF) Report, El Salvador and Guatemala are ranked the highest in terms of homicide rates among children and adolescents.<sup>2</sup> According to a

<sup>2</sup>(2014). *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children*. UNICEF.

2015 UN survey, 85 per cent of Central American women immigrants said that they lived in a neighborhood controlled by gangs and 64 per cent of them had either faced direct attacks on herself or lost a close relative. El Salvador, Honduras and Guatemala are ranked high among the most dangerous countries in the world in spite of efforts made to contain violence.

To flee from violence in their home countries, most people board cargo trains, collectively known as *La Bestia* where they become easy prey for mass extortion, kidnapping, sexual assault, human trafficking, enforced disappearances, etc., at the hands of criminal groups who control these routes. In addition, they also risk facing amputation or even death as the trains don't have passenger trails. They also face the risk of getting arrested as police and migration agents invigilate the routes. Worse still, they do not report these crimes in the fear of deportation to their home countries and thus can't avail medical care if required. Families spend all their savings to send children and women through safer routes by bus or car, often with forged documents. Three beneficiaries can be identified — the criminal networks that move immigrants to the US and Mexico at exorbitant prices without guaranteeing them any safety (migrant smugglers or coyotes); the corrupt officials who demand increasing sums from immigrants to avoid detention and the governments of host countries which allow these dangers to persist in order to discourage immigration. According to Ramón Márquez, a shelter director, deportations have failed to discourage people from migrating and have rather forced them to take more dangerous and remote routes. In his opinion, stringent laws have made "migrants more vulnerable, more invisible, more trafficked".<sup>34</sup>

Earlier migrant smugglers, traditionally called *polleros*, who were trusted members of the local community, have come to be responsible for migrants' plight. Migrants are often kidnapped

or even prosecuted because of their inability to pay for the protection money. Many studies have suggested that two-thirds of the people trafficked are women. Whereas according to UNICEF, children and adolescents between twelve to seventeen are the most vulnerable. Women immigrants are often held as hostages, their passports are confiscated and forced into prostitution upon their inability to pay the coyotes or protection money. The risk has increased manifold with the entry of one of the major Mexican drug cartel-Los Zetas into the migrant protection racket. The Central American countries have taken special measures against human trafficking and protect people against generalized violence; however, there is a lack in terms of resources and staff which limits its reach.

The Trump administration, instead of trying to stabilize the countries in the region and protecting people fleeing from violence, is toughening the barriers which have worsened the situation of immigrants by empowering the criminal networks. Donald Trump calling most immigrants from Central America "animals, rapists and criminals" hints at his xenophobia and can be seen as an attempt to dehumanize the immigrants. The US is a signatory to the UN Protocol Relating to the Status of Refugees (1967) and the UN Convention on the Rights of the Child. However, the Trump administration's Zero Tolerance policy faced intense criticism from all sides for violation of human rights and the rights of children.

In this context, the research paper seeks to address the following questions— Is Zero Tolerance policy adopted by the Trump administration in consonance with the UN Convention on the Rights of the Child and the UN Protocol Relating to the Status of Refugees? What are the implications of such policies on the psychology and identity of immigrant children? The paper also seeks to address the ongoing debate— whether to regard these people fleeing from violence in their home countries as "illegal immigrants" or "refugees"? The question is integral in devising immigration policies as the terms have different symbolic meanings and different political implications.

<sup>3</sup>Marquez, R. (2016, May 10). *Shelter Director; La-72*

<sup>4</sup>*La-72 is a migrant shelter in the Southeast of Mexico named after the migrants murdered in the massacre of San Fernando in 2010 by the drug-cartel called Los Zetas*

## Immigrants or Refugees?

Although used interchangeably, the terms-refugees, asylum seekers and immigration have crucially different meanings. "An asylum seeker is someone who is also seeking international protection from dangers in his or her home country, but whose claim for refugee status hasn't been determined legally."<sup>5</sup> Seeking asylum is the first step in becoming a refugee and thus, it is important to note that the asylum plea might get rejected if the applicant fails to prove his or her well-founded fear of persecution. An immigrant is someone who chooses to leave his or her own country in pursuit of a better life and is free to return home whenever he or she wants. Whereas, a refugee is someone who is forced to flee from his or her country to escape war, violence or prosecution.

Recognizing a group of people as refugees is a way of legitimizing their appeal for safe shelter. Whereas, regarding them as immigrants mean that those people are arriving for economic reasons and perhaps even lying about their asylum claims. According to the UN Refugee Agency, "more than 294,000 asylum seekers and refugees from the NTCA were registered globally as of the end of 2017, an increase of 58 per cent from a year earlier. This is sixteen times more people than at the end of 2011." The fact that the asylum seekers' population comprises of more families, new-borne, children and pregnant women than young men is a testimony to the claim that they are fleeing persecution in their countries as they would not have made such risky journey to the US just for economic reasons. Thus, recognition of people entering the US from these countries as "illegal immigrants" is a very parochial approach of looking at the crisis and in doing so, they are dismissing the claims of asylum seekers. The main gap, however, lies in the definition and the five grounds laid down categorically by the UN.

A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.

<sup>5</sup>*Migrants, asylum seekers, refugees and immigrants: What's the difference?* (2018, June 22). Retrieved September 24, 2018, from International Rescue Committee: <https://www.rescue.org/article/migrants-asylum-seekers-refugees-and-immigrants-whats-difference>

These five grounds limit the scope of the application of the UN 1951 Convention and the Protocol Relating to the Status of Refugees as the people fleeing from generalized violence in their home country do not fit into any of these categories. Nonetheless, US immigration judges have interpreted the laws to grant asylum to immigrants, specially to women and children. Their asylum is justified on the ground of "membership in a particular social group" as the criminal gangs target them because they are women and children. Women, children and adolescents are more vulnerable to trafficking, forced recruitments as they are less suspected and in the case of women, forced into sexual relationships with the gang members. According to a recent analysis of WOLA, the decision of the case is influenced majorly by the location of the court and the judge. For instance, judges in New York grant asylum in more than 75 per cent of the cases, in contrast to judges in Atlanta where about 90 per cent of the pleas are rejected.

The debate becomes more complex due to apprehension that criminals and gang members may fake their asylum claims to get an easy entry into the States and eventually expand their control network. In reality, there is no data or study to demonstrate that a significant population of Central Americans entering the US has links with gangs or drug cartels and are using the immigration system to expand their control in the US. In contrast, according to the US Border Patrol Acting Chief, Carla Provost, "Of all the unaccompanied minors at the Southwest border since 2011, only 0.02 were suspected or confirmed to have ties to gangs in their home country. That's 56 minors out of 250,000."

The UNHCR has been very foresighted in analyzing the asylum seekers fear in terms of both subjective fear and objective fear during Refugee Status Determination. It includes analyzing the subjective fear of the individual based on his or her experiences vis-à-vis the situation in the seeker's home country to determine the person's eligibility to be a refugee. But any long-term solution to the problem will include redefining the eligibility grounds for claiming refugee status and working to stabilize the situation in these countries by rooting out gangs and drug cartels. Many regional refugee conventions



such as Africa's 1969 OAU Convention and Latin America's 1984 Cartagena Declaration of Refugees broadened the definition of refugee to recognize people fleeing generalized violence as refugees.

### **Zero Tolerance policy vis-à-vis US Refugee Act and UN Conventions**

"Give me your tired, your poor, your huddled masses yearning to breathe free"<sup>6</sup>

On 7 May 2018, the Trump administration imposed "zero tolerance" policy to prosecute all illegal immigrant referrals from the Department of Homeland Security, including people applying for asylum. The country which until recently rendered refuge to more people than the rest of countries, has drastically reduced the maximum number of refugees it will admit by setting the ceiling at 45,000 persons for 2018. Moreover, the imposition of strict vetting procedures has lengthened the waiting duration which has increased the burden on the state institutions and exposed asylum seekers in dangerous situations for protracted periods. Recently, there has been a lot of hues and cry against the policy as it not only led to the separation of thousands of children from their parents but also because it 'criminalized' the asylum process. In this segment, an attempt is made to analyze if and how the "zero tolerance" policy in dissonance with the US Refugee Act of 1980, UN policies concerning the status of Refugees and the UN Convention on the Rights of the Child.

The US asylum system is governed by the UN Protocol Relating to the Status of Refugees and the 1980 Refugee Act which established the right to seek asylum in the US. The Refugee Act vested power in the hands of US Attorney General to make provisions to extend support and asylum to more refugees and expand the reach of humanitarian parole. The law reads that it is the historic policy of the US to provide humanitarian assistance to persons fleeing prosecution in their home countries and also encourages other nations to extend

resettlement opportunities to these persons to the best extent possible. The Act aimed to provide for a permanent and systematic procedure for admission, resettlement and absorption of the refugees in the US society. Instead of facilitating absorption of the immigrant population in the society, Trump administration has time and again targeted non-criminal immigrants to uproot their familial and business ties in the US. According to Human Rights Watch analysis, the arrest of people with no criminal record has shot up under Trump tremendously with almost triple the number of arrests in the first seven months of 2017 than the total arrests in the same period in 2016. For instance, the Immigration and Customs Enforcement (ICE) raid in April 2018 which led to the arrest of 97 workers in the largest workplace in rural Tennessee. The incident instilled fear among the immigrant population who grew apprehensive to go to work or send their children to school.

Regarding the assistance for refugee children, it authorizes the Director to provide for educational services including English language training in the elementary and secondary schools, make suitable provisions for children welfare such as foster care, healthcare, etc. In recent, some reports suggested that the Trump administration rebuffed Dilley Independent School District and other schools in Texas from educating the children that the Trump administration separated from their parents at Dilley South Texas Residential Centre. The administration is being blamed for forcing detained migrant children to opt for this online for profit charter school which is known to have delivered poor results. This is a clear intimation that the provisions of the act and taxpayers' money are being misused for profiteering.

"Seeking asylum is not a crime, and neither is entering a country irregularly."<sup>7</sup>

The "Zero Tolerance" policy called for criminal prosecution of adults, including asylum seekers entering the US illegally and in recent, the administration also issued a directive instructing

<sup>6</sup>This is a line from the poem "The New Colossus" composed by Emma Lazarus. The poem is inscribed on the pedestal of the Statue of Liberty and symbolizes the US as a country which has a place for everyone and has the capacity to transform lives.

<sup>7</sup>Zeid. (2015, September 15). Display News. Retrieved September 24, 2018, from United Nations Human Rights Office of The High Commissioner: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449>

the immigration officials to not regard a State's failure to safeguard its people against generalized violence as a legitimate ground for granting asylum. In this regard, UNHCR's document-" Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention" becomes important as the above mentioned clauses of the "zero tolerance" policy are antithetical to guidelines prescribed in this document. The document, in its first guideline, provides that every person fleeing persecution, human rights violations and other serious threats in his or her home country has the right to seek asylum in other countries and it must be respected. The 1951 Convention provides that asylum-seekers shall not be punished for their illegal entry or stay if they present themselves to the authorities and give a valid reason for their actions. However, the document also takes into consideration that asylum-seekers may have legitimate reasons for illegal entry or stay, for instance, people may be unable to apply for asylum as they lack proper identity documentation. The need then arises to assess if the undocumented migrant has a plausible explanation for the absence of documents, for instance, maybe he or she was unable to get a hold of documents due to the urgency of their departure.

The UN Special Rapporteur on the Human Rights of Migrants and the UN Committee on the Elimination of Racial Discrimination stated that criminal prosecution of immigrants is incompatible with the human rights and thus, suggested the US to treat it as a civil matter. The US is also a party to the Convention Against Torture under which it is obligated not to return an individual fleeing persecution to a State where they run the risk of being subjected to torture or losing their life under Article 16. While these International laws give considerable autonomy to the States in framing their immigration policies, it also mandates that they frame laws in consonance with migrants' human rights and protect asylum seekers from criminal prosecution-which the Trump administration is transgressing.

While the US law allows the asylum seekers to stay in the US until their plea for protection

is being determined legally, the government has argued that it has the right to detain them. Jurisprudence in this matter has been very irregular as many courts have rejected this interpretation. Challenges to the practice of detention of asylum applicants have come from many directions, often through class-action suits which record cases of prolonged detention of asylum seekers waiting for adjudication of their cases. The UN guideline on Detention provides protection against the arbitrary and prolonged detention of asylum seekers even though it allows detention for three purposes i.e. to maintain public order, public health or national security.<sup>8</sup> It lists out purposes that do not justify detention such as detention to serve as a deterrent to seeking asylum or penalty for illegal entry and maintains that detention should be done only on an individual basis. Once again, the detention of Central Americans entering the US can be deemed unjust as it is sought to penalize these immigrants for crossing the border illegally. It is also speculated that the administration is using the tactic of family separation to act as a deterrent to avoid future immigration. It becomes clearer from Attorney General Jeff Sessions' statement to law-enforcement officials in Arizona— "If you are smuggling a child, then we will prosecute you, and that child will be separated from you as required by law. If you don't like that, then don't smuggle children over our border." It also mandates that the detention should not be punitive in nature-detainees should not be held in prison, families should be accommodated together whenever possible, asylum seekers should be able to make regular contact to relatives, etc., none of which is being followed in entirety. On 20 June 2018, President Trump signed the Executive Order ending provisions that led to the separation of families as it directed that children and parents are to be detained together.

The 1951 UN Refugee Convention and Protocol Relating to the Status of Refugees is based on five main principles which also includes the 'Principle of unity of the family'. The US ratified the Protocol in 1968 and thereby, conceded to the majority of principles and obligations set out in

<sup>8</sup>Agency, T. U. (2012). *Detention Guidelines*.

the 1951 Convention. Since family is considered to be the most natural and fundamental unit of the society, the States are obligated to protect it. On the basis of this recognition, UN Convention sets out that the government must take necessary steps to ensure protection and unity of the refugee's family, especially when the head of the family has fulfilled the necessary conditions to seek asylum in a particular country. A spill over implication of criminal prosecution of the adults entering the US illegally to seek asylum was the separation of families as the children couldn't accompany their parents to federal jails where the latter were referred for prosecution. In some cases, immigrant families were separated even when they followed the US law and presented themselves at the ports of entry for seeking asylum on the grounds such as the adults did not enough evidence that they were child's legal parent or guardian and were worried about the safety of the child. In the ACLU lawsuit, the judge made it clear that the policy leading to family separation is unconstitutional; violating family integrity which, some courts regard is implicit in the Fifth Amendment's guarantee of "liberty".

The US signed the UN Convention on the Rights of the Child (UNCRC) on 16 February 1995 but it didn't ratify it and thus, it is not legally bound to fulfil its obligations. UNCRC is premised on four main principles which help in interpretation and realization of all the rights. One of the most important principles is laid down in the Article 3 which states that any decision concerning children should be taken to further the best interests of the child. The UN spokesperson Ravina Shamdasani said, "Detention is never in the best interests of the child and always constitutes a child rights violation," as she stressed that the US needs to "adopt noncustodial alternatives that allow children to remain with their families." Detention and separation from parents worsen the plight of the children as it damages their mental and physical health. Thus, the "zero tolerance" policy was a violation of Article 19 of UNCRC which imparts that the child has the "right to be protected from being hurt and mistreated in body or mind".

In a voice clipping obtained by ProPublica from

inside a US Customs and Border Protection facility, a six-year-old Salvadoran girl Alison Jimena Valencia Madrid was heard crying for she had not spoken to her mother for days after separation and the authorities had warned her that her mother could be deported without her. Article 9 provides that a child should not be separated from his or her parents against their will and if they have already been separated, the child has the right to maintain relations and direct contact with parents on a regular basis-both of which were violated here. The policy also violated provisions of Article 22 of UNCRC which sets out that child-refugees have the right to special protection and that the host country is obligated to help the child trace his or her parents or family members with the aim of reunification by separating them from their parents in the first place.

Article 37 provides that no child should be deprived of his or her liberty and the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest period of time. Even though the Trump administration revoked the separate detention of children and parents, it is trying to bring in a new regulation which would supersede the Flores Settlement according to which minors could be detained for not more than 20 days, to allow detention of immigrant families as long as it deems necessary. Upon being separated from parents, children are identified by the US government as "unaccompanied alien children" which refers to a category that describes people under 18-years who came to the US unaccompanied. This is a major jolt to their identity as they are disassociated with their parents and thus violates Article 8 of UNCRC which gives the children right to an identity in respect his or her nationality and family ties. It becomes more problematic when it comes to reunification with the family as they are categorised with children without any parent or guardian.

From the examples stated above, it is explicit that the "Zero Tolerance" policy is not only antithetical to the UN Conventions concerning the status of refugees and UN Convention on the Rights of the Child but also to the 1980 US Refugee Act that governs the US immigration policy. Howsoever, the

US cannot be held for non-compliance to of the UN Conventions concerning refugees as the definition of the refugees under 1951 Convention doesn't extend to protect people fleeing from generalised violence in their country. Similarly, since it has not ratified the UN Convention on the Rights of the Child, it cannot be charged for violating the provisions of the treaty. But the rights of people entering the US to flee generalised violence in their country can be protected by an expansive reading of provisions of the treaties that it has ratified such as the UN Convention Against Torture. Impact of the Zero Tolerance Policy on Children

According to the Department of Homeland Security, 2,342 children were forcibly separated from their parents since early May this year after crossing the Southern US border as part of "zero tolerance" policy. Texas Civil Rights Project spoke to detained adults where the parents reported that they were separated from their parents on false pretenses, such as the child is being taken for a bath. They were not given any information about where their children would go. The testimonies of separated families are heart-breaking. A Honduran woman told authorities that her daughter was pulled from her while she was breastfeeding her. A Honduran man took his life in a Texas jail after being separated from his wife and 3-year-old son.

While the Trump administration's Zero Tolerance policy was being condemned from all the people of different and opposing political view, ProPublica released a voice clipping from inside a US Customs and Border Protection facility. The recording captured the plight of children where children as young as 4-years-old were crying for Mami and Papá as if these were the only two words they knew. Ginger Thompson, a ProPublica reporter was told by the aunt of 6-years-old Salvadoran girl that her niece told her, "Please aunty, please, I will behave myself just come and get me out of here."<sup>9</sup> Imagine the anguish of a 6-year-old child that she is promising to give up on her enjoyment so that her aunt takes her home and she can meet her

mother if possible. Undoubtedly, "Zero tolerance" policy has had adverse economic and psychological impacts on the children and their parents. Beefed-up border controls have exposed children and other vulnerable people fleeing violence to trafficking and other dangers. These children entering the US with their parents fleeing violence experience a series of traumatic events-violence in their home country, exploitation and fatigue during their journey, etc. When upon reaching the US, they are separated from their parents forcibly, without being informed or allowed to contact them, it adds to their traumatic experience resulting into prolonged trauma or toxic stress. It affects the architecture of their brain as it is not fully developed which has detrimental impact on learning and behavioural patterns on a long term. There have been cases where the children detainees placed in shelter facilities have been abused or indulged in acts of self-harm. Children who witness their parent's arrests are more likely to endure long-term mental and behavioural disorders such as-depression, post-traumatic stress disorder, prone to substance use, etc. It could also spur a mental health condition if a child is genetically prone to the disease. Incarceration of parents leaves a significant jolt on the family unit as parent's ability to rear their children is compromised. It also leads to decline in mental well-being of the parents which impedes their ability to provide emotional support and guidance for their children. When one parent is deported, the remaining spouse or partner also suffers from depression which affects their ability to support and raise the child.

Still worse, when children are kept in detention, they are deprived of the environment and opportunities integral for their normal development. The children after being separated from their parents are transferred to the Office of Refugee Resettlement, a part of the Department of Health and Human Services which shelters children at child immigrant shelters, tent camps or house them with their family members, foster parents or sponsors. The ORR is responsible for tracing and screening the nearest relative of the child to whom the child can be handed over. However, the Trump administration is using these children to identify and, in some

<sup>9</sup>Chakraborty, R. (2018, June 20). *The voices of children separated at the border*. Retrieved September 29, 2018, from VOX: <https://www.vox.com/2018/6/20/17482476/children-separated-at-border-audio>



cases, arrest the unauthorized immigrant relatives who agree to serve as “sponsors” and take up the child’s responsibility. An Immigration and Customs Enforcement official told the Senate committee that the ICE had arrested 41 unauthorized immigrants in the same way. Resultantly, lesser relatives are coming forward to take the responsibility of the children as it might result into their arrest too. They face a jolt on their identity as fleeing from violence in their country, they leave behind their language, community, etc., and separation from parents leads to disassociation from their family identity. The more time they come to spend in these shelters, the more they come to absorb their identity as asylum seekers- the other or mere numbers, rather than normal children.

In most of the cases, most asylum seekers are able to pass the “credible fear” test but evidence shows that parents who had been separated from their parents more often than not failed their interviews. According to the *Dora v. Sessions* lawsuit, parents could not answer the questions satisfactorily as they were depressed by the separation from their children. Consequently, the Trump administration has agreed to give a second chance to the families who were separated to make an asylum claim. Moreover, the parents who failed the screening will still be allowed to stay in the US until their children’s cases are adjudicated and if the child passes the screening, the family will be eligible to apply for asylum together. The policy also undermines economic security of the children as they are disassociated and separated from their parents and family who genuinely try to provide for their sustenance and make provisions for their upliftment. Thus, a child is devoid of his or her basic needs and rights-food, shelter, healthcare, education, etc., which is manifested in the choices and decisions he or she makes in adulthood.

## CONCLUSION

The surge of immigrants from the NTCA is a consequence of generalised violence and opportunity for criminals to exploit unprotected people in transit. The crisis, however, is partly a legacy of US intervention in the NTCA during the Cold War

and its deportation policies. Stringent enforcement policies have worsened the situation as immigrants are forced to take dangerous and remote routes to avoid deportation where they become easy prey to criminals and the corrupt state authorities. This also breeds corruption and thereby, undermines the institutions responsible for ensuring public security.

In the second segment, while defining the terms-asylum seeker and refugees and determining its political implications, a major gap was detected. It lies in the definition of the term ‘refugees’ which does not recognize generalised violence as a legitimate ground for seeking refugee status. Resultantly, these people are unable to make a request for a safe haven under the UN Conventions concerning the refugees. Thus, a long-term solution to the problem will require redefining of the eligibility grounds for claiming refugee status. In the third segment, the “Zero Tolerance” policy of the Trump administration was evaluated vis-à-vis the US Refugee Act, UN Convention on the Rights of the Child and UN Conventions and documents concerning the rights of refugees. It became explicit that the “Zero Tolerance” policy is not only antithetical to all the laws, treaties and documents that govern the US immigration policy but also to the values enshrined in the Constitution. Due to the above-identified gap in the eligibility criteria for seeking refugee status, the US cannot be held for non-compliance of the UN Protocol Relating to the Status of Refugees. Since the US has not ratified the UN Convention on the Rights of the Child, it cannot be charged for violating the provisions of the treaty. However, the rights of people entering the US to flee generalised violence in their country can be protected with an expansive reading of provisions of the treaties that it has ratified such as the UN Convention Against Torture. In the last segment, adverse implications of the “zero tolerance” policy on the psychology and identity of the children were identified.

## A way forward

In order to deal with the immigration crisis, the US government should step up its asylum process

while extending the scope of its humanitarian parole to provide adequate protection to those awaiting adjudication. It should try to address the root factors which impel the Central Americans to flee their homes by working jointly with the regional governments to water down the strength of gangs and drugs cartels-responsible for the violence. The policies being adopted by the Trump administration are devised to avoid the crisis and not solve it which would be detrimental to the country on a longer run. The NTCA should devise community-based violence prevention programs and bring about structural reforms to capacitate the police and army to combat gang violence. UNHCR has been working with regional governments and NGOs to provide protection, safe shelter and job opportunities. In the current scenario, with hundreds of children still waiting for reunification with their parents and constant efforts of the administration to supersede Flores settlement to allow indefinite detention of families, only a little can be expected. The children represent the future and thus, engaging them in the peace process is important. Analyzing their perspective on the conflict and how peace can be built can prove to be crucial for their recovery as well as benefit the community.<sup>10</sup> However, any remotely moral policy will only come about when the xenophobic tendencies that portray the US as the victim of the crisis and the asylum seeker as its creators will be side-lined.

## REFERENCES

- (1989). *The United Nations Convention on the Rights of the Child*. The United Nations.
- (2014). *Children on the run*. The UN Refugee Agency.
- (2014). *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children*. UNICEF.
- (2017). *Representing Asylum-Seekers from Central America: Leveraging International Law to Strengthen Gang-Based Asylum Claims*. The UN Refugee Agency.
- Undocumented Migration from the Northern Triangle of Central America*. (2017, October 25). Retrieved September 24, 2018, from International Crisis Group: <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/undocumented-migration-northern-triangle-central-america>
- Migrants, asylum seekers, refugees and immigrants: What's the difference?* (2018, June 22). Retrieved September 24, 2018, from International Rescue Committee: <https://www.rescue.org/article/migrants-asylum-seekers-refugees-and-immigrants-whats-difference>
- Agency, T. U. (2012). *Detention Guidelines*.
- Chakraborty, R. (2018, June 20). *The voices of children separated at the border*. Retrieved September 29, 2018, from VOX: <https://www.vox.com/2018/6/20/17482476/children-separated-at-border-audio>
- Cone, J., & Bonacasa, M. B. (2018). Invisible War: Central America's Forgotten Humanitarian Crisis. *The Brown Journal of World Affairs*, 225-237.
- <https://www.americanprogress.org/issues/immigration/reports/2018/06/01/451474/still-refugees-people-continue-flee-violence-latin-american-countries/>. (2018, June 1). *They are (still) refugees: People continue to flee violence in Latin American countries*. Retrieved September 29, 2018, from Center for American progress: <https://www.americanprogress.org/issues/immigration/reports/2018/06/01/451474/still-refugees-people-continue-flee-violence-latin-american-countries/>
- Marquez, R. (2016, May 10). Shelter Director, La-72.
- Meye, M., & Pachico, E. (2018, February 1). *Fact Sheet: U.S. Immigration and Central American Asylum Seekers*. Retrieved September 25, 2018, from WOLA: <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>
- Speck, M. (2016, August 1). *Easy Prey: Criminal Violence and Central American Migration*. Retrieved September 29, 2018, from International Crisis Group: <https://www.crisisgroup.org/latin-america-caribbean/central-america/easy-prey-criminal-violence-and-central-american-migration>
- Wildman, S. (2017, June 20). *9 questions about the global refugee crisis you were too embarrassed to ask*. Retrieved September 29, 2018, from VOX: <https://www.vox.com/world/2017/1/30/14432650/global-refugee-crisis-refugee-ban-trump-9-questions>
- Zeid. (2015, September 15). *Display News*. Retrieved September 24, 2018, from United Nations Human Rights Office of The High Commissioner: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449>

<sup>10</sup>Save The Children is a non-governmental organization which has involved decisions that affect them.