

Human rights violations at international borders: trends, prevention and accountability

UNICEF Submission to the Report of the United Nations Special Rapporteur on the Human Rights of Migrants

February 2022

I. UNICEF main concerns and calls on Member States

UNICEF recognizes Member States' sovereignty and the need for border management processes that are safe and orderly, while upholding human and children's rights. UNICEF is deeply concerned about the instrumentalization and pushbacks of children, such as those on Europe's borders that have resulted in the loss of lives and children and families being put into harms' way. Reports of children living in appalling conditions, being pushed back on the EU's external borders, forcibly returned or detained, are a direct violation of the UN Convention on the Rights of the Child.

1) UNICEF calls upon Member States to uphold access to territory and protection for children seeking asylum. All children should have their claim evaluated on an individual basis, compliant with the right to seek asylum and the principle of non-refoulement. Access should be complemented by swift identification, registration, adequate reception capacities and the frontloading of resources to support referral to appropriate procedures and services.

UNICEF is concerned about a trend towards fortification of borders, expedited returns procedures, and pushbacks, with their related child rights violations. Children and their families have the right to seek asylum and have their protection needs evaluated on an individual basis. Expanded and efficient use of responsibility-sharing mechanisms between Member States, such as family reunification procedures, resettlement, and voluntary relocation schemes can assist towards sharing pressures responsibly.

Any measures that undermine the best interests of children in asylum, border and return procedures will put children's lives at risk and erode international refugee law and shared commitments to safe, orderly and regular migration management.

2. UNICEF calls for children's best interests to be systematically assessed in returns decisions and warns against expedited procedures that do not include sufficient safeguards or consider the risks children may face upon return. This means that any expedited procedures or fast-tracked border screening measures need to include sufficient safeguards to consider child-specific risks.

Any proposed measures to expedite returns must be complemented by a renewed emphasis on procedural and legal safeguards and on pathways to regular status for children. The best interests of children should be a primary consideration in their qualification for international protection, submission of applications for other legal protections, or access to other forms of regular status, whether they are unaccompanied or traveling in a family unit.

The precondition to the return of any child – whether unaccompanied or within a family – is that return has been found to be in their best interests through an individual and participative process with the involvement of child protection authorities.

3. UNICEF calls for a renewed commitment to protect children in countries of origin, transit and destination and warns against policies that reduce protections down to only those who are unaccompanied.

Children who arrive unaccompanied need robust protections and support and should never be returned unless it is found to be in their best interests. At the same time, policies that reduce protections for children in families can contribute to the instrumentalization, abandonment, and trafficking of children. A child is a child, whether alone or in a family unit.

UNICEF calls for broader legal protections for all children in the context of migration as well as prioritized investments in child protection capacities and services in countries of origin, transit and destination. Sustained investments in reception, referral and child protection capacities, and support to enhance collaboration of child protection actors across borders, is critical to prevent the exploitation and trafficking of children, prevent children from going missing and strengthen protections for all children regardless of their migration status.

4. UNICEF calls for border officials to be trained in the rights of the child and child-sensitive procedures, for child welfare authorities to have a leading role in the screening, assessment and referral of children and families, and to ensure that children are not held in closed facilities as they go through screening, border, asylum or return procedures.

The initial contact between a child and a government official is important as it sets the stage for interaction between the child and the immigration system. A child-sensitive reception system ensures that border processes incorporate child welfare principles and engage qualified, culturally competent professionals to screen and interview children, assess their needs and familial relationships, and determine their best interests. Child welfare authorities should have a leading role in the screening and any decisions related to the reception, care and protection of migrant and asylum-seeking children. Smart firewalls – a separation of functional responsibilities between immigration authorities and those providing care, protection and services for children – must exist.¹

Any screening, border, asylum or return procedures need to include robust safeguards to prevent the de-facto deprivation of liberty of all children, regardless of their age or whether they are in family units. Financial investments should be shifted from closed facilities into adequate reception and care arrangements, which also tend to be less costly in practice.

II. Responses to specific questions asked by the Special Rapporteur²

1. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021.

2. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.

Responses to questions 1 and 2 have been merged.

¹ See: UNICEF, [Building Bridges for Every Child: Reception, Care and Services to Support Unaccompanied Children in the United States](#)

² The information submitted here is not comprehensive, but based on responses from a number of UNICEF offices. We may send further information based on inputs from UNICEF Regional and Country Offices, as we receive them.

Chile:

On 12 February 2022, the country's new Migration Law went into effect with the publication of its *by-laws*. [Publicación del Sábado 12 de Febrero de 2022 \(interior.gob.cl\)](#)

Switzerland:

Adopted *before* May 2021: on June 5, 2016, the population approved the bill for accelerated asylum procedures with 66.8 % votes in favor. These ordinance and law provisions went into effect in the spring of 2019. Two years later, a first evaluation now assesses the accelerated procedure as "merely satisfactory". This is unsatisfactory from a human rights perspective: targeted adjustments are necessary to protect asylum seekers. <https://www.fedlex.admin.ch/eli/oc/2018/439/fr> (in French)

Change *in* 2021: In 2019, the Swiss Federal Administrative Court concluded under the "Salvini Decree" that Dublin returns of families could no longer be legitimized by assurances of family-friendly housing from the Italian authorities. In 2021, the Federal Administrative Court has ruled in a reference judgment that families with young children may again be transferred back to Italy in the Dublin procedure. In its ruling, the Federal Administrative Court relies exclusively on the formally changed legal situation in Italy, the assurance of the Italian authorities and the decision issued by the European Court of Human Rights at the beginning of 2021. On the other hand, the court refrains from analyzing the actual conditions in the Italian accommodation system in detail.

United Kingdom:

The UK Government intends to overhaul the asylum system in the UK, with the stated aims of making the immigration system fairer and more efficient whilst being strict on illegal immigration and tackling people smuggling. The New Plan for Immigration was [announced in May 2021](#). UNHCR has [raised serious concerns](#) about its provisions. In July 2021, legislation was introduced. The new [Nationality and Borders Bill](#) is now passing through Parliament to become law.

Recent UK Government policy guidance:

- [Code of conduct: interpreters working for UK Visas and Immigration](#); 26 October 2021
- [Conducting asylum interviews](#); 7 June 2021
- [Considering children's individual protection needs](#); 30 July 2021
- [Discretionary leave](#); 17 December 2021
- [Family asylum claims](#); 22 September 2021

USA:

Title 42: An updated version of this order issued by the Center for Disease Control (CDC) was enacted on August 2, 2021, where the Department of Homeland Security (DHS) is given discretion to continue to bar almost anyone from seeking asylum in the U.S. under the claim they present a "threat of introduction or further spread of international pandemics." The order essentially blocks immigration processing in general, including asylum, to those without a legal permanent status.

The updated order also added a provision where it suspends the right to “introduce certain persons from countries where a quarantinable communicable disease exists.” This is of great concern as it continues to put the safety and wellbeing of migrant children and families at risk, especially those fleeing from violence, poverty, food insecurity and climate driven disasters. It leaves these groups without access to regular migration processing, including asylum, or adequate health and protection screenings.

In 2021, [1.6 million](#) migrants were expelled from the U.S.-Mexico border.

Although unaccompanied children largely stopped being expelled under Title 42 beginning in November 2020, families with children continue to be expelled.³ This has led to family separations, where children in family units decided to journey alone.

- [CDC Title 42 order](#)
- [Updated CDC Title 42 Order](#)
- [DHS Statement on Updated CDC Order](#)
- [UNICEF USA Statement on Title 42](#)

Migrant Protection Protocols (MPP): MPP, also known as the “Remain in Mexico” policy, went into effect in January 2019. Implemented by DHS, MPP required certain asylum seekers arriving by land at the U.S.–Mexico border to be returned to Mexico to wait while their asylum claims went through immigration courts in the U.S. On June 1, 2021, DHS officially terminated MPP through a memorandum. Through litigation, the U.S. District Court for the Northern District of Texas ordered DHS to “enforce and implement MPP.” As motions by the Biden administration continued to be denied, MPP was finally reimplemented, through court order, on December 2, 2021. The current iteration of MPP now includes all asylum-seekers from the Western Hemisphere, instead of just including asylum-seekers from Spanish speaking countries, which makes the group subject to the policy much larger.

Although the new iteration, as of now, has not been used to return asylum seeking children and families to Mexico, concerns remain. During its first iteration, MPP forced approximately 70,000 asylum seekers to return to Mexico, where children and adolescents waited months in overstretched shelters and makeshift camps in dangerous areas of Mexico without access to appropriate housing, hygiene, nutrition and essential services. An estimated [20,000 children were subject to the risk of serious harm](#). When the program was initially terminated, by President Biden, some of these children were able to re-enter the U.S. between February and August 2021. However, most children who were first impacted by this policy continue to await in Mexico. MPP can once again have profound consequences for children, many of whom have been left with no safe options to escape dire conditions and threats in their home countries.

- [MPP Reimplementation Guidance](#)
- [UNICEF Statement on MPP Reimplementation](#)

Title 42 and MPP worsen humanitarian situations at the border and exacerbate the very risks that children and families fled in the first place. It is important that asylum-seeking families can stay together and have access to safety, education, legal counsel, health and other essential services.

³ Before the practice of expelling unaccompanied children was blocked in court, U.S. Customs and Border Protection (CBP) used Title 42 to turn away and expel nearly [16,000 unaccompanied children](#).

Central American Minors Refugee and Parole Program (CAM): The program was established in 2014 and it provides certain qualified children who are nationals from El Salvador, Guatemala, and Honduras, as well as certain family members of those children an opportunity to apply for refugee status and possible resettlement in the United States. In 2018, the CAM program was terminated as part of the review of the U.S. Refugee Admissions Program. On March 10, 2021, the Department of State (DOS) announced the reopening of the CAM program in two phases. The first phase beginning in March 2021 focused on reopening and processing eligible cases that were closed when the program was terminated in 2018. On June 15, 2021, DOS and DHS announced the implementation of phase two. Phase two of the reopening expanded eligibility to include legal guardians who are in the United States under any of the qualifying categories.

The program is meant to offer children fleeing persecution in Central America with a “safe, legal and orderly alternative” to traveling to the U.S. southern border on their own. As the number of unaccompanied children continues to grow, overwhelming the current process and exposing the dangerous conditions that many are fleeing, the CAM program would allow parents of children seeking protection to apply while their children are still in their country of origin. There is no clear indicator that the program would reduce the number of unaccompanied children but it has been lauded in providing a safe regular alternative to children who already have parents in the United States and seek to reunite with them.

- [CAM Refugee and Parole Program](#)
- [DOS and DHS announcement](#)

3. Please provide information on how the “safe third country” concept is applied and if there is any “safe third country” list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.

Germany:

In Germany, the following countries are currently considered “safe countries of origin”:

Member States of the European Union

Albania

Bosnia and Herzegovina

Ghana

Kosovo

Macedonia, Former Yugoslav Republic

Montenegro

Senegal

Serbia

Spain:

Closure of Border Spain-Morocco (Ceuta and Melilla since 13.03.2020) – Moroccan measure for sanitary purposes.

Spain has published these readmission agreements:

<https://extranjeros.inclusion.gob.es/es/normativa/internacional/readmision/index.html>

The Spanish Government is planning to amend the Asylum Law (before the opening of the border with Morocco) to extend to Ceuta and Melilla the same asylum procedure that already applies at the airports and detention centres (admission or denial of asylum claims in 10 days with the possibility of immediate return). The current system in Ceuta and Melilla provides for wider periods. This

measure could seek to accelerate return of rejected asylum seekers who have remained stuck in Morocco after many months of border closure. Nonetheless, the success of this measure depends of the willingness of Morocco to receive back migrants.⁴

Switzerland:

According to the Asylum Act, an asylum application is generally not considered if the person concerned can return to a "safe third country" in which he or she was staying before submitting his or her asylum application in Switzerland ([Art. 31a Asylum Act](#)). In Switzerland, EU and EFTA states are considered safe third countries because they have ratified the 1951 Refugee Convention and the European Convention on Human Rights and, according to the State Secretariat for Migration, also apply them in practice (see [here](#)). In addition, the Federal Council can designate other countries as "safe third countries" if there is effective protection against refoulement. Ultimately, countries are considered "safe countries of origin" if asylum seekers are said to be safe from persecution there ([Art. 6a para. 2 let. a and b AsyLA](#)). Repeatedly, the Federal Administrative Court confirms the expulsion of people to "safe third countries" or "safe countries of origin" without sufficiently examining the human rights situation in these countries and carefully clarifying possible dangers for the people concerned. Precautionary, interim measures are also repeatedly pronounced against Switzerland, on the basis of which UN committees temporarily stop threatened expulsions.

United Kingdom:

New Immigration Rules came into force in the UK on 31 December 2020. In broad terms, the [Rules](#) allow an inadmissibility decision to be taken on the basis of a person's earlier presence in or connection to a "safe third country", even if that particular country will not immediately agree to the person's return. More significantly, if someone is determined to be inadmissible, the new provisions permit their removal to any "safe third country" that will admit them (not just the specific country or countries through which they travelled or to which they have a connection).

New rules on the handling of claims for asylum came into effect from 1 January 2021. Guidance for Home Office asylum caseworkers was published the day before, on 31 December 2020.

UK legislation allows for a "safe country of origin" concept. States are designated "safe" by order of the Secretary of State for the Home Office. The Secretary of State may make such an order where they are satisfied that "there is in general in that State or part no serious risk of persecution of persons entitled to reside" there, and that removal there "will not in general contravene" the European Convention on Human Rights. In making the order, the statute requires the Home Secretary to have regard to information "from any appropriate source (including other member states and international organisations)". The current list of countries designated "safe countries of origin" can be found [here](#).

USA:

Currently the only "safe third country" agreement that the US has in place is with Canada. A bilateral treaty between the U.S. and Canada to manage the flow of refugee claimants at the shared land border went into effect on December 29, 2004. Under this agreement, refugees and asylum seekers must make their claim in the first country in which they arrive between the U.S. or Canada, unless they are exempt (i.e. family members, unaccompanied migrant children, document holders, and public interest exceptions). However, in 2020, Canada's Federal Court declared that the U.S. is not a safe country for people seeking asylum. Therefore, the "safe third country agreement" between the U.S. and Canada violates the Canadian Charter of Rights and Freedom and is inconsistent with the Refugee Convention.

⁴ <https://elpais.com/espana/2022-02-23/el-gobierno-quiere-cambiar-el-tramite-del-asilo-en-ceuta-y-melilla-para-agilizar-la-devolucion-de-los-inmigrantes.htm>

Although no longer enacted, in 2020, the U.S. signed Asylum Cooperation Agreements (ACAs) with Guatemala, El Salvador and Honduras. The ACAs, just like “safe third country” agreements, require asylum-seekers to apply for protection in these countries first. Out of the three ACAs, only the agreement with Guatemala was ever put into effect. On February 6, 2021, [the Biden administration officially terminated the ACAs with the Northern Triangle](#) countries through an Executive Order. If the ACAs were enacted, it would have slowed down the asylum process and make it more difficult for families and children to prove their asylum claims.

4. Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.

United Kingdom:

The UK’s [Independent Chief Inspector of Borders and Immigration](#) monitors and reports on the efficiency and effectiveness of the immigration, asylum, nationality and customs functions carried out by the Home Secretary and by officials and others on her behalf. The Chief Inspector is a public appointee and independent from government, his reports are laid before Parliament.