

AMERICAS: PUSHBACK PRACTICES AND THEIR IMPACT ON THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES

AMNESTY INTERNATIONAL SUBMISSION TO THE UNITED NATIONS (UN) SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS, FEBRUARY 2021

In response to the [Questionnaire](#) of the UN Special Rapporteur on the human rights of migrants on “pushback practices and their impact on the human rights of migrants”, Amnesty International is pleased to provide the following input on select patterns of unlawful pushbacks of migrants and refugees in the Americas region – particularly in the United States of America, Mexico, Canada, and Trinidad and Tobago.

1.1 UNITED STATES OF AMERICA (USA)

From 2017 to 2020, the USA implemented increasingly draconian immigration policies to drastically limit access to asylum at the US–Mexico border, resulting in irreparable harm to thousands of individuals and families seeking sanctuary from persecution or serious human rights violations in their countries of origin.

Those policies include ongoing, mass pushbacks of hundreds of thousands of refugees and migrants at the US–Mexico border, both at and between official ports of entry, including through its abusive asylum and border policies called:

- “Metering”, by which tens of thousands of migrants and refugees were forced to wait in violent border regions in northern Mexico – sometimes for months before they were permitted to request asylum – and without access to adequate accommodations, food, health care, legal representation, or physical security from abuses by State and non-State actors;¹
- “Migrant Protection Protocols” (or “MPP”), better known as the “Remain in Mexico” policy, requiring asylum-seekers at the US–Mexico border to return to and stay in Mexico during the adjudication of their asylum claims, which can take months or years to complete;²
- “Asylum Cooperative Agreements”, which resulted in the forced transfer of approximately one thousand asylum seekers to the Northern Triangle of Central America during 2020, under what effectually constituted “safe third country agreements” with governments in those countries (even though those countries lacked functioning asylum systems), and without adequate individual assessments of their protection needs;³ and

¹ See, Amnesty International, extended statement on situation of migrant caravan participants in Tijuana, “US government endangers asylum seekers with unlawful policies” (26 November 2018): <https://www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies>. See also, Amnesty International report, *‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States* (October 2018), at Chapter 2, “Illegal Pushbacks of Asylum Seekers at the US–Mexico border”: <https://www.amnesty.org/en/documents/amr51/9101/2018/en>. See also, “Facts and Figures” two-pager, accompanying the report, *‘You Don’t Have Any Rights Here’* (11 October 2018): <https://www.amnesty.org/en/latest/news/2018/10/usa-facts-and-figures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment>. See also, Amnesty International open letter to the US Department of Homeland Security (19 October 2018), in relation to findings on family separations detailed in the report, *‘You Don’t Have Any Rights Here’*: <https://www.amnesty.org/download/Documents/AMR5192802018ENGLISH.pdf>. See also, Amnesty International research report, *Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers* (June 2017): <https://www.amnesty.org/download/Documents/AMR0164262017ENGLISH.pdf>.

² See, Amnesty International amicus brief (June 2019) in *Innovation Law Lab v. McAleenan*, available at: <https://www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-international-supports-challenge-to-remain-in-mexico-policy-describing-dangerous-conditions-asylum-seekers-face-in-mexico/>.

³ Senate Foreign Relations Committee Democratic staff report, commissioned by Committee Chairman Bob Menendez (D-N.J.) on the United States’ Asylum Cooperative Agreements (ACAs) with Guatemala, Honduras, and El Salvador, *Cruelty, Coercion, and Legal Contortions: The Trump Administration’s Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador* (18 January 2021), available at: <https://www.foreign.senate.gov/imo/media/doc/Cruelty,%20Coercion,%20and%20Legal%20Contortions%20--%20SFRC%20Democratic%20Staff%20Report.pdf>.

- Mass “expulsions” of approximately 350,000 migrants and refugees (including over 13,000 unaccompanied children) from March to December 2020, which were conducted under unnecessary and unlawful pretexts of public health measures during the COVID-19 pandemic emergency, without providing those being “expelled” with any access whatsoever to asylum procedures, legal remedies, or individual risk assessments.⁴

The USA also criminalizes irregular entry, in contravention to international law and standards.⁵

These policies have willfully placed refugees and migrants at unnecessary risk of potentially lethal violence and serious human rights violations by State and non-State actors – in many cases resulting in *refoulement* (or “chain refoulement”) by US, Mexican, and Central American authorities – and have been intended to deter individuals from seeking protection in the USA, violating their right to seek asylum.

The so-called “metering” and “Remain in Mexico” policies were applied to individuals seeking asylum at the border regardless of whether or not they were children, families, pregnant, living with disabilities, claimed to face threats in Mexico, were members of particular social groups who faced persecution or targeted violence in Mexico, or otherwise may have been in vulnerable situations upon return to Mexico by US authorities.

In 2020, the US government exploited the COVID-19 crisis to halt all processing of asylum claims on the US–Mexico border and to deny access to asylum procedures to those who crossed into the USA irregularly. US authorities unlawfully detained and “expelled” over 330,000⁶ migrants and refugees between March and November – including over 13,000⁷ unaccompanied children – without consideration of their protection needs or the risks of persecution, death, torture or other ill-treatment that they faced upon *refoulement* to their countries of origin.

In hundreds of documented cases, those individuals deported by the USA in 2020 had contracted the COVID-19 virus while in US custody due to the negligence of authorities, and contributed to the regional outbreak of the pandemic throughout the Americas.⁸

While committing mass pushbacks of migrants and refugees at the US–Mexico border, the US government under President Trump also undertook a campaign of targeted legal harassment against individuals and organizations defending those people’s rights (“Migrant Human Rights Defenders”), in order to further undermine their access to asylum procedures and protection from harm in the dangerous regions to which they were pushed back.⁹

1.2 MEXICO

The government of Mexico has often been complicit in the committing of pushbacks against migrants and refugees under the aforementioned US policies, including “Remain in Mexico” and the “metering” of those arriving at the border on unlawful asylum “wait lists”. In some cases, those individuals subjected to the “metering” policy were Mexican nationals whom the governments of Mexico and the USA conspired to prevent from leaving Mexico and accessing the US asylum system, contrary to both governments’ obligations under international law and their national legal systems, including the right to freedom of movement (and for nationals to leave the country) under Article 11 of the Mexican Constitution.¹⁰

⁴ Amnesty International USA, et al., joint publication, *Explainer on U.S. Deportations and Expulsions During the COVID-19 Pandemic* (21 May 2020), available at: <https://www.amnestyusa.org/wp-content/uploads/2020/05/Explainer-on-Deportations-and-Expulsions-During-the-COVID-19-Pandemic-1.pdf>.

⁵ See, 8 U.S. Code § 1325 (Improper entry by alien) and § 1326 (Re-entry of removed aliens), available at: <https://www.law.cornell.edu/uscode/text/8/chapter-12/subchapter-II/part-VIII>.

⁶ US Customs and Border Protection (CBP), CBP enforcement statistics (2020), available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

⁷ American Civil Liberties Union statement, “District Court Blocks Trump Administration’s Illegal Border Expulsions” (November 2020), available at: <https://www.aclu.org/press-releases/district-court-blocks-trump-administrations-illegal-border-expulsions>.

⁸ On conditions in US immigration detention during the COVID-19 pandemic, including for those deported from the country, see the Amnesty International research report, *‘We are adrift, about to sink’: The looming COVID-19 disaster in US immigration detention facilities* (7 April 2020): <https://www.amnesty.org/en/latest/news/2020/04/usa-covid19-pandemic-authorities-must-release-immigration-detainees/>. An update to this report provides more recent statistics and additional info on the disastrous COVID-19 outbreak in US immigration detention facilities, as well as reckless deportations of asylum seekers and migrants, further spreading the virus and endangering those affected. See, *Update to Amnesty International report on COVID-19 in US immigration detention* (31 August 2020), available at: <https://www.amnesty.org/en/documents/amr51/2958/2020/en/>.

⁹ Amnesty International research report, *‘Saving lives is not a crime’: Politically motivated legal harassment of migrant human rights defenders by the USA* (July 2019), available at: <https://www.amnesty.org/en/latest/news/2019/07/usa-authorities-misusing-justice-system-harass-migrant-human-rights-defenders/> (statement); <https://www.amnesty.org/en/documents/amr51/0583/2019/en/> (report).

¹⁰ See, Amnesty International, extended statement on situation of migrant caravan participants in Tijuana, “US government endangers asylum seekers with unlawful policies” (26 November 2018): <https://www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies>.

Migrants and refugees from Central America who have entered Mexico in search of international protection have frequently been detained and deported to their countries of origin, without information on (or being given access to) asylum procedures, and without individual assessments of risks they could face upon deportation.¹¹ Under the pretext of public health measures during the COVID-19 pandemic, Mexico's immigration agency in April 2020 deported 3,653 (all but 106) individuals in immigration detention to their countries of origin – primarily in the Northern Triangle of Central America – without individualized risk assessments for the harm they could face upon return.¹²

In response to so-called “migrant caravans” of people who sought to travel safely in large groups from Central America to the USA through Mexico in 2018 and 2019, Amnesty International documented numerous testimonies of migrants and refugees who were subjected to pushbacks at Mexico's southern border, or by US authorities with the complicity of Mexican authorities at the northern border, where they would prevent migrants and refugees from approaching the US border to request international protection.¹³

1.3 CANADA

1.3.1 SAFE THIRD COUNTRY AGREEMENT

The *Agreement between the Government of Canada and the Government of the United States of America For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (Safe Third Country Agreement, or “STCA”) is a bilateral treaty between Canada and the USA that came into effect in 2004. Subject to narrow exceptions, individuals seeking asylum after entering Canada from the USA at land ports of entry are deemed ineligible to have their claims referred to the Immigration and Refugee Board, and are returned to the USA.

Amnesty International is of the view that the STCA violates Canada's international legal obligations. In July 2020, the Federal Court of Canada determined that the STCA violates s. 7 of Canada's *Charter of Rights and Freedoms*, which protects the right to life, liberty and security of the person. The decision (presently under appeal), deemed that those returned under the STCA face arbitrary immigration detention in conditions that “shock the conscience”.¹⁴ Moreover, the judge expressed concern about the heightened risk of *refoulement* for those who are returned to the USA under the STCA.¹⁵

1.3.2 ORDERS IN COUNCIL

On 20 March 2020, Canada enacted Order in Council (“OIC”) 2020-0161.¹⁶ Premised as a temporary measure in response to COVID-19, the measure prohibits foreign nationals from entering Canada from the USA for the purposes of claiming refugee protection. As of the date of the present submission, Canada has renewed the measure 15 times.¹⁷ The text of the prohibition in its most recent form, which was adopted on 20 January 2021, is provided by Order in Council 2021-0009.¹⁸ As an executive measure, it is not subject to oversight by the legislature.

¹¹ Amnesty International research report, *Overlooked, under-protected: Mexico's deadly refoulement of Central Americans seeking asylum* (January 2018), available at: <https://www.amnesty.org/en/documents/amr41/7602/2018/en/>.

¹² Reuters, “Mexico all but empties official migrant centers in bid to contain coronavirus” (26 April 2020), available at: <https://www.reuters.com/article/us-usa-immigration-mexico-shelters/mexico-all-but-empties-official-migrant-centers-in-bid-to-contain-coronavirus-idUSKCN2280S7>.

¹³ See, Amnesty International, extended statement on situation of migrant caravan participants in Tijuana, “US government endangers asylum seekers with unlawful policies” (26 November 2018): <https://www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies>. See also, Amnesty International research report, *Stuck at the Door* (26 November 2018): <https://www.amnestyusa.org/wp-content/uploads/2018/11/STUCK-AT-THE-DOOR-en.pdf>.

¹⁴ *Canadian Council for Refugees v. Canada* (Immigration, Refugees and Citizenship) - Federal Court (fct-cf.gc.ca), para. 137.

¹⁵ *Canadian Council for Refugees v. Canada* (Immigration, Refugees and Citizenship) - Federal Court (fct-cf.gc.ca), para. 94.

¹⁶ 2020-0161.

¹⁷ 2020-0185; 2020-0263; 2020-0370; 2020-0442; 2020-0469; 2020-0538; 2020-0565; 2020-0672; 2020-0795; 2020-0810; 2020-0838; 2020-0886; 2020-0968; 2020-1128; 2021-0009.

¹⁸ 2020-0161. “Prohibition — claim for refugee protection: 5(1)A foreign national is prohibited from entering Canada from the United States for the purpose of making a claim for refugee protection unless the person. (a) seeks to enter Canada at a land port of entry designated by the Minister of Public Safety and Emergency Preparedness under section 26 of the Immigration and Refugee Protection Regulations and: (i) is a claimant referred to in section 159.2, 159.5 or 159.6 of the Immigration and Refugee Protection Regulations, or; (ii) is a citizen of the United States; or (b) is a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Public Safety and Emergency Preparedness or the Minister of Citizenship and Immigration, is in the national or public interest, while recognizing the paramount public health interests of Canada and Canadians.”

Subject to narrow exceptions, the OIC applies to all persons entering Canada from the USA between official ports of entry along the land border, and at air ports of entry and marine ports of entry.¹⁹ Those who do not meet an exception are pushed back into the USA. Although Canadian authorities indicate that they have an “agreement” with US authorities governing how those pushed back are to be processed,²⁰ the details have not been made public and its legal authority has not been established. Moreover, although those claiming refugee protection are given a “direction to return” to the border once it reopens,²¹ there is no indication as to when this will take place. Over 200 people were subjected to the measure as of 11 November 2020.²²

Amnesty International is of the view that this measure is contrary to Canada’s international obligation of *non-refoulement*, which prohibits states from transferring individuals to a place where they would be at real risk of serious human rights violations. Read together with the right to an effective remedy, the obligation of *non-refoulement* requires states to carry out an individualized evaluation of the risks faced by the individual upon transfer. By denying entry, or expelling, persons seeking to enter Canada from the USA for the purpose of making a claim for refugee protection, the OIC constitutes a blanket measure that is inconsistent with Canada’s international legal obligations.

Ill-treatment in the USA

Under international law, Canada has an obligation to ensure protection against *refoulement* for all persons who are present in its territory or jurisdiction. This prohibition is applicable to any form of forcible removal or transfer, including non-admission at the border.²³

Amnesty International is concerned about the ill-treatment that migrants and refugees may face in the USA. In the 2018 report, ‘*You Don’t Have Any Rights Here*’, Amnesty International documented various areas of concern, including family separations (which, in some cases, were found to constitute torture), and arbitrary and indefinite detentions.²⁴

According to public media reports, there are at least eight cases of people who have been subjected to the OIC and who were detained upon return to the USA.²⁵

Chain refoulement

When considering a similar measure in 2011, the Inter-American Commission on Human Rights found that a former Canadian policy on pushbacks was contrary to the *American Declaration on the Rights and Duties of Man*.²⁶ The prohibition of *refoulement* applies with regard to the place to which removal is to be effected or any other place to which the person may subsequently be removed.²⁷ Without binding obligations upon the US to prevent removal of individuals directed back while they await the opportunity to claim protection in Canada, the OIC raises concerns about Canada’s compliance with its international obligations.

There are a number of recent measures adopted by the USA that raise the spectre of Canada being complicit in chain *refoulement* from the USA through the application of the OIC. (See above analysis of US immigration and asylum policies constituting unlawful pushbacks.)

According to public media reports, there is at least one reported case of a person subject to the OIC who was subsequently deported from the US.²⁸

1.4 TRINIDAD AND TOBAGO

Amnesty International has documented and remains concerned about pushbacks by authorities of Trinidad and Tobago against Venezuelans in need of international protection.

¹⁹ [Coronavirus disease \(COVID-19\): Refugees, asylum claimants, sponsors and PRRA applicants](#) - Canada.ca. At land ports of entry, the *Safe Third Country Agreement* applies.

²⁰ [Special Committee on the COVID-19 Pandemic - Hot Issues Notes – May 2020](#) (securitepublique.gc.ca) .

²¹ [Asylum seekers turned back from Canada face detention, deportation](#) | WBFO.

²² [Asylum seekers turned back from Canada face detention, deportation](#) | WBFO.

²³ UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol”, (26 January 2007) available online: <https://www.refworld.org/docid/45f17a1a4.html>.

²⁴ Amnesty International report, ‘*You Don’t Have Any Rights Here*’: *Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States* (October 2018), at Chapter 2, “Illegal Pushbacks of Asylum Seekers at the US-Mexico border”: <https://www.amnesty.org/en/documents/amr51/9101/2018/en>.

²⁵ [Canada turns away asylum seekers during coronavirus border closure](#) - The Washington Post.

²⁶ *John Doe et. al. v Canada*, Case 12.586, Inter-American Commission on Human Rights, Report No. 24/11, OEA/Ser.L.V/II.141, doc. 29 (2011).

²⁷ *Ibid* note 11, para. 20.

²⁸ [Canada turns away asylum seekers during coronavirus border closure](#) - The Washington Post.

Trinidad and Tobago is one of the few countries in the Americas that has no national legislation on asylum, meaning in practice that people who apply for asylum or who are granted refugee status have no access to many of the rights granted under the Convention relating to the Status of Refugees (1951 Refugee Convention) and its Protocol (1967), to which Trinidad and Tobago is party. The country also criminalizes irregular entry, in contradiction of international law and standards.²⁹

In 2019, Trinidad and Tobago granted an estimated 16,500 Venezuelans temporary visas and the right to work in a one-off “amnesty”. However, as of August 2020, over 24,000 Venezuelans were hosted in Trinidad and Tobago, and as of September 2020, 14,241 had lodged asylum claims, according to the UN High Commissioner for Refugees (UNHCR) the body mandated to process such claims in the country.³⁰

Throughout 2020, Trinidad and Tobago’s authorities forced asylum seekers back to Venezuela, often via sea. In July, authorities reportedly deported at least 165 Venezuelans,³¹ and in September a further 93.³² In November, an estimated 16 children – including a small baby – and approximately 12 adults were deported from Trinidad to Venezuela, but later returned following an outcry, as among those deported some reportedly had outstanding legal challenges to their deportations.³³ The IACHR later issued precautionary measures for six of the children who had been returned.³⁴

In December, between 14 and 21 children and adults died or went missing following a shipwreck off the coast of Venezuela, according to the UNHCR. The boat was believed to be *en route* to Trinidad and Tobago.³⁵

The COVID-19 pandemic has exacerbated the precarious situation for Venezuelans seeking sanctuary in Trinidad and Tobago. In March 2020, the authorities closed its borders to all arrivals, including nationals, migrants and refugees, in practice closing all regular avenues to enter. In July, the Minister of National Security stated that people found to be helping Venezuelans enter the country would be criminalized.³⁶ Amnesty International believes this has risked pushing Venezuelans in need of international protection further underground, and into hiding, and away from the health services that could protect the entire population.³⁷

On two occasions during 2020, more than 20 civil society organizations, including Amnesty International, wrote to Prime Minister Keith Rowley asking for him to grant Venezuelans international protection.³⁸ Despite this, the government continued to refuse to recognize the seriousness of the human rights violations taking place in neighbouring Venezuela and continued to refer to those fleeing as “economic migrants”.

According to reports, some 50 Venezuelan children were deported between January and November,³⁹ despite the fact that Trinidad and Tobago is also a signatory to the UN Convention on the Rights of the Child, which requires countries to act in the best interest of children, refrain from detaining them according to international law, and prohibits deporting them to situations where they could face ill-treatment or danger.

²⁹ Amnesty International, *Annual Report 2019*, Trinidad and Tobago, <https://www.amnesty.org/en/countries/americas/trinidad-and-tobago/>.

³⁰ See: Regional Inter-Agency Coordination Platform, <https://r4v.info/en/situations/platform/location/7498>.

³¹ Amnesty International, ‘Trinidad and Tobago: Deportation of 165 Venezuelans violates international law’, 6 August 2020, <https://www.amnesty.org/en/latest/news/2020/08/trinidad-tobago-deportation-165-venezuelans-violates-international-law/>.

³² Amnesty International, ‘Open letter to Dr Keith Rowley, Prime Minister of Trinidad and Tobago’, 8 October 2020, <https://www.amnesty.org/download/Documents/AMR4931882020ENGLISH.PDF>.

³³ Amnesty International, ‘Trinidad & Tobago: Return of deported children gives government second chance to do the right thing’, 25 November 2020, <https://www.amnesty.org/en/latest/news/2020/11/trinidad-tobago-return-deported-children-second-chance/>.

³⁴ Inter-American Commission on Human Rights, ‘IACHR grants protection measures to six migrant children in Trinidad and Tobago’, 9 December 2020, http://www.oas.org/en/iachr/media_center/PReleases/2020/293.asp.

³⁵ UNHCR, ‘UNHCR and IOM saddened at deaths of refugees and migrants in shipwreck off Venezuela coast’, 15 December 2020, <https://www.unhcr.org/news/press/2020/12/5fd7db764/unhcr-iom-saddened-deaths-refugees-migrants-shipwreck-venezuela-coast.html>.

³⁶ Ministry of Health News Conference, 25 July 2020, <https://www.facebook.com/CNC3Television/videos/1884100525065559/?vh=e&extid=TCSEnAJyR22ooCUg&d=n>.

³⁷ Amnesty International, ‘Trinidad and Tobago: Deportation of 165 Venezuelans violates international law’, 6 August 2020, <https://www.amnesty.org/en/latest/news/2020/08/trinidad-tobago-deportation-165-venezuelans-violates-international-law/>.

³⁸ Amnesty International, ‘Open letter to Dr Keith Rowley, Prime Minister of Trinidad and Tobago Return of deported children gives your government a second chance’, 25 November 2020, <https://www.amnesty.org/download/Documents/AMR4933902020ENGLISH.pdf>.

³⁹ Newsday TT, ‘UNHCR: Over 50 children sent back to Venezuela this year’, 24 November 2020, <https://newsday.co.tt/2020/11/24/unhcr-over-50-children-sent-back-to-venezuela-this-year/>.

1.5 RECOMMENDATIONS TO STATES

- Refrain from summarily turning away migrants and refugees at international boundaries, both at and between official ports-of-entry.
- Refrain from forcing refugees to wait extraterritorially to request international protection, or during the pendency of their asylum claims after they present themselves at international boundaries to request protection.
- Review and repeal any legislation that criminalizes irregular entry, and/or denies protection to those crossing international boundaries irregularly for the purpose of seeking asylum.
- Terminate any bilateral or multilateral agreements constituting “Safe Third Country Agreements”, which are fundamentally contrary to the principle of *non-refoulement* among other international laws and standards.
- Ensure asylum seekers are exempt from entry bans put in place in response to COVID-19, in accordance with international law, while also screening them effectively to ensure those in need are given access to adequate and appropriate health care.
- Refrain from using the COVID-19 pandemic as an excuse to deny access to international protection to those who need it most; and likewise refrain from using discriminatory language that stigmatizes and associates people in need of international protection with threats to public health.
- Stop detaining child migrants and refugees, as detention is never in the best interest of the child; and stop deporting children to situations where they could face ill-treatment or other violations of their human rights.