



AMERICAS: STUCK AT THE DOOR

THE URGENT NEED FOR PROTECTION OF CENTRAL AMERICAN REFUGEES,
ASYLUM SEEKERS AND MIGRANTS IN THE CARAVANS

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1. INTRODUCTION

The arrival in Mexico since 19 October 2018 of between 8,000 and 10,000 migrants, refugees and people seeking asylum¹ from Honduras, as well as from El Salvador, Nicaragua and Guatemala as part of a series of so-called caravans is an urgent situation that requires States to respond in line with international human rights law and standards. The recommendations contained in this document are based on fact-finding missions by Amnesty International researchers during October and November in southern Mexico and Guatemala², as well as in Mexico City and Tijuana, in addition to information obtained from governments in various countries in the region, international organizations and civil society organizations present in the field. During this research, Amnesty International has spoken to approximately 200 members of the caravans, either individually or in focus groups, including interviewing several families, women travelling with children, as well as members of the LGBTI community.

Amnesty International does not oppose governments using border controls, yet they must be lawful and respect human rights, including the right to seek asylum. The organization's research for decades in Europe, the Americas, and other parts of the world, has shown that in general, attempts by governments to implement hard-line border controls to prevent irregular arrivals of migrants and refugees do not stem the number of people leaving their countries, yet simply force people to use more clandestine - and as a result more dangerous - routes, putting human lives at risk and fuelling criminal networks.³

The recent departure in multitudinous Central American caravans is an exceptional phenomenon that has reached proportions not seen since the exodus of refugees during the civil wars in Guatemala and El Salvador during the 1980s. However, it is relevant to put this recent human exodus into perspective of overall migration levels, as the number of irregular migrants apprehended by U.S. authorities in 2017 was the lowest on record for the last 46 years,⁴ and in 2018 they were still unusually low, although they began to register an upturn in the second half of 2018.⁵ Amnesty International is concerned about the human rights of all those who leave their home to find a safer place to live, whether they are members of caravans or not.

¹ On October 13, 2018, a group of hundreds of people, whose size grew spontaneously and rapidly, left San Pedro Sula, Honduras, to reach approximately 7,000 people. This first caravan travelled through Guatemala, reached the border with Mexico on October 19 and entered this country to continue to the United States. Although it is impossible to count on an exact figure, estimates by international organizations, national authorities, municipalities and civil society organizations point to 8 or 10,000 migrants, asylum seekers and refugees have left Honduras and other Central American countries since mid-October to date to integrate a series of different caravans. The caravans are made up of multiple nuclei of people who do not necessarily advance at the same pace and may opt for different decisions along the way, including staying in a particular place or returning to their country of origin.

² An Amnesty International delegation visited the Mexican towns and cities of Huixtla, Mapastepec, Tapachula, Ciudad Hidalgo and Frontera Talismán, and the towns of Ayutla, Tecún Umán and el Carmen in Guatemala during a mission to southern Mexico and Guatemala between 23 and 28 October. On 6 November an Amnesty International delegation carried out research and interviews at the sports facilities set up by Mexico City authorities to receive members of the caravan. Researchers also visited the northern border city of Tijuana between 18 November and 21 November.

³ See, for example: Amnesty International: Fear and Fences: Europe's approach to keeping refugees at bay, 2015, EUR 03/2544/2015.

Also of relevance are Official assessments of previous US hard-line border control strategies: US General Accounting Office, *Illegal Immigration: Status of Southwest Border Strategy Implementation*: May 1999 p17-21, available at: <http://www.gao.gov/archive/1999/gg99044.pdf>. See also: Interview with Doris Meissner, former Immigration and Naturalization Service Commissioner responsible for overseeing the implementation of Operation Gatekeeper and the 1994 Plan: see M. Cooper "On the Border of Hypocrisy: The unintended consequences of getting tough on illegal immigration", *LA Weekly*, 4 December 2003, available at <http://www.laweekly.com/2003-12-04/news/on-the-border-of-hypocrisy/>.

⁴ See, Amnesty International USA: *You don't have any rights here: illegal pushback, arbitrary detention and ill treatment of the asylum seekers in the United States* Page 14. Index number: AMR 51/9101/2018, 11 October 2018.

⁵ Statistics from the United States Customs and Border Protection Agency (CBP) April to October, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

2. UNDERSTANDING THE CONTEXT: REASONS WHY PEOPLE ARE LEAVING HONDURAS, EL SALVADOR, NICARAGUA AND GUATEMALA:

The departure of thousands of Central Americans from their countries in a short period shows that people continue to flee desperately in search of protection. Statistics from the United Nations High Commissioner for Refugees (UNHCR) show that the numbers of people who applied to be recognized as refugees from Honduras, Guatemala and El Salvador has increased significantly, with 118,949 asylum applications worldwide in 2017. This represents a 1007% increase versus asylum applications filed in 2012.⁶

Amnesty International has documented that violence⁷, which occurs in a context of generalized impunity and lack of government protection, drives people to leave the so-called North Triangle of Central America (Honduras, Guatemala, El Salvador), along with poverty and inequality. By way of example, with 60 homicides per 100,000 inhabitants El Salvador has one of the highest homicide rates in Latin America, after Venezuela. In Honduras the murder rate (43,6) is 800 percent higher than that of the United States.⁸ Citizens face many risks, including forced recruitment of children and adolescents, extortion, death threats and even murder by the *maras*, which are powerful violent criminal groups that exercise territorial control in various parts of these countries.⁹ Sexual violence, especially against women and members of the LGBTI community, is also widespread and often targeted against specific individuals. Similarly, Nicaragua is another Central American country that has registered massive departures of its citizens from April 2018 onwards, due to a violent repressive strategy by the government in response to social protests, including possible extrajudicial executions, torture and arbitrary detentions.¹⁰

The organization has also documented the presence in the caravans of many people who fled direct persecution and recent acts of violence by *maras* in Honduras and El Salvador as well as government repression in Nicaragua. These observations were corroborated with those carried out by international organizations and humanitarian organizations also carrying out interviews in the field.

3. HUMAN RIGHTS ON THE MOVE:

Right to freedom of movement, personal integrity and security:

The prolonged closure of borders increases uncertainty and despair among migrants, asylum-seekers and refugees. Article 13 of the Universal Declaration of Human Rights allows for freedom of movement and the right to leave one's country. Arbitrarily closing border crossings increases

⁶ Globally, 11,810 asylum applications were received from El Salvador, Honduras and Guatemala in 2012. Available at: <http://popstats.unhcr.org/en/overview>

⁷ While the homicide rate has decreased in El Salvador, Guatemala and Honduras, the current official figures for 2017 remain above the epidemic level assessed by the World Health Organization (10 per 100,000): the homicide rates in Honduras (43.6 per 100,000), and Guatemala (27.3) are respectively 800 percent higher than the U.S. rate (5.3 per 100,000).

⁸ According to the FBI, the US murder rate stands at (5.3 per 100,000). See information at: <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/murder>

⁹ Amnesty International: *Home Sweet Home? Honduras, Guatemala and El Salvador's role in a deepening refugee crisis*. October 2016, Index number: AMR 01/4865/2016

¹⁰ Amnesty International: *Shoot to Kill: Nicaragua's strategy to suppress protest. 29 May 2018*, Index number: AMR 43/8470/2018 . Amnesty International: *Instilling Terror: From Lethal Force to Persecution in Nicaragua*. 18 October 2018, Index number: AMR 43/9213/2018

the risks to the safety of those who are forced to wait for days in precarious sanitary conditions or forced to take more dangerous routes to continue their journey. Amnesty International researchers documented that Honduran, Guatemalan and Mexican authorities closed border crossing points, at different times between 17 and 28 October.¹¹

In addition, for years, Amnesty International has documented how migrants and asylum-seekers are frequently subject to muggings, extortions, kidnappings and killings and disappearances on their journey through Mexico.¹² In many instances, these crimes are not properly investigated by authorities. The members of the caravans have not been exempt from these dangers. Amnesty International was also informed of extortions against the caravans and abuses of authority by Guatemalan Police who removed them from vehicles and forced them to walk.

Use of Force:

In situations of crowds or massive movements of people, authorities must strictly limit the use of force in line with international standards that call for strict observance of the principles of proportionality and necessity, and only when all other means have failed to contain any violence. Devices such as tear-gas, stun-grenades, or other such devices, which are too inaccurate or which, by their very nature, have an indiscriminate effect because they may affect both people who participate in violence and peaceful persons alike, should therefore not be used in situations in which only a small number of people behave violently.¹³ Even in cases where individuals may take a forceful approach to security officials, authorities must ensure that they respond in line with international standards and seek alternative means to calm unrest. These devices may only be used when people have the opportunity to disperse and not when other routes of escape are blocked.

The arrival of the caravans resulted in the deployment of Mexican security forces on the Mexico-Guatemala border and on the shore of the Suchiate River, including Federal Police, the *Gendarmeria* and military personnel from the Mexican Navy, directly observed by Amnesty International researchers. In addition, Guatemalan Police and members of the military were deployed on the Guatemalan side. Furthermore, approximately 7,000 US troops (including soldiers and national guard) soldiers are currently deployed to the US–Mexico border.

On October 19, Mexican Federal Police used tear gas during the first arrival *en masse* of thousands of people on the border bridge between Mexico and Guatemala.¹⁴ The use of tear gas in this context could potentially violate international standards on the use of force, given that it occurred on a bridge where people were confined in barriers and in response to a limited period of unrest.¹⁵

On October 28, one man from Honduras was killed during the second arrival *en masse* of on the border bridge during a confrontation between people who arrived at the bridge and Guatemalan and Mexican security forces. Amnesty International has received differing video and testimonial information indicating that the projectile that resulted in the death could either have been a rubber bullet or a projectile designed to disperse irritant into a room or closed space.¹⁶

11 The Honduran government deployed security forces to close the Agua Caliente border between October 17-20. Guatemalan and Mexican authorities closed the Rodolfo Robles bridge that divides both countries, on several occasions between 20 and 28 October.

12 Amnesty International, *Facing Walls: USA and Mexico's Violations of the Rights of Asylum Seekers*. 15 June 2017, Index number: AMR 01/6426/2017. Page 33.

13 Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 7 September 2015, p 86.

14 Amnesty International has been unable to verify whether direct violence was used by members of the caravans against Federal Police, following the disruption of a part of the bridge barrier by smaller group of people entering Mexico. Amnesty International received several reports of people wounded during the ensuing panic that followed, including families separated.

15 Amnesty International: *Use of Force Guidelines*: Op Cit, reference 13 above.

16 A number of press reports pointed to the death being caused by a rubber bullet, for example: <https://www.aljazeera.com/news/2018/10/honduran-killed-mexican-border-crackdown-migrant-caravan-181029130957107.html>. The author of these acts has not been clarified. Mexican authorities affirmed that Federal Police were not armed and Guatemalan

On November 25, US Border Patrol agents pertaining to the Customs and Border Protection agency (CBP) used teargas in response to a group of between dozens and hundreds of migrants and refugees, including families and children, who walked and ran up to the border fence near the San Ysidro Port of Entry following a public march. CBP confirmed the use of teargas and “other projectiles”,¹⁷ and according to photos and videos analysed by Amnesty International, the “other projectiles” were likely baton or bean bag rounds (more colloquially known as “plastic bullets”), with at least one instance happening at close range. In addition, Amnesty International has received more than one report of people wounded during this incident.

Rubber bullets, baton or bean bag rounds, as well as cartridges with chemical irritants, if fired directly at a person, are potentially lethal. These are weapons not for indiscriminate use against crowds of people who are unarmed and for the most part not carrying out acts of violence, and their use in these circumstances would violate international human rights standards.

The right to seek asylum and obligations under international refugee law:

Central Americans and people of any nationality who are forced to leave their countries require adequate information about their rights and effective access to asylum processes in the country in which they decide to apply, with guarantees of due process. The right to seek asylum is a right established in international instruments, and the binding international legal principle of *non-refoulement* prohibits states from sending people to countries where they face a real risk of suffering serious human rights violations.¹⁸ The principle also applies to other people (including irregular migrants) who risk serious human rights violations such as torture, even if they do not meet the legal definition of a refugee.¹⁹ In addition, international standards require that no child be held in immigration detention, in accordance with the best interests of the child.²⁰ In the case of Mexico, legal regulations prohibit the detention of children in immigration detention.²¹

Amnesty International has carried out research in recent years on the widespread failures of Mexico’s National Migration Institute (INM) to properly screen for people in need of international protection. 75% of a group of hundreds of people recently surveyed by Amnesty International who were detained by Mexican migration authorities did not receive information about their right to seek asylum in Mexico.²²

Detentions, returns, deportations, and possible violations of the principle of *non refoulement*:

authorities purported to not possess arms that could fire projectiles. However, the day prior, on 27 October, Amnesty International researchers saw at least one firearm held by a Guatemalan policeman guarding the closed bridge that had a launcher that had the capacity to launch projectiles. Journalists that were present in the events have denounced that Mexican Federal Police fired the projectile that killed the man. Allegations of Mexican Federal Police using similar projectiles have been made in the past, during protests for the inauguration ceremony of President Peña Nieto in December 2012, see:

<https://aristeguinoticias.com/0612/mexico/no-se-repartieron-balas-de-goma-el-1d-osorio-chong/>

¹⁷ See for example, Twitter announcement by CBP on 25: <https://twitter.com/CBP/status/1066842405415124994> as well as Statement by CBP Commissioner McAleenan given to reporters, as quoted: <https://www.cnn.com/2018/11/26/politics/customs-border-protection-tear-gas-san-diego-tijuana-san-ysidro/index.html>.

¹⁸ The United Nations Convention on the status of refugees, (1951) , as well as its accompanying 1967 Protocol, outlines in Article 33 that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

¹⁹ See *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the states of Refugees and its 1967 Protocol*. Available at: <http://www.refworld.org/pdfid/45f17a1a4.pdf>

²⁰ See, for example: General comment from the United Nations Human Rights Committee on Article 9: “Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors”. As well as the UNHCR’s position regarding the detention of refugee and migrant children in the migration context” (January 2017) clarifying that “children should not be detained for immigration purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interest: Available at: <http://www.refworld.org/docid/503489533b8.html>

²¹ See Mexico’s Regulation on the General Law on Rights of Children and Adolescents, Article 111, available at: https://www.gob.mx/cms/uploads/attachment/file/339082/LGDNNA_Con_Ltimas_reformas_2018_hasta_la_del_20_de_junio_.pdf

²² Amnesty International, *Overlooked and Under protected: Mexico’s Deadly Refoulement of Central Americans Seeking Asylum*. 23 January 2018, AMR 41/7602/2018

According to official information, Mexican authorities received more than 3,230 asylum applications from caravan members at the end of October.²³ On 14 November the INM informed Amnesty International that 533 of these people abandoned their claims and were returned to their country²⁴ and later on 25 November reported that almost 2,000 people from the caravans had been returned to their country²⁵. Amnesty International has reason to believe that many more members of the caravans could be eligible for asylum claims and is also concerned that a number of unlawful returns could have been carried out in violation of the *non refoulement* principle. The above 533 returns carried out only referred to those people who were removed from a convention centre set up as a temporary facility to initially receive members of the caravans in the city of Tapachula. Many caravan members decided not to enter these facilities on learning that Mexican authorities were in fact using this space as a de-facto detention centre, relying on a regime of mandatory detention for asylum seekers housed in the convention centre, contrary to international standards, which operated between 20 October and 4 November.²⁶

Beyond the people returned from the “Mesoamerican Fair” convention centre, Amnesty International has documented a series of apprehensions of members of the caravans along the highways, including families and children. At times these apprehensions have happened on a mass scale, reaching the hundreds.²⁷

The numbers of people returned as provided by the Mexican government contrast sharply with the numbers published by Honduran authorities, pointing to as many as 4332 Hondurans returned from Mexico between 15 October and 7 November 2018.²⁸ In addition, one of the main measures announced on 20 October by the Guatemalan and Honduran governments to attend the massive arrival of the first caravan was to facilitate the so-called “voluntarily” return to their country²⁹, rather than focusing on their basic needs or the possible risks they could face on their return. New information received by Amnesty International in addition to previous research³⁰ raises doubts about whether proper screening for their protection needs was being conducted before loading people onto buses in Guatemala and Mexico.

Amnesty International also received multiple testimonies from caravan members and international organizations of pushbacks from the international bridge by Mexican officials, and directly spoke to at least two asylum seekers in detention on 25 October that had been placed on the deportation list for buses to their country, despite already having sought asylum in Mexico. Based on the information gathered, Amnesty International considers several deportations and returns could have been unlawful, putting people’s rights at risk.

²³ Mexico’s Interior Ministry: Secretaría de Gobernación, Tramita COMAR más de tres mil solicitudes de refugio de integrantes de caravana, 6 de noviembre de 2018 disponible en <https://www.gob.mx/segob/prensa/tramita-comar-mas-de-tres-mil-solicitudes-de-refugio-de-integrantes-de-caravana?idiom=es>

²⁴ Letter from National Institute of Migration to Amnesty International, dated 14 November 2018. OFICIO No. INM/DGJDH/341/2018.

²⁵ Press release from the Ministry of the Interior, 25 November 2018, available at: <https://www.gob.mx/segob/prensa/autoridades-mexicanas-retoman-control-del-cruce-fronterizo-el-chaparral-en-baja-california?hootPostID=ab0d151a45a6507af47614d8509b8fb7>

²⁶ The “Mesoamerican Fair” in the city of Tapachula which was turned into a provisional immigration detention center given the fact that the normal detention migration centre in the border city of Tapachula (Estacion Migratoria Siglo XXI) had reached full capacity. The organization confirmed from both official sources and international organizations that members of the caravan were misled by migration authorities who offered them refuge in a “shelter”. Many caravan members accepted this offer, not aware that in fact they would be detained mandatorily in the “Mesoamerican Fair” convention centre, in violation of international standards, with the only option of leaving the facilities by “accepting” deportation. To request asylum, members of the caravan were obliged to register and accept being detained. Amnesty International was denied access to this venue on two occasions on 25 and 26 October.

²⁷ On 26 October, Amnesty International witnessed a convoy carrying approximately 80 members of the caravan that were apprehended by a convoy of INM and Federal Police vehicles on the highway. Multiple sources confirmed that at least 300 caravan members were apprehended during this same operation. In addition, caravan members, international organizations, and the Mexican human rights ombudsman have confirmed a series of apprehensions by the INM along the highways of Mexico, including families and children.

²⁸ For the number of people returned to Honduras during this period, see: CONMIGHO, Observatorio Consular y Migratorio de Honduras, cifra de retornados 2018, available at: <https://www.conmigho.hn/direccion-general-de-proteccion-al-hondureno-migrante/retornados-2018/>

²⁹ Joint conference held by President Jimmy Morales and President Juan Orlando Hernández on 20 October, 2018. According to Honduran authorities, 7,013 Hondurans have voluntarily returned to their country between 15 October and 13 November 2018. CONMIGHO, Observatorio Consular y Migratorio de Honduras, cifra de retornados 2018, disponible en <https://www.conmigho.hn/direccion-general-de-proteccion-al-hondureno-migrante/retornados-2018/>

³⁰ Also see Amnesty International: *Home Sweet Home? Honduras, Guatemala and El Salvador’s role in a deepening refugee crisis*. October 2016, Index number: AMR 01/4865/2016

Amnesty International has also documented the repeated violation by the US government of the *non-refoulement* principle and other rights of asylum seekers. Unlawful practices have included, among others: (1) mass illegal pushbacks of asylum-seekers at the US–Mexico border; (2) thousands of illegal family separations, through which the Trump administration has deliberately and purposefully inflicted extreme suffering on families, ill-treatment which rose to the level of torture in some cases; and (3) increasingly arbitrary and indefinite detention of asylum-seekers, without parole, constituting cruel, inhuman or degrading treatment or punishment (ill-treatment) which is absolutely prohibited in international law³¹. Likewise, DHS has implemented these interrelated policies in unison: closing the borders to asylum-seekers and pushing them back into harm's way. Simultaneously, the Trump administration is seeking to dismantle the US asylum system, including by narrowing definitions of who qualifies for protection.³²

Dignity, humanitarian assistance and persons with special protection needs:

Humanitarian assistance is necessary for the realization of human rights such as the right to life and health, for persons displaced because of a conflict, natural disaster or other emergencies. States have the primary responsibility for initiating, coordinating and providing humanitarian assistance within their territory.³³

Amnesty International has observed in the caravans many families with children, as well as breastfeeding women. The organization also witnessed caravan members with special protection needs such as unaccompanied children, women, LGBTI people, and people with disabilities. International organizations dedicated to children's rights have estimated that 1 out of 4 members of the first caravan are children.³⁴

Many members of the caravans – including families – have been exposed to the elements, walking during the day under very high temperatures in certain parts of Guatemala and southern Mexico, or sleeping on the ground in public spaces, parks or sidewalks. Multiple cases of dehydration have been reported by international humanitarian organizations and the Mexican human rights ombudsman, as well as other ailments, including burns, conjunctivitis, fainting, and diarrhea related to lack of adequate food.

Amnesty International witnessed the enormous solidarity towards migrants and asylum seekers which has come from locals, churches, shelters and international and national organizations in respond to the basic needs of the caravans. Some municipal governments in towns and cities of southern Mexico and Mexico City also rapidly coordinated efforts to provide food and shelter. Nevertheless, Amnesty International also witnessed a lack of government humanitarian assistance by the Guatemalan government during the delegation's visit to Tecún Uman, from 25 to 28 October.

The responsibility of US and Mexican authorities on the border of Tijuana – San Diego:

Given the recent arrival of thousands of caravan members in Tijuana, and the expected arrival of many more in the coming days, authorities of the United States and Mexico must urgently share the responsibility to provide protection to those people waiting to enter the United States or considering their options in Mexico. Amnesty International Researchers on the ground in Tijuana have documented the arrival of the first part of the caravans to this northern border city. By

³¹ See, Amnesty International "USA: You don't have any rights here: illegal pushback, arbitrary detention and ill treatment of the asylum - seekers in the United States". Index number: AMR 51/9101/2018,11 October 2018. Available at <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>

³² Ibid.

³³ In accordance with United Nations General Assembly Resolution 46/182, which created a framework for humanitarian assistance and coordination.

³⁴ Amnesty International has collected a series of data collected by both Save the Children and UNICEF throughout the duration of the caravans in relation to the proportion of children travelling in the caravans.

November 19, the temporary sports facilities set up to receive caravan members was already full, with thousands more people expected to arrive in coming days.

According to information available to Amnesty International, the Mexican government, in a departure from its treatment of some previous caravans that have passed through Mexico, has not offered transit passes to the members of this caravan, nor humanitarian visas, which would effectively give them a provisional document that would protect them from detention or deportation while on Mexican soil. Amnesty International has received several reports from interviews with members of the caravan indicating that they are yet still undecided about whether to remain in Mexico or to seek asylum in the United States, yet they would make their decision once arriving in the city of Tijuana.

Mexico's asylum agency (the *Comisión Mexicana de Ayuda al Refugiados*, COMAR), currently has no officials based in the city of Tijuana, which undermines the capacity of the Mexican state to simplify and expedite possible asylum claims. Mexico's migration law allows for several options for members of the caravan, which includes the use of humanitarian visas valid for one year,³⁵ asylum claims before COMAR (which Mexican law requires to be lodged within 30 days of arrival in Mexico, contrary to international standards), as well as options for regularization for those people with family members in Mexico. At the time of writing, most caravan members have no provisional document which protects them from a potential detention or deportation, or from arbitrary detention by local police who are known to often detain migrants without documents, even though they have no authority to do so.

On 9 November, US President Donald Trump issued a Proclamation³⁶ that violates both international and US law by limiting the right to seek asylum only to those people who present themselves at official Ports of Entry (POE) to a government official CBP.³⁷ Despite that fact that a court ruling has temporarily barred the US Executive Branch from enforcing the Presidential Proclamation of 9 November³⁸, the Department of Homeland Security continues to reinforce border control efforts at the San Ysidro POE in order to respond to those people who may seek to cross into the USA outside of a queue at a POE, such as erecting barricades with concertina wire in the car lanes of the POE. These recent efforts add to pre-existing controls by CBP at this POE, which in recent months has been allowing a maximum 30 to 70 asylum seekers per day into the POE, according to municipal authorities of Tijuana. Amnesty researchers have also observed that Mexican authorities have deployed numbers of federal police with riot gear to the Mexican side of the POE, as well as erected metal gates that could be closed for crowd control, if there were an effort by asylum seekers to cross through the car lanes.

There are few indications that the US government has considered plans to significantly increase the number of officials trained in carrying out asylum interviews assigned to receive the potentially thousands more asylum seekers who are soon to arrive at this POE.

By way of contrast, approximately 7,000 US troops are currently deploying to the US–Mexico border – almost the same number as currently deployed to Afghanistan³⁹ – at a potential cost of hundreds of millions of dollars, to unnecessarily support the already overfunded and overstuffed

³⁵ Mexico's Migration Law Article 52 (V) c – allows for humanitarian visas to be issued in situations of "public interest", beyond the normal conditions for humanitarian visas which are reserved for migrants that have been victims of crimes in Mexico, or for those who are currently asylum seekers.

³⁶ Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States. Issued 8 November 2018: <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states/>

³⁷ See Amnesty International's statement on this Proclamation: <https://www.amnesty.org/en/latest/news/2018/11/usa-trumps-proclamation-to-restrict-the-rights-of-people-seeking-asylum/>

³⁸ Associated Press, 20 November: "US judge stalls enforcement of Trump asylum restrictions", available at: <https://apnews.com/9ba57ad1383f41c3afe1baa5b2d9c3bf>

³⁹ US Department of Defense, "Enhancing Security and Stability in Afghanistan", available at: <https://media.defense.gov/2018/Jul/03/2001938620/-1/-1/1/1225-REPORT-JUNE-2018-FINAL-UNCLASS-BASE.PDF>

Customs and Border Protection (CBP) agency of DHS, which alone has 60,000 personnel.⁴⁰ Amnesty International questions the necessity, cost and proportionality of deploying troops to the southern border, who have neither the mandate nor the training to carry out migratory screening activities nor law enforcement functions.

In recent days, media outlets have reported⁴¹ a possible agreement between the US government and the incoming Mexican government that would force asylum seekers to remain in Mexico awaiting the resolution of their cases in US courts. While this deal was later denied by an elected Mexican official⁴², this would not be the first time that reports have surfaced in recent months about the United States government trying to negotiate for asylum seekers to stay in Mexico. Other such discussions in recent months have also explored the idea of Mexico being declared as a “safe third country.” The fatal problem with this US plan is that Mexico is not a uniformly safe country for all asylum-seekers.

Amnesty International opposes any national policies to automatically return asylum-seekers and refugees to a supposedly “safe third country” (a country where the person can presumably receive protection), because they undermine authorities’ obligations to undertake individualized assessments of asylum claims and risks upon return to both the asylum-seeker’s country-of-origin and the third country. Without an individualized assessment of each asylum-seeker’s claim, there is a heightened risk of *refoulement* to ill-treatment, persecution or other irreparable harm, in violation of the asylum-seekers’ human rights.

4. RECOMMENDATIONS

Given the risks to the rights of migrants, asylum-seekers and refugees who have left their countries in recent weeks, and the strong possibility that further groups of people will continue to leave their countries, Amnesty International presents the following recommendations to the governments of Honduras, Nicaragua, El Salvador, Guatemala, Mexico and the United States:

For countries of origin:

- Urgently address the factors that drive people to leave their country, including endemic impunity for human rights violations, inequality, generalized violence and persecution of human rights defenders and activists.
- Refrain from closing border crossings and effectively undermining the right of citizens to leave their country.
- Ensure mechanisms to identify if people returned to Guatemala, Honduras and El Salvador are in danger in their communities of origin and provide them adequate and immediate protection.

For authorities of transit and receiving countries:

- Properly inform people about their right to seek asylum and ensure that they have access to asylum procedures with all due process guarantees.

⁴⁰ The cost of deploying 2,000+ National Guard troops until now has already cost almost 220 million, according to media reports, for example: <https://www.washingtonexaminer.com/policy/defense-national-security/costs-are-mounting-for-trumps-use-of-the-military-at-the-border>

⁴¹The Washington Post: “Deal Paves the Way for asylum overhaul at U.S. border” https://www.washingtonpost.com/world/national-security/deal-with-mexico-paves-way-for-asylum-overhaul-at-us-border/2018/11/24/87b9570a-ef74-11e8-9236-bb94154151d2_story.html?utm_term=.6feddb5060f7. 24 November 2018.

⁴² Reuters, “Trump says asylum seekers to wait in Mexico, incoming government denies.” Available at: https://uk.reuters.com/article/uk-usa-immigration-mexico-idUKKCN1NT0SI?utm_campaign=trueAnthem:+Trending+Content&utm_content=5bfa4e5504d3013c7f98b4e0&utm_medium=trueAnthem&utm_source=twitter. 24 November 2018.

- Ensure that all procedures related to returns and transfers of individuals to countries of origin involve human rights guarantees, among others allowing the individuals' effective access to legal counsel and the opportunity to challenge the lawfulness of any return decisions before competent judicial bodies.
- Urgently curtail the use of immigration detention for asylum-seekers, migrants and their families. Ensure that liberty is the default condition, and that the detention of asylum-seekers and migrants is exceptional and only resorted to when it is determined to be lawful, necessary in the specific circumstances and proportionate to a legitimate purpose based on an assessment of the individual's circumstances.
- Ensure that no child is detained in immigration detention centers, including with their family.
- Ensure that all allegations of unlawful detention and deportation in violation of the *non refoulement* principle are promptly and effectively investigated, that all those found to be responsible are held to account and that the victims are granted full reparations.
- Guarantee the safety and integrity of persons in transit and investigate all abuses and violations of the human rights of migrants and asylum-seekers.
- States must assume their responsibilities in humanitarian assistance by organizing, coordinating and providing any assistance that may be required by persons on their territory. Civil society providing humanitarian assistance should be appropriately supported by the government.
- Urgently and significantly enhance reception conditions ensuring migrants and asylum seekers have access to shelter, beds, water, sanitation, food, psychological attention and personal safety;
- In line with international standards, exercise restraint in using force, including in the use of so-called "less lethal weapons" such as tear-gas and rubber bullets. Any force used must be proportionate to the seriousness of the offence and the aim to be achieved. If the potential harm outweighs any potential benefits, the authorities must accept that the aim may not be achieved, and force should not be used.

Specific measures recommended for the Mexican government:

- Immediately deploy COMAR officials to the Tijuana and the northern border area in order to ensure proper screening of migrants and asylum seekers who may qualify for international protection, ensuring priority to the respect of human rights and principles of family unity.
- Implement a mechanism for abbreviated and simplified asylum claims for people with certain risk profiles based on age, social group and nationality, to expedite the normal process of asylum claims before COMAR which can take a number of months.
- Explore options for providing provisional documentation to those people awaiting reception at US Ports of Entry. Authorities must consider the use of, among others: humanitarian visas, provisional transit passes, or other measures to ensure that caravan members are protected from deportation to their countries of origin while their case is processed. Authorities must ensure that any provisional document provided to these people does not disqualify them from subsequently seeking asylum before COMAR in the event of deciding to stay in Mexico.

Specific measures recommended for the United States government:

To the US Congress:

- Following the Executive Branch's adoption of unlawful measures to deny people the right to seek asylum, and its simultaneous refusal to promptly receive their asylum claims at Ports of Entry, Congress should decline to fund DHS Customs Border Protection (CBP) operations, absent rigorous Congressional oversight of those operations and DHS policy guidance halting illegal pushbacks of asylum seekers, both at and between Ports of Entry.

- Decline to fund all detention operations of DHS Immigration Customs and Enforcement (ICE), absent rigorous Congressional oversight of those operations and DHS policy guidance halting the detention of family units.
- Increase Justice Department (DOJ) funding for immigration judge teams and establish and fund a nationwide Legal Orientation Program (LOP) for all immigration detainees.
- Pass legislation banning family separation and family detention and providing appointed counsel for unaccompanied children and parents with children.
- Increase funding for the DHS Citizenship Immigration Services (CIS) asylum corps and the State Department (DOS) refugee corps.
- Press the federal government to halt negotiations with Mexico regarding any agreements to force asylum seekers to remain in Mexico awaiting the outcome of asylum claims, or to declare Mexico a “safe third country” which would be in violation of both US and international law.

To the Executive Branch:

- Immediately accept asylum-seekers at the US–Mexico border, both at and between official ports-of-entry.
- Halt the unnecessary, disproportionate, and financially wasteful deployment of US military personnel to the Mexico border.
- Halt family separations in all circumstances, except following a rigorous determination of best interests of the child, which must be articulated to family members and recorded in the case files of those affected.
- Ensure funding to fulfil US obligations under US and international law to swiftly receive and process protection requests by the asylum seekers whom CBP has been unnecessarily forcing to wait in Mexico for months.

To US federal and state law enforcement officials:

- Monitor, regulate, investigate, and where appropriate criminally prosecute any acts of violence or other abuses by armed citizens along the US–Mexico border.

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