



General Assembly

Distr.: General
19 February 2020

English only

Human Rights Council

Forty-third session

24 February–20 March 2020

Agenda item 6

Universal Periodic Review

Written statement* submitted by Physicians for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 February 2020]

* Issued as received, in the language(s) of submission only.



Physicians for Human Rights medical evidence documents the detrimental effects of the United States of America immigration and border policies on asylum seekers

Physicians for Human Rights (PHR) was founded on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. For more than 30 years, PHR – which shared in the 1997 Nobel Peace Prize for its work to end the scourge of landmines – has used its investigations and expertise to advocate for persecuted health workers and facilities under attack, prevent torture, document mass atrocities, and hold those who violate human rights accountable.

This submission addresses several issues and is based on field interviews and clinical evaluations along the U.S.-Mexico border in Tijuana, Mexico; Arizona; California; and Texas as well as analysis of immigration and border policies by PHR medical experts and staff.

Family separation

Since October 2018, PHR medical experts have evaluated 37 individuals, including 14 children and 23 parents, who were separated under the U.S. government’s “zero-tolerance” policy in the summer of 2018 to discourage illegal migration into the U.S. by requiring that the Department of Justice prosecute and hold all adult aliens caught crossing the border illegally. No exception was made for asylum seekers or children, which resulted in families and children being separated in immigration detention. All individuals evaluated reported severe negative psychological impacts due to the separation, with particularly severe consequences for children. Many of the children evaluated met the criteria for post-traumatic stress disorder (PTSD), separation anxiety disorder, and/or major depression even after being reunited with their parents.

Some parents informed PHR clinicians that U.S. officials told them they would never see their children again, that their children would be adopted by families in the United States, or that they deserved to be separated because they were “criminals” or traffickers for crossing between ports of entry, while the rest were given no reason for the separation. Parents described trying to locate their children and going for weeks with no contact or information as to their children’s whereabouts.

Separation from parents has been shown to be linked with higher rates of PTSD in affected children.¹ The negative impact on the cognitive and emotional functioning of separated children can continue into adulthood and contribute to lower academic achievement, attachment difficulties, and poor mental health.²

Alternatives to detention

Despite a compliance rate of 99 percent of families showing up for immigration court hearings, in 2017, the Trump administration terminated the Family Case Management Program, which provided a least-restrictive alternative for special populations of immigrants. Studies in several countries comparing the well-being of refugees in community settings to those in detention consistently find better mental health outcomes for families in the community.³

¹ P.L. Geltman, W. Grant-Knight, S.D. Mehta, et al, “The ‘lost boys of Sudan’: functional and behavioral health of unaccompanied refugee minors re-settled in the United States,” *Archives of Pediatric and Adolescent Medicine*, 2005, 159: 585–91.

² I. Bronstein and P. Montgomery, “Psychological distress in refugee children: a systematic review,” *Clin Child Fam Psychol Rev*, 2011, 14(1), 44-56. doi:10.1007/s10567-010-0081-0.

³ https://s3.amazonaws.com/PHR_other/factsheets/PHR_Asylum_Fact_Sheet_Alternatives_to_Detention.pdf

Inadequate health care and detention conditions

PHR has found that Customs and Border Protection (CBP) officials regularly misinterpret or even disregard the limits of their legal authority while conducting border enforcement activities, constituting human rights violations and resulting in serious harms to health.⁴ Lack of medical screening and dangerously inadequate conditions of confinement provoke grave concern⁵ and reflect systemic shortcomings with dangerous health consequences.⁶

Deaths in U.S. custody

The recent deaths of five children in CBP custody highlight the deficient care provided by CBP, especially to minors. An investigation by the Office of Inspector General exposed dangerous conditions in detention cells. PHR is concerned about inadequate medical screenings, poor access to emergency medical care, insufficient pediatric care, and confiscation and disruption of medication.⁷

Migrant protection protocols

The Migrant Protection Protocols (MPP), requiring asylum seekers to wait out their immigration proceedings in Mexico, leave asylum seekers vulnerable to violence and with no resources to move their claim forward, which puts them at risk and violates the principle of *non-refoulement* by subjecting them to “great risk, irreparable harm, or persecution.”⁸ According to TRAC, as of December 1, 2019, 59,241 asylum seekers have been returned to Mexico under MPP.⁹ PHR interviewed several asylum seekers who faced violence while waiting in Tijuana, Mexico, including Manuel (a pseudonym), who said he was almost killed.¹⁰ During his clinical evaluation with PHR, Manuel recalled the ordeal: “I thought that at any moment I would lose my life.” Scars on Manuel’s chest and forearm were consistent with his report. Manuel managed to escape and went into hiding in Tijuana but told PHR he was terrified he would be found before his turn arrived to make an asylum claim in the United States.

Third country Asylum rule and Asylum cooperative agreements

In July 2019, the Department of Homeland Security (DHS) and the Department of Justice issued the Third-Country Asylum Rule, whereby any asylum seeker who travels through Mexico or Guatemala would be required to make an asylum claim there before being able to seek protection in the United States.¹¹ Issued on November 19, 2019, the interim final rule “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act” provides a framework within which the U.S. government can send asylum seekers to countries in which they are likely to face grave risks. These bilateral Asylum Cooperative Agreements with El Salvador, Guatemala, and Honduras violate the provisions of U.S. law which prohibit “safe third country” relocation of asylum seekers unless that third country can ensure their protection from persecution and guarantee a full and fair asylum process.¹² PHR’s research shows the danger of these policies through consistent documentation of how asylum seekers who had previously sought to relocate to a

⁴ <https://phr.org/our-work/resources/zero-protection-how-u-s-border-enforcement-harms-migrant-safety-and-health/>

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24800>

⁶ <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>

⁷ https://phr.org/wp-content/uploads/2019/07/PHR-Fact-Sheet_Health-Risks-of-CBP-Detention.pdf

⁸ <https://www.law.cornell.edu/uscode/text/8/1225>

⁹ <https://trac.syr.edu/phptools/immigration/mpp/>

¹⁰ https://phr.org/wp-content/uploads/2019/10/PHR-Asylum-Seekers-Fleeing-Violence-Report-October-2019_FINAL_English.pdf

¹¹ <https://content.govdelivery.com/accounts/USDHS/bulletins/251a4f7>

¹² 8 U.S.C. § 1158(a)(2).

“third country” such as Mexico or Guatemala, before seeking asylum in the United States, faced threats or violence in those countries. Asylum seekers also faced the risk of *refoulement* by Mexican immigration officials, who have returned Central Americans to their countries of origin despite fears of persecution and/or torture if returned^{13,14}

Obstruction of medical care

The ability of U.S. health care providers in and near the border area to practice medicine is hindered by immigration enforcement activities that impede patient treatment.¹⁵ Interviews by PHR documented a range of concerns in and near health facilities, in contravention of the principles in the DHS Sensitive Locations Policy.¹⁶ These actions may also violate U.S. laws and policies intended to secure fundamental ethical and legal protections, including non-discrimination, ensuring patient privacy, and confidentiality. Physicians interviewed by PHR reported that CBP agents have insisted on shackling patients in critical condition, which affects the ability to examine the patient and run diagnostic tests. Agents conduct searches in hospital parking lots and hold ambulances carrying critically ill patients at checkpoints.¹⁷ Agents arrest patients undergoing surgery and pressure providers to clear sick patients for detention, compromising safe medical discharge.¹⁸

Recommendations

PHR recommends that the U.S. government:

- Ensure that the asylum application process is safe, predictable, and transparent, and includes trauma-informed practices that safeguard the physical and psychological health of asylum seekers.
- End practices that restrict physical and legal access to the U.S. asylum system, including MPP and “metering” along the U.S.-Mexico border.
- Fund programs that prioritize community-based alternatives to detention for asylum seekers – particularly for children and family units – over incarceration or extraterritorial queuing.
- Cooperate with regional and international monitoring mechanisms.
- Instruct DHS to ensure respect by all agents for the Sensitive Locations Policy through publicly affirming these principles, providing training for agents to consider the medical needs of patients impacted by enforcement actions, and investigating and sanctioning agents who violate guidelines.
- Direct DHS to end child detention in CBP facilities, provide standards for better care of all persons in custody, and publicly release findings of impartial investigations related to all deaths in custody.
- Pass legislation that codifies the Sensitive Locations Policy into the Immigration and Nationality Act and exercise oversight of DHS to ensure compliance with such policies.
- Legislate humanitarian standards for the treatment of migrants and asylum seekers in U.S. custody, including in places of immigration processing and detention.

¹³ <http://www.humanrightsfirst.org/sites/default/files/HRF-Mexico-Asylum-System-rep.pdf>.

¹⁴ https://www.echr.coe.int/Documents/COURTalks_AsyI_Talk_ENG.PDF.

¹⁵ <https://www.nytimes.com/2019/06/10/us/border-migrants-medical-health-doctors.html>.

¹⁶ <https://phr.org/our-work/resources/not-in-my-exam-room>

¹⁷ Ibid.

¹⁸ Ibid.