

Situation at the USA-Mexico Border

To the Member States joining us in our review pre-session today:

Thank you for your time and attention to the situation at the USA-MX border. I speak to you today as the Vice President of the Women's International League for Peace and Freedom, a feminist peace organization striving for demilitarization, and as a migration and human trafficking researcher who investigates how human rights violations contribute to the blight of exploitation of the world's most vulnerable people with a focus on migration at the USA-MX border. But beyond these roles, I am a native of the USA-Mexico border, having been raised between cultures, languages, and countries. I speak to you today not just as a researcher and human rights defender, but as a fronteriza. I speak not just about a vulnerable region, but of my home.

The funds allocated to Immigration and Customs Enforcement (ICE), Executive Office for Immigration Review (EOIR) and Custom and Border Protection (CBP) increased from USD 15.8 billions in 2010 to USD 23.1 billions in 2019, further militarising the USA-Mexico border. Though such defence spending is said to be for security measures, the immigration practices and policies such as the "Zero Tolerance" interpretation of Immigration Code 1325 and the recent Migrant Protection Protocols program, implemented at the USA-Mexico border have led to gross human rights violations, including inhumane treatment of asylum seekers at US ports of entry, broadened jurisdiction and racial profiling leading to illegal arrests and detention of US citizens and residents, and deaths of impoverished and indigenous children while in custody of the US Border Patrol.

A zero-tolerance policy adopted by the Attorney General in April 2018, directed US Attorney's Office along the Southwest border to criminally prosecute attempted illegal entry and illegal entry into the USA by an alien under Section 1325 (a) of the US immigration code. This resulted in families travelling with their children, including asylum-seeking families, being automatically separated and subjected to criminal prosecution as a punitive deterrent from migrating to the country. It is the most prosecuted federal offense in the USA and contributes to the business of mass incarceration by detaining immigrants in US federal prisons and detention centres, most of which are privately run for profit.

Since 2018, nearly 6,000 children have been separated from their parents at the border, with 1,000 taken even after a federal judge's injunction in July 2018. A total of 69,550 migrant children were held in US custody in 2019. These numbers range from newborns to teens. The illegal and cruel practice of separating the children of asylum-seekers and border crossing migrants from their parents will have

severe and lasting harm as underlined by several UN Experts,¹ and constitutes acts of torture. This and other practices when apprehending asylum seekers who are following the legal process of reporting to a port of entry, occur because the US government treats them as criminals who are trespassing, rather than asylees seeking protection. Once detained, migrants – and some citizens who have been racially profiled and/or live within the 100 mile “no constitution zone” where USCBP has broad jurisdiction – are exposed to rampant physical, mental, and sexual abuse, unhygienic conditions, and little to no medical care. Moreover, ICE was reported to prevent detained migrants from contacting attorneys when they looked for legal assistance to pursue their cases.²

In 2014, the Committee against Torture reminded the USA of its obligations under the Convention to respect and protect the rights of refugees, asylum seekers and migrants and made several recommendations in this regard.³ In its first UPR cycle (UPR I), the USA supported many recommendations on the respect and protection of the human rights of migrants, including one to “avoid the criminalization of migrants and ensure the end of police brutality, through human rights training and awareness-raising campaigns, especially to eliminate stereotypes and guarantee that the incidents of excessive use of force be investigated and the perpetrators prosecuted”.⁴ Regrettably, in its second UPR cycle (UPR II), it only noted recommendations relating to investigations and accountability for the deaths of migrants by customs and border patrols⁵; guarantee the right to family reunification of migrants held in detention.⁶

Recommendations

- Repeal section 1325 of the US immigration code, reversing the interpretation that allows for cruel “zero tolerance” and family separation policies, and rendering unauthorized migration –

¹ UN Experts, “Migrant caravan: States have duty to protect human rights”, Geneva, 28 November 2018, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23941&LangID=E>

² See, for example: <https://www.aclunc.org/news/aclu-seeks-court-order-against-ice-guarantee-detained-immigrants-access-lawyers>

³ CAT Committee, “Concluding observations on the combined third to fifth periodic reports of the United States of America”, 19 December 2014, available at: <https://uhri.ohchr.org/Document/File/79c2a87f-9133-4134-a720-451dde3eae19/939a376a-f0ad-4023-8b64-671f5aa633bf>

⁴ Recommendation 92.105 (Uruguay)

⁵ 176.229 “Investigate cases of deaths of migrants by customs and border patrols, particularly those where there have been indications of an excessive use of force, and ensure accountability and adequate reparation to the families of the victims” (Mexico)

⁶ 176.338 “Guarantee the right to family reunification of migrants held in detention and continue with the efforts to protect the human rights of migrant persons, particularly their economic, social and cultural rights” (Paraguay)

free of any trafficking attempt – as a civil instead of a criminal offence, in line with what recommended by the Committee on the Elimination of Racial Discrimination in 2014.

- Reinstating the asylum category defining domestic violence and sexual assault cases as victims of violence.
- Abolish the failing Immigration and Customs Enforcement agency, divest from the privatization of detention centres profiting from ICE raids, and invest in an oversight committee that reviews resettlement assistance in centres under the management of the Office of Refugee Resettlement and the Administration for Children and Families and in partnership with health and mental health professionals.
- Investigate cases of deaths of migrants by customs and border patrols, particularly those where there have been indications of an excessive use of force and ensure accountability and adequate reparation to the families of the victims.