

TABLE OF CONTENTS

Children on the Move Framing Review	4
A map of existing protection frameworks, overarching issues, and areas for improvement	
Children on the Move Learning Review	38
Risk factors, Responses, and Recommendations	
Appendix: Case Studies About Children on the Move	72
Examples of Good Practice: Germany, Sweden, and the United Kingdom	73
In Transit: On and Through Lesbos, Greece	96
En Route Through Europe: On the Western Balkan Route via Serbia	123
Exclusionary Practices: The Difficulty of Entering the United States and Australia	144
The Impact of Persistent Exclusion: Rohingya Leaving Myanmar	166
Internal Migration: From Bihar to Rajasthan, India	184
Living Rough: On the Street in Senegal	198

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EXCLUSIONARY PRACTICES

The Difficulty of Entering the United States and Australia

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INTRODUCTION

Around the world, children and families undertake perilous journeys to flee dangers in their countries of origin. Around the world, both liberal and conservative governments see these people as migration dilemmas to be solved through military enforcement and, where adequate documentation is lacking, through detention. The United Nations Committee on the Rights of the Child (CRC) has stated that children should not be denied their liberty or arbitrarily detained as a means of immigration control.¹ However, the United States, Mexico, Australia, and many other countries have created policies that allow officers to detain undocumented migrants who pass their borders. Many policies treat large migration flows as a national security threat that needs to be mitigated rather than as vulnerable populations who need protection.² As the framing review discusses, it can be an arduous task for asylum seekers to demonstrate they have “a well-founded fear of persecution” under the UN Convention on the Status of Refugees.³

Mountz and her coauthors have described detention as a physical demonstration of exclusionary state practices.⁴ Detention centers are mostly situated at the periphery of communities. Detainees are kept behind walls, and, within those walls, they are isolated from each other and under constant surveillance.⁵ Migrants crossing borders in search of asylum are perceived to be a national security threat; therefore, they are treated like criminals. Families and children are included in the potential threat and are detained on arrival. According to Mountz and her coauthors, “there is a circular rationale that legitimizes detention: migrants might be criminals, necessitating detention; migrants must be criminals because they are detained.”⁶

This case study explores how both the United States and Australia have used their economic power and other strategies to shift the burden of processing asylum seekers to smaller states in their region. It will first focus on US strategies to shift the burden of processing and screening asylum seekers to Mexico, then move on to discuss child protection failures for migrant children detained in the United States

and Mexico. The case then highlights similarities between US and Australian use of off-shore detention and discusses the treatment of children in Australian detention facilities. This case underscores the widely supported claim that the use of detention constitutes an abuse of children’s human rights.

THE US BORDER: DETENTION, DEPORTATION, AND EXCLUSION

The Obama administration and previous administrations have favored aggressive border enforcement strategies and policies. Since the early 1990s, US government leaders have focused on increasing border protection and security. After the September 11 attacks, political leaders have aimed to enforce rigorous immigration policies, and to strengthen their power to choose who enters and lives in the United States.

Over the past five years there has been an increase in the numbers of migrants primarily from El Salvador, Guatemala, and Honduras—the “Northern Triangle” of Central America—seeking asylum in the United States. In fiscal year 2014 (October 1-September 30), the United States apprehended 68,541 unaccompanied children and 68,445 members of families traveling together in the southwest border sectors of the country. Northern Triangle countries were the countries of origin for approximately 83 percent of those migrants.⁷ The language of crises determines the response and funding for support. This migration flow of families and children was first declared a “humanitarian crisis” and later became a “refugee crisis.” Advocates such as the United Nations High Commissioner for Refugees (UNHCR) have attempted to shift

the tone of public debate by highlighting reasons for supporting the arrivals as refugees.⁸ Families, including children, flee the Northern Triangle because of violence combined with economic and political instability. Many unaccompanied children (UAC) have crossed the border in an attempt to reunite with a parent in the United States (see Case Table 4.1).

There is expansive use of automatic and arbitrary detention of asylum-seeking families and children arriving in the United States as an explicit deterrence strategy to immigration.⁹

The United States, Mexico, and the Northern Triangle countries have colluded to block migration flows from the Northern Triangle. The Mexican-Guatemala border is often described as “porous”; therefore, the US government has bolstered funding and enforcement efforts at that border, developing the Southern Border Program (SBP). The aim is to block major migration routes through eastern Mexico towards Texas. Strengthening border enforcement and increasing deportations could leave vulnerable populations trapped in dangerous situations. Since the start of the SBP in 2014, Mexico’s apprehensions have more than doubled.¹⁰

Deportations from Mexico and the United States to the Northern Triangle

The flow of asylum seekers has continued to increase over recent years. This is shown in the number of deportations from Mexico and the United States, which has increased by 50 percent over the past five years. As legal scholar Daniel Fitzgerald has pointed out, the key difference is that the United States has shifted the burden of processing asylum seekers to Mexico.¹¹ Deportations from the

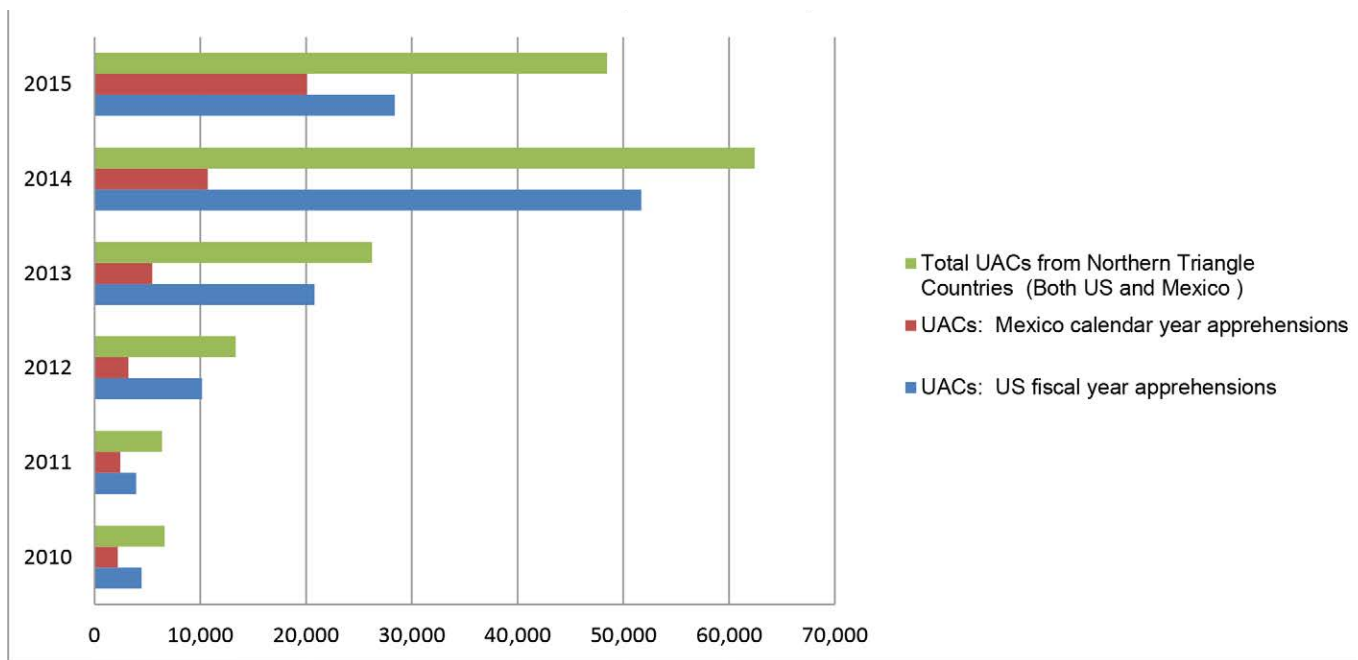
Case Table 4.1 Drivers of Migration from the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras)

<p><i>"If you stay you will die, if you leave, you might...either way it's better to try."</i> —Child on the move*</p>		
<p>*Quoted in Jessica Jones and Jennifer Podkul, <i>Forced from Home: The Lost Boys and Girls of Central America</i> (New York: Women's Refugee Commission, 2012), 9.</p>		
Family reunification	Violence	Economic and Political Instability
<p>Approximately 49 percent of Salvadoran and 47 percent of Honduran unaccompanied children (UAC) report having at least one parent in the United States.*</p>	<p>The UNHCR interviewed 404 children from the Northern Triangle and Mexico to understand root causes for families and UAC fleeing their homes. Their data highlight that children are fleeing domestic violence, gangs, and general violence.* The Women's Refugee Commission found evidence that Mexican cartels are recruiting children from the Northern Triangle region. The cartels use children to smuggle drugs and to create havoc among rival gangs.**</p>	<p>Rosenblum and Ball point to the high levels of poverty, political instability and droughts as causes for children migrating.***</p>
<p>*UNHCR, <i>Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection</i> (Washington DC: UNHCR, 2014).</p>	<p>**Jessica Jones and Jennifer Podkul, <i>Forced from Home: The Lost Boys and Girls of Central America</i> (New York: Women's Refugee Commission, 2012).</p>	<p>***M. Rosenblum and I. Ball, <i>Trends in Unaccompanied Children and Family Migration from Central America</i> (Washington, DC: Migration Policy Institute, 2016).</p>

United States have decreased, while deportations from Mexico have increased dramatically, particularly in 2015.¹² As noted earlier, this is, in part, due to greater US support for immigration control on Mexico's southern border. Therefore, while fewer migrants are making it to the United States, the demand for resettlement in the United States has not decreased. Many advocates are troubled by high rates of deportation, low settlement rates, and limited protection offered to refugees in Mexico. Civil-society organizations in Mexico continue to make the case that high rates of deportation demonstrate limited humanitarian screening in Mexico.¹³ In their 2015 report, Villegas and Rietig of the

Migration Policy Institute raise similar concerns. They demonstrate a dramatic increase of total unaccompanied children apprehended in 2014 and 2015.¹⁴ Apprehensions in Mexico were on the rise while they fell in the United States in FY 2015 (Case Figure 4.1).

Many experts expected this trend to continue. However, thus far in 2016 apprehensions of unaccompanied minors have dropped in Mexico and increased in the United States. Case Figure 4.2 shows total unaccompanied minors apprehended in the United States and Mexico for the seven months from January through July 2016. In email correspondence with Ariel Ruiz Santo of the Migration



Note that US data are for the fiscal year (FY, October 1 through September 30) while Mexican data are for calendar year. Unaccompanied minors only (Mexico also reports data on accompanied minors; the US includes them as members of family units).

Source: US Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2015, November 24, 2015, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2015>; Unidad de Política Migratoria (Mexican Migration Policy Unit) SEGOB, "Eventos de menores extranjeros 2010-2015," http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Series_Historicas.

Case Figure 4.1 Unaccompanied (UAC) minors from Northern Triangle countries (El Salvador, Honduras, Guatemala) apprehended in the US Southwest Border Region and in Mexico 2010–2015 (US numbers FY)

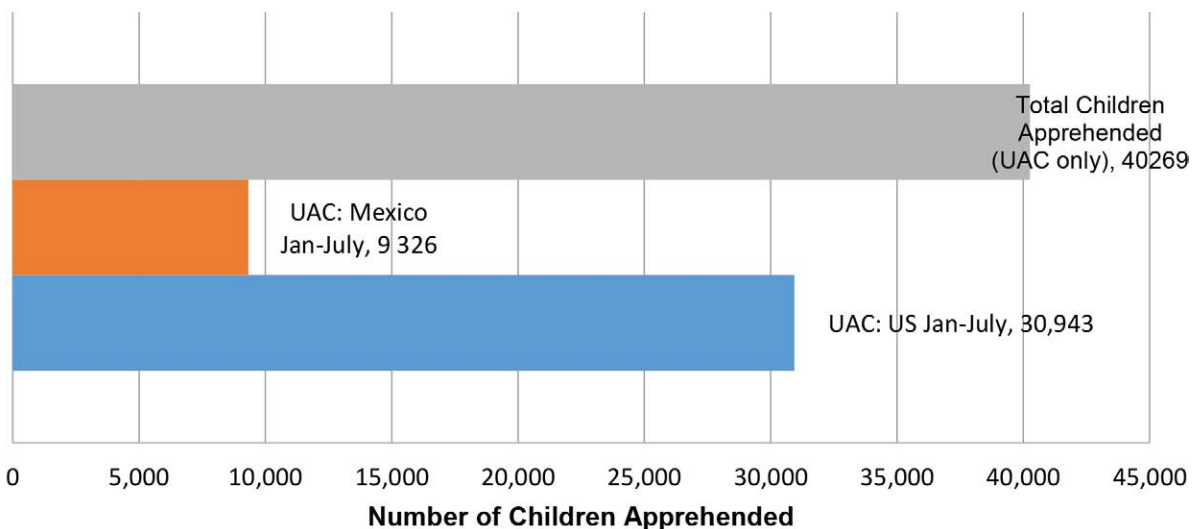
Policy Institute, he pointed out that although the number of apprehensions of unaccompanied minors will be less in Mexico than the extraordinary numbers of 2015 the total number of such apprehensions will be much higher than the number in 2014, before the Southern Border Program began.

For both the United States and Mexico, children from the Northern Triangle comprise by far the bulk of unaccompanied minors apprehended. As Case Figure 4.3 illustrates, children who originated from El Salvador, Guatemala, and Honduras made up 22 percent of minors apprehended in the Southwest Region of the United States in FY 2016 through

August. For Mexico, the percentage of child migrants from the Northern Triangle is even greater—they made up 97 percent of unaccompanied minors apprehended.¹⁵

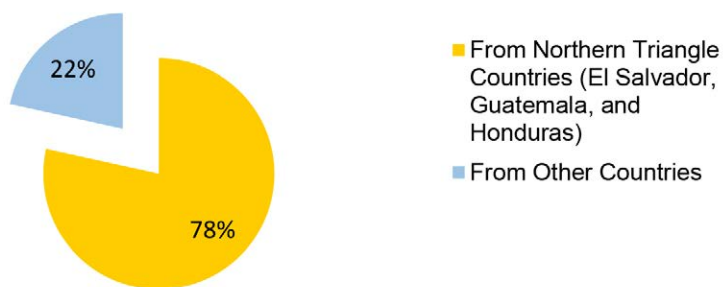
Authorities' actions differed greatly by location of apprehension. Mexico deported 77 percent of apprehended unaccompanied children in 2014; in contrast, the United States deported only 3 percent.¹⁶

One reason for lower rates of deportation in the United States is the long wait times to have an asylum case heard before a judge. The average wait time for all cases, including those of unaccompanied children, was esti-



Unaccompanied minors only. Source: FXB calculations for Jan-July 2016, based on figures from US Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> and Unidad de Política Migratoria (Mexican Migration Policy Unit) SEGOB, “Chart 3.1.5 Eventos de menores extranjeros,” Jan-July, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos.

**Case Figure 4.2 All Children Apprehended, Mexico and US Southwest Border Region, first 7 months of 2016
January through July, unaccompanied children (UAC)**



Source: Border Patrol, Southwest Family Unit and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

Case Figure 4.3 Countries of Origin of Unaccompanied (UAC) Minors, Apprehended in US in the Southwest Border Regions, FY 2016 Thus Far (Oct–August)
Total Children = 54502

mated in April 2016 to be 666 days, or more than one year and nine months.¹⁷ Rosenblum found that the US government has underfunded the immigration court. In 2014 funding for enforcement operations increased by 300 percent while immigration adjudication increased by only 70 percent.¹⁸ This has resulted in long judicial backlogs. Children in immigration proceedings have the right to legal representation but are not provided with it at government expense; there is a huge shortage of lawyers who are willing to represent these children for no or very little cost, so the majority receive no legal counsel at all.¹⁹ It is difficult to make an asylum claim without the assistance of an attorney; those who make claims without attorneys are more likely to be deported.²⁰ According to the Transactional Records Access Clearinghouse (TRAC), of those cases opened in 2014, 60 percent (53,616) involving unaccompanied children and 69 percent (51,786) involving

mothers with children were still pending in January 2016. From July 18 through October 14 in 2014, only 179 unaccompanied children were allowed to stay in the U.S. out of a total of 1,637.²¹ Creating a system that could promptly process asylum claims in the United States would be one method to remove children and families from detention.

Apprehended in the United States

Children and families have been travelling for weeks or months by the time they reach the United States-Mexico border. US immigration law requires that the Department of Homeland Security (DHS) detain most illegal migrants who arrive in the United States. Border apprehension appears to be one of the most traumatic points in the journey for children. Once apprehended at the border, most people are placed in cold cells called “las hieleras” or “iceboxes.” Lights are kept

on, and there are no beds. Only some facilities provide mattresses and thin blankets. Children interviewed complained about the cold, crowded, and unpleasant experiences they had in these facilities.²² There are no signs in the center explaining migrants' rights to just treatment, and there is no clear complaint system if they suffer abuse while in Customs and Border Patrol (CBP) custody.²³ The American Civil Liberties Union (ACLU) has filed lawsuits against the Border Patrol for the poor conditions and traumas that children have suffered at the border in these facilities.²⁴

US Border Patrol officers have been accused of human rights abuses, including persuading families not to apply for asylum. Human Rights Watch interviewed people who had their claims for asylum ignored, and were coerced into signing documents that they did not understand.²⁵ A woman with her child from Honduras recalled her experience in detention at the border: "They called me and they said that I had to sign this paper. They told me that it was for a judge to see my case. But I never saw a judge and they told me I had a deportation order. They told me I was already deported."²⁶

Children and families are briefly interviewed when apprehended at the border; judges will sometimes use information gained from those interviews to assess migrants' claims for asylum. Many asylum seekers have had officials record "no fear of persecution" and "travelled for work" as their reasons for crossing the border.²⁷ The credibility of these interviews came into question after the discovery of border officials recording "travelled for work" as the reason a three-year-old crossed the border.²⁸ Lawyer Barbara Hines, Co-Director of the Immigration Clinic at the University of Texas at Austin Law School, ar-

gues that greater oversight is needed in this part of the screening process, if judges will allow information gathered from the border interview into evidence for asylum claims.²⁹

The Border Patrol has not set clear standards or guidelines for how employees should interact with children in their custody. Christian Ramirez, Human Rights Director at Alliance San Diego, recently visited Ursula, a new border detention center in the Rio Grande Valley area. Ramirez described Ursula as "kennels for children."³⁰ He has been in dialogue with border agents for years, and has argued that people who are fleeing dangers from their home country should be able to expect, at a minimum, that border patrol officers will provide the same standards of care as those with charge over violent criminals. Until recently, the Border Patrol claimed that they were running processing centers, not detention centers, in an effort to excuse themselves of higher standards of care.³¹

The Border Patrol is supposed to quickly transfer unaccompanied children to the Office of Refugee Resettlement's (ORR) facilities. ORR facilities provide a space for children to be processed in a child-friendly environment with people who are trained to care for children. The Office of Refugee Resettlement was founded as a result of the Refugee Act of 1980. Most unaccompanied children are held in ORR facilities for approximately 20 days and are then released to a parent or guardian. The *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) outlines conditions for the treatment of children in detention. The act mandates that unaccompanied children cannot be held in DHS facilities longer than 24 hours, and children from countries other than Mexico and Canada cannot be deported.³² Unfortunately, due to overcrowding in ORR

facilities, some children have waited weeks in border patrol facilities before being transferred.³³

People seeking asylum have to pass a “credible fear” interview to have their case heard before an immigration judge. If they do not pass this interview, they will be deported. This screening process can be difficult for children to navigate, especially for unaccompanied children who have suffered abuse, lack education, or may be unable to articulate important information that will demonstrate their credible fear. Children may be unable to express themselves like adults; therefore, they require people specifically trained to fairly evaluate their claim. The Office of Refugee Resettlement has established training and protocols for those who interact with children, creating child-friendly procedures for credible-fear interviews.³⁴

The settlement agreement from *Flores v. Meese* applies to unaccompanied children in the US, including their treatment, detention, and release. It ensures their treatment “with respect, dignity, and special concern for their particular vulnerability.”³⁵ As a result, unaccompanied children enjoy a number of additional safeguards and protections that adults and families arriving in the United States do not: unaccompanied children must be held in the least restrictive setting appropriate to their age and special needs, and released from custody “without unnecessary delay.”³⁶ The United States has also developed protective guidelines for child asylum seekers.³⁷ Children in the United States can apply for Special Immigrant Juvenile Status (SIJS), which provides a path to lawful permanent residence to children who cannot reunify with one or both parents due to abuse, abandonment, or neglect. SIJS is still a very

underutilized form of relief, and recent limitations on its scope have been introduced in Congress.³⁸ Trafficked children can also apply for a T-visa, which provides lawful immigration status for four years and can lead to permanent residence, though it is only very rarely granted.³⁹

Family Detention

In 2014 the Department of Homeland Security expanded its use of family detention to address the large number of women and children crossing the border. Before 2014, families were only in family detention center for a few weeks on average; by 2015 some families were being detained for over six months. As mentioned earlier, US law dictates that unaccompanied children can only be detained for a short time and then must be released to a guardian. However, if children arrive with a parent, the government claims it has the right to detain children for longer periods of time. After families have passed a credible-fear interview, they are placed in detention while they wait for their court hearing. The resurgence of family detention is believed to deter mothers from future migration to the United States with their children by making detention their final destination.⁴⁰

The use of family detention had decreased after 2006 when the Hutto Residential Center was shut down because of human rights abuses involving women and children. Within Hutto, children were dressed in prison uniforms; there were no toys; and families were kept in cells. Families looked and felt like prisoners.⁴¹ The 2015 expansion of family detention facilities resulted in the three current immigration detention centers holding families: Berks Family Residential Center in Pennsylvania (Berks), Karnes Residential

Center in Texas (Karnes), and South Texas Family Residential Center in Dilley, Texas (Dilley). The organization that managed Hutto is now running the Dilley center for families. While conditions in Dilley are better than in Hutto, Dilley is still like a prison: families are still under constant surveillance and unable to leave.

Families are held together, but they are often roomed with other families, resulting in a situation that is not ideal: children sleeping in rooms with unknown adults. Cases of sexual abuse have been recorded in these shared rooms.⁴² Children older than 12 are often separated into dorm-like accommodations with their gender and age group. However, this can increase children's anxiety through separation or leave younger children vulnerable to bullying and other mistreatment by older children.

Dr. Olivia Lopez, a professor of social work and formerly lead social worker at Karnes, now whistle blower, spoke to the US House of Representatives concerning the neglect to health and psychological services in Karnes. She witnessed children being turned away by medical staff until emergency surgery was needed and mothers being moved into isolation for punishment, with their children being left alone, unsure of their mothers' whereabouts.⁴³ Lopez claimed that she had been ordered to keep from recording any medical or mental health concerns so as to avoid a paper trail.⁴⁴

In 2015, 78 mothers in Karnes began a hunger strike. Many of these mothers had been in detention for over eight months while they waited to have their asylum cases heard before a judge and were desperate to be released into society. The mother who organized the strike was put into an isolation cell with her 11-year-old son. The one-room cell

has a small sink and toilet. They were treated like criminals and forced to use the bathroom in front of each other. Detention center managers have denied the existence and use of isolation cells. However, there are many stories by women who have been placed in an isolation cell within the center.⁴⁵

In 2015 a federal judge in California ruled that family detention should be shut down, saying that *Flores v. Meese* did apply to children migrating with their families and that if children are held they must be held in licensed facilities, per the *Flores v. Meese* agreement.⁴⁶ To remain open, Karnes and Dilley have pursued a childcare license in Texas. The Texas Department of Family and Protective Services has granted a childcare license to Karnes. However, many advocates do not believe Dilley or Karnes can claim to provide children with the standards of care expected of licensed childcare facilities within the community. The Texas department has been sued in an effort to halt other family detention centers from receiving a license.⁴⁷

To combat detention complaints, families have been released into the community at a faster pace, but mothers are typically required to wear ankle monitors. Burnet found that many families are now in detention for less than a month.⁴⁸ However, the bracelets are cumbersome, need to be charged often, and can infringe on the mothers' movements. Women are required to report to Immigration Customs and Enforcement (ICE) on a regular basis. Some women have worn the monitors for years. Therefore, many advocates argue this approach is still a human rights' abuse, depriving mothers of their liberty.⁴⁹

Apprehended in Mexico

There are approximately 60 immigration

detention centers in Mexico. The Mexican government would normally send unaccompanied children to the Agency for Integral Development of the Family (DIF) shelters. These shelters support Mexican children as well as migrants. Due to the influx of unaccompanied children in Mexico, these shelters have been unable to cater for all children who have been apprehended. Instead, children have been sent to migration stations or detention centers, which are less equipped to provide for children's needs. Human Rights Watch found many centers have not had enough beds, and children are sleeping in overcrowded rooms with adult strangers.⁵⁰ Andrew Schoenholtz and his co-authors found migrant children have no access to education while they are detained, and health provisions are minimal.⁵¹

Children and families living in migration stations are vulnerable to extortion, robbery, and other abuses. In a February 2014 fact-finding visit to the Mexico-Guatemala border, the human rights advocacy group Washington Office on Latin America (WOLA) discovered that police at all levels harass migrants about their immigration status and extort money.⁵² Their researchers also cited a 2013 survey with similar findings, by Red de Documentación de las Organizaciones Defensoras de Migrantes (the Documentation Network of Migrant Defense Organizations) and the Jesuit Migration Service, which analyzed responses from 931 migrants at seven shelters in Mexico. Fifty-two percent reported being robbed and thirty-three percent reported being extorted, predominantly by criminal groups.⁵³

Moreover, the process of applying for asylum can take months. Children have been given the option of applying for asylum and waiting for an unpredictable period of time to process the claim, or return to their home country and begin the dangerous journey again.

Many children are unaware of their rights, fear being detained indefinitely, and voluntarily leave. Karen Musalo, Lisa Frydman, and Pablo Ceriani Cernadas highlight the risk for children who leave detention and try crossing the border again.⁵⁴ They are vulnerable to becoming victims of trafficking or forced labor. Many children cannot access child protection programs and do not qualify for resident permits in Mexico.

The Mexican government cannot know if it is complying with its *non-refoulement* obligations under its current immigration practice. Schoenholtz and his co-authors found that many children are deported without meeting any officials trained to screen children for international protection needs.⁵⁵ Child protection officers (Oficiales de Protección de la Infancia, OPIs) are a group of officers trained to work with children and focus on the best interests of children, but they are part of the Mexican immigration authority. UNHCR interviewed 72 migrant children detained in Mexico in late 2013 and found nearly 80 percent had no knowledge of these child protection officers.⁵⁶ An interviewee in the Schoenholtz report indicated that the child protection officers may be too busy processing deportations to provide the child protection services necessary.⁵⁷

DETENTION IN AUSTRALIA

The primary route of undocumented migrants to reach Australia is by sea. The number arriving by boat peaked in 2013, at 20,587 people.⁵⁸ Successive Australian governments have created policies that punish asylum seekers who arrive by sea. The governments' messaging and policies are made to deter migrants and to demonstrate tight border security to Australian residents. Governments

who demonstrate they are tough on border control have tended to benefit politically.⁵⁹

Former Prime Minister John Howard introduced the “Pacific Solution” in early 2000. To prevent undocumented migrants arriving in Australia, the navy intercepted boats carrying refugees and transported them to the Republic of Nauru, a small, impoverished island in the Pacific Ocean, for processing. The Australian Government has paid Nauru to accommodate asylum seekers who have tried to reach Australia by boat. It is difficult for journalists, lawyers, or human rights monitors to gain access to the island. Migrants are isolated from community and advocacy. Australia has made a similar arrangement with Papua New Guinea to use Manus, one of its islands, as a detention site. By enforcing migration policy in others’ sovereign territory offshore, Australia is able to use its geography to subvert international refugee law.⁶⁰

Former Prime Minister Kevin Rudd promised “no advantage” for those who came by boat to Australia. In 2013 Rudd declared that those processed offshore on Manus and Nauru will never be settled in Australia; instead, they must settle in Cambodia and Papua New Guinea (PNG). Fiji’s Foreign Minister Ratu Inoke Kubuabola has accused Australia of using its “economic muscle” to persuade Papua New Guinea to accept thousands of people into its country.⁶¹ Cambodia and Papua New Guinea are poor countries, and many asylum seekers fear they cannot earn enough money to enable their family members to join them. This desire to earn money and to reunite families has given rise to the title “economic migrants” and influenced public opinion that those detained on these islands should not be allowed to settle in Australia.⁶²

“Operation Sovereign Borders” came into effect in late 2013, under then Prime Minister Tony Abbott. The policy allows authorities to use force to intercept and turn back asylum-seeker boats, shifting the burden onto nearby states to process asylum seekers. In 2013, 20, 587 undocumented migrants arrived in Australia via 300 boats; in 2014 only 160 arrived and via only one boat.⁶³ From December 2013 through August 2015, 20 boats with over 600 asylum seekers were turned back.⁶⁴ The Refugee Council of Australia has been very critical of this policy, arguing that asylum-seekers’ claims cannot be fairly assessed out at sea.⁶⁵

On April 26, 2016, Papua New Guinea’s Supreme Court ruled Australia’s detention of asylum seekers on Manus Island is illegal.⁶⁶ The five-man bench of the court ruled the detention breached the right to personal liberty in the PNG constitution. The current Turnbull government has refused to allow those in offshore detention to travel to Australia, and is under pressure to find another country in which to resettle them. The PNG Prime Minister, Peter O’Neill, believes the detention center has damaged their country.⁶⁷ He said Australia bore responsibility for the 905 men held within, while Australia argues the men are PNG’s responsibility. The detention center has opened its gates, so people can move around the island. However, many do not feel free and are still waiting to be granted asylum.⁶⁸

Indefinite detention for undocumented migrants is legal in Australia. The Australian high court has upheld the validity of the offshore centers in several cases.⁶⁹ The government affirms its right to detain people for national security and has chosen to ignore the United Nations interpretation of the International Covenant on Civil and Political Rights (IC-

CPR) and to ignore its recommendations to remove people from detention. The Australian government has continued to argue arbitrary detention is lawful.⁷⁰ The United Nations High Commissioner for Refugees (UNHCR) has criticized the existence of the offshore processing centers, along with their harsh conditions and indefinite detention.⁷¹ Professor Ben Saul describes indefinite detention as rapidly becoming Australia's Guantanamo Bay: "a legal black hole where we send people forever."⁷²

Apprehended in Australia and Surrounding Islands

In 2014 approximately 800 children were held in detention for an indefinite period of time. Australian detention centers have been described as crowded, unhygienic, and in appalling conditions. Employees of Save the Children report regular outbreaks of lice, gastro and other communicable diseases that are difficult to contain due to close living conditions, shared bathrooms and eating areas.⁷³ Children who are detained in Australia or offshore are held, on average, for one year and two months. Some children have been detained for longer than 27 months because Australian intelligence services believe their parent may pose a security threat. Almost all children in Australian detention centers either travelled to Australia by boat without a visa or were born in detention. Over 167 babies were born in detention between 2012 and 2014. Sometimes the nationality is left blank on the child's birth certificate when they are born to stateless parents.⁷⁴

A 2014 report by the Australian Human Rights Commission (AHRC) noted detention's significant negative impacts on the mental health and well-being of children.

Eighty-five percent of children and parents felt that their emotional and mental health had been affected by detention. In the first half of 2014, 34 percent of children in detention were assessed as having mental health disorders at levels comparable with children receiving outpatient mental health services in Australia, compared with less than 2 percent of children in the Australian population. The significance of children's mental health in detention is also demonstrated by high rates of self-harm. In the period of January 2013 to March 2014, 128 children aged between 12 and 17 engaged in actual self-harm while in detention, and 171 children threatened self-harm.⁷⁵

Further, children are exposed to danger through their close confinement with adults who suffer high levels of mental illness. Thirty percent of adults detained with children have moderate to severe mental illnesses. Mentally unwell adults can have negative impacts on the development of children. Children who have depressed parents are at a higher risk to suffer from depression or other mental health disorders than children from homes without mental illness.⁷⁶ An AHRC inquiry into Australian detention found almost all parents reported that they themselves had symptoms of depression, anxiety, or were on anti-depressant medication, and that their children had poor sleep, poor appetite, and behavioral problems. One mother said, "Enough is enough. I have had enough torture in my life. I have escaped from my country. Now, I prefer to die, just so my children might have some relief. I have reached the point I want to hand over my kids."⁷⁷

Two asylum seekers have set themselves on fire to protest their isolation and indefinite detention at Nauru. On April 27, 2016, a 23-year-

old man set himself alight. Before he set himself alight, it is believed the man yelled, “This is how tired we are; this action will prove how exhausted we are. I cannot take it anymore.” A few days later on May 2, 2016, a Somali woman on Nauru became the second person to light herself on fire. Refugee advocates believe she is 19 and came to Nauru at the age of 16 or 17. The Somali woman survived and is recovering in hospital. It is likely that she will be returned to Nauru once her health has improved. Peter Dutton, the Australian immigration minister, has stood firm that no action from advocates or those in processing centers will change government policies on border control and detention.⁷⁸

Australia has made some improvements for migrant families and children. Around 29,000 people have been granted temporary “bridging” visas and have been permitted to live in the Australian community.⁷⁹ This includes around 4,000 children. However, many people are on the visa for an indefinite time; are denied access to health care, work, and education; and are living in impoverished conditions. Gillian Triggs, the president of the AHRC said the holding of people for years on a succession of bridging visas was “a very significant breach of basic human rights.”⁸⁰ Moreover, as of February 2016, 115 children remained in detention.⁸¹

CONCLUSION

Many countries are prioritizing border protection over international human rights obligations. Both the United States and Australia have adopted strategies to shift the burden of processing undocumented migrants to smaller and poorer neighboring states. Increasing border enforcement and security in Mexico has decreased the number of mi-

grants arriving from the Northern Triangle into the United States. Offshore processing has almost stopped migrants arriving on Australia’s shores. Both strategies result in detention of families and children. Detention deprives them of their liberty, produces mental health issues, and can place children at serious risk. Moreover, families and children are often not adequately screened for international protection needs, and they are unable to access adequate support services. These border strategies do not address the root causes of people migrating. Instead they perpetuate grave human rights violations against children and their families, exposing already vulnerable and distressed communities to extreme hardship. The examples of the United States, Mexico, and Australia demonstrate that current border control strategies are impinging in serious and deleterious ways on children’s human rights.

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