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Trump's Zero Tolerance Policy 1 Year On

One year after the forcible separation of children from their families at the U.S. southern border under President Trump's 'zero tolerance' policy **the government continues to threaten¹ further actions that would work against children's best interests.** The application of such policies would certainly negatively impact all children who journey to the U.S., but there is an added toxicity where children are detained (either unaccompanied or with their families), or separated from their families altogether. Evidence shows the harm caused by family separation and detention - even short-term - on children and on the capacity of caregivers.

Data on how the situation for separated children has been resolved remains unclear.

Initial basic identification efforts were hampered by the absence of a formal coordinated system between the Office of Refugee Resettlement, which takes in children, and the Department of Homeland Security, which separated them; something denied by the Government.² One case taken to the District Court of the Southern California alone approximates that over 2,000 children are affected. Reports suggest that it could take over two years to identify all the children separated under the policy,³ and much more to conduct tracing and verification ahead of family reunification. Numbers are constantly changing as reunifications and discharges occur.⁴ **However, reports suggest that high numbers of children under-five years of age were separated under the policy, with a significant proportion not yet reunified with parents or previous primary caregivers.⁵**

Yet focussing on those separated under zero tolerance may be a misnomer. Reports suggest that, U.S. authorities separated 8,000 family units in 2017, and 6,000 between April and August 2018.⁶ Separations took place before and since, which the Department of Homeland Security argues are in the child's best interests, such as where a caregiver is a danger to the child or due to be detained for serious criminal activity.⁷ While such separations may be in the child's best interests, decision making in this regard should be made by the mandated authority following due process, which is not possible at the border.

Furthermore, **there continues to be high numbers of children arriving unaccompanied** at the U.S. southern border. Reports from 2018 note that, while over 500 hundred children had been forcibly separated from their parents under zero tolerance, 16,000 Guatemalan children in total were detained in the U.S.⁸ These children often spend unnecessarily long periods of time in closed shelters, separated from the community and normal life. They are also exposed to violence, abuse, exploitation and neglect.

Which children are moving and why? Data on the number of children journeying from the north of Central America to Mexico and the U.S. are difficult to establish. Approximately 6,000 unaccompanied children were deported in 2018.⁹ Most people flee due to lack of employment or community-level development opportunities¹⁰, in addition to violence by gangs violence and are afraid to return,¹¹ as gangs control communities and subject people to extreme levels of extortion.¹² Homicide rates in the region are among the highest in the world.¹³ Rates of sexual violence and violence against LGBTQI people are also extremely high.¹⁴ Children on the move are largely from poor, marginalised, unsafe communities, that have not had basic schooling, existing employment, and belonging to the historically-excluded Mayan people.¹⁵ They are seeking to improve the lives of their families, or to be reunited with their families, who migrated for the same reasons.¹⁶ This reveals the lack of



investment Guatemala makes in children and adolescents.¹⁷ The Guatemalan state seems to willingly facilitate migration through its lack of guarantees to the fulfillment of rights, which if in place would limit remittances from citizens abroad; currently representing 11% of Gross Domestic Product.¹⁸ The UN's committee on the rights of the child recently observed that the Guatemalan state must guarantee the right to migrate *or not to migrate*, noting the poor conditions within the country that leave its citizens with little alternative.¹⁹ Yet corruption and impunity are widespread and criminal organisations are embedded within state structures.²⁰

What is the child protection and care situation of boys and girls like? Migrants either travel alone and face the dangers along the way, or pay between 5-10,000 USD for support from a 'guide',²¹ which still does not safeguard them from corrupt police, or from corrupt officials²², or hostile reception upon arrival at the border. Both carry the risk of kidnapping, homicide, abuse and exploitation,²³ border closures, militarised responses from states, involuntary returns, a lack of shelters including for children and unaccompanied minors, xenophobia, sexual violence and organised crime.²⁴ Some traffickers promising transport actually hand displaced people over to the migration authorities.²⁵ People moved in 'caravans' in 2017-18 for protection and lower costs,²⁶ a situation expected to be repeated, but this may be linked to higher levels of child trafficking.²⁷ The Governments of Guatemala and Mexico made a number of efforts to stop people from travelling, including detaining children and adults under the guise of providing shelter, providing misinformation about options for onward travel,²⁸ and hostile border closures or attempted closures resulting in injury and death; sometimes mobilising local vigilante groups or making local communities xenophobic and hostile.²⁹ Access to information for displaced people on services and rights remains severely lacking.³⁰ Mass movement put pressure on hosting communities and states, especially in Guatemala where the government did not declare a state of emergency, or benefit from the resultant assistance and funds.³¹ Mexico received additional support, but state and NGO capacity was still overwhelmed with shelters lacking sufficient food, water and health services³² and mixing children on the move with other groups such as people with disabilities or addictions.³³

What is their reception like? At the end of 2018 up to 7,000 asylum seekers at a time were held at the border between Mexico and the U.S. at Tijuana. They were each there for approximately 3 months,³⁴ while on informal and uncoordinated waiting lists.³⁵ The unsanitary conditions offered limited privacy and the risk of extortion, manipulation and threats of deportation by the authorities.³⁶ Once in the U.S., asylum seekers face increasingly restrictive immigration policies, and inhumane practices:³⁷ Indeterminate detentions and sexual abuse have been documented,³⁸ as well as death of children during and soon after release.³⁹ Without legal representation, acceptance rates for asylum applications are extremely low.⁴⁰ In 2019, the Government ordered the promotion of new regulations to charge immigrants presenting asylum applications.⁴¹ In June 2018 the U.S. announced that domestic abuse and gang violence would no longer be considered a legal basis for asylum claims,⁴² and other household members of children's sponsors (usually relatives) were asked to undergo extensive background clearances.

What is their return like? Unaccompanied children are returned to their home countries, but usually only to the capital, where they have to make their own way home often within highly insecure areas. Few deported children have relatives in the country that receives them.⁴³ The adult meeting them may be known to them, but might not be able to keep them safe, meet their needs, or support their onward journey. After the U.S. threatened to withdraw financial aid to the region if the flow of people did not slow down, the governments of Honduras and Guatemala initiated a Safe Return plan in late 2018.⁴⁴ Observers advise



further analysis on the voluntariness of deportations that have taken place, with reports of coercion, sedation and lack of basic services.⁴⁵ A judge in Mexico has banned deportation of children and adolescents who arrived during certain dates, and requested mechanisms be activated to protect children's rights regardless of their migratory status.⁴⁶

Key Messages

1. Cutting aid to Guatemala, Honduras and El Salvador⁴⁷ will only serve to worsen conditions that are prompting families to leave.

- ✓ Aid programmes must be continued or reinstated, as they have had an impact on making source communities safer, and significantly reduced numbers of children leaving for the US.⁴⁸
- ✓ It is critical to enable the voices of returning children to inform migration policy and controls, and individual migration decisions.

2. Take measures to prevent unnecessary family separation and safeguard and uphold the rights of unaccompanied children in transit and seeking asylum.

- ✓ Assess and respond to the protection needs and grounds for asylum of unaccompanied children, rather than automatically considering them to be only migrants in transit.⁴⁹
- ✓ Uphold the rights of asylum seekers to protection and due process within decision-making on their application to remain; recognizing the violence, abuse and life-threatening conditions from which most are fleeing.
- ✓ All children should be provided with legal representation and advocacy to support them through the legal process of deciding on their application to stay.
- ✓ End the use of immigration detention, which often leads to family separation as children cannot be detained for more than 20 days.
- ✓ Establish a tracking system for all family members in immigration detention (ORR, ICE, Border Patrol, etc.), to avert future separations and to allow for rapid reunification in cases of inadvertent separation.
- ✓ Establish a system to monitor and support the quality of care being provided in all transit or detention centres, and publish real time data on the number of unaccompanied children in detention and their family separation status.
- ✓ Children awaiting decisions on their status need access to education, healthcare and other essential services including services to maintain family contact.
- ✓ Rather than establishing further detention facilities to respond to pressure on border patrol services, ensure short processing times and establish family and community-based care systems, including foster families, while sponsoring families are found.

3. Promote family reunification where possible and if not family contact, and ensure alternative care meets quality standards and prioritises families.

- ✓ Do not deter relatives or family friends from caring for children, such as by asking them other household members to undergo extensive background clearances.
- ✓ Ensure care decisions and planning for each child upholds their individual rights, and considers each child's individual best interests.
- ✓ Facilitate regular, if not daily, contact between children and parents, relatives or family friends and support their (re)integration.
- ✓ Give priority to family reunification, and if this is not possible give priority for family-based placements to children under-3 and children with disabilities.
- ✓ If in need of interim care, make every effort to place children in non-restrictive, appropriate settings, in locations accessible to parents, relatives or family friends.



- ✓ If children are in need of longer-term alternative care, prioritise family-based placements. No child should be placed or held in care that is institutional in nature, including tented cities⁵⁰, whilst awaiting a decision on their status.
- ✓ Commit to preventing the placement of any child under the age of three in any form of residential care as a matter of national policy.⁵¹

4. U.S. sanctuary cities and states, including their immigration courts, should be supported not overwhelmed.

- ✓ The U.S. should not expend significant funds relocating migrants to sanctuary cities and states; funds better spent developing supportive local infrastructure.
- ✓ Good practice of sanctuary cities and states should be reinforced and replicated in border towns, which are most able to immediately support vulnerable families.
- ✓ All municipalities should strive to create a welcoming and inclusive environment.

5. Fund, coordinate with and support services in origin and transit countries, to ensure deported children and families including unaccompanied children can travel safely and rebuild their lives.

- ✓ Ensure that the decision to return a child is carried out following a proper process of determining their best interests, and that a parent, legal guardian or specialized official accompanies the child throughout the return process.⁵²
- ✓ Ensure services to facilitate appropriate reception, care and sustainable reintegration⁵³ into community life, including through equal access to services and recognition of skills gained and potential contributions.
- ✓ Where service provision is scarce, or communities difficult to access,⁵⁴ work closely with local organisations to maximise chances of reaching all.
- ✓ The protocol for supporting child deportees in Guatemala⁵⁵ needs to be fast-tracked.
- ✓ Guatemala's border governance measures need to ensure protection from return to unsafe locations, in collaboration with its neighbours.⁵⁶

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