

# REFOULEMENT, DETENTION, PUSH-BACKS AND DEPORTATIONS OF ASYLUM-SEEKING AND MIGRANT CHILDREN IN THE CONTEXT OF THE COVID-19 PANDEMIC

## KEY MESSAGES

### 1. States can and must protect both public health and access to asylum

**Every child's right to seek asylum, protection or to reunite with family members should never be compromised because of public health considerations.**<sup>1</sup> States have a responsibility to protect public health and may temporarily close their borders or introduce movement restrictions to limit COVID-19 transmission. However, containment measures must be non-discriminatory, necessary, proportionate, reasonable and prioritize the protection of the most vulnerable. Child rights are intrinsic rights that do not stop at borders and can never be put on hold -- much less so in the middle of a global pandemic. Every State always has a responsibility to fulfil the Convention on the Rights of the Child.

**It is not possible to claim asylum without access to territory.**<sup>2</sup> States that don't allow for this are violating the **non-refoulement principle**, one of the most widely recognized norms of international law. Whether traveling alone or with family, any child should be allowed to enter a State's territory in order to apply for asylum and be able to remain there for the duration of asylum proceedings, or until a sustainable solution in her best interests is identified. Reception of asylum-seekers and the processing of asylum claims must continue despite COVID-19, with priority for the most vulnerable. Children seeking asylum should be protected from sexual exploitation and abuse and have access to safe and child-friendly reporting mechanisms.

**Allowing entry to asylum-seeking and migrant children should be accompanied by public health protocols to prevent and mitigate COVID-19 risks**, such as health screening on arrival; testing; quarantine and self-isolation measures that preserve family unity; provision of relevant information in a language and format that children and their families can understand; and access to medical attention and healthcare services when needed, including mental health, psychosocial support and gender-based violence services. States should make available the necessary protective equipment and psychosocial support to frontline workers so they can continue to receive asylum claims, conduct case management and initiate family reunification processes.

**Safeguards should be in place for unaccompanied and separated children (UASC).** Processing should be carried out by child protection authorities, not immigration authorities. Measures should be child-sensitive, ensure children's physical and psychological health and wellbeing, and take into account child safeguarding (e.g. establishing family/filial relations for adults accompanying UASC and separating UASC from non-related adults).

### 2. States should stop detaining children because of their or their parents' migration status. Asylum-seeking and migrant children and families should be released and placed in non-custodial alternatives to detention

**Detention is always harmful to children's physical and mental wellbeing, but it is particularly dangerous in the context of COVID-19** given the high risk of an outbreak in any detention facility. Even if it is only for a few hours, children should never be detained.

**In countries where deportations and other returns of migrants have been halted due to the COVID-19 crisis, children and families in pre-removal detention should be promptly released** to minimize the risk of infection and avoid instances of indefinite and arbitrary detention.

**A moratorium should be put on any new detentions of asylum-seeking and migrant children and families.**

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<sup>1</sup> UNHCR estimates that about 123 countries have fully or partially closed their borders to contain the spread of the virus, with some 30 States making no exception for access for asylum-seekers. Many have suspended the right to seek asylum, with risks of refoulement as asylum-seekers are turned away at the border

<sup>2</sup> Joint General Comment No. 23 and No. 4, Committee on the Rights of the Child and *The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)*.

**All releases from immigration detention facilities should happen following strict safeguards to prevent and respond to COVID-19**, including mandatory self-isolation, provision of relevant information, and regular follow-up on those released. Firewalls should be established to ensure that children are able to access healthcare in practice regardless of their migration status and without fear of detention or deportation. Release should happen in close coordination with civil society and other community-based actors to ensure asylum-seeking and migrant children and families access critical essential services upon release.

**Now is the time to put in place community-based alternatives to detention for children and families.**

When necessary, unaccompanied and separated children should be placed in family- and community-based care settings, while working to identify a durable solution in line with the best interests of each child as quickly as possible.

### **3. States should immediately stop push-backs and deportations of children, especially if they are unaccompanied or separated. These practices do not only threaten children's rights and health, but also public health for all countries involved**

**Pushing back or deporting children without due process, without giving them an opportunity to apply for asylum or without child protection authorities conducting an assessment of each child's best interests is *always* a child rights violation** and puts children at risk of refoulement by being sent back to situations of violence, trafficking, abuse or exploitation that may be life threatening and cause irreparable harm.

**Pushing back or deporting children in the context of the ongoing COVID-19 pandemic carries additional serious public health and child protection risks**, including the likelihood of further spread of the disease in countries ill-equipped to manage a public health emergency of this scale.

### **4. In contexts where push-backs and deportations continue, returning and receiving States should urgently step up COVID-19 prevention and response measures and cross-border cooperation to protect children, as well as their families and communities**

**Countries of origin, transit and destination should develop and implement protocols** that include screening on arrival; testing; quarantine and self-isolation measures that preserve family unity; provision of relevant information in a language and format that children and their families can understand; and access to medical attention and healthcare services when needed, including mental health, psychosocial support and gender-based violence services. These measures should be available before and after forced removals. Sending countries should provide information about children and families being deported with as much advance notice as possible to allow for proper reception and reintegration in countries of origin.

**Countries of origin receiving children should prioritize:**

- ✓ **Assessment for protection concerns** upon arrival to ensure necessary protective measures are put in place.
- ✓ **Quarantine and self-isolation measures** that preserve family unity, as well as children's physical and psychological health and wellbeing and protection.
- ✓ **Child safeguarding** measures, with particular attention to unaccompanied and separated children and other children in vulnerable situations.
- ✓ **Context-specific information** to deported children and their families about how to prevent and respond to COVID-19, especially in communities that may have no capacity to practice physical distancing and limited access to water, sanitation and hygiene.
- ✓ **Safe transportation** of children back to their communities of origin and **family reunification**.
- ✓ **Mental health and psychosocial support** to children, including specialized care as needed.
- ✓ **Case management** by a social worker.
- ✓ **Social inclusion and safety** of children and families once they go back to their communities of origin, as they are likely to face discrimination, stigma and violence.