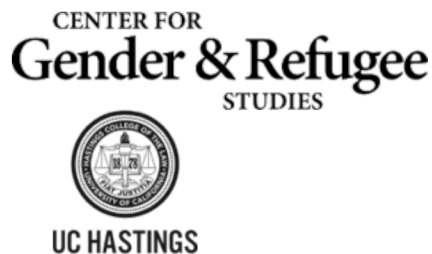


Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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Chapter 5 Introduction to Chapters on Children in the Context of Migration in Mexico – Two borders: one childhood

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This chapter is translated from the original Spanish version.

I. Introduction

This chapter analyzes the main features and effects of the current migration, asylum, and child protection policies in Mexico from a human rights perspective. It is also an introduction to the two chapters that analyze the protection of the rights of children and adolescents in the context of outgoing, in-transit, incoming, and returning migration in Mexico with a focus on the Mexico-Guatemala and the U.S.-Mexico borders.

Both chapters analyze the profile of Mexican and foreign migrant children from different perspectives, highlighting differences based on the nationality and migration status of Mexican and Central American children and adolescents. However, in examining the legal framework, public policies, and programs for the protection of children, those differences tend to fade. Notwithstanding the particularities of Mexico's Northern and Southern border areas and their different impacts on the lives and rights of children and adolescents, common factors are at play in both contexts.

This chapter aims to generally describe issues relating to children and adolescents in the context of migration in Mexico—without glossing over the specificities of each border area—as well as the specific situations faced as a result of their nationality, migration status, and ethnic background. Our first overarching conclusion is that systemic violations of human rights define the lives of North-bound Mexican migrant children and adolescents; Mexican children whose parents migrate irregularly; children and adolescents who are returned from the United States; Central American children and adolescents living or in transit in Mexico; and Mexico-born children of Central American parents living in Southern Mexico.

These human rights violations have three common roots: (1) the national and regional security-based approach to migration by the Mexican government; (2) a paternalistic approach to child protection that neglects the children and adolescents condition as rights-bearing persons; and (3) a context of growing violence throughout Mexico that manifests in multiple ways, has specific and serious impacts on women and children, and is encouraged by the high levels of corruption and impunity. Out of these three elements in the Mexican migration and asylum, security, and child protection systems, several contradictions and limitations arise, affecting the basic rights of migrant children and adolescents.

This chapter will describe the normative, political, and institutional aspects that affect Mexican and foreign migrant children and adolescents in both of Mexico's border zones. We will analyze the legal framework on migration, asylum, and child protection, along with the most relevant programs implemented in the last few years. Advances, setbacks, challenges, limitations, and

problems will be highlighted from a human rights perspective. The subsequent two chapters are devoted to an in-depth analysis of the impact of policies implemented at Mexico's Northern and Southern borders, respectively, on different groups of migrant children and adolescents.

II. Legal framework on migration, asylum, and child protection

The legal framework for the protection of migrant children and adolescents in Mexico includes the Convention on the Rights of the Child (CRC) and the Convention on the Rights of all Migrant Workers and Members of their Families (international); as well as the Constitution of the United Mexican States, the Law for the Protection of the Rights of Children and Adolescents, the Migration Law, and the Law of Refugees and Supplementary Protections (domestic). Bilateral agreements between Mexico and neighboring countries are also part of this legal framework, analyzed in chapter 13 by the National University of Lanús.

It is important to analyze whether recent changes to this legal framework are advances or setbacks towards comprehensive child protection. In the last few years, the legal framework on each of the themes herein investigated—child protection, migration, asylum, and human rights—has been modified either completely or partially. This includes a significant human rights reform to the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos* or CPEUM). Specifically, on June 10, 2011, amendments to several human rights provisions of the CPEUM were enacted. This chapter does not include an exhaustive analysis of this reform's positive and negative aspects, but does highlight some new provisions that will affect the rights of migrant children and adolescents, as well as the rights of children of migrants.

It is important to emphasize that this reform established the legal primacy of international human rights treaties. The content and applicable standards of those treaties, such as the CRC, have been incorporated at the level of the Constitution. The principle of the child's best interests, among others, is now of binding, constitutional effect.

A. Legislation on the rights of children and adolescents

In addition to the CPEUM, the 2000 Law for the Protection of the Rights of Children and Adolescents (*Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes*), still in force as of late 2014, was specifically enacted in response to the recommendations of the Committee on the Rights of the Child to the Mexican government.¹ However, child protection organizations have described it as a weak piece of legislation—one that seems unable to significantly influence policies, practices, and programs for the protection of children's rights. Although the Law for the Protection of the Rights of Children and Adolescents is a federal one,

¹ Among the Recommendations to the Mexican State by the Committee on the Rights of the Child, issued 15 years ago, it is worth quoting the following: "...The Committee reiterates its recommendation that the State party continue its process of legislative reform to ensure that domestic legislation relating to children's rights, both at the federal and State levels, is in full conformity with the principles and provisions of the Convention and reflects its holistic nature..." Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Mexico, 22nd Sess., 1999, October 8, ¶ 20, U.N. Doc. CRC/C/15/Add.112 (1999, November 10). See also Red por los Derechos de la Infancia en México. (2005, septiembre). *Infancias mexicanas, rostros de la desigualdad*. Retrieved from <http://derechosinfancia.org.mx/documentos/reportealternativomexico.pdf>.

child protection is a matter of state jurisdiction. This means that the law's role is merely to enunciate the rights of children and thus it is not effective as a tool for comprehensive child protection. Mechanisms and provisions are needed to enforce these rights in practice, both at the state and local level.

For this reason, in the last few years there have been proposals to design and pass legislation that meet all of these challenges. For example, the Legislative Branch² has consistently tried to update the legal tools relating to the protection of children and adolescents since 2000. During the term of the LXII Legislature of the Chamber of Deputies (*Cámara de Diputados*), as many as 23 bills have been introduced to partially reform the Law for the Protection of the Rights of Children and Adolescents. Other bills have also been introduced in order to harmonize the legal framework for child protection. In total, 14 different regulations have been marked for reform.

There are several areas of child protection that are targeted by these attempts at reform, such as family life, education, mental and physical well-being programs, and sexuality, among others. This shows the extent of the challenges with regard to the protection of children and adolescents and their rights in Mexico.

Members of congress and the President's office have introduced bills that, rather than amending specific laws and regulations, seek to completely overhaul the legal framework for child protection. None of these initiatives had succeeded until September 2014, when President Enrique Peña Nieto submitted a child protection bill to Congress, using the presidential fast-track prerogative. This bill had hitherto been kept in secrecy, without civil society input.³ Civil society actors engaged in several attempts to improve this bill, particularly in light of its inadequate provisions on migrant children and adolescents. This intense advocacy work led to some improvements. On December 3, 2014, the General Law of the Rights of Children and Adolescents (*Ley General de los Derechos de Niños, Niñas y Adolescentes*) went into effect by presidential decree.⁴

The advocacy work that resulted in an improved law was carried out by the Working Group on Migration Policy (*Grupo de Trabajo de Política Migratoria* or GTPM), through organizations

² See Gamboa Montejano, C., & Valdés Robledo, S., por Dirección de Servicios de Investigación y Análisis. (2014, abril). NIÑAS Y NIÑOS: Estudio comparativo de las iniciativas a la Ley que Protege sus Derechos, así como de otras relacionadas, presentadas en la LXII Legislatura. At <http://www.diputados.gob.mx/sedia/sia/spi/SAPI-ISS-34-14.pdf>.

³ Mr. Peña Nieto issued a press release stating that a bill “will be sent to the Senate floor as a fast-track initiative containing the draft of a General Law for the Protection of Children and Adolescents. The new law will establish obligations for federal, state, and local authorities in order to harmonize the child protection framework and better regulate children's rights . . .” México, Presidencia de la República. (2014, 1 de septiembre). Envía el Presidente Peña Nieto al Congreso Iniciativa de ley general para la protección de niñas, niños y adolescentes. Retrieved from <http://www.presidencia.gob.mx/articulos-prensa/envia-el-presidente-pena-nieto-al-congreso-iniciativa-de-ley-general-para-la-proteccion-de-ninas-ninos-y-adolescentes/>.

⁴ See Decreto por el que se expide la Ley General de los Derechos de Niñas, Niños y Adolescentes, y se reforman diversas disposiciones de la Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Integral Infantil, Diario Oficial de la Federación [DO], 2014, 4 de diciembre (Mex.). Retrieved from http://www.dof.gob.mx/nota_detalle.php?codigo=5374143&fecha=04/12/2014.

working on children's and migrants' issues. The original presidential bill was based on a security approach, which restricted the rights of migrant children and adolescents.⁵

Among the provisions established by the new law, it is worth highlighting the fact that all categories of migrant children and adolescents are included—both accompanied and unaccompanied, Mexican and foreign. Also, the principle of the child's best interests is clearly established as a fundamental consideration in all migration procedures, regardless of the child's immigration status. Article 92, for example, recognizes due process guarantees, including the right to a hearing and to free legal assistance.

Under the new law, the System for the Comprehensive Development of Families (*Sistema de Desarrollo Integral de la Familia* or DIF) has the obligation to set up shelters for migrant children and adolescents, which must conform to international standards (Articles 94 and 95). The law also prohibits returning or expelling children and adolescents back to their home countries if their lives would be at risk, or where there is a situation of widespread violence and massive human rights violations, as in the case of many Central American countries. Article 97 establishes that the return of children and adolescents can only take place under the principle of the child's best interests.

Regarding Mexican migrant children and adolescents, the law establishes the government's obligation to provide social and consular assistance to Mexicans abroad, especially in cases of repatriation procedures (Article 100). This task corresponds to the Secretariat of External Relations (*Secretaría de Relaciones Exteriores* or SRE), in coordination with the DIF and the National Migration Institute (*Instituto Nacional de Migración* or INM).

Undoubtedly, these provisions require supplementary reforms to ensure their full applicability, from minor adjustments—such as the changes to the migration law that are analyzed in the following section—to major institutional, budgetary, and programmatic reforms. A significant challenge on this reform path is the change in political priorities. The security and control perspective permeates migration and asylum policies, including the responses to migrant children and adolescents.

B. Legal framework on migration and asylum

Two fundamental legal tools relating to foreign migrant children and adolescents are the May 2011 Migration Law (*Ley de Migración*) and its September 2012 Regulation. The Migration Law, the first in the country's history, arose from widespread violence and human rights violations in several parts of Mexico. These violations called into question the government's commitment to respecting and protecting migrants' human rights. One such event was the massacre of San Fernando, Tamaulipas in August 2010.⁶

⁵ See Estudios Fronterizos.org. (2014, 24 de octubre). Posicionamiento del GTPM, el Foro Migraciones y el COMPA ante la ley general de los derechos de los niños, niñas y adolescentes. Retrieved from <http://estudiosfronterizos.org/2014/10/24/foro-migraciones-foro-migraciones/>.

⁶ This heinous crime, attributed to the Zetas Cartel, involved the kidnapping and murder of 72 migrant men and women from México, and Central and South America. See Comisión Interamericana de Derechos Humanos (CIDH). (2013, 30 de diciembre). Derechos humanos de los migrantes y otras personas en el contexto de la movilidad en México. Retrieved from <http://www.oas.org/es/cidh/migrantes/docs/pdf/Informe-Migrantes-Mexico-2013.pdf>.

As a result of this background, the guiding principles of Mexico's migration policies, set forth in Article 2 of the new law, include absolute respect for migrants' human rights, whether Mexican or foreign, as well as the principle of nondiscrimination. The law identifies groups of particular vulnerability, including migrant children and adolescents.

However, despite these advances, there are several contradictions that prevent effective protection of migrant children and adolescents, as well as adult migrants living or in transit in Mexico. The human rights approach is in tension with the national security approach outlined in Article 1 of the law. The latter approach, moreover, is reinforced by the appeal to migration authorities to contribute to border security.

For this reason, although this law is a step forward in facing the challenges that migration poses to Mexico—as shown by the many human rights standards included in the law—it still has serious limitations. One of them is the role assigned to INM regarding migrant children and adolescents. Under the new law, INM is still the authority that decides whether migrant children will be detained, sheltered by DIF, or repatriated. Secondly, the law gives INM the prerogative to detain migrant children and adolescents. Third, the law does not establish fundamental due process guarantees for children and adolescents, especially unaccompanied ones, such as the right to have a guardian.

The Regulation of the Migration Law has even more serious contradictions affecting the rights of migrant children and adolescents. It is important to clarify that the Regulation was drafted and approved without civil society input. It has two significant problems. On the one hand, it does not include certain fundamental human rights standards. On the other hand, it contains mechanisms that neglect basic rights of children and adolescents. These loopholes and omissions contradict the spirit of the CRC, which defines children and adolescents as rights-bearing persons.

Articles 141 to 143 of the Regulation on migrant children and adolescents exhibit confusion, omissions, and errors in securing the best interests of unaccompanied migrant children. Another serious problem in both the law and the regulation is the lack of measures to guarantee due process.

The Law of Refugees and Supplementary Protections (*Ley sobre Refugiados y Protección Complementaria*), passed in January 2011, and its Regulation, are also ambiguous and contradictory. These legal tools include some provisions of the 1951 Geneva Convention on the Status of Refugees and its Additional Protocol of 1967, as well as standards designed by the UN High Commissioner for Refugees (UNHCR) and other international law bodies, such as the definition of “refugee” established by the Declaration of Cartagena of 1984.

The Law of Refugees and Supplementary Protections establishes principles of nondiscrimination, the child's best interests, no punishment for irregular entry, family unity, and no return (Articles 1 and 5 to 9). It also calls for the adoption of measures to ensure the provision of institutional assistance to asylum applicants who need special attention, including children and adolescents, among other vulnerable groups (Article 20). Article 44 recognizes that “in light of the conditions faced by refugees when leaving their countries or origin, compared to other

foreigners, refugees must receive the greatest support to enjoy the rights and guarantees established in the Constitution,” including social rights such as education, healthcare, and the right to family reunification.

The law also includes actions to ensure the right to request asylum, such as training for migration officers and public servants, and requires authorities to immediately notify the Mexican Commission of Support for Refugees (*Comisión Mexicana de Ayuda a Refugiados* or COMAR) when a foreigner plans to request asylum (Article 15, sections IX and XIII, and Article 21). Additionally, the law recognizes the right to receive clear, timely, and free information about the procedure to apply for asylum, the rights of asylum seekers, and the right to have a translator or interpreter (Articles 19 and 40).

The regulation includes a chapter specifically devoted to “Unaccompanied Children and Adolescents,” which recognizes their right to apply for asylum. These applications must be given priority and be determined according to the child’s best interests (Article 35). It also establishes the authorities’ obligation to look for alternatives for temporary care, as well as the children’s right to receive clear information about the asylum procedure. The law additionally calls for the determination of the child’s best interests to take the opinions of children and adolescents themselves into account (Article 36).

However, both the law and its regulation have significant loopholes, aggravated by their implementation. These include problematic limitations specifically related to asylum-seeking children and adolescents, on issues such as due process and detention pending proceedings for asylum or other relief.

Finally, it is necessary to highlight, within the applicable legal framework, the bilateral and regional agreements that have been signed in the last years between Mexico and Central American countries, on the one hand, and Mexico and the United States, on the other—as well as other regional tools designed in the Regional Conference on Migration. In all of these cases, as described in chapter 13, the priority of the agreements prioritize deportation of migrants, including children and adolescents, over protection of their rights. Chapter 7 on the Northern border exposes the harms resulting from these agreements, particularly with regard to the return of Mexican children and adolescents from the United States.

In some ways, these legal tools have helped make more visible the situation of children and adolescents in the context of migration, especially unaccompanied migrant children. However, they demonstrate serious shortfalls in incorporating human rights standards into bilateral and regional agendas. Instead, they prioritize security to the detriment of basic due process guarantees, and neglect to address the structural causes of the migration of thousands of children and adolescents in Mexico and Central America.

C. Legal framework on trafficking in persons

In 2012, the Law for the Prevention, Sanctioning, and Eradication of Trafficking in Persons and for the Protection of its Victims (*Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos*

Delitos) was passed. This piece of legislation is relevant in the context of U.S.-bound Mexican and foreign migrant children and adolescents because of the growing number of trafficked children and adolescents for sexual and labor exploitation purposes in Mexico and the United States.

The National Human Rights Commission (*Comisión Nacional de Derechos Humanos* or CNDH), stated that “the information provided by the Office of the Attorney General (*Procuraduría General de la República* or PGR) and its counterparts at the state level, the INM and the DIF, among other agencies, warn that trafficking significantly affects children and adolescents, as 39.8 percent of all recorded victims of trafficking are minors.”⁷ Since the enactment of the new legal framework, the 2012 law has been consistently criticized by experts for deficient content.⁸ Implementation on the ground has also given rise to challenges, in light of inadequate institutional development.⁹ In April 2014, the DIF reported that up to 70,000 children and adolescents are victims of trafficking in Mexico.¹⁰

In this same vein, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) expressed as follows:

[The committee is] concerned about the connection between the increased numbers of disappearances of women, in particular girls throughout the country, and the phenomenon of trafficking in persons. It is concerned that victims of trafficking are being subjected not only to sexual and labor exploitation, but are also forced to serve, *inter alia*, as mules and sexual slaves. It reiterates its concern at the lack of uniformity in criminalizing trafficking at the state level. It notes with concern that the Office of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons (FEVIMTRA) does not have the mandate to follow up on complaints of trafficking in persons when the offence is committed by organized criminal groups. It is further concerned that the State party does not have a system in place to record disaggregated data on the incidence of trafficking and has failed to fully address internal trafficking.¹¹

By the end of 2014, there was a partial reform to the Law against Trafficking (*Ley de Trata*) that incorporated some international principles, such as the protection of the victims’ lives, human dignity, safety, and rights. Similarly, all Mexican states are required to set up shelters or transit

⁷ Comisión Nacional de los Derechos Humanos (CNDH). (2013, diciembre). Diagnóstico sobre la Situación de la Trata de Personas en México, p. 135. Retrieved from http://www.senado.gob.mx/comisiones/trata_personas/docs/Diagnostico_Trata.pdf.

⁸ Observatorio Latinoamericano sobre Trata y Tráfico de Personas. (2013, 23 de mayo). Observaciones, comentarios y propuestas del Capítulo Mexicano del ObservaLATrata (Observatorio Latinoamericano de Trata y Tráfico de Personas); respecto a la Ley General la Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a la Víctimas de estos Delitos en México. Retrieved from http://www.senado.gob.mx/comisiones/trata_personas/reu/docs/Observatorio_contra_Trata_230513.pdf.

⁹ See CNDH, Diagnóstico sobre la Situación de la Trata de Personas en México.

¹⁰ See Periodico La Jornada. (2014, 25 de abril). Se estima que en México hay 70 mil niñas y niños víctimas de trata. *La Jornada*. Retrieved from <http://www.jornada.unam.mx/2014/04/25/sociedad/042n1soc>.

¹¹ Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico, 52nd Sess., 2012, July 9-27, ¶ 20, U.N. Doc. CEDAW/C/MEX/CO/7-8 (2012, July 27). Retrieved from <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MEX-CO-7-8.pdf>.

homes for victims of trafficking. However, some aspects of the reform were severely criticized by organizations working on this set of issues. For example, the definition of trafficking seems to have been limited to the final state of exploitation, excluding the entire process of capture and transport for purposes of exploitation—despite the fact that this process is precisely what defines “trafficking,” even if the final goals of exploitations are not met.¹² This could have serious repercussions for migrant children and adolescents who are victims of trafficking on Mexican soil, but who are on their way to be exploited in the border area or on U.S. soil.

III. Institutional framework for the protection of migrant children and adolescents in Mexico: a security approach, a paternalistic vision, and lack of human rights perspective

A. The INM

One of the agencies addressing the situation of children and adolescents in the context of migration in Mexico is the National Migration Institute. Although its functions are more focused on Central American migrant children and adolescents in transit or living in Mexico, its actions affect all aspects of migration, including U.S.-bound migration from Mexico.

The INM is a national security agency in charge of controlling the movement of persons in Mexico, by coercive means if necessary—including the detention and deportation of migrants, adults and children alike. Because of the primacy of security concerns over the protection of human rights and other considerations, the INM’s actions have a major impact on the rights of migrant children and adolescents. This situation is explained in greater detail in chapter 6 on Southern Mexico.

The report titled “Niñez detenida” describes the establishment of child protection officials (*oficiales de protección a la infancia* or OPI) within the INM.¹³ As explained in the report, these officials should have been housed within the Mexican child protection agency, and not the INM. This deficient placement has posed fundamental problems from the start, transforming these officials into immigration agents whose roles do not align with the comprehensive protection of children and adolescents. Rather, they report and respond to the agency in charge of migration control, including the detention and deportation of migrants, both child and adult.

Due to the goals of the INM and its policy functions of migration control, detention, and deportation, it is illogical to expect that the OPIs operate in conformity with the principle of the child’s best interests. The INM’s ultimate institutional objective is deportation, euphemistically called “assisted repatriation.” For this reason, INM officials are hardly in a position to offer intermediate alternatives. The tight timelines set by the INM correspond to repatriation goals, and do not permit a serious evaluation of cases that is consistent with children’s fundamental right to a fair hearing.

¹² See Ulloa Ziaúrriz, T. (2014, 23 de diciembre). Lo que la Cámara de Diputados arruinó en la Ley de Trata. *Cimacnoticias*. Retrieved from <http://www.cimacnoticias.com.mx/node/68476>.

¹³ Ceriani Cernadas, P., coord. (2012, septiembre). *Niñez detenida: los derechos humanos de niñas, niños y adolescentes migrantes en la frontera México-Guatemala. Diagnóstico y propuestas para pasar del control migratorio a la protección integral de la niñez.*

The training of the INM staff, both in general and specifically concerning human rights, is also a source of concern. In this respect, the diagnostic of the IMN titled “Towards an Accountability System for the Human Rights of Migrants in Mexico” (*Hacia un Sistema de Rendición de Cuentas en pro de los Derechos de las Personas Migrantes en México*), carried out by the Institute for Security and Democracy (*Instituto para la Seguridad y la Democracia* or INSYDE), highlights the following:

To this date, the INM lacks both a migration training academy and an initial training program. The personnel are not trained before entering service. Instead, after the hiring process, a general introduction to service and some training on specific issues are provided. Likewise, criteria to access training programs are not clearly defined The lack of training and the current deficiencies in the few programs that exist constitute some of the greatest weaknesses of the INM. As a result, the IMN has not been able to develop a human rights culture or an organizational culture that reflects the highest ethical and professional standards .

. . .¹⁴

This situation has to do with the priorities of the INM and the current legislation that defines migration policy as a central element of national security policy. Another example of this is the way in which the INM budget is allocated. The largest part of the budget goes to control and surveillance activities, as shown in an analysis published last year by the Center for Analysis and Research (*Centro de Análisis e Investigación* or FUNDAR), which points out that “in 2011, [INM] spent over 2.94 billion pesos (bp). . . . The largest share of these resources, 2,360 bp (82 percent) were allocated for activities relating to migration management and control”¹⁵

B. The DIF system

In addition to the deficiencies and loopholes detected in the legal framework for child protection, there are weaknesses and contradictions in the current institutional system. We identify two main problems.

First, the DIF system operates with a paternalistic vision targeting certain groups in situations of vulnerability. It is not an institution fully and exclusively devoted to protecting children and adolescents under standards for comprehensive child protection in accordance with the CRC.¹⁶ This perspective affects all the policies and practices relating to children and adolescents in the context of migration in Mexico, including Central American children and adolescents in transit

¹⁴ El Instituto para la Seguridad y la Democracia (Insyde) & Wolf, S. (Coord.). (2013). Diagnóstico del Instituto Nacional de Migración: Hacia un Sistema de Rendición de Cuentas en pro de los Derechos de las Personas Migrantes en México, p. 364. Retrieved from http://insyde.org.mx/wp-content/uploads/2013/09/R_E_Diagn%C3%B3stico_INM_final.pdf.

¹⁵ Fundar, Centro de Análisis e Investigación & Córdova Alcaez, R. (Coord.). (2013). Una mirada al presupuesto del Instituto Nacional de Migración: ¿Dónde estuvieron sus prioridades durante 2011? p. 8. Retrieved from <http://fundar.org.mx/una-mirada-al-presupuesto-del-instituto-nacional-de-migracion-donde-estuvieron-sus-prioridades-durante-2011/#.VLw48WTF9H2>.

¹⁶ Ceriani Cernadas, P., coord. (2012, septiembre). Niñez detenida: los derechos humanos de niñas, niños y adolescentes migrantes en la frontera México-Guatemala. Diagnóstico y propuestas para pasar del control migratorio a la protección integral de la niñez.

or living in Mexico, Mexicans migrating to the United States or returned from the U.S. across the border, children and adolescents who may migrate due to structural causes (especially the lack of basic rights and growing social, institutional, gender-based and family violence), as well as Mexican children and adolescents whose parents have migrated. The result is that certain rights violations become unavoidable (for example, being irregularly returned from the U.S.), and others are violated precisely because of this inadequate approach, for example, by detaining and repatriating children and adolescents to Central America without due process and without regard for the child's best interests.

Second, as explained in section C below on the coordination between INM and DIF, as well as in the chapter on migrant children in Mexico's Southern border, DIF's work to protect the rights of migrant children and adolescents is severely limited by the primacy of security-based concerns. This hierarchy of priorities is the main cause of the most serious abuses against the rights of migrant children and adolescents, committed by both State agents and organized crime syndicates.

Despite its limitations, the DIF national system, along with its offices in each state of the country, have begun to include the protection of migrant children in their programs. To this end, the DIF developed a strategy of prevention and attention to migrant children and adolescents and unaccompanied returned children. Its main goal is to "coordinate efforts and actions among the three levels of government, public and private institutions, and national and international civil society organizations, in order to address the needs of migrant and repatriated children and adolescents traveling unaccompanied, as well as to promote joint protection and family and community actions."¹⁷

In the last few years, after the Migration Law and its Regulation took effect by transferring responsibility over migrant and asylum-seeking children and adolescents to DIF, some changes in the treatment of children occurred. These, however, were limited by DIF's budget constraints and its paternalistic vision, which lacks an intercultural, rights-based perspective. The latest reform, although not yet published or finalized, is the drafting of the Protocol for Unaccompanied Asylum-Seeking Migrant Children and Adolescents (*Protocolo para los Niños No Acompañados o Separados de sus Familias en Busca de Asilo*).¹⁸ This new piece of legislation seeks to outline procedures for the attention of children at DIF-run shelters and other facilities.

It is also important to discuss the institutional framework for the protection of children and adolescents in light of the several forms of violence that victimize them. We refer here to violence suffered by Mexican children and adolescents that forces them to leave the country. Also, Mexican and foreign migrant children and adolescents suffer abuses while in transit in

¹⁷ See DIF Nacional, Gobierno de México. (2012, febrero). Estrategia de Prevención y Atención de Niñas, Niños y Adolescentes Migrantes y Repatriados No Acompañados. Retrieved from http://www.corteidh.or.cr/sitios/Observaciones/5/Anexo_8.pdf.

¹⁸ See Ministerio Público de la Defensa, México. Protocolo para los Niños No Acompañados o Separados de sus Familias en Busca de Asilo. Retrieved from <http://www.mpd.gov.ar/articulo/index/articulo/protocolo-para-los-ni-os-no-acompa-ados-o-separados-de-sus-familias-en-busca-de-asilo-953>.

Mexico, mostly at the hands of organized crime, but also with the complicity of some public security forces.

Organized crime is the main perpetrator of violence in several parts of the country, especially in the northern and southern border areas, where the Mexican government has been unable to reestablish the rule of law. The government has implemented a misguided militarization policy in large parts of its territory, including border zones. In this context of growing violence, there are no specific programs for the protection of migrant children and adolescents in transit through Mexico that include both risk prevention and comprehensive protections to victims. The emphasis on controlling foreign migrants and on facilitating the repatriation of Mexican children and adolescents—in agreement with the United States—is a serious obstacle to effectively addressing violence.

CEDAW has pointed out not only the context of widespread violence against adult women and girls in the country, but also the negative effects of the security-based approach taken by the State to fight organized crime and the resulting impunity for other forms of violence, such as domestic violence. Particularly, the Committee expressed its concern that:

the public security strategy to combat organized crime combined with persistent impunity and corruption have contributed to the intensification of already existing patterns of widespread discrimination and violence against women in the State party, rooted in patriarchal attitudes, and to the minimization and invisibility of this phenomenon. The Committee is concerned that women and girls have been subjected to increasing levels and different types of gender-based violence, such as domestic violence, forced disappearances, torture and murders, especially femicide, by State actors, including law enforcement officials and the security forces, as well as by non-State actors such as organized crime groups.¹⁹

Based on these conclusions, the Committee exhorted the Mexican government to undertake the following actions:

a) Revise its public security strategy to combat organized crime to accord it with its international human rights obligations, including the Convention and to end the high levels of insecurity and violence in the country, affecting women and girls disproportionately; b) Reverse the strategy's negative impact on women and girls and comply with its due diligence obligations to prevent violence against women, including domestic violence, forced disappearances, torture and murders, especially femicide; investigate, prosecute and punish State and non-State perpetrators, and provide redress to women who have been victims of violence regardless of the context and of the alleged perpetrators; c) Provide systematic training on human rights, in particular on women's rights, to all law enforcement officials, the military and the navy forces involved in operations in the context of the public security strategy and establish and enforce a strict code of conduct so as

¹⁹ Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico, 52nd Sess., 2012, July 9-27, ¶ 20, U.N. Doc. CEDAW/C/MEX/CO/7-8 (2012, July 27). Retrieved from <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MEX-CO-7-8.pdf>.

to effectively guarantee the respect of human rights; d) Take all necessary measures to establish a standard system for the regular collection of statistical data on violence against women²⁰

C. Coordination among DIF, INM, and other actors

In order to coordinate efforts among institutions working on migration issues, in March 2007, the Inter-Institutional Dialogue on Migrant Children, Adolescents, and Women (*Mesa de Diálogo Interinstitucional sobre NNA y Mujeres Migrantes*, hereinafter “*Mesa*”) was established. The *Mesa* incorporates disparate public institutions, international agencies, and—sporadically—civil society organizations invited at the authorities’ discretion. (Such invitations are intermittent despite the fact that the *Mesa* is required by its bylaws to include civil society representation.) The *Mesa* promotes initiatives to address the situation of migrant children and adolescents.

This first attempt at institutional coordination produced some limited results, such as the design of a model for the protection of the rights of unaccompanied migrant and returned children and adolescents. The INM created the position of OPIs, and through agreements between DIF and INM, Offices of Attention to Minors in Migration Stations (*Módulos de Atención para Menores Migrantes en las Estaciones Migratorias* or MAEM) were created. However, these two tools show important limitations in terms of human rights, as we have described in other reports.²¹ Finally, it is worth mentioning the creation of the Manual for the Protection of Unaccompanied Migrant Children and Adolescents (*Manual de Referencia del Modelo de Protección de los NNA Migrantes no Acompañados*) in 2011, which includes a series of proposals that could produce significant changes if implemented.

After the new federal government took office in 2012, the *Mesa* did not meet until the second half of 2014. The so-called migrant children “crisis”²² in the United States encouraged the new government to once again convene the *Mesa*, this time with more active participation of civil society organizations. Two meetings have taken place since then, but have ended without agreements on concrete measures to ensure comprehensive protection for migrant children and adolescents.

Additionally, in 2014, new shelters in the state of Chiapas opened for migrant children and adolescents. It is important to make two observations here. *First*, as the Fray Matías de Córdova Human Rights Center has documented after its monitoring of one of these shelters, children still endure conditions similar to those experienced at the Migration Stations, even though no longer detained in the custody of INM. They do not receive adequate food and, because of the closed-

²⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico, 52nd Sess., 2012, July 9-27, ¶ 20, U.N. Doc. CEDAW/C/MEX/CO/7-8 (2012, July 27). Retrieved from <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MEX-CO-7-8.pdf>.

²¹ Ceriani Cernadas, P., coord. (2012, septiembre). Niñez detenida: los derechos humanos de niñas, niños y adolescentes migrantes en la frontera México-Guatemala. Diagnóstico y propuestas para pasar del control migratorio a la protección integral de la niñez.

²² See in the Introduction of this book our criticisms of the depictions of and response to the increase in unaccompanied children and adolescents crossing into the United States in 2014, as well as the characteristics of that child migration phenomenon. We describe this phenomenon as a “crisis,” but use the term to mean a regional crisis of human rights, human development, humanitarian rights, and refugee rights.

door nature of shelters, similar in effect to detention centers, the children experience stress and anxiety due to lack of information.

Second, as illustrated by government statistics, the large majority of migrant children and adolescents who are detained on Mexican soil are transferred to Migration Stations as a step prior to repatriation.

D. The role of consulates

The following chapters also address consular protection. Reform proposals from civil society organizations have not only addressed the legal framework on migration, but have also sought to strengthen the role of the Mexican consulates abroad and Central American consulates in Mexico in protecting migrant children and adolescents. Mexico prides itself on its extensive consular network²³ in the United States. However, several criticisms have been made about the protection departments within the consulates, the budget these departments are allocated, and their staffing levels.

The Mexican protection policy for Mexicans abroad is not as strong as it should be. When serious human rights violations have been committed against Mexican children and adolescents in the United States, the Mexican response to the U.S. government has been weak—limited to submitting lukewarm complaints rather than demanding appropriate responses. Dialogue between the two countries is extremely unbalanced in terms of demands and responses.

Similarly, the role of Central American consulates in Mexico is disappointing. The main problem is the lack of policies and mechanisms specifically designed for the protection of the rights of migrant children and adolescents. This is particularly clear in the widespread practices of detention and repatriation without due process or consideration of the child's best interests. Thus, in addition to budgetary and personnel constraints, the lack of trainings on human rights, and especially children's human rights, is a serious problem. For this reason, consular practices are focused on logistical arrangements (such as accompaniment of children) following decisions of the Mexican authorities, rather than on guaranteeing the rights of children and adolescents. Chapters 2, 3, and 4 on Honduras, El Salvador, and Guatemala document these issues in greater detail.

IV. Conclusions

The following two chapters on the situation of children and adolescents in the context of migration in Mexico document the extent of the challenges for protection of their rights and physical integrity. These challenges have two main sources. First, among these is the nature of the migration phenomenon, which includes several categories of children and adolescents in a situation of acute vulnerability. The Mexican context of direct and indirect violence against children and adolescents, both Mexican and foreign, determines all aspects of their migration throughout the Mexican territory.

²³ Currently there are more than 142 Mexican consulates abroad. See Secretaría de Relaciones Exteriores, México. Consulados de México en el Exterior. Retrieved from <http://www.sre.gob.mx/images/stories/infografias/consul/consulado.html>.

The other source of challenges is the policies and practices implemented in this context. We identify three main spheres in which policies and practices are problematic, to be analyzed in depth in the following chapters: (1) deficiencies and limitations for the comprehensive protection of children and adolescents—particularly to ensure their rights to personal development, an adequate standard of living, nondiscrimination, and a dignified life free of violence; (2) a paternalistic approach that prevents the design of comprehensive protection policies; and (3) the primacy of migration control and security goals over the protection of the rights of children and adolescents.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>.