# Childhood and Migration in Central and North America:

## Causes, Policies, Practices and Challenges

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# Chapter 12 Repatriation and Reintegration of Migrant Children

Wendy Ramirez, Megan McKenna, and Aryah Somers
Kids in Need of Defense

## I. Introduction

During 2014, at least five and up to ten Honduran children deported by the United States government were killed after arriving back to Honduras.[1] Ten years ago, in a well-publicized case, Edgar Chocóy Guzman was killed by gangs in 2004 just 17 days after his return to Guatemala. He had raised this exact fear in his unsuccessful attempt to gain U.S. protection during the course of his removal proceedings.[2] The details of these cases are known to us only because of media attention or the continued advocacy of attorneys representing these children. What we do not know, however, is how many other children deported by the United States in the past decade have been killed or victimized by trafficking, exploitation, abuse, or violence upon their return.

In an effort to address this alarming possibility, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) called for the safe and sustainable repatriation and reintegration of unaccompanied children. The TVPRA was the first federal legislation to (1) include language on the safe and sustainable repatriation and reintegration of unaccompanied children and (2) mandate that the United States government report on measures taken to ensure safe removal of children.[3] Despite this legislation, the United States still lacks clear policies and procedures to govern the process of repatriation and reintegration of children. In addition, it has produced the mandated reporting on safe repatriation measures only twice during the past six years, in violation of reporting requirements set out in the TVPRA. As demonstrated by known cases, described above, these failures lead to children being returned to danger and possibly death in their home countries.[4]

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[1] Planas, R. (2014, August 20). Children Deported to Honduras Are Getting Killed: Report. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/08/20/minors-honduras-killed_n_5694986.html.

[2] De Leon, S., Associated Press. (2004, May 9). Guatemalan Youth Slain 17 Days After Being Deported From U.S. *LA Times*. Retrieved from http://articles.latimes.com/2004/may/09/news/adfg-deport9.

[3] The TVPRA requires that "the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security… submit a report… on efforts to improve repatriation programs for unaccompanied alien children. Such report shall include— (i) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States; (ii) a statement of the nationalities, ages, and gender of such children; (iii) a description of the policies and procedures used to effect the removal of such children from the United States and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last habitual residence, including a description of the repatriation pilot program created pursuant to subparagraph (A); (iv) a description of the type of immigration relief sought and denied to such children; (v) any information gathered in assessments of country and local conditions pursuant to paragraph (2); and; (vi) statistical information and other data on unaccompanied alien children as provided for in section 462(b)(1)(J) of the Homeland Security Act of 2002 (6 U.S.C.11 § 279(b)(1)(J))." William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457. 122 Stat. 5076 (2008) (hereinafter "TVPRA of 2008").

[4] UN Committee on the Rights of the Child (CRC*), CRC General Comment No. 6 (2005)*: *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, ¶ 85, CRC/GC/2005/6 (2005, September 1), prohibits the return of children without family in the home country without a specific care plan: "In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial

This chapter provides a brief overview of TVPRA's requirements on repatriation and reintegration; international and regional standards; and the process of repatriation and reintegration. We examine problems with current U.S. policies, and identify best practices for better protection and reintegration of children being returned to their countries of origin. This overview is based on the first-hand experiences of Kids in Need of Defense (KIND). Specifically, we draw upon our expertise in protecting unaccompanied children through our pro bono legal services program, our advocacy efforts in the United States, and our Guatemalan Child Return and Reintegration Project.[5]

## II. Background: repatriation and reintegration

While the terms repatriation and reintegration are not defined under U.S. federal law, it is important to have a general understanding of both the difference between these two concepts and how they are interrelated. Generally, repatriation is understood as the process through which an unaccompanied child is returned by a government authority in one country to the government authority of her country of origin. Repatriation can be imposed by the government—as a result of a deportation order, for example—or can result from a child's request to return to her country, through a process called voluntary departure. Although it departs from international standards and best practices, repatriation in the United States generally proceeds in relation to the immigration removal proceeding. For this reason, repatriation is sometimes also referred to as removal, return, or deportation.

Generally, when a child is apprehended by U.S. immigration authorities, those authorities initiate a removal proceeding before an immigration court. The court in those proceedings then makes a decision on the child's removability based upon his eligibility for certain forms of humanitarian relief. If the unaccompanied child does not fall within an existing category of humanitarian relief, the child is ordered deported to his home country even if return is not in his best interests. Repatriation thus results from a removal order, rather than on a reasoned decision on the best interests of the child or a determination of his safety upon return. Also within this system, many children, particularly Mexican unaccompanied children, lack meaningful access to protection or access to counsel, and may be repatriated against their will directly from the border. This, too, occurs without consideration of their safety or best interests. The TVPRA requires that the Secretary of Homeland Security consult the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied child to a particular country, but it is unclear the extent to which this actually occurs. It is also unclear whether reports showing high levels of abuses of children's rights or of trafficking of children, if consulted, have any effect on a decision to repatriate a child found ineligible for relief.[6]

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responsibilities upon return to the country of origin"; Center for Public Policy Priorities. (2008, September). A Child Alone and Without Papers: A report on the return and repatriation of unaccompanied undocumented children by the United States. Retrieved from http:// http://forabettertexas.org/images/A_Child_Alone_and_Without_Papers.pdf.

[5] As of July 31, 2014, KIND had been referred more than 6,400 unaccompanied children ranging from 18 months old to 18 years old since the start of its operations in January 2009, and trained 7,800 pro bono attorneys. The large majority of the children are from Honduras, El Salvador, and Guatemala, but KIND has been referred children from 66 countries. KIND's Guatemalan Child Return and Reintegration Project (GCRRP) has been referred 160 children since it began in September 2010; on average children receive reintegration support for about one year.

[6] TVPRA of 2008, § 235(a)(5)(B).

Nevertheless, the safe and sustainable repatriation and reintegration legislation is viewed as part of a larger framework ensuring that vulnerable unaccompanied children are protected from the moment of apprehension; through their care and custody; throughout removal procedures; and if a decision is made to remove the child, until their safe repatriation and successful reintegration. This broader framework requires that unaccompanied children have meaningful access to all processes in the United States to seek protection from exploitation, trafficking, abuse, and violence before any repatriation and reintegration process can be initiated. However, as noted, many gaps and challenges in the process and system persist.

Reintegration follows repatriation and is the process of ensuring that a child can be safely and sustainably reintegrated into her family, community, and country. Reintegration is particularly complex because it requires an understanding of the internal context of the country and the underlying root causes that drove the migration of the child. If those same factors are still present, this can be an extremely difficult process, particularly if the child did not return voluntarily. Components of a reintegration process can include re-evaluation of presence of violence or threat to the child; evaluation of family ties and relationships; community structure and opportunities; education, employment, skills training; psychosocial or psychological treatment; access to health care; access the shelter; cultural and linguistic support; and faith or religious networks of support. Reintegration requires greater resources, investment, and knowledge, and should impact the critical policy question of whether repatriation should even take place, e.g., if the child cannot be reintegrated safely and sustainably. In general, governments throughout the Central America-Mexico-United States corridor, have not implemented adequate reintegration programs in the region.

## III. U.S. law on safe repatriation and reintegration: unsatisfied mandates

Thousands of unaccompanied children[7] are returned from the United States to their country of origin every year. Most return after being ordered removed from the country or granted voluntary departure at the conclusion of an immigration hearing or removed directly from the custody of U.S. Customs and Border Protection at or near the border.[8] As noted, TVPRA sought to shed light on what actually happens to unaccompanied children who are removed, but there has been limited to no action in relation to these provisions. The increase in unaccompanied children arriving to the U.S. seeking protection and the resulting acceleration of immigration hearings without access to counsel makes the implementation of the safe repatriation and reintegration provisions even more critical.

The TVPRA requires the Secretary of State to create "a pilot program, in conjunction with the Secretary of Health and Human Services and the Secretary of Homeland Security,

[7] The U.S. Homeland Security Act of 2002 defines an unaccompanied child as a person who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom - (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." Homeland Security Act of 2002, Pub. L. 107-296 Section 462(g), 116 Stat. 2135, 2205 (2002).

[8] Voluntary departure is a form of immigration relief given to a foreign national in removal proceedings whereby he/she agrees to leave the United States voluntarily by a specific date rather than being removed by the U.S. government.

nongovernmental organizations, and other national and international agencies and experts, to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies."[9] This provision, as noted, comes into play once children have had the opportunity to present their claims for humanitarian relief.

For children from Mexico and Canada, the U.S. Secretary of State must negotiate bilateral agreements with both countries for the safe repatriation of children. Such agreements must protect children from severe forms of trafficking in persons. At a minimum, they must provide for return to appropriate employees or officials, including child welfare officials where available, of the accepting country's government during reasonable business hours.[10] Notably, for children from Mexico and Canada, this process should not be initiated until a determination has been made that the child is not a victim of trafficking, does not have an asylum claim, and is able to make an independent decision to withdraw her application for admission.[11]

Mexican unaccompanied children are generally removed from border patrol stations, in a process called voluntary removal. While called voluntary, reports by UNHCR, Appleseed, and the Women's Refugee Commission have documented the lack of adequate screening procedures for Mexican unaccompanied children to ensure that repatriation is limited to those children who are not at risk and who are capable of voluntarily deciding to return.[1] These problems are discussed in greater detail in chapter 9, on unaccompanied children at the U.S.-Mexico border.

In July 2011, the Department of State submitted a report to Congress that included the number of deportations from the U.S. to various countries. According to this report, 1,632 unaccompanied children were removed from the United States between December 2008 and June 2011.[12] This number includes 623 Mexican children. However, this report does not appear to include the over 40,000 unaccompanied Mexican children returned at the border between those same years.[13]

Since the 2011 report, the U.S. Department of Homeland Security has not widely shared their repatriation numbers, so this data is not readily available in the United States. The ministries of migration in El Salvador, Guatemala, and Honduras, however, have begun to track and share information about the number of children repatriated from the United States. Their data accounts for all children (under age 18) and does not differentiate between children who were unaccompanied in the U.S. or those who returned with a caregiver.[14] According to the ministries of migration in the respective countries, 164 children were returned to El Salvador from the U.S.

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[9] TVPRA of 2008, § 235(a)(5)(A).
[10] TVPRA of 2008, § 235(a)(2)(C).
[11] TVPRA of 2008, § 235(a)(2)(A).
[12] U.S. Department of State. (2011, July 21). Report to Congress on the Provision of P.L. 110-457 Regarding Repatriation of Unaccompanied Alien Children and U.S. Government Efforts to Protect Them from Human Trafficking (hereinafter "2011 Department of State Report to Congress"). Document with author.
[13] U.S. Customs and Border Protection. Southwest Border Unaccompanied Alien Children. Retrieved from http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children.
[14] The numbers shared by these countries are of children generally and not only unaccompanied children, however. In addition, children who are returned from the U.S. as adults and then found to children upon return are also included in these numbers.

in 2014 (based on data available until the 22nd of May), [15] 194 children were returned to Guatemala (from the U.S.) in 2014,[16] and 300 children returned from the United States to Honduras in 2012.[17] While U.S. authorities have not made data available on returns of Mexican children,[18] according to the National Institute of Migration (INM) in Mexico, 16,971 unaccompanied Mexican children were returned from the U.S. in 2013 and 13,324 in 2014.[19]

As noted, the urgency to find ways to protect these children and ensure they are not returning to harm has never been greater, as the number of unaccompanied children coming to the United States has risen dramatically in recent years. In fiscal years leading up to 2011, the average number of children who came alone to the United States was between 6,000 and 8,000. This number increased at an unprecedented rate to 24,481 unaccompanied children apprehended by U.S. Border Patrol in fiscal year 2012, 38,833 in fiscal year 2013, and 68,631 in fiscal year 2014.[20] Numerous reports, including most recently a report by the UN Refugee Agency,[21] have found that children are fleeing alone in unprecedented numbers often to escape increasing violence in Honduras, Guatemala, and El Salvador.[22] Many of the children may be forced to return to an environment of community violence, violence in the home, or poverty—which reflect the root causes for their flight and are structurally inter-related.[23] In addition, children are now facing challenges to accessing protection

[15] Dirección General de Migración y Extranjería (DGME) El Salvador. (2014). Document with author.
[16] Dirección General de Migración de Guatemala. (2014). Deportados Via Aerea. Retrieved from http://www.migracion.gob.gt/index.php/root1/estadisticas.html.
[17] Dirección General de Migración y Extranjería, Honduras. (2012). Estadisticas Migratorias, Año 2012. Retrieved from http://www.migracion.gob.hn/index.php?option=com_content&view=article&id=78&Itemid=274 (data for 2013 and 2014 was not available on the DGME site but the numbers may be trending higher for 2013).
[18] Appleseed. (2011). Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors. Retrieved from http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf, p. 9.
[19] *See* chapter 7 on Northern Mexico, table 3 (citing INM statistics); INM. (2013). Eventos de repatriación de mexicanos desde Estados Unidos (Adultos y NNA) de 2000 al 2013. Retrieved from http://www.gobernacion.gob.mx/es_mx/SEGOB/Series_Historicas and http://www.gobernacion.gob.mx/es_mx/SEGOB/V_Repatriacion_de_mexicanos_de_EUA.
[20] USBP. (2015). USBP Sector Profile – Fiscal Year 2014 (Oct. 1st through Sept. 30th) (reflecting apprehensions by U.S. Border Patrol). Retrieved from http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf; USBP. (2013). USBP Sector Profile – Fiscal Year 2013 (Oct. 1st through Sept. 30th) (reflecting apprehensions by U.S. Border Patrol). Retrieved from http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf; USBP. (2012). USBP Sector Profile – Fiscal Year 2012 (Oct. 1st through Sep. 30th). Retrieved from http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202012%20Sector%20Profile.pdf. See chapter 1 for additional statistics on apprehensions by the Office of Field Operations.
[21] UNHCR. (2014, March). Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection. Retrieved from http://unhcrwashington.org/children; USBP. (2015). United States Border Patrol Southwest Border Sectors. Retrieved from http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf.
[22] For more information, see Chapter 1, on UNHCR's findings with respect to Mexican and Central American children's international protection needs.
[23] See Chapters 2-4 for an in-depth analysis of root causes of migration, including increases in violence, in Honduras, El Salvador, and Guatemala.

in the United States due to inadequate notice of accelerated hearing dates in immigration courts and inadequate access to counsel.[24]

Once back in their home countries, children must rely largely on themselves and, if available, family, to ensure their own safe return and reintegration. In addition to the violence in their home countries, of which they are often a target, children are also returning to the same conditions of extreme poverty, with limited educational and other opportunities—often now exacerbated by a significant debt to pay to their smugglers. [25] Most children will not have a support system connecting them to vital services, such as help with school enrollment, scholarships, skills training, psychosocial support, and family reunification. This leaves them vulnerable to trafficking, exploitation, abuse, and violence—the very harms that the TVPRA provisions were enacted to prevent.

*Cecilia's Story*

> *Cecilia[26] was 17 years old when she decided to migrate to the United States alone hoping to bring her family out of extreme poverty. Cecilia recounted that at age 12 she felt obligated to quit school and find a job to support her family after her mother became ill and was unable to walk. As her mother's illness progressed, Cecilia's father abandoned the family. Cecilia traveled to a city outside of Guatemala City and worked 17 hours a day, but still was unable to earn enough to support her family. Cecilia was detained by U.S. Border Patrol shortly after she crossed the border into the United States and was subsequently placed in a government shelter where she remained for three months because she did not have family in the U.S. with whom to reunify. Cecilia was placed in removal proceedings but had no attorney to represent her. She did not know her legal options and was advised that she was not eligible for immigration relief and should request voluntary departure. Cecilia requested and was granted voluntary departure by an immigration judge, without any consideration of the circumstances she was returning to in Guatemala, or whether return would be in her best interests. Cecilia returned to Guatemala. While she was excited to see her family, Cecilia quickly grew desperate as her family's economic situation had worsened while she was away. In addition, now she was also faced with a $5,800 debt as a result of her trip.*

Cecilia should have been eligible for Special Immigrant Juvenile Status based on abandonment by her father, but she was nevertheless returned to Guatemala. This brings into question whether her due process rights were protected throughout her deportation proceeding, including access to

[24] Semple, K. (2014, August 4). Advocates in New York Scramble as Child Deportation Cases Are Accelerated. *New York Times*. Retrieved from http://www.nytimes.com/2014/08/05/nyregion/advocates-scramble-as-new-york-accelerates-child-deportation-cases.html?_r=0; Stewart, N. (2014, September). Program to Give Legal Help to Young Migrants. *New York Times*. Retrieved from http://www.nytimes.com/2014/09/23/nyregion/groups-to-provide-lawyers-for-children-who-face-deportation.html.

[25] Center for Gender & Refugee Studies, and Kids In Need of Defense. (2014, February). A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, pp. 79-83. Retrieved from http://cgrs.uchastings.edu/our-work/treacherous-journey (hereinafter "A Treacherous Journey").

[26] All names provided are pseudonyms used to protect the identity of these children.

counsel. Her deportation also highlights how safe repatriation and the best interests of the child were not adequately considered during the proceeding.

Cecilia's story is only one example of many children who return, with new smuggling debt, to unchanged conditions of systemic poverty, lack of access to education, and weak child protection systems. Children who do not receive reintegration support are at greater risk of re-attempting the dangerous trip in an effort to pay off their debt. These same children are also vulnerable to trafficking. Without community-based support services to help them find local options to pay off their debt, receive psychosocial support, and finding other alternatives to remigration, children remain vulnerable at home. To successfully deliver such services, collaboration between all stakeholders is needed—including the U.S. government, the child welfare agencies in the countries of origin, civil society, and consular officials in countries of transit and destination.

## IV. Regional protocols and international conventions: unfulfilled standards

At this time, there is no single legally binding and enforceable regional or international agreement governing repatriation and reintegration procedures for unaccompanied children between all countries in the Central America-Mexico-United States corridor. While regional and international protocols can provide guidance and a principled framework, the United States should create protocols that reflect the best interests of children and meet the TVPRA mandate of safe and sustainable repatriation and reintegration.

The Regional Conference on Migration has worked to develop regional guidelines and promote national protocols in the region. The 2007 Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking and the 2009 Regional Guidelines for the Assistance to Unaccompanied Children in Cases of Repatriation guarantee the physical and moral integrity of children during the process of repatriation. They require all governments to respect children's human rights and ensuring the best interest of the child. These protocols recognize that countries must ensure the protection of the rights of children while in their custody, including providing access to food, water, medical attention, psychological assistance, education, and opportunities for recreation. Governments must also guarantee that children are informed of their rights. These protocols reference the United Nations Convention on the Rights of the Child (CRC), specifying principles such as the best interest of the child, non-discrimination, family unity and reunification, respect for human rights, and due process. However, these regional guidelines primarily focus on repatriation, and not on reintegration. Additionally as mentioned above, they are not binding.[27]

Individual countries in the region have developed their own national or bi-national guidelines and protocols. In 2006, the Honduras Protocol on the Repatriation of Children and Adolescent Victims or Vulnerable to Trafficking in Persons was developed; and in 2012, Mexico and Guatemala agreed to a Bi-National Protocol Project for Assistance to Children and Adolescent Unaccompanied Migrants. Both Protocols are discussed in greater detail in chapter 13, on regional and bilateral agreements.

[27] For more information on these and other instruments, see chapter 13 on regional and bilateral agreements.

Moreover, as noted, under TVPRA, the United States is required to develop agreements with Mexico and Canada for the repatriation of unaccompanied children. In 2009, the Department of Homeland Security (DHS) signed 30 bilateral agreements with the Mexican National Migration Institute (*Instituto Nacional de Migración*) and the Mexican consulates on the repatriation of vulnerable migrants, including unaccompanied children.[28] Through a request under the Freedom of Information Act (FOIA), these documents became available to the general public. Although purportedly intended to address the safe repatriation of Mexican nationals, these bilateral agreements are merely logistical in nature and do not address the protection and best interests of unaccompanied children. At their core, these agreements facilitate enforcement of removal orders rather than provide guidance to agents on special considerations for children or practices that are child friendly. Additionally, as is the case with the regional protocols, reintegration is not addressed.[29]

In addition to these regional and bi-national efforts, the primary international instrument providing a principled framework for the repatriation and reintegration process is the CRC. As already noted, regional guidelines created through the Regional Conference on Migration have used the CRC as a reference and framework. The CRC does not envision a repatriation decision occurring within the context of an immigration removal decision; rather, States should conduct a best interests determination to protect children irrespective of their immigration status.[30]

Another international convention relevant to repatriation decisions is the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to prevent the *refoulement* of asylum seekers.[31] The U.S. incorporated these principles into domestic law through the 1980 Refugee Act, which prohibits the U.S. government from repatriating of individuals facing persecution. The prohibition on return applies irrespective of whether U.S. immigration authorities apprehend the individual at the border or within the interior of the country. In practice, however, access to asylum by individuals presenting themselves at the border and ports of entry has deteriorated. The faulty screening of Mexican children by U.S. border officials poses a particular risk of *refoulement* in violation of international protection obligations. This problem is addressed in greater detail in chapter 9, on unaccompanied children at the U.S.-Mexico border.

The Vienna Convention on Consular Relations sets out certain rights for consular access to persons in detention to converse and correspond and arrange for his or her legal representation.[32] The U.S. ratified this convention, but, at the time, took the position that it was self-executing and did not require implementing legislation.[33] In the immigration context, "every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of

[28] U.S. Department of Homeland Security. (2009, April 3). Secretaries Napolitano and Espinosa Announce Agreement on Mexican Repatriation. Retrieved from http://www.dhs.gov/news/2009/04/03/agreement-mexican-repatriation-announced.
[29] For additional details on United States-Mexico agreements, see chapter 13 on regional and bilateral agreements.
[30] Convention on the Rights of the Child (CRC) art. 3, 1989, November 20, 1577 U.N.T.S. 3.
[31] Convention Relating to the Status of Refugees. 1951, July 28, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees. January 31, 1967. 606 U.N.T.S. 267.
[32] Vienna Convention on Consular Relations art. 36(1), 1963, April 24, 596 U.N.T.S. 261.
[33] Garcia, M. J., Congressional Research Service (2004, May 17). CRS Report for Congress: Vienna Convention on Consular Relations: Overview of U.S. Implementation and International Court of Justice (ICJ) Interpretation of Consular Notification Requirements. Retrieved from http://fas.org/sgp/crs/row/RL32390.pdf.

his or her nationality in the United States."[34] Bilateral treaties may require consular notification even if the detained migrant does not request such notification; however Mexico, Guatemala, Honduras, and El Salvador do not have such agreements with the United States.[35] Mexico has informed the Department of State that it would like to be notified of the detention of any child, pregnant woman, or person at risk.[36] However, the consular officers do not have the right to access if the person does not request contact with the consulate; this significantly limits consular contact in immigration detention. As explained below, consular officials usually do receive notice once the U.S. government has decided to remove a person to her country of origin.

U.S. policies on returning unaccompanied children contravene a number of other international treaties and conventions to which the U.S. is not a party, such as the International Covenant on Civil and Political Rights (guaranteeing children the right to such measures of protection as are required by their status as a child);[37] the Universal Declaration of Human Rights (children are entitled to special protection and assistance);[38] and much soft law.[39]

## V. U.S. repatriation process for unaccompanied children

In general, the U.S. repatriation process for unaccompanied children is not transparent and varies greatly from country to country. While the practices for children apprehended by and transferred from DHS to the custody of the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS) are generally known, it is much less clear what happens to children in the reverse scenario, when they are picked up by DHS from ORR for removal to their country of origin.

The key government actors in the repatriation process are the DHS, ORR, the Department of State (DOS), and the Department of Justice (DOJ). Essentially, the decision on repatriation takes place in the removal proceeding before an immigration judge of the Executive Office for Immigration Review within DOJ. Neither the best interests of the child nor the safety of the child guide this proceeding; rather the child's eligibility for relief or her defenses to removability from the basis of

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[34] 8 C.F.R. § 236.1(e) (2014).
[35] 8 C.F.R. § 236.1(e) (2014).
[36] U.S. Department of State. (2014, March). Consular Notification and Access, 4th Ed. Retrieved from http://travel.state.gov/content/dam/travel/CNAtrainingresources/CNAManual_Feb2014.pdf.
[37] International Covenant on Civil and Political Rights art. 24, 1966, December 19. 999 U.N.T.S. 171. Retrieved from https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf.
[38] Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III). (1948, December 10).
[39] CRC General Comment 6 (2005), Treatment of Unaccompanied and Separated Children Outside of Their Country Origin, including ¶ 84. ("Return to the country of origin is not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies,") and ¶ 92, ("The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs."); UNHCR. (2007, October 5). Conclusion on Children at Risk, No. 107 (LVIII) – 2007. Retrieved at http://www.unhcr.org/4717625c2.html (stating that "best interests of the child shall be a primary consideration."); U.N. Committee on the Rights of the Child. (2012) Report on the 2012 Day of General Discussion – The Rights of All Children in the Context of International Migration. Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf.

the determination.[40] Once the immigration judge issues a decision ordering the removal of the child to her country of origin, either through an order of deportation or a voluntary removal order, the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) initiates the procedure for the actual repatriation process for unaccompanied children.

TVPRA also requires the U.S. government to assess country conditions before repatriating children by consulting the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied child to a particular country. However, it is unclear the extent to which this actually occurs.[41] The ICE trial attorney will transmit the information on the final immigration court order to another ICE officer who will begin to make travel arrangements for the child on the Justice Prisoner and Alien Transportation System (JPATS) flights. JPATS flights are ICE charter flights to countries to which large numbers of individuals are being removed. These flights mix adults and children, as well as men and women. This process is used for children from Guatemala and Honduras. Mexican children, however, are usually transported to the border by bus; and children repatriated to El Salvador travel on commercial flights rather than JPATS flights.

ICE also contacts the consulate of the child's country of origin to inform officials that the child will be returning home. There is generally no prior contact with the consulate, and DHS does not consistently share information with Central American consulates when an unaccompanied child is detected, apprehended, and detained. The consulates have asked DHS to notify them of a child in CBP or HHS custody; however, there has been no progress on this issue to date.[42]

After ICE contacts the consulate, practices vary across the country depending on the particular consular office, as discussed in greater detailed in Chapter 8. The consulate can visit the child at the ORR shelter or remotely prepare and issue travel documents. Beyond this procedure of providing travel documentation, the consular officers have played a limited role in protection. Although the consulate could also interview the child to ensure that the child's rights were respected throughout the process of apprehension, custody, and removal and help to assess the child's situation abroad, this does not occur in practice. While some ORR shelters may encourage the child to maintain communication with their consulate, this is not done consistently.

In the face of the unprecedented influx of migrant children apprehended by CBP and placed in ORR custody in 2013 and 2014,[43] some of the consulates are pushing for greater involvement at all stages of the process in the United States. Challenges remain, however, with U.S. policies and the consulates' capacity to reach all unaccompanied child nationals. Through conversations with the Embassy of El Salvador, the consulates of El Salvador are looking to better understand the types of immigration relief available for unaccompanied children in the United States. The consulates have begun to build a network of collaborative partners to provide legal services for unaccompanied children with upcoming immigration hearings who have been reunified with

[40] For a discussion of available forms of relief in the United States and barriers faced by children in obtaining them, see Chapter 10 on immigration remedies and procedures in the United States.
[41] TVPRA of 2008, § 235(a)(5)(B); A Treacherous Journey, p. 80.
[42] For additional details on consular agreements and practices, see chapter 13 on regional and bilateral agreements.
[43] See chapter 9 on unaccompanied children at the U.S.-Mexico border for a more in-depth discussion of border practices.

family in the United States. These steps can also help inform the consulates' protection role if unaccompanied children are subsequently ordered removed.[44]

ICE will provide an approximation of when the child will return to their country of origin, but no specific date with reasonable notice. At best, DHS gives ORR shelter workers and consulates two days' notice that the child will be picked up and placed on a DHS flight home. The timing is based on available seating on JPATS flights to the home country. The short notice gives shelter workers, consulates, and others who are trying to coordinate the child's return and family reunification little time to do so effectively.[45] Through KIND's repatriation and reintegration project, KIND has observed that the consulates of Guatemala do not consistently receive information from DHS about a child's return. DHS notifies the consulate for the purposes of a travel document, as the consult must issue such document before DHS can confirm and coordinate the child's return flight. In KIND's view, consulates should be more involved in requesting timely information from DHS before a child's return to help ensure a safe process.

Usually, children's families are notified of the child's imminent return by a caseworker at the ORR shelter housing the child. The children are able to buy and take with them clothes, shoes, notebooks, and school notes in a duffel bag that is provided by ORR. Even when there is sufficient time to explain to children what will happen next, children are usually not provided information about what will happen during their flight or upon their return to their country of origin.

There is a significant gap in information on the next step of the process between the pick-up of the child from the ORR shelter and the arrival to the country of origin, as the process is not transparent during this period of time. From information gathered from children, an ICE officer picks up the child from the ORR shelter and transports her to an ICE detention facility, where the child is held with others. She is then placed at some point on a flight and returned to her country of origin, usually in the capital city.[46] Generally Central American unaccompanied children are returned with adults on JPATS charter planes, but are seated in a separate section of the airplane. Unaccompanied children should be accompanied by child welfare trained individuals once in ICE custody for the repatriation process, but it appears that they are escorted by enforcement officers.

The JPATS flights usually land at the capital city of the country, but may sometimes instead arrive at an alternative major city, such as San Pedro Sula in Honduras. Families in the home country must figure out how they are going to get to airport to pick up the child. They receive no assistance in transport to the city to receive their children, but must instead find resources on their own. The

[44] Conversation with KIND, notes on file with author.

[45] This information is based on KIND's experience coordinating with families in Guatemala whose children are returning home and for whom KIND provides reintegration support through the Guatemalan reintegration project. Throughout the four years that KIND's reintegration project has operated, we have seen DHS give short notification to ORR shelter caseworkers and foreign consulates of a child's return date and time.

[46] Children who are released from ORR custody prior to their final hearing and are later deported are expected to leave the country at the expense of the family, which is expected to pay for the child's flight home. Typically, they have several months to comply. It is difficult to determine, however, if and how many children leave as many are likely to remain in the U.S. undetected. KIND has only seen two cases of children who were released to a family member and they were seeking safe return and reintegration support. A ninety-eight percent (98%) of children helped with KIND's safe return and reintegration services were escorted home from an ORR shelter by DHS on ICE charter flights.

returning children can be from remote, impoverished areas, as is often the case with children from Guatemala. The parent or other caregiver may have to take time off from their work to make the journey and pay for transportation with limited resources. The lack of sufficient notification and time for planning diminishes the likelihood of safe return, reunification, and reintegration.

### *A. Guatemalan children*

In Guatemala, the key actors in the current reception and reunification process are the Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores*), General Directorate of Migration (*Dirección General de Migración*), Secretary of Social Welfare (*Secretaría de Bienestar Social*), and the Attorney General's Office for Children and Adolescents (*Procuraduría de la Niñez y la Adolescencia*). These government agencies also rely on DHS to provide information about the child's arrival date and time. Typically, DHS provides this information only when it hands over the child to migration authorities of her country of origin.[47]

Returned unaccompanied Guatemalan children arrive to the military side of the La Aurora airport and are usually allowed to deplane prior to adults. They are greeted by caseworkers from the Secretary of Social Welfare, and possibly representatives of the Attorney General's Office of Children and Adolescents, who have the legal authority to take custody of the child. The children are walked into a reception room and have a separate waiting area from the adults. Some children are mistakenly treated as adults, and returned together with adults during the flight, but then moved to the children's waiting area upon discovery of their age.

Children are usually provided snacks and can make phone calls to family. The child then undergoes an initial interview for health and safety purposes. In some cases, a parent or family member may be waiting at the airport or at the new shelter in Zona 1 of Guatemala City. The child is then reunified with parent or legal guardian with verification of identity documentation and through execution of an administrative act granting custody back to the family. If the child is unable to be reunified, she is transported to the Secretary of Social Welfare shelter in Zona 1 of Guatemala City. If the child cannot be reunified with a family member, the child will be institutionalized in the child welfare system through a judicial proceeding.[48] There are also children who sometimes arrive on the commercial side of the La Aurora airport, but little is known about the process for these children. Beyond this initial reception process, there is virtually no additional follow-up on safe and sustainable reintegration for these children. [49]

[47] Based on conversation with stakeholders, advocates, and NGOs about the reception processes in the country of origin.
[48] Based on conversation with stakeholders, advocates, and NGOs about the reception processes in the country of origin.
[49] Based on conversation with stakeholders, advocates, and NGOs about the reception processes in the country of origin.

### *B. Honduran and Salvadoran children*

In general, based on conversations with stakeholders, the U.S. side of the repatriation process is virtually identical between Guatemala, El Salvador and Honduras. One key difference is, in contrast to Guatemala, and as mentioned above, child returns to El Salvador are conducted via commercial planes with a DHS officer escort rather than via ICE JPATS charter planes.

### *C. Mexican children*

As discussed in chapter 9 on unaccompanied children at the U.S.-Mexico border, the majority of repatriated Mexican children are returned directly from the border. The repatriation process for Mexican children is cursory compared to the process for Central American children. Mexican children speak to a consular officer regarding biographical information, but generally do not undergo interviews for safe and sustainable repatriation or regarding their best interests. The process for returning children to the custody of the National Migration Institute and transferring to the custody of the National System of Integral Family Development (*Sistema Nacional de Desarrolo Integral de la Familia*) are not consistent across the country, as explained in greater detail in Chapter 7 on Northern Mexico.[50]

As noted in the case of El Salvador, in the last two years, some consulates have begun to push for greater involvement. For example, in August 2014, the Mexican Ministry of Foreign Affairs (SRE) announced that they are distributing a new questionnaire to consular officials along the Mexico-U.S. border.[51] This questionnaire will further the goal of safe and sustainable repatriation, serving as a tool to determine if the child is a possible victim of trafficking or crime or fears returning home because of intrafamilial violence or sexual assault. The questions will also assess whether a return home serves the best interest of the child.[52] The Mexican consulate will interview the child utilizing this new questionnaire once the child has been interrogated by U.S. CBP officers. The SRE has sought technical assistance from two non-governmental organizations to update their screening tool.[53] Challenges remain, however, with U.S. policies and the consulates' capacity to reach all unaccompanied child nationals.

## VI. U.S. reintegration process for unaccompanied children

As previously noted, the TVPRA was the first legislation to include language on safe repatriation of unaccompanied children and to mandate the U.S. government reporting on safe repatriation measures. It required the DOS to create a pilot program, in conjunction with HHS, DHS, nongovernmental organizations, and other national and international agencies and experts "to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual

[50] For more information on treatment of Mexican children returned by U.S. immigration officials, see Chapter 7 on Northern Mexico.
[51] For more information on the differential treatment of Mexican unaccompanied children vis-à-vis Central American unaccompanied children by U.S. border officials, see chapter 9, on unaccompanied children at the U.S.-Mexico border.
[52] Gómez Quintero, N. (2014, August 20). SRE will help Mexican migrant children in the US. *El Universal*. Retrieved from http://www.eluniversal.com.mx/in-english/2014/sre-migrant-children-93243.html.
[53] Kids In Need of Defense (KIND) and Institute for Women in Migration (IMUMI).

residence, including placement with their families, legal guardians, or other sponsoring agencies."[54] Despite the reintegration provision of TVPRA, the United States has in effect viewed its responsibility towards these children as ending once they are turned over to the custody of government officials from the country of origin at the port of entry.

Implementing reintegration is a complex process and should be based on a more comprehensive understanding of the internal context of the country and underlying root causes that drive migration of children. This includes understanding the political context (general political factors, violence and oppression, etc.); the security context (the extension of gang and drug trafficking activities, etc.); the economic/developmental context (general economic factors and how children fit into this context); the environmental context (distribution of land, environmental disasters, and agricultural reform, crop failures, etc.); and the child protection context (child protection system, child labor eradication campaigns, etc.). This kind of effective implementation requires collaboration among U.S. government agencies supporting development and security assistance abroad, as well as non-governmental organizations with expertise in working directly with populations in need of protection and support.

In 2010, the State Department's Bureau of Population, Refugees, and Migration funded the International Organization for Migration (IOM) to implement an 18-month pilot project. The project supported the return and reintegration of unaccompanied children returning to El Salvador, and assisted the Government of El Salvador in building its capacity to help these children. The project, which was managed jointly by IOM and the El Salvadoran Institute for the Development of Children and Adolescents (*Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia* or ISNA), assisted children with family reunification, and facilitated the child's reintegration through education, vocational training, and medical and psychological care. It ran from March 2010 through September 2011. After the project's completion, local and national authorities were to continue its activities.[55]

Although this was a positive initial effort, it is unclear whether the program still operates under local and national authorities. Due to a change in child welfare laws, a mandate gap emerged between ISNA and the National Council for Children and Adolescents (*Consejo Nacional de la Niñez y Adolescencia* or CONNA). This gap may have impacted or even ceased the implementation of this program, as it is unclear which agency has full mandate over the reintegration of returned child migrants. Nonetheless, with the surge of children repatriated from the Mexican border in recent months, ISNA and CONNA are collaborating with the General Directorate of Migration and Aliens (*Dirección General de Migración y Extranjería* or DGME) in at least the initial reception of children; however these efforts fall short, as discussed in Chapter 4 on El Salvador, and reception efforts do not necessarily extend to the reintegration process.[56]

The U.S. State Department's two reports to Congress on the pilot project did not offer information about the impact of the 18-month program; specific steps taken to ensure the children were safely and humanely repatriated; or any best practices identified to inform future programming.

[54] TVPRA of 2008, § 235(a)(5).
[55] 2011 Department of State Report to Congress.
[56] Information based on conversation with NGO stakeholders and ISNA representative in El Salvador. Such efforts are discussed in greater detail in Chapter 4 on El Salvador.

According to IOM, the 2010-2011 pilot helped 52 children find scholarship assistance, job training, and other social services.[57] The second report stated that ISNA had established a national reintegration program for returned children—but, as explained about, the continuing viability of this program remains unclear. It additionally reported that IOM had published a Manual of Reintegration that outlines the roles and responsibilities of El Salvadoran government agencies, as well as a directory of organizations that provide reintegration services, and had documented unaccompanied child reintegration practices in the region.[58] However, to date, these materials have not been made available. Moreover, no projects other than the 2010-2011 ISNA pilot have been implemented by the U.S. government to address the safe repatriation and reintegration of unaccompanied children, and the United States has not issued best practices regarding repatriation and reintegration of children. The Department of State does not currently fund programs to specifically support safe reintegration of repatriated unaccompanied children.

TVPRA also required reporting on efforts to improve repatriation programs for unaccompanied children, including data on: the number of unaccompanied alien children ordered removed and actually removed; the nationalities, ages, and gender of the children; a description of the policies and procedures used to effect the child's removal from the United States; the steps taken to ensure that such children were safely and humanely repatriated to their home country; a description of the type of immigration relief sought and denied to the children; and any information gathered in assessments of country and local conditions. The two DOS reports to Congress on the 18-month pilot project in El Salvador lack substance and fail to meet these requirements. They provide only extremely basic statistical information about U.S. agencies' work addressing mandates under the TVPRA[59].

Reintegration also requires that unaccompanied children be provided safe and sustainable family reunification services once returned to their home country. These must include social services and shelter care if the child has no family with whom to reunite, as well as services to support reintegration into their family and community. Beyond an initial reception process, however, the governments of El Salvador, Guatemala, and Honduras do not have systems in place to follow up with and provide reintegration support to returned children. As explained in greater detail in Chapters 2-4, all three countries have child protection laws in place, but lack national child protection systems that can actually implement those laws. Rather, the relevant agencies are severely under-resourced, lack clear standards, and do not extend in practice across the entire country.[60] While the United States does have development programs through the U.S. Agency on for International Development (USAID) in the region, it has not engaged in efforts to explicitly connect these programs to reintegration support for children the U.S. has deported. Nor do its efforts to adequately help strengthen child protection systems. Overall, there is an absence of reintegration policies and programs across the region.

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[57] IOM PowerPoint presentation document. (2012, May 12). Document with author. *See also* Méndez, M. (2012, March). Project "Return and Reintegration of Unaccompanied Migrant Boys, Girls, and Adolescents", PHASES I & II. Retrieved from http://www.rcmvs.org/Eventos/Otros/Marzo2012/Presentations/SAL%20-%20CRM_mar12%20Eng.ppt.

[58] 2011 Department of State Report to Congress.

[59] A Treacherous Journey, p. 82.

[60] Oficina de Derechos Humanos del Arzobispado de Guatemala. (2011). Informe de la Situación de la Niñez y Adolescencia en Guatemala 2011. Retrieved from http://www.odhag.org.gt/pdf/InformeNinez2011.pdf.

## VI. Case study: the Guatemalan Child Return and Reintegration Project

In the absence of sustainable government reintegration initiatives, non-governmental organizations have stepped in to provide services in the region. In 2010**,** KIND launched the Guatemalan Child Return and Reintegration Project (GCRRP), an innovative a partnership between KIND, the Global Fund for Children (GFC) and four local nongovernmental organizations in Guatemala: Fundación Castillo de Amor para la Niñez; Asociación Pop No'j; Colectivo Una Vida Digna; and El Refugio de la Niñez. The project aims to help children returning alone to Guatemala from the United States without adequate support. The children who have benefited from the GCRRP the most are those who remained in ORR shelter care because they lacked family in the U.S. with whom they could reunify, then were found ineligible for immigration protection. These children leave the U.S. because they have accepted voluntary return,[61] or because they have been ordered deported. Between October 2010 and September 2014, the GCRRP received 160 referrals of children in ORR shelters who expressed an interest in its services.[62] Of note, this project is fully voluntary. A child's case worker or social worker in the ORR shelter presents the child with information about the project, and refers the child to KIND only if she expresses interest in the GCRRP.

The GCRRP social worker conducts an intake interview with the child via videoconferencing (as most children are referred from ORR shelters in Arizona and Texas). The social worker asks various questions to familiarize himself with the child's life back home. For example, with whom did the child live before coming to the U.S., what was their day to day life in Guatemala, did they attend school, at what age did they start working (if applicable), what motivated them to leave, etc. The assessment tool also consists of child friendly questions that will help the GCRRP social worker detect any past history of abuse or other circumstances that would render return as contrary to the best interest of the child. In a couple of cases, the GCRRP social worker has detected past abuse, and reported this to the ORR shelter and the child's legal service provider to secure a re-interview of the child. In this way, the GCRRP acts a final safeguard to protect children from unsafe returns. In most cases, however, the child is referred to KIND for reintegration support once the child has already been deemed ineligible for relief following a final immigration hearing. Based upon this initial process, KIND plays a role in recognizing the need to connect decisions on return with the feasibility of safe and sustainable repatriation and reintegration.

The GCRRP then matches the child with the NGO that can best provide necessary services. The NGO and KIND coordinate contacting the family members to help them arrange travel to the capital city to reunite with the child. The NGO meets with the child and provides comprehensive support, which includes education and vocational skills training opportunities, psychosocial support, and facilitation of health care and other critical services.[63]

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[61] Note, however, that in many cases, voluntary departure or return takes place in an uninformed or coerced manner that fails to be truly "voluntary." See chapter 9 on unaccompanied children at the U.S. border for more information.
[62] The percentage of Guatemalan children in ORR custody who were told about the program and accepted versus those who were told about the program and declined is not known. This data was not taken by the case workers in the facilities.
[63] It should be noted that KIND's GCRRP is comprised of unaccompanied children within the 10 percent of those who remain in ORR custody throughout their immigration proceedings. These are children for whom ORR has not found a sponsor. Because the children do not have family or a non-familial sponsor in the US, it is more likely that

The following is a chart of the GCRRP service model after children are referred to the program by their immigration attorney or social worker, counselor, or case manager at a federally funded ORR shelter:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ⇒ | Care plan for return and reintegration developed by KIND, local NGO partners and the child. KIND and local NGO partners coordinate for child's return. | ⇒ | Returning child is met at the airport in Guatemala, by local NGO partners and the child's family | ⇒ | Child receives services in Guatemala by local NGO partner, or by referral to other local resource as per care plan | ⇒ | Local NGO partners follow up with youth based on needs and progress, and KIND monitors case progress |

Since the first unaccompanied child was referred to KIND in October 2010, the GCRRP has helped 121 Guatemalan children return home safely. In a very short period of time, this unique pilot program has demonstrated the power of a collaborative effort among multiple stakeholders to address the needs of a vulnerable, and often invisible, population of children. Although the project has helped only around one percent of the children returning to Guatemala each year, it has served as a catalyst to demonstrate that return and reintegration can succeed with relatively modest resources and collaboration[64].

*Santiago's Story*

> *Santiago migrated from a small village in Quiche. The poverty in his village is severe and Santiago felt discouraged by the lack of job prospects. He attempted to cross the U.S.-Mexico border twice, was apprehended and taken into custody, and ultimately referred to the GCRRP. Upon his return to Guatemala, he expressed worry and guilt that his family, who was already living in extreme poverty, now had a huge debt to pay to cover his trips to the United States. KIND's NGO partner organization in Guatemala (Colectivo Vida Digna) visited Santiago's home and invited him and his parents to attend workshops about Mayan cultural knowledge and skill-building trainings. There, Santiago and his family began to explore valuable strengths and skills they already possessed that could help them enter the competitive market economy. With the help of special agricultural training and a small loan, Santiago and his family harvested two acres of onions and one acre of green beans that were then sold to a buyer for export. Santiago has gained confidence and can see opportunities at home that are real alternatives to migration. Although challenges remain—his family still lives without running water or electricity—Santiago is happy that he can contribute to his family's economy.*

they have family in their home country. In KIND's experience, all the children in our program had close or extended family to whom to return.

[64] In 2014, KIND estimated a cost per child.

*As he looks to the future, he hopes to find a way to return to school to continue his formal education.*

*Andres' Story*

*Andres had always excelled in school and was well underway to earning his high school degree. His goal was to become an accountant. Unfortunately, Andres was often discouraged by the lack of job prospects in his community, even for youth like him who had the opportunity to reach a higher level of education than most children and youth in Guatemala. Andres felt that the only chance he had to develop professionally and to repay his parents for the sacrifices they made putting him through school was to migrate to the United States. Andres traveled north with his older sister; they were detained by U.S. Border Patrol at the border. Andres was transferred to an ORR shelter, and his sister was quickly deported to Guatemala. After learning that his only form of relief was to request voluntary departure, Andres was referred by his case manager to KIND's GCRRP in October 2012. When interviewed by KIND, Andres expressed being anxious and depressed because his family would be unable to pay the $9,000 debt they had acquired as a result of his trip. He feared his dreams of becoming an accountant would never come true. Since his return to Guatemala, Andres and his family have received guidance and support from one of the GCRRP's local NGO partners. Through a generous scholarship provided by the NGO partner, Andres re-enrolled in school and will successfully complete his high school diploma this year with a track in Accounting. The local NGO partner also invited Andres and his mother to participate in their micro-lending program to help the family develop a small business that can generate income.*

Through the GCRRP, KIND has also increased the visibility of the realities children face when they return home, and the conditions that pushed them to migrate to the U.S. in the first place. Challenges to any reintegration effort will persist so long as governments fail to address systemic issues such as endemic poverty, inequities in access to education, community violence, and a lack of child protection systems.

Through partnerships with local NGOs, stakeholders, and advocates in Guatemala, the project has also gained visibility with the Guatemalan government. KIND has shared the project as an experience that can help inform Guatemalan ministries' oversight of the reception, family reunification, and reintegration of repatriated children (e.g. by the Secretariat of Social Welfare, Ministry of Foreign Relations, and Attorney General's Office). Ongoing public outreach and advocacy is needed to highlight the importance of services following children's return as well as the larger systemic issues that drive migration, mentioned above and discussed in detail throughout this book.[65]

In contrast to the model implemented by the International Organization on Migration in El Salvador in 2010 and 2011, which did not incorporate civil society, the GCRRP model seeks to strengthen existing civil society actors in developing more sustainable systems, together with

[65] For more information on the systemic issues affecting Guatemala, see Chapter 3 on Guatemala.

governments in the region. This type of multi-lateral and government/non-government collaboration could be used to create new programs in Honduras and El Salvador in support of the reintegration of unaccompanied children.[66] It is critical that international organizations work not to replace government and civil society capacity in the region or to inadvertently create conflict, but rather to strengthen and build local capacity.

While programs like the GCRRP are a step forward in ensuring that children who are escorted home by DHS can return safely, initiatives such as these need to be taken on a much larger collaborative scale with both governmental and non-governmental support. Comprehensive efforts must address the many needs of children who return home, including those returning to violence and extreme poverty. Current national and international efforts do exist to expand repatriation and reintegration programs; these should engage with NGOs, such as KIND and its partners, with expertise in working with unaccompanied children. Children's best interests and safety must be paramount in any repatriation and reintegration program. In addition, governments must provide greater transparency regarding the reintegration process for unaccompanied children.

## VII. How the U.S. falls short in ensuring safe repatriation and reintegration

As noted in the sections on repatriation and reintegration above, the United States has fallen short of implementing safe and sustainable repatriation and reintegration systems for unaccompanied children pursuant to the TVPRA. This section contains summary points on key problems in current U.S. practices. The U.S. and regional and bilateral recommendations at the end of this book include suggestions on improving the repatriation and reintegration of migrant children, and address the problems discussed below.

***Need for transparency in the repatriation process***. With respect to repatriation, there have been limited advances in transparency and ensuring safety and dignity in the return process for unaccompanied children. As explained in detail above, many aspects of the process remain unclear, to the detriment of children and families. This additionally imposes difficulties upon NGOs and other service providers attempting to assist children.

***Failure to ensure that child welfare professionals escort children repatriated to countries of origin.*** Unaccompanied children should be escorted by child welfare professionals to ensure that their particular rights are respected, such as safety during transport and what to do if child expresses fear or an impact of trauma.

***Lack of coordination amongst key U.S. government agencies on safe and sustainable repatriation and reintegration.*** Although the TVPRA offers a baseline for DHS, HHS, DOS, and other agencies involved in the repatriation process to consider the child's safety, better cooperation, communication, and coordination is needed prior to the child's departure from the United States.

[66] For more information specifically on the key actors in those countries, see Chapters 2 and 4 on Honduras and El Salvador.

***Failure to consider the best interests of the child in decisions on repatriation***. Few, if any, returning children receive assistance that would enable them to reintegrate into their communities and find ways to stay in their home countries safely and sustainably. Children returning to situations of violence in the home and their communities, which may have forced them to migrate in the first place, do not receive follow up support or protection from the state upon return. As result of weak or absent child protection systems, this leaves them vulnerable to danger and makes it unsafe to remain in their countries. In cases like these, reintegration may also require helping the child and his family relocate to a new community if returning to the original community is not a safe option.

As demonstrated by the above, the best interests of the child are not a primary consideration when a decision is made in an unaccompanied child's immigration case in the United States. Best interests are not considered when deciding whether to order a child deported (removed) or how to return a child ordered removed; or when deciding whether and how to return a child who receives a voluntary departure order.[67] The best interest of the child principle is the universal cornerstone of child protection around the world, as well as within the U.S. child welfare system at the state level. It is embodied in the Convention on the Rights of the Child (CRC), which states, among other vital provisions, that the best interests of the child must be a primary consideration in decisions regarding children.[68]

***Limited number of child advocates for best interest determinations***. Under the TVPRA, in a limited number of cases, the United States makes use of "child advocates" who are appointed to address the best interests of the child throughout the child's immigration case. They are requested by ORR in cases involving particularly vulnerable children. However, adjudicators are not required to adhere to the recommendations of child advocates in the context of the child's removal proceedings.[69] Because only a very small percentage of unaccompanied children receive child advocates, the risk of returning unaccompanied children to harm, particularly if they were unrepresented in their proceedings, remains great.

The Young Center for Immigrant Children's Rights is the leading U.S. organization that facilitates the appointment of child advocates to unaccompanied children. The Young Center seeks to determine whether a child to whom it has been assigned can be safely repatriated, as required by the Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. The Young Center uses UNHCR's Best Interests Determinations (BID) Guidelines as a framework,[70] and submits recommendations to attorneys and federal immigration authorities.[71] ORR has recently provided funding to expand the child advocate program, but the vast majority of unaccompanied children will still not have a child advocate assigned to their cases.

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[67] A Treacherous Journey, pp. 3, 56-60.
[68] Convention on the Rights of the Child, Art. 3.
[69] For more information on when a child advocate is appointed for a child, *see* A Treacherous Journey, pp. 57-58.
[70] UNHCR. (2008, May). UNHCR Guidelines on Determining the Best Interests of the Child. Retrieved from http://www.unhcr.org/4566b16b2.pdf.
[71] In cases where there are significant concerns about a child's safety upon repatriation, the Young Center will contract with a social worker in the child's home country to visit the child's home and conduct a home study to determine whether it would be safe for the child to return. Young Center for Immigrant Children's Rights. Projects – The Young Center. Retrieved from www.theyoungcenter.org/about/projects.

***Children are not provided attorneys in their immigration proceedings***. Unaccompanied children are also not provided legal counsel in their deportation proceedings. They must either pay for a private attorney or find a pro bono attorney to help them raise a defense against deportation in immigration court and before USCIS. The large majority of children do not find attorneys.[72] Without an attorney, it is extremely difficult to navigate the inordinately complex U.S. immigration system. As explained in Chapter 10 on immigration relief and procedures available to migrant children, many barriers to relief persist within this system.

As a result, children who are potentially eligible to stay in the U.S. may not receive status and could be erroneously returned. In addition, a child may not share his story and experiences to adults he does not know, or may be too traumatized, fearful, or ashamed to disclose experiences such as severe abuse, neglect, or sexual assault. This is particularly true of unaccompanied children from Mexico who are screened by CBP officers—who do not have child welfare expertise—soon after the child's apprehension. For children with attorneys, it often takes several meetings before the child is able to share difficult facts about what happened in their home country. Children without an attorney—the large majority of children in immigration proceedings—are mostly unable to meaningfully share their story before a judge or asylum officers.

***Failure to connect development and rule of law programs in the region to reintegration programs.*** The mandate of TVPRA for safe and sustainable reintegration has not been fully implemented and has not been connected to larger development projects in the region. In order for reintegration to succeed, it must be connected to efforts to ensure safety and access to opportunities in the sending countries. In June 2013, the U.S. Senate passed S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, a wide-ranging bill that included a provision requiring USAID, in conjunction with DHS, HHS, DOJ, international organizations, and nongovernmental organizations in the United States, to create "a multi-year program to develop and implement best practices and sustainable programs in the United States and within the country of return to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies.[73]" The language is more directive than that of the TVPRA and creates programming within USAID to help address the needs of children returning alone from the United States. A U.S. House of Representatives companion bill to S.744, which is nearly identical to S. 744, includes the S. 744's language on repatriation and reintegration.[74] Additional bills have been introduced by members of the House of Representatives following Senate approval of S. 744. Representative Lucille Roybal-Allard (D-CA) introduced a bill in July 2013 that includes similar repatriation and reintegration language as S. 744. The bill, H.R. 2624, the Child Trafficking Victims Protection Act, was cosponsored by Representative

[72] Transactional Records Access Clearinghouse (TRAC), Syracuse University. (2014). Juveniles – Immigration Court Deportation Proceedings. Retrieved from http://trac.syr.edu/phptools/immigration/juvenile/. Using data from 2005 through June 2014, TRAC found that nearly half of unaccompanied children do not have attorneys. KIND estimates that, since the surge in unaccompanied children, the number of unaccompanied children without attorneys is at least 70 percent.

[73] Border Security, Economic Opportunity, and Immigration and Modernization Act of 2013, S. 744, 113th Cong., 1st sess. § 3612(j)(1) (2013). Retrieved from http://thomas.loc.gov/cgi-bin/bdquery/z?d113:S.744.

[74] Border Security, Economic Opportunity, and Immigration Modernization Act, H.R. 15, 113th Congress, 1st sess. (2013). Retrieved from http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.15:. The bill was introduced by Representative Joe Garcia (D-CA) in October 2013.

Ileana Ros-Lehtinen (R-FL). Although these bills have not passed and are not necessarily expected to pass, they do demonstrate a growing awareness and recognition of need for USAID support for reintegration through development programs.

USAID could increase its development programming to include reintegration support for unaccompanied children who return home. On June 20, 2014, after his meeting with Central American officials in Guatemala, Vice President Biden announced U.S. funding of $9.6 million "to help the Central American governments receive, reintegrate and care for their citizens repatriated from the United States."[75] From these monies, $7.5 million has gone to USAID to work with IOM on a "bricks and mortar" project to assess the capacity of El Salvador, Honduras, and Guatemala to receive repatriated adults and children and increase capacity of its existing reception centers.[76] Additional funding to USAID for long term reintegration support has not been announced and will depend on any supplemental monies per President Obama's request to be approved.

***Failure to ensure that reintegration programs funded by the U.S. government are sustainable***. Regarding prior efforts on reintegration, such as the IOM project in El Salvador, there is limited information on the sustainability of these types of projects. The lack of access to data and information remains an impediment to better understanding of these programs.

***Overemphasis on military or law enforcement approach to violence in the region.*** The Central America Regional Security Initiative (CARSI), which is led by the Department of State and the USAID, focuses on the impact of the deteriorating security situation in Central America on human security and the ability of citizens to fully participate economically and socially in their communities. Countries that receive or have received CARSI funding include Guatemala, El Salvador, Honduras, Costa Rica, Belize, and Nicaragua.[77] CARSI has received almost $500 million to date to support these efforts. CARSI has largely emphasized combating narco-trafficking and gang activity in the region. It has stated as its objective the development of a safer and more secure region where criminal organizations no longer wield the power to destabilize governments or threaten national and regional security and public safety, as well as to prevent the entry and spread of illicit drugs, violence, and transnational threats to countries throughout the region. It has strived to meet this goal by addressing border security measures, offering technical assistance to law enforcement and justice sectors, and supporting gang prevention and social programming for at-risk youth. USAID manages the Economic Support Fund (ESF) portion of the CARSI initiative, which funds at-risk-youth programming.

A major concern with CARSI is that it is focused largely on law enforcement and military backing to address the systemic violence in these countries. However, there have been significant concerns

[75] The White House (2014, June 20). Remarks to the Press with Q&A by Vice President Joe Biden in Guatemala. Retrieved from http://www.whitehouse.gov/the-press-office/2014/06/20/remarks-press-qa-vice-president-joe-biden-guatemala.

[76] *See* Joffe-Block, F., PBS NewsHour. (2014, 6 October). Can U.S.-style youth programs in Central America keep kids from migrating? Retrieved from http://www.pbs.org/newshour/rundown/u-s-seeks-curb-central-american-child-exodus-youth-programs/.

[77] U.S. Government Accountability Office. (2013, January 30). Subject: Status of Funding for the Central America Regional Security Initiative. Retrieved from http://www.gao.gov/assets/660/651675.pdf.

regarding human rights abuses committed by military and police, transparency in judicial systems, and accountability for past human rights abuses.[78]

The majority of children migrating from Central America are fleeing violence perpetrated by the factions CARSI aims to combat. This fact should cause the United States to reconfigure its funding to specifically address the root causes of child migration through strategic development initiatives that promote transparency, accountability, and respect for human rights—as these same measures will also help diminish criminal factions' control over the region. Additionally, U.S. development initiatives should include in their objectives comprehensive reintegration support, in collaboration with civil society, to children returning from the United States.

The U.S. should *not* invest in utilizing only security, military or law-enforcement based methods to promote sustainable reintegration. As noted, efforts should focus on investing in opportunities for safe and healthy and development of children and youth and alternative strategies for violence reduction.[79] This is particularly critical in Guatemala, Honduras, and El Salvador, where powerful organized criminal networks operate with impunity in light of weak governing and protection structures. The U.S. should also refrain from using force to interdict and prevent individuals from seeking protection from violence and abuse. For instance, using military to forcefully stop individuals from fleeing violence or persecution is neither effective nor humanitarian and does not make for successful prevention or reintegration.[80] While not the focus on this chapter, there are increasing numbers of unaccompanied children being returned from Mexico to Central America, raising serious humanitarian and protection concerns. Chapter 13, on regional and bilateral agreements, discusses the need for a coordinated response in greater detail.

## VIII. Moving toward best practices: lessons learned from GCRRP on safe and sustainable repatriation and reintegration

The U.S. should create systems of safe and sustainable repatriation that are transparent and centered on respecting the fundamental rights of children based on four key principles: survival and development; non-discrimination; child participation and the right to be heard; and the best interests of the child. Building a framework around these key principles will ensure the creation of a system that promotes the best practices in child protection and meets TVPRA mandates.

Based upon a program evaluation commissioned by The Global Fund for Children, we identify six key components of KIND's GCRRP reintegration program to support a scaling up of the project or replication in another country. These key components demonstrate how reintegration programs could should be structured to reflect the key principles of survival and development, ensuring that children's right to development in a broad sense includes physical, psychological, emotional,

[78] Meyer, P. J. & Ribando Seelke, C., Congressional Research Service. (2014, May 6). Central America Regional Security Initiative: Background and Policy Issues for Congress. Retrieved from http://fas.org/sgp/crs/row/R41731.pdf, p. 33.
[79] Garzón Vergara, J.C., Woodrow Wilson Center Latin American Program. (2014). How to Respond to Organized Crime and Leave Behind the "War on Drugs." Retrieved from https://readymag.com/u52521463/40223/.
[80] Jesuit Conference of the United States, and the Washington Office on Latin America. (2014). U.S. Support and Assistance for Interdictions, Interceptions, and Border Security Measures in Mexico, Honduras, and Guatemala Undermine Access to International Protection. Retrieved from http://www.jesuit.org/Assets/Publications/File/US_Border_Externalization_2014_v1.pdf.

social, and spiritual development; nondiscrimination based on age and status; and the right to participate meaningfully in decisions that affect their lives. Many of these key components, gleaned from KIND's insights and experiences, also appear as recommendations at the end of this book.

***Connecting with children and ensuring they participate in identifying their own social service needs before their departure from the U.S.*** Connecting with children prior to their departure eases the child's anxiety about return to the home country and family reunification. About 84% percent of KIND's GCRRP participants returned to rural communities in the Western Highlands, more than 100 miles and up to an eight-hour drive from Guatemala City, where children initially arrive after being removed from the U.S.[81] Most of the families have never traveled to Guatemala City before, may have limited resources to travel, and are in need of interpretation services, as Spanish is not their first language. During the interviews that KIND conducts prior to the child's departure from the United States, children most frequently want to know how they are going to be transported back to their country, what will happen to them upon arrival, and how they will reunify with their family. Providing information about the return process and about the GCRRP's initial guidance and support throughout the family reunification helps lessen children's fear. The assistance that GCRRP local NGO partners provide to families in order to travel back to their community has also helped ensure a successful family reunification. Overall, identifying the child's expressed social service needs prior to his/her departure from the United States ensures a continuum of attention and psychosocial support from the point the child leaves the ORR shelter to the point she arrives in her home country.

***Reintegration program components should reflects a child's right to development in its broadest sense.*** The reintegration services that the GCRRP provides are wide ranging and based on each child's individual needs. These include: **Safe Return** (family contact, family reunification, transportation from Guatemala City to home town, overnight emergency shelter for family, emergency meal on the day of arrival); **Follow Up** (home visit, home and community assessment, goal setting); **Health and Psychosocial Services** (referral to medical and dental clinics, psychosocial services, referral to counseling); **Education** (school enrollment, school supplies, scholarship search, financial assistance with bus fare, enrollment fees, uniforms, books);[82] **Skills Training for children and for families when possible** (computer classes, skill building workshops, vocational training); **Food and Clothing Referrals** (referrals for food assistance); and **other supporting services** (e.g., providing loans to families to support them in starting a business).[83]

The child provides information to KIND at the initial intake/assessment interview prior to their departure from the United States. This information forms the basis for subsequent service delivery. Through the GCRRP partnership model with local NGOs, KIND is able to meet most of the expressed needs of the program's participants. A key component of success is identifying local programs that exist in close proximity to the child's home to ensure they provide an opportunity to reintegrate. Some children have expressed their concern for paying off their smuggling debt and

[81] Based on GCRRP data from October 2010 to August 13, 2014.
[82] GCRRP Services Overview. Notes on file with author.
[83] KIND tracks the number of GCRRP participants served under each category and this data is available with author.

working to support their family, such that going back to school becomes secondary. Others have expressed the desire to go back to school and to find ways to work during the week.

***Partnering with local community based organizations that are linguistically and culturally competent ensures non-discrimination of children based on gender, language, and other bases; and ensures culturally appropriate services.*** Providing comprehensive return and reintegration support to children who return home requires a collaborative effort from various stakeholders, especially community based organizations that are familiar with the local culture, language, and support systems. KIND's model of partnering with local NGOs to help communicate with the child's family back home and connecting with the child before her departure from the United States allows for a seamless referral process and continuous support for the returning child.

Local NGO partners are also better positioned to assess family dynamics prior to the child's return. A vast majority of children returning to Guatemala are indigenous Maya. In the case of children whose families speak a local Mayan dialect and limited Spanish, the NGO partners' bilingual staff has provided invaluable translation services in dialects such as Mam, Chuj, and K'iche. Moreover, working with local NGOs that have indigenous language and cultural competency (within the historical context of marginalization and discrimination) is critical to establishing rapport with the child and identifying resources in the community. This is also critical to efforts to work with the entire family, as described below,

***Underscoring the importance of working with the entire family unit to help the child reintegrate sustainably, reflecting the child's right to family life.*** It is critical to work not just with the child, but also the entire family in the reintegration process. This is important, because, in many cases, family will be the child's sole support system, and the child may face rejection upon return because of the perceived failure of the migration process. In working with families, new uncovered facts may present significant challenges, such as the existence of intrafamilial violence. In other case, the family may want to support the child, but needs psychosocial guidance on how to work with the returned child and collaborate as a family to do so.

***Accounting for and addressing the reintegration needs of returning girls*.** Approximately 21 percent of the GCRRP participants are girls. Successful reintegration efforts must take into consideration gender and the challenges that girls face at home and in their communities. For example, between August 2012 and December 2014, the GCRRP assisted four girls under the age of 18 who were pregnant or had an infant under their care. Their service needs included pre-natal care, medical care for the mother and child during and after birth, and in one case, professional assistance for a newborn with developmental delays. The GCRRP local NGO partners also work closely with girls to address challenges they face at home if they wish to continue their education. In some cases the local NGO partners have stepped in to provide psychosocial support and to talk to the family about the importance of supporting their child's education and have. On a macro level, interfamilial violence is a larger societal issue that impacts individuals of different races, genders, social economic statuses, ages, and cultures (although some, including girls, may be disproportionately affected). When addressing the causes of migration as well as the reintegration needs of girls, upholding protections for survivors of intrafamilial and gender violence is critical.

***Access to school, scholarships, and vocational and skills training opportunities for youth are critical, and reflect a child's right to learn in a healthy and productive environment.*** Most GCRRP participants report that extreme poverty and lack of access to education and employment opportunities are among the reasons they migrated to the United States. GCRRP local NGO partners have successfully worked with community foundations and accredited entities that provide technical trainings to secure financial support for participants interested in continuing their education or obtaining vocational training. To serve the needs of children located in remote rural areas, GCRRP local NGO partners have also worked with radio-phonic programs accredited by the Ministry of Education of Guatemala to ensure children's access to educational programs. Where possible, GCRRP local NGO partners have developed their own scholarship programs, vocational training programs, micro-lending programs, and internship programs to better prepare GCRRP participants for employment opportunities. These are only a few of many components that should be considered when establishing reintegration programming for unaccompanied children who return home. While KIND has drawn upon its experience in Guatemala through a collaborative effort with local NGOs, replicating the project in another country (El Salvador or Honduras, for example) will require conducting a new assessment of the human services and resources available or lacking in those countries. Additionally, varying political and cultural contexts should be taken into account.

## IX. Conclusion

The United States must not return children to their countries in the absence of a process to ensure that repatriation is in their best interests. Once such a system is in place, the United States should focus on establishing robust return and reintegration programming and protocols.

Numerous stakeholders in the United States are looking for ways to address concerns raised by unprecedented numbers of children coming to the United States. This attention presents a promising opportunity to incorporate return and reintegration programs into US development assistance, and to address the root causes of migration via our foreign policy.

A focus on both repatriation and reintegration will help address the core issues driving this migration, in which children see flight as an element of survival. Their situations remind us of the greater societal responsibility to ensure the well-being of children regardless of which side of border they may find themselves. As children are exposed to political conflict, violence, poverty, exploitation, and inequities in access to education and economic opportunities, their movement through migration is increasing global. While the historic migration of unaccompanied children to the United States brings new challenges, it also provides unique opportunities to fundamentally change the way we treat these children and to ensure the protection they need and deserve.

*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](http://cgrs.uchastings.edu/Childhood-Migration-HumanRights).*