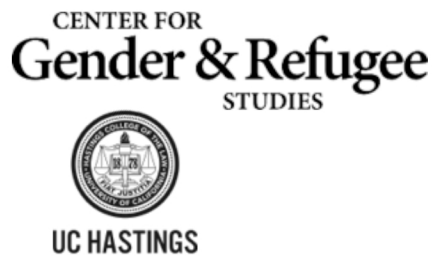


# Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

February 2015



## Chapter 13 Children, Migration, and Human Rights in Bilateral and Regional Agreements in Central and North America

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*This chapter is translated from the original Spanish version.*

### I. Introduction

There is a growing recognition of the need to address the multidimensional, transnational phenomenon of international migration in a manner that transcends public policy at the local or national level.<sup>1</sup> Serious, long-term coordination between countries in terms of human rights, human development, and the humanitarian impact of international migration is essential for appropriately responding to the many challenges of human mobility.<sup>2</sup>

In a previous report, we emphasized that the migration of Central American children and adolescents through Mexico toward the United States is a phenomenon that is beyond the national and political reach of any one country, and requires a comprehensive approach that necessarily includes a human rights focus.<sup>3</sup>

Cooperation between States on issues related to migration by means of bilateral, regional, or global mechanisms is carried out in a variety of ways. Some agreements focus on strengthening migration control policies, while others seek to reduce dangers along migration routes, protect migrants (in general or specific groups, such as children and adolescents or victims of human trafficking), or address the root causes of migration.

The different approaches of cooperation mechanisms represent distinct strategies for addressing migration; as such, each will have a differential impact on the rights of migrants and their families, the causes of migration, and the living conditions of those deciding to return to their country of origin. As described in the introduction of this book, the number of children and adolescents affected by migration has grown annually. The policies, practices, and actors that negatively impact their rights and living conditions have also grown and diversified.

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<sup>1</sup> De Lucas, J. (October 2004). Globalización, migraciones y derechos humanos: la inmigración como res política. *Cuadernos electrónicos de filosofía del derecho*, 10. Retrieved from <http://dialnet.unirioja.es/servlet/articulo?codigo=1031377>. See also Velasco, J. (2010). Dejando atrás las fronteras. Las políticas migratorias ante las exigencias de la justicia global. *ARBOR Ciencia, Pensamiento y Cultura*, 186(744), 585-601. doi: 10.3989.

<sup>2</sup> United Nations High Commissioner for Human Rights. (2013). *Improving Human Rights-Based Governance of International Migration*. Geneva, Switzerland.

<sup>3</sup> Ceriani Cernadas, P. (Coord.). (2013). *Niñez detenida: los derechos de los niños, niñas y adolescentes migrantes en la frontera México-Guatemala*. Mexico City: Distribuciones Fontamara.

This chapter will examine different bilateral and regional agreements in the region that directly or indirectly impact the human rights of migrant children and adolescents. First, we will examine the Regional Conference on Migration (RCM), which is the principal forum for strategic regional dialogue on migration. We will touch on some of its results, decisions, policies, and directives, as well as the model's successes and limitations, with a particular focus on children and their rights.

This is followed by a thorough review of migration agreements ratified by Central American countries, the United States, and Mexico. We will analyze the reach and limitations of these agreements from a human rights perspective, paying special attention to migrant children and adolescents, both accompanied and unaccompanied, and families.

We will attempt to identify the priorities of these agreements in order to evaluate to what extent human rights principles—such as the best interests of the child and the child's right to be heard—are taken into account. Special attention will be given to agreements related to entry, deportation, family reunification, residency in destination countries, and repatriation and reintegration in countries of origin.

Finally, we will consider how these bilateral and regional agreements complement, contradict, or are juxtaposed with other regional cooperation interests and priorities. In particular, we will examine the impact of other regional agreements on the structural causes of migration and the protection of migrant children, adolescents, and adults in transit.

To this end, we will review, on the one hand, free trade agreements, and their possible impact on the causes of increasing migration in the region. On the other, we will review security agreements that, rather than protect the population, may increase the dangers facing migrant children, adolescents, and their families in transit. We will analyze the extent to which these agreements may have exacerbated the increasing violence in Mexico and Central America that pushes children, adolescents, and young people to migrate.

## **II. Childhood and the Regional Conference on Migration: visibility, lack of a rights-based approach, and lack of enforcement mechanisms**

The Regional Conference on Migration, also known as the Puebla Process (*Proceso Puebla*), is a multilateral regional forum that brings together member countries and observer countries to discuss issues related to migration, with a particular focus on Central America, North America, and the Caribbean.<sup>4</sup> The Technical Secretariat of the RCM describes it as a regional intergovernmental forum on migration in which countries with different migration realities seek

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<sup>4</sup> The member countries of the Regional Conference on Migration are: Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States. Observer countries are: Argentina, Colombia, Ecuador, Jamaica, and Peru. The following international organizations and human rights mechanisms are also observers: the High Commissioner for Refugees (UNHCR), the International Organization for Migration, the United Nations Special Rapporteur on the Human Rights of Migrants, the United Nations Economic Commission for Latin America and the Caribbean / Latin American and Caribbean Demographic Center (ECLAC / CELADE), the Inter-American Commission on Human Rights (IACHR), the Secretary General of the Ibero-American Conference (SEGIB), the Central American Integration System (SICA), the United Nations Population Fund (UNFPA), and the International Committee of the Red Cross (ICRC). See <http://www.rcmys.org/Descripcion.htm>.

common ground. Its primary objective is to share experiences and best practices, as well as to promote regional cooperation on migration.<sup>5</sup>

This regional cooperation model presents many challenges in terms of coordination and organization. Among its priorities is establishing continuous and meaningful dialogue between participants and representatives that are well-versed in these issues and authorized to negotiate. While participation in the RCM is permanent—that is, State presence is on-going—representatives change year to year. Additionally, the agencies tasked with RCM affairs can change through national directives. Governments can send representatives from agencies with different mandates, functions, and political orientations.

Another issue is the rotation of host countries and its effect on meeting agendas. While rotation ensures each country the opportunity to express and discuss its interests and problems, particular conferences may, on some occasions, respond primarily to the current needs of the host country. Additionally, problems may arise from the various commitments of delegates. Many respond to short-term electoral interests, while others view participation in the RCM as merely another political post, rather than an opportunity for meaningful dialogue.

Human rights have been on the RCM agenda for some time. However, human rights have not been included among the principal discussion points until recently (the first initiative was in 1999, years after the implementation of migration policies).<sup>6</sup> The task of asserting human rights within these dialogues generally falls to international observers and civil society organizations.

Currently, the RCM agenda is centered on three key issues:<sup>7</sup> (1) migration policy and management; (2) human rights; and (3) migration and development.<sup>8</sup> A strategic plan is developed for each issue to meet jointly-developed objectives by implementing actions and activities according to a specific timeline. The migration policy and management focus places a strong emphasis on border security and control, including the eradication of human trafficking and sexual slavery (these two crimes are mentioned together in spite of the substantial differences between them, especially in relation to their victims).<sup>9</sup>

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<sup>5</sup> RCM. (October, 2004). Notes for the presentation of the Coordinator of the Technical Secretariat of the RCM during the special working group from September 30, 2004 to October 1, 2004. *See also* The Regional Conference on Migration (RCM) or Puebla Process. (2010). Retrieved from [https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/puebla\\_process\\_brochure2010.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/puebla_process_brochure2010.pdf).

<sup>6</sup> *See* RCM (November, 2009). Historical Plan of Action (“Action Plan”). Retrieved from <http://www.rcmys.org/PlanAccion/Plan%20de%20Acci%F3n%20Hist%F3rico%20-%20Revisado%20Nov%202009%20-%20Eng.pdf>.

<sup>7</sup> In an effort to strengthen dialogue between the RCM and civil society, non-governmental organizations formed the Regional Network for Civil Organizations on Migration (RNCOM), which functions as the main interlocutor for regional civil society organizations working on immigration. *See* the RCM official site <http://www.rcmys.org/Descripcion.htm>.

<sup>8</sup> *See* Regional Conference on Migration. (November, 2009). Historical Plan of Action. Retrieved from <http://www.rcmys.org/PlanAccion/Plan%20de%20Acci%F3n%20Hist%F3rico%20-%20Revisado%20Nov%202009%20-%20Eng.pdf>.

<sup>9</sup> The victims of sexual slavery are persons—especially children and adolescents and women—while the legal interest affected by human trafficking is a state’s policy on entry into its territory (notwithstanding the fact that migrants and those requesting asylum can be victims of other crimes, such as kidnapping or rape).

These objectives include coordination of: return processes for irregular migrants; the development, revision, and implementation of migration policies based on national interests (rather than regional); and the technical cooperation necessary to facilitate these objectives, especially return processes. These goals strongly reflect the security focus of migration policies in destination and transit countries, such as Canada, the Dominican Republic, Mexico, and the United States. While these objectives mention the rights of migrants, this is limited to general references about their safety and dignity. It is clear that the priority is to strengthen border control mechanisms and ensure the repatriation of migrants to their countries of origin.

Conversely, the strategic plan for human rights objectives includes a significant political commitment to “respect existing commitments to the human rights of migrants regardless of migratory status, as defined in the 1948 Universal Declaration of Human Rights and other relevant international instruments.” These objectives are also applied to refugees and include a specific reference to migrant children: “to strengthen the respect of the human rights of all migrants regardless of migratory status, with a special focus on vulnerable groups such as women and children.”<sup>10</sup>

RCM activities have focused on training and raising awareness by means of seminars, workshops, and campaigns, as well as the creation of consular networks. The previously-mentioned declaration demonstrates a political commitment to human rights. However, it is important to note that these objectives do not include a significant list of human rights instruments that would comply with the legal framework, nor do they include mechanisms for making these rights operational, as discussed below and as analyzed in other chapters of this book.

Finally, more ample objectives have been developed to address the third issue, the connection between migration and development. These include, for example: promoting a better understanding of regional migration by means of a more objective and long-term approach that takes into account the origin, manifestation, and impact of migration in the region; encouraging the exchange of relevant statistics on temporary migrant workers and other migrant groups tied to the positive contributions of migrants in their countries of origin and destination countries; and carrying out activities related to the integration of migrants.<sup>11</sup>

It is worth noting that the focus on this final point reflects a commitment to neoliberal policies, which is not surprising. Given the benefits of migration as perceived by a political consensus within the complex framework of globalization, these policies seek to create an integrated global market in which production costs are diminished by localizing various phases of production and creating markets for these goods. This theory has been shown to be beneficial for all parties involved. This is reflected in the RCM’s positive view of remittances and their impact on growth and development.

In practice, as migrants—in particular those with irregular status—have been increasingly working the most informal and dangerous jobs in the United States, the factors leading to migration have also been growing. This, together with off shoring and the proliferation of *maquilas*, confirms the

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<sup>10</sup> RCM, Action Plan.

<sup>11</sup> RCM, Action Plan.

priority given to an economic development model that benefits few, rather than to human development in all countries, especially from a human rights perspective.

The differences between these three issues reveal the complexity of the initiative undertaken by RCM. Furthermore, there is a serious divide between RCM's ideological positions (sketched out collaboratively) and the political practices adopted and desired by each member State vis-à-vis the realities of migration. To date, concrete progress has been made in this first area—coordination and security—while little progress has been made in advancing a human rights and human development agenda.

As we shall see, the rhetorical commitment to human rights cannot materialize without the creation of other mechanisms, and the fundamental reversal of approaches adopted in other areas. Moreover, the rhetorical support of human rights within the context of the RCM has little correlation with the human rights policies of individual countries and their domestic legislative practices. For example, Mexico would appear to be a fervent defender of human rights based on its legislation, but the abuse of migrants and violations of their rights have continued to increase in recent years.<sup>12</sup>

One example of the failed implementation of RCM-based policies is the situation of unaccompanied migrant children and adolescents who are returned to Honduras and Guatemala from Mexico and the United States. Specific guidelines state that these children and adolescents cannot be left at the border without protection. However, this is the most frequent course of action, during which children and adolescents are not assisted by social services and/or their family members are not contacted to guarantee their safe return.<sup>13</sup> These difficulties in policy implementation, due to a lack of enforcement and safeguarding mechanisms, reflect the RCM's limitations as a pragmatic forum for tackling the challenges of ensuring the rights of migrants and the interests of member countries.

Civil society organizations have called attention to these contradictions. A decade ago, the need to reduce the chasm between the rhetoric of States and the political will to ensure the rights of migrants and the reality facing migrants attracted attention.<sup>14</sup> Since then, the gap has only grown.

The RCM Action Plan became part of the collection of international instruments at various levels following the formalization of certain resolutions and agreements. The limitations of this voluntary cooperative framework are evident in the nature of resolutions adopted by the RCM, which, while emerging from dialogue and cooperation, are not binding. However, RCM documents are multilateral agreements and, as such, expressions of the will of States parties. In this sense, while they are not formally obligatory instruments of international law, they can be considered substantial expressions of cooperation and consensus. That is, they can be considered powerful

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<sup>12</sup> See chapters 5-7 on Mexico for details on human rights violations.

<sup>13</sup> See chapters 2 and 3 on Honduras and Guatemala.

<sup>14</sup> Regional Network for Civil Organizations on Migration (RNCOM). (May, 2004). RNCOM Declaration at the IX Meeting of the RCM. Retrieved from <http://www.uca.edu.sv/publica/idhuca/migracion.html#declaracion>.

declarations or actions depending on the context in which they are made, regardless of there being no enforcement mechanism.<sup>15</sup>

The following sections will touch on the principal actions and agreements made within the RCM framework, which refer to migrant children, either directly or indirectly. The majority of these cases reveal a double deficit: (1) a lack of compliance, responsibility, and tracking mechanisms; and (2) a limited human rights focus, specifically a significant lack of fundamental and procedural human rights safeguards.

*A. The joint Mexico-Canada study on the human rights of migrant children and adolescents*

In its partial compliance with the human rights action plan, the RCM has repeatedly discussed issues regarding migrant women, children, adolescents, and families, including their protection. Following the February 2000 RCM meeting in San Salvador, Canada and Mexico carried out a joint study to analyze the human rights situation of migrant children in the context of RCM.

The report (October 2002) includes an analysis of the situation and a series of recommendations to the RCM, member States at a national level, and other parties involved.<sup>16</sup> In particular, the report recommends that the RCM encourage countries in the region to establish a legal framework that can effectively protect migrant children based on international treaties, especially the Convention on the Rights of the Child (CRC) and the Beijing Rules.

Furthermore, the report recommends that the RCM promote permanent monitoring of the conditions under which migrant children and adolescents are apprehended, deported or repatriated, and detained, including independent specialized monitoring of detention conditions. It also recommends the development of multiregional training programs for consular officials on techniques for interviewing migrant children and adolescents, and for border control agents on the vulnerability of migrant children and adolescents and methods for researching and interviewing them.<sup>17</sup> In short, the study calls for: (1) the design of a legal framework sensitive to the rights of children and adolescents; (2) permanent monitoring, especially of detention and repatriation procedures; and (3) educational and training programs for key officials, especially on the rights of children and adolescents.

The report closely analyzes the risks facing migrant children and adolescents and the procedures that should be in place to ensure their well-being. It also highlights human rights violations committed against detained children and adolescents. The report explains that detention will never be in the best interests of the child, citing cases of physical and sexual abuse, negligence, a lack of

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<sup>15</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala, Asociación Misioneros de San Carlos Scalabrinianos, & UNICEF. (June, 2013). *Sistematización y análisis de los instrumentos generados en el seno de la Conferencia Regional sobre Migración (CRM), en material de atención y protección a niños, niñas y adolescentes migrantes*. Guatemala City, p. 7.

<sup>16</sup> Action Canada for Population and Development & the Colegio de Michoacán for the Governments of Canada and Mexico (October 2002). *Migrant Children: Human Rights, Protection and Services in the Member Countries of the Regional Conference on Migration, The Mexico-Canada Joint Study on Migrant Children in the Region* (en lo sucesivo "Migrant Children"). Retrieved from [http://www.rcmys.org/documentos/investigacion/pagina\\_investigacion.htm](http://www.rcmys.org/documentos/investigacion/pagina_investigacion.htm).

<sup>17</sup> Action Canada for Population and Development, *Migrant Children*, pp. 6-7.

access to rights, and untrained personnel. The human rights of children and adolescents are further aggrieved by restrictions on the rights to education, healthcare, and other services. The report also emphasizes the trauma of deportation on migrant children and adolescents.

The report documents mistreatment by authorities during detention and deportation, including sexual abuse and verbal violence. It also documents the weak physical and emotional state of children and adolescents, many of whom suffer from insomnia, anxiety, and emotional stress. Citing a 2007 Human Rights Watch report, it points out that, as opposed to adults, who can be released on their own recognizance, children and adolescents do not have the autonomy to be granted this conditional liberty, as they do not have access to a lawyer or are unaware of their rights.<sup>18</sup>

The report documents cases in which children and adolescents are used as bait to lure other members of their families, subjecting their entire families to the possibility of deportation. It concludes with a survey conducted in each country on the situation as it was in 2002.

More recent reports identify the same problems, demonstrating the continuation of practices that contravene international law and RCM declarations, and are generally inefficient. The 2011 “Children at the Border” study conducted by Appleseed, and the *Niñez Detenida* report released by the National University of Lanús Human Rights Center, in conjunction with the Fray Matías de Córdova Human Rights Center (Tapachula, Chiapas), reach the same conclusions. These reports reveal serious human rights problems arising from the absence of a coordinated and integrated national and international focus on the rights of migrant children and adolescents. They also demonstrate the priority given to migration control objectives over the protection of the rights of children and adolescents, as well as deficiencies in child protection policies.

In fact, all of the investigations mentioned in this book reach the same conclusions in this regard. In many ways, it could be said that the risks and challenges facing migrant children and adolescents have increased drastically. As levels of violence in countries of origin and transit have grown, detention and repatriation mechanisms for children, adolescents, parents, and/or families have also been strengthened. These procedures do not provide guarantees for the protection of rights.

Migration policies and proposals are yet to identify an effective rights-based solution to the human development and humanitarian crises that characterize migration processes. These crises include inadequate living conditions and violence in countries of origin, dangers in transit countries, an increasingly hostile reception in destination countries (such as arbitrary detention and deportation), and the denial of protection to refugees. Given this context, an increased effort should be made to find a regional solution that can analyze and comprehend all phases of migration in the region, not just the deportation and return processes on which regional cooperation has centered in recent years.

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<sup>18</sup> Action Canada for Population and Development, *Migrant Children*, p.19. (Noting that this due process exists in both Mexico and the United States.)



*B. Repatriation regulations and recent protocols*

Since 2003, the RCM has adopted two distinct types of migration regulations: (1) regulations for multilateral and/or bilateral agreements between RCM member countries on the overland repatriation of migrants (2003); and (2) regional regulations for providing assistance to unaccompanied repatriated children (2009).

*1. Guidelines for establishing multilateral and/or bilateral mechanisms between RCM member countries for the overland repatriation of migrants*

These guidelines arise from the focus on migration policies and management, which, as mentioned earlier, reflects pragmatic interests. This document was adopted in the conclusions of the May 1999 RCM Migration, Return, and Reintegration Seminar held in Honduras, and the 8<sup>th</sup> Meeting held in Antigua (May 2002), during which the parties agreed to “reinforce coordination between governments and with international bodies in the return of irregular migrants, and . . . Develop a regional strategy and focus to facilitate the return of irregular migrants . . . .”<sup>19</sup> These guidelines show that the priority for States is to find a way to balance mechanisms for repatriating migrants who are “undesired” in their countries, with a system that provides basic healthcare for those involved.

The guidelines consist of seven articles. The first refers to antecedents and defines the “target population” and the “international legal framework.” This invocation of the international legal framework is very abstract. It begins with the rights, obligations, and responsibilities of member States vis-à-vis international law, humanitarian law, and humanitarian norms (including the 1951 Geneva Convention on refugees, its 1967 Protocol, and the principle of *non-refoulement*).

It then reminds signatories of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families to pay particular attention to the observations made in said Convention. The United States is not a signatory of this Convention, and is therefore not obligated to guarantee its provisions. However, many of these standards are incorporated in other instruments of the Inter-American and United Nations systems that are legally in force in the United States. Additionally, the commitment to international human rights law varies between States.

The remaining articles are related to logistical and operational aspects of return processes, such as transport points, timeframes, shelters and help centers, information systems, institutional strengthening, financing, international technical coordination, and monitoring and evaluation mechanisms. They focus on issues such as location, timeframes, and information on the identities of undocumented migrants.

Overall, the tone of the guidelines is that they are recommendations rather than obligations. Perhaps most relevant to our purpose is the language regarding differentiated attention in section 2.2.8, which is in force in various countries. Instead of reinforcing the principle of family unity,

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<sup>19</sup> RCM. (December 2003). Lineamientos para el Establecimiento de Mecanismos Multi y/o Bilaterales entre los Países Miembros de la Conferencia Regional sobre Migración (CRM) en Materia de Retorno de Migrantes Regionales por Vía Terrestre, pp. 2-3. Retrieved from <http://www.acnur.org/biblioteca/pdf/7351.pdf?view=1>.

the word “should” is used throughout, instead of stronger language such as “must” or “shall.” The repatriation of migrants should comply with the principle of family unity. Expulsion countries should avoid separating family members during detention, and should ensure that all family members are repatriated together during daylight hours.

In spite of the section’s emphatic tone, it contains several problems. The principle of family unity is expressed rhetorically. However, it is reduced to a superficial and simplistic interpretation of the obligation to transport members of the same family together. A correct interpretation of the concept of family unity should be much stronger, protective, and inclusive. It should include a series of obligations that States must follow, both negative and positive, such as guaranteeing family reunification, protecting family unity, and preventing the separation of families due to the deportation of a family member.

Another serious problem with these guidelines is the language granting States a certain measure of discretion in issues related to shelters and transitory detention centers. For example, the guidelines state that countries *can* establish training programs for migration agents and representatives from other related agencies, and that this training *can* cover issues related to human rights and attention for migrants in transit, especially those most vulnerable.

As we can see, this tentative approach to migrant human rights, and the complete absence of the rights of children and adolescents, demonstrates that they are at least secondary in comparison to the guidelines’ explicit goals. These guidelines were adopted in 2003, one year after the Mexico-Canada report on migrant children and adolescents. However, the conclusions and recommendations of that report were not properly taken into account when adopting these guidelines.

*C. Regional guidelines for attention to unaccompanied migrant children and adolescents during repatriation processes*

On July 9, 2009, a new series of guidelines specifically related to migrant children and adolescents was adopted. However, these guidelines are not geared toward migrant children and adolescents in general; rather, they are related exclusively to the repatriation of unaccompanied children and adolescents. These guidelines contain specific clauses for protecting the rights of migrant children and adolescents not included in the 2003 guidelines. However, their text lacks a substantial focus on rights, especially regarding the most complex problems and challenges of migration in the region.

The guidelines are comprised of an introduction and six sections, each with various articles. The introduction states that “member countries place a high priority on providing the necessary assistance during the repatriation process, in an effort to ensure a legal, prompt, dignified, safe and orderly return, with respect to children’s human rights taking always into account their best interests, age, gender, ethnicity, religion, and socio-economic and cultural background.” This declaration introduces our most important observation regarding this agreement. On the one hand, it alludes to the best interests of the child, while on the other hand it establishes repatriation as the priority, when it is in fact the best interests of the child that should define what measures to adopt, which may or may not include repatriation.

The guidelines continue, naming international instruments to which the majority of member countries belong, and recognizing a variety of relevant human rights principles.<sup>20</sup> These guidelines explicitly recognize and give voice to the fundamental principles of “the best interests of the unaccompanied child, family reunification, and respect for [their] human rights.” In keeping with the CRC definition, these guidelines define a child as any person under the age of 18.

Section I touches on general issues. The commitment to human rights is mentioned again as an objective, and is further-ranging in its application. It establishes that human rights and the best interests of the child should always be safeguarded “from the moment they are detained until their repatriation.” This would appear to signify that the human rights of children and adolescents are not only applicable procedurally, but inherent and continuous in all State interaction with the child at every level and in every moment.

Section II concerns unaccompanied children and adolescents. Article 4 establishes that each RCM member country should, in accordance with its national legislation, treat the unaccompanied child with dignity and respect, and provide necessary assistance, including: transferring the unaccompanied child to a safe and appropriate location; informing them of their rights and reassuring them that the primary intention is to protect their physical and psychological safety; carrying out interviews by qualified authorities with consideration for gender and age; and, if applicable, administering basic emergency services according to the specific medical and/or psychological needs of the child. Article 5 establishes that family reunification will only be guaranteed if it is in the best interests of the child.

Section III concerns protection for unaccompanied children during repatriation according to the best interests of the child. Once again, the text reiterates the importance of this principle. The tone is prescriptive, signaling that attention *should* include: accommodations and temporary shelters that are appropriate in terms of physical safety and protection of human rights; timely access to medical and psychological care as well as education and recreation; confidentiality; and the right to be informed about their legal status in a language that is comprehensible to them, according to their age and level of maturity.

Sections IV and V concern communication between relevant authorities and the adoption of procedures that ensure the well-being of children and adolescents, among them: communication through the corresponding diplomatic or consular channels; consular assistance and protection; communication between relevant institutions; and the consideration of alternatives to repatriation when the safety of the unaccompanied child is at risk.

The guidelines stipulate procedures, hours, and ports of entry for repatriation. These are general guidelines; they do not contain specific information or identify specific agencies (such information is provided in appendices and specific protocols). This requires the development of measures to ensure the protection of children and adolescents during repatriation. The trip is to be adequate,

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<sup>20</sup> Among them are: the Convention on the Rights of the Child (CRC) and its Optional Protocol on the sale of children, child prostitution, and child pornography; International Labor Organization Convention 182 on the Worst Forms of Child Labor; Inter-American Convention on the International Traffic in Minors; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Vienna Convention on Consular Relations.

safe, and prompt, and must meet the basic needs of children and adolescents. There should be communication with the child's country of origin in order to ensure their proper reception. Finally, section VI recommends that officers interacting with children wear different outfits than those worn by public order officers, and recommends the promotion of technical assistance, training, and cooperation.

Even with guidelines that establish the commitment to protect unaccompanied children and adolescents, the document contains four serious problems. First, these are merely guidelines, giving States ample discretion in their implementation. Also, consequently, they do not provide for any monitoring or compliance mechanisms.

Second, in many cases, local agreements between States dictate what measures to take to ensure the well-being of children and adolescents during repatriation. The absence of specific guidelines for defining these measures, and the aforementioned discretion granted to States, complicate the protection of unaccompanied children and adolescents.

Third, the guidelines leave out many children and adolescents, as they refer exclusively to those that are unaccompanied. There is no doubt that unaccompanied children and adolescents are especially vulnerable, both during their migration and repatriation. As such, the need to protect their rights is critical. This, however, does not excuse the lack of consideration of other migrant children and adolescents whose rights may be at risk and who may have different needs than those of their adult caregivers.<sup>21</sup>

The fourth problem with the guidelines is their objective. Rather than ensuring the best interests of the child by means of a series of mechanisms and solutions, it is limited to some aspects of repatriation. As such, these guidelines have a seriously limited focus on the rights of children and adolescents. While they rhetorically invoke a number of human rights principles and include special protection measures during repatriation, they lack substantial and procedural guarantees tailored to protecting the rights of children and adolescents in the short and long term.

The key issues are not only how, when, and to whom the child or adolescent is repatriated, but also why. The discussion should center on whether the child or adolescent should be repatriated, or whether to take another course of action by means of a more ample and exhaustive process: a formal Best Interests Determination (BID).

In order to make decisions based on the best interests of the child, there should be a process in place to ensure the rights of children and adolescents in each case in accordance with applicable international standards. This is precisely what these guidelines lack, and it is their principal limitation; its effects are described in detail in almost every chapter of this study citing violations of the rights of migrant children and adolescents repatriated from Mexico or the United States, and the failure to guarantee their protection.

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<sup>21</sup> The problem of leaving aside the general rights of children at each stage is also reflected in internal legislation, such as the Mexican migration law approved in 2011. This is described in chapters 5-7 of this book.

*D. Recent RCM initiatives regarding unaccompanied children and adolescents*

Since the beginning of this decade, the issue of migrant children and adolescents in the region has become more prominent in RCM initiatives due to the following: (1) the significant increase of children and adolescents—both unaccompanied and those migrating with their families—from Central America and Mexico to the United States; (2) the increase of other children and adolescents affected by migration policies, including those separated from their families due to detention and deportation, and those left behind by migrant parents; and (3) the dramatic increase of the dangers facing these children and adolescents in their countries of origin, destination countries, in transit, and during repatriation. In spite of this varied context, in which different groups of children and adolescents are affected, RCM conferences have focused on unaccompanied children.

Mexico and Guatemala have developed a binational protocol to attend to unaccompanied migrant children and adolescents. The protocol emphasizes that these children and adolescents should not be returned without having been properly attended to by protective services or without a protocol that ensures their safe return to their homes and families. The protocol is based on work carried out in both countries and includes a number of tasks and responsibilities at different levels. Though both countries have developed measures to formalize the protocol, it has not been signed by the respective States.<sup>22</sup>

Additionally, a general protocol for attending to unaccompanied migrant children and adolescents was developed during the 2013 RCM Seminar on Migrant Children and Adolescents.<sup>23</sup> It establishes a relevant basis for guaranteeing the human rights of migrants. The formal adoption of these protocols will signify some progress toward ensuring the rights of migrant children and adolescents in Central and North America.

In 2013, the RCM also published a report that systematizes and analyzes RCM instruments for attending to and protecting migrant children and adolescents. The main purpose of the report is to compile and evaluate all of the different RCM documents, agreements, guidelines, and promotional material produced to date on migrant children.

This report is up to date with the results and recommendations of the 2002 report, and contains new recommendations. Among them are: (1) a national registry for statistics on unaccompanied migrant children and adolescents that will contribute to improving policy design; (2) the need to improve methods for interviewing deported children and adolescents that go beyond registering their identity and country of origin, as well as the creation of interview materials tailored to the diversity and complexity of child migration in the region; (3) an extensive analysis of interviews in order to give voice to the interests, needs, and experiences of these children and adolescents during their deportation and repatriation; (4) the need to reduce the number of interviews to which children and adolescents are subject, and the tentative restructuring of the interview process by means of cooperation between countries; (5) more emphasis placed upon the principles of the best interests of the child and non-revictimization in the development of documents and instruments; (6) more consideration for the best interests of the child and an independent analysis of their parents' needs; (7) more civil society participation in the formulation and drafting of documents

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<sup>22</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala (2013), p.18.

<sup>23</sup> Held in Antigua, Guatemala (August, 2013).

and instruments; and (8) the elaboration of binational protocols on the processing, treatment, accompaniment, and reception of unaccompanied children and adolescents in order to provide better attention and protection.<sup>24</sup>

In mid-2014, the RCM adopted a number of decisions regarding the mistakenly called “humanitarian crisis” of unaccompanied children. In the Managua Extraordinary Declaration, adopted on June 25, 2014,<sup>25</sup> the Vice Ministers and Heads of Delegation, recognizing regional co-responsibility and the immediate need to implement comprehensive and interrelated measures, agreed to the following:

1. Ensuring the best interests of the child, reaffirming that the best interests of the child, and family unity, must guide regional, bilateral, and national responses.
2. The creation and meeting of an ad hoc group on migrant children.
3. Providing accurate information and engaging in community outreach.
4. Combating human trafficking and strengthening cooperation in the implementation of respective national laws.
5. Migration management and coordination to detect trafficking, smuggling, and related crimes in order to discourage irregular migration flows.
6. Development; committing to work together to address the structural causes of the irregular movement of unaccompanied migrant children, and working toward the eradication of such causes, by creating social and economic development programs in communities of origin, among other initiatives.
7. Strengthen consular protection, particularly assistance to unaccompanied children.
8. Repatriation and reintegration; supporting the creation of laws that address the return of children with their families to their countries of origin that are in accordance with due process, and cooperating to dedicate sufficient resources to implement return and reintegration programs in countries of origin.
9. International protection, recognizing that some unaccompanied children should be granted refugee status or similar protection.
10. Accept offers of assistance and cooperation from international organizations, civil society, and non-governmental organizations involved in the protection of migrants.
11. Technical exchanges and training on best practices.

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<sup>24</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala (2013), pp. 77-80.

<sup>25</sup> See RCM (June 2014). Declaración Extraordinaria. Retrieved from [http://www.crmsv.org/ReunionesCRM\\_GRCM.htm](http://www.crmsv.org/ReunionesCRM_GRCM.htm).

This Declaration, and the recommendations of the 2013 Report, may signify improvement in terms of regional cooperation, the development of rights-based agreements, and the recognition of structural causes. However, there are no enforcement or monitoring mechanisms to ensure implementation. Some key human rights issues are not included, such as avoiding the detention of migrant children and adolescents, and ensuring the best interests of the child in every case. Also, critical emphasis is placed on the responsibility of parents, without taking into account other policies that contribute to family separation, such as the lack of regularization programs or family reunification procedures.

These issues are even more critical in light of measures implemented by governments following the Declaration's ratification. As demonstrated in this book, the number of children and adolescents detained and repatriated from Mexico to Central America, as well as the regrettable resurgence of the practice of family detention in the United States, are clear examples of the totally inadequate responses to the regional human rights, human development, humanitarian, and refugee crises behind child migration in Central and North America.

### **III. Regional and bilateral migration agreements**

There are several types of migration agreements that have been signed by countries in the region, both bilateral and multilateral. The majority of these are recent and in accordance with the aforementioned RCM action plans. Given that Mexico is a country of origin, transit, and destination, it has signed the most agreements with the most States. Mexico has bilateral agreements with the United States, Nicaragua, El Salvador, and Guatemala. The four Central American countries have signed a Memorandum of Understanding (MOU) on safe repatriation based on RCM guidelines. Additionally, bilateral agreements between them have been implemented, sometimes retroactively, as appendices of this multilateral MOU.

The United States has not signed any multilateral agreements regarding migration. Whereas, by contrast, the United States has promoted and signed multilateral trade and security agreements that obliquely affect migration, its patterns, its underlying causes, and its consequences. Repatriation agreements between the United States and Mexico are made on three levels: ample bilateral agreements at the national level; general agreements at the regional level; and specific repatriation agreements at the local level.

#### *A. Mexico, El Salvador, Guatemala, Honduras, and Nicaragua: MOU and appendices*

In San Salvador on May 5, 2006, Mexico, El Salvador, Guatemala, Honduras, and Nicaragua signed a multilateral MOU on the dignified, expeditious, and safe overland repatriation of Central American migrants.<sup>26</sup> This MOU is based on guidelines from multilateral and bilateral RCM agreements. The tone and nature of the MOU are in line with previously established RCM guidelines and provide for the inclusion of appendices regarding technical details of the MOU's application by means of bilateral agreements between Mexico and the other countries. While all

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<sup>26</sup> See the complete version of the agreement at the following website:

<http://www.estudiosdemigracion.org/inedim2013/documentosypub/basededatos/legislacionnacional/acuerdosbilaterales/memorandumrepatriacion.pdf>.

of these agreements were composed along similar lines, several specific issues are worth pointing out.

The 2006 MOU is a multilateral agreement signed by all parties, except for the United States. It makes reference to human rights and child migration issues, but does not rigorously analyze or define the conditions necessary to ensure that each State is in compliance with its human rights obligations, particularly with regard to children. The MOU makes reference to three types of migrants: irregular migrants, those in high-risk groups, and those accused of having committed a crime or administrative infraction aside from irregularly entering the country.

Children and adolescents are part of the second group, which also includes pregnant women, disabled persons, persons over the age of 70, and victims of human trafficking. The only principle mentioned is that of family unity, although neither the family unit nor mechanisms for its protection are defined. Consideration is given to migrant children and adolescents only in the context of the physical conditions of repatriation. High-risk migrants, including children and adolescents, should be informed of repatriation processes by consular officials, and their air transportation should be provided for when necessary (to places far from the southern border).

*Table 1: Multilateral and bilateral agreements on migration, signed within the RCM framework<sup>27</sup>*

<b>Name</b>	<b>Date</b>	<b>Type</b>	<b>Level</b>	<b>Purpose</b>	<b>Signatories</b>
Agreement between the United States of Mexico and the Republic of El Salvador on the orderly, expeditious, and safe overland repatriation of Salvadoran migrants from Mexico	05/17/2005	Agreement	Bi	Establish a model for the orderly and safe repatriation of Salvadoran nationals	M-El S.
Memorandum of Understanding between the Governments of the United States of Mexico, El Salvador, Guatemala, Honduras, and Nicaragua on the dignified, orderly, expeditious, and safe overland repatriation of Central American nationals	05/05/2006	Memorandum of Understanding	Multi	Mechanisms for regional cooperation on repatriation	M-El S.- G-H-N

<sup>27</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala (2014), pp. 22-29.



Appendix to the Memorandum of Understanding between the Governments of the United States of Mexico, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua on the dignified, orderly, expeditious, and safe overland repatriation of Central American nationals	11/21/06	Appendix	Bi	Details of the MOU's operational aspects	M-H
	04/25/07	Appendix	Bi	Details of the MOU's operational aspects	M-N
	_____	Appendix	Bi	Details of the MOU's operational aspects	M-G
	09/07/09	Appendix	Bi	Details of the MOU's operational aspects	M-G-H-El S.
Procedural Manual for the dignified, orderly, and safe repatriation of Central American nationals from El Salvador, Guatemala, Honduras, and Nicaragua who are under the custody of Mexican immigration authorities	11/15/11	Manual	Multi	Facilitate MOU operations by means of Mexican cooperation on repatriation	

The first countries to sign bilateral agreements with Mexico were El Salvador and Guatemala (May 17, 2005, and June 28, 2005, respectively). These agreements were signed before the multilateral agreement, and adopted retroactively as appendices. These two countries are the closest to Mexico. More important, however, is that these appendices contain the most substantial points regarding the treatment of high-risk migrants, particularly children and adolescents.

The bilateral agreement with Honduras is the least protective of the human rights of migrant children and adolescents. Ratified in 2009, this agreement provides scant measures for safeguarding the rights of Honduran migrants. All of the agreements establish basic rules regarding the location and hours of repatriation procedures; regulations concerning consular protection and the right to request refugee status; the recognition of regular status; and repatriation without detriment to possible future readmission into Mexico. Chapters 2 and 4 of this book that describe the situation in Honduras and El Salvador offer many instances of the irregular application of this agreement on the part of all governments involved, including non-compliance with the most basic commitments regarding logistical aspects of the repatriation of children and adolescents.

The agreement with Guatemala describes repatriation procedures. The agreement defines high-risk groups, including unaccompanied children and adolescents (defined as persons under the age of 18 traveling alone). The agreement establishes specific protocols for these high-risk groups,

including: the notification of consular authorities during the initiation of the repatriation process; the need for Guatemalan consulates to recognize the nationality of migrants at least one day prior to repatriation; and the return of Guatemalan nationals to consular authorities according to the rules established in the agreement. Equally, Guatemalan authorities commit to respect the human rights of persons being repatriated to other Central American countries via Guatemala.

The other two agreements with El Salvador and Nicaragua fall in between the focus of the Guatemala agreement and the weak commitment of the Honduras agreement. The agreement with El Salvador adds some new elements to the list of guarantees, expressing that the obligations assumed by the parties do not affect other international obligations they may have in relation to human rights or other general issues (article 3). The guidelines include a separate section on high-risk migrants, among them children and adolescents, who are to be treated separately from the general migrant population.

Repatriations are also subject to the principle of family unity and proof of kinship (article 7). Also, while the principle is invoked, there are no specific instructions for defining who is a family member, or the type of procedure involved to invoke the principle.

Table 2: Ratified and approved agreements with Central American countries<sup>28</sup>

<b>Document</b>	<b>National Legislation</b>	<b>Best Interests of Unaccompanied Children and Adolescents</b>	<b>Consular Notification</b>	<b>Custody During the Procedure</b>	<b>Human Trafficking</b>
<b>Memorandum of Understanding:</b> M-G on the protection of women and child victims of human trafficking	n/a	n/a	n/a	n/a	Yes
<b>Agreement:</b> M-El S on the safety of overland repatriation	In accordance with national laws	n/a	Yes, with the goal of verifying age and nationality	n/a	Yes, in a separate report
<b>Memorandum of Understanding:</b> M, El S., G, H, N on dignified and safe overland repatriation	In accordance with national laws	n/a	Yes, if the person is classified as high risk	n/a	They receive special attention, as they belong to a high risk group

<sup>28</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala (2013), pp. 56-61.

<b>Appendix M-H</b> on overland repatriation	n/a	n/a	n/a	n/a	n/a
<b>Appendix M-N</b> on the overland repatriation of Central Americans	n/a	n/a	Yes	n/a	They receive special attention, as they belong to a high risk group
<b>Appendix M-N- El S-G-H</b> on the overland repatriation of Central Americans	n/a	n/a	Yes, for unaccompani ed children and adolescents	Custody granted from Mexico to Guatemala n authorities	They receive special attention, as they belong to a high risk group

In general, in spite of the safeguards and protections granted in the various bilateral agreements, it is clear that none of them is an adequate instrument for protecting the rights of migrant children and adolescents. References to children and other high-risk groups are made; however, compliance with international human rights obligations is minimal. From a practical point of view, this minimal compliance could have been sufficient for these bilateral agreements to be considered acceptable according to RCM migration management and policy guidelines.

In addition to the MOU and their appendices, procedural manuals for all member States were written in 2010 and 2011. The 2010 manual is fairly general, while the 2011 manual is more detailed. The purpose of both manuals is to regulate the repatriation of Central Americans from Mexico. The 2011 procedural manual makes some advances in the protection of the human rights of migrant children and adolescents, as it incorporates the notion of preserving the best interests of the child. It facilitates consular communication for provision of more specific contact information. It also distinguishes between the procedures to follow in cases of accompanied and unaccompanied children and adolescents.<sup>29</sup>

### *B. El Salvador and the United States*

As part of comprehensive legislation against child trafficking, the United States established requirements for the safe and sustainable repatriation of unaccompanied children and adolescents as part of the Trafficking Victims Protection Reauthorization Act (TVPRA). Section 1232(a)(5)(A) of the law requires the Department of State—in conjunction with the Department of Health and Human Services, the Department of Homeland Security (DHS), and NGOs—to create a pilot program for identifying best practices and providing for the sustainable, safe repatriation of unaccompanied foreign children to their countries of origin or residence. The program was designed in 2010 as an 18-month pilot project, and administered by the International

<sup>29</sup> Comisión Pastoral de Movilidad Humana Conferencia Episcopal de Guatemala (2013), pp. 14-15.

Organization for Migration (IOM) and the Salvadoran Institute for the Integral Development of Children and Adolescents (*Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia* or ISNA).<sup>30</sup>

The program's objective is the protection of the rights of unaccompanied children and adolescents. It provides them support in their family and community reintegration processes in areas such as education, job training, and physical and mental health. The program also has an investigation and monitoring component.

According to IOM, the initial phase of the project benefited 52 returning unaccompanied children, guaranteeing their adequate reintegration and reception in El Salvador. It provided them with school assistance, job training, and other services. Local and national Salvadoran organizations were to assume control of the project following the first phase. IOM has signaled that the initiative is in its second phase and projected to assist approximately 10 children and adolescents. However, no information has been disseminated on whether or not the program is being effectively implemented by said organizations, nor is it clear which institutions are responsible. Furthermore, the results of monitoring phases I and II are not yet available.

In any case, what is most important is that the number of children and adolescents benefitting from this program to date reveals the extremely limited impact of such initiatives. Those involved, particularly the five States directly involved in this regional phenomenon, do not comprehensively address the most rooted structural aspects of migration. Furthermore, as we shall see in chapters 8 and 4 of this report on the United States and El Salvador, the rights of children and adolescents are not adequately taken into account, especially in terms of family reunification, due process, the best interests of the child, and the child's right to development in the medium and long term.

### *C. Mexico and the United States*

The situation in the United States with respect to the repatriation of Mexican nationals has changed significantly in recent years. Immigration issues that were once addressed at the local level have become increasingly consolidated under the jurisdiction of DHS and Immigration and Customs Enforcement (ICE) since the attacks of September 11, 2001. In spite of this consolidation, there is still some regional variance in the United States in terms of protection offered to migrants—particularly children and adolescents—while under the custody of local authorities.

Between 1996 and 2012, four bilateral agreements regarding migration were signed between the United States and Mexico. The most recent, signed in 2004, consists of a memorandum of understanding between the U.S.-DHS and the Mexican Secretariat of the Interior and Secretariat of Foreign Relations regarding the repatriation of Mexican nationals.

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<sup>30</sup> Cavendish, B., and Cortazar, M. (2011). *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (hereinafter "Children at the Border"), p. 24. Retrieved from <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

### 1. Bilateral agreements at the national level

The first of these agreements is a Memorandum of Understanding on United States consular protection and Mexican nationals, which went into effect on July 5, 1996.<sup>31</sup> This document affirms the commitment of States parties to “respect the human rights of all persons within their respective borders,” as well as their desire to cooperate in good faith and maintain good relations in accordance with the Vienna Convention (1963).

The document also affirms their mutual desire to promote the protection of human rights by means of mechanisms on the border and activities of immigration services, as well as consular protection. It also affirms their mutual desire to support the participation of local authorities. These instruments also obligate consular safeguarding of the best interests of the child, in line with the Vienna Convention on Consular Relations. As such, unaccompanied Mexican children and adolescents have the right to communicate with Mexican consular officials, to have the consulate notified of their detention, to be informed of their right to consular notification, and to be visited by a consular official during their detention.<sup>32</sup>

Child and adolescent migration proceedings are presented in relation to the commitment of both countries to “ensure the specific notification of consular representatives in cases related to the detention of children, pregnant women, and persons in high risk situations.” Furthermore, this instrument ensures consular protection and the presence of corresponding consular officials in “legal actions in relation to their respective nationals including legal proceedings related to children.” The practices and procedures along the U.S.-Mexico border described in chapters 7 and 8 of this report describe non-compliance with these precepts.

The second bilateral agreement was signed on June 11, 1998. It is a memorandum of understanding on the Immigration and Naturalization Commission’s Consulting Mechanism and those tasked with providing consular services and protection.<sup>33</sup> Human rights are limited to providing consular protection to Mexican migrants in custody and regulating the conduct of immigration officials, and some other aspects.

Finally, in 2004, two more bilateral agreements were signed. The first is the Mexico-United States Action Plan for Cooperation and Border Security. It does not make any mention of children and adolescents or human rights. This Action Plan reinforces similar initiatives developed following the September 11, 2001 attacks.<sup>34</sup> The second agreement is the Memorandum of Understanding

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<sup>31</sup> See Memorandum de Entendimiento Sobre Protección Consular de Nacionales de México y de Estados Unidos, EEUU-México. (1996, May 7). Retrieved from <http://www.sre.gob.mx/images/stories/docnormateca/dgpme/memo/memoentendimiento.pdf>.

<sup>32</sup> Cavendish, B., *Children at the Border*, p. 25.

<sup>33</sup> See Memorandum de Entendimiento Sobre los Mecanismos de Consulta Sobre Funciones del Servicio de Inmigración y Naturalización y Protección Consular, EEUU-México, 1998, June 11. Retrieved from <http://www.ordenjuridico.gob.mx/Publicaciones/CDs2010/CDCConsular/pdf/T52BIS.pdf>.

<sup>34</sup> See Velázquez Flores, R. y Schiavon, J. (2008). El 11 de septiembre y la relación México-Estados Unidos: ¿hacia la securitización de la agenda? *Revista Enfoques*, VI(8). Retrieved from <http://www.redalyc.org/pdf/960/96060805.pdf>.

on the Safe, Orderly, Dignified, and Humane Repatriation of Mexican Nationals.<sup>35</sup> This MOU is the most important document regulating bilateral relations on migration between the Mexican Secretariat of the Interior and Secretariat of Foreign Relations, and the U.S.-DHS. This MOU is currently in force by virtue of the April 2009 Bilateral Agreement, which executed 30 local agreements on the repatriation of Mexican nationals.<sup>36</sup>

This document represents a change of direction for bilateral agreements signed by the United States, as there are more human rights applicable to migration in general, and the repatriation of nationals in particular. The first difference is that this MOU affirms the “recognition of human rights independent of migratory status,” and establishes that repatriation be compliant with human rights principles.

The objective of this memorandum is to establish a framework for specific bilateral actions and transparent procedures for the safe and orderly repatriation of Mexican nationals. Article 18 establishes basic criteria and principles that underlie the development of agreements on local repatriation procedures.

Article 3 establishes repatriation principles and criteria, including human rights principles, such as: (a) repatriation should be conducted in a manner consistent with the respect of human rights and dignity of Mexican nationals found in the United States in violation of immigration law; (e) the unity of families should be preserved during repatriation, taking into consideration administrative parameters; and (f) recognition of the high priority and special needs of unaccompanied children and adolescents.

The Mexican participating agency should make every effort to have the appropriate family welfare representatives receive such persons upon repatriation from the United States. The document does not specify particular mechanisms for protecting family welfare, or for ensuring that the repatriation of children is safe and in line with human rights.

*General regulations established by the 2004 MOU*

Repatriations should be conducted in a manner consistent with the respect of human rights and dignity of Mexican nationals found in the United States in violation of immigration law.
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All detained Mexican nationals have the right to be notified by the Department of Homeland Security of their right to communicate with a Mexican consular official and to meet in private with said official.
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<sup>35</sup> See Memorandum de Entendimiento entre la Secretaría de Gobernación y la Secretaria de Relaciones Exteriores de Seguridad Interna de los Estados Unidos de America Sobre la Repatriacion Segura, Ordenada, Digna y Humana de Nacionales Mexicanos, EEUU-México. Retrieved from [http://www.sre.gob.mx/images/stories/dgpme/acuerdos/mou\\_repatriaciones.pdf](http://www.sre.gob.mx/images/stories/dgpme/acuerdos/mou_repatriaciones.pdf).

<sup>36</sup> U.S. Department of Homeland Security. (April 2009). Secretaries Napolitano and Espinosa Announce Agreement on Mexican Repatriation. Retrieved from <http://www.dhs.gov/news/2009/04/03/agreement-mexican-repatriation-announced>.

<p>Points of repatriation are to be established in a manner consistent with scheduled hours of operation and staffing availability. Every effort should be taken by Mexico to ensure that mutually designated points of reception are fully staffed with appropriate local, state and/or federal entities responsible for the health, welfare, and safety of Mexican nationals.</p>
<p>Identification of points of contact to receive and/or convey information about incidents involving reported mistreatment or potential human rights concerns.</p>
<p>Incapacitated persons, unaccompanied minors and other vulnerable individuals should be repatriated during daylight hours to ensure their safety. The Mexican Participating Agencies should make every effort to have the appropriate family welfare representatives receive such persons upon repatriation from the United States.</p>
<p>Timely special notification and information should be provided by DHS authorities for cases where additional preparation will be required to receive an unaccompanied minor or an individual with medical, mental or other special needs.</p>

Such pronouncements suppose a certain level of protection of the human rights and special needs of migrant children and adolescents. While not ideal, it is a starting point, as it can be considered an improvement over the types of pronouncements made in prior agreements at the national level. However, it is worth noting that the application of the 2004 MOU at the local and regional levels has been uneven.

The 30 local agreements were enacted in order to meet the requirements for the repatriation of Mexican nationals from the United States. These local agreements interpret the protection of the human rights of children and adolescents in different ways, some of which can result in serious rights violations.

Moreover, this MOU lacks the same human rights standards that were omitted five years later by the RCM. Some general human rights principles are included rhetorically in the text; however, in practical terms, only basic logistical protection measures are specifically addressed in the MOU. For example, the protection of the unity of families should go beyond avoiding family separation “during repatriation.” Similarly, the protection of children and adolescents should imply significantly more than repatriation during daylight hours.

Chapter 9 of this book addresses unaccompanied children and adolescents at the United States border. It provides evidence of unaccompanied Mexican children and adolescents being returned rapidly without being transferred to the Office of Refugee Resettlement. These practices clearly demonstrate the lack of tools for protecting rights and the existence of mechanisms that facilitate the return of children and adolescents without taking into account their rights and needs, including the international protection of migrants under the Geneva Convention.

## *2. Local agreements that implement the 2004 MOU<sup>37</sup>*

In order to observe the similarities and differences between agreements signed by local governments, we will compare the local repatriation agreement used in Atlanta, Georgia and Raleigh, North Carolina (which is identical to other local agreements, such as New Mexico's) with the local agreement in El Paso, Texas.

While these local agreements affirm basic principles included in the national MOU, there are differences in key areas, such as the principle of family unity. According to the Georgia and North Carolina agreement, the family unit may include spouses (including de facto partners), children, siblings, parents, grandparents, uncles, and aunts. El Paso's local agreement, however, defines the family unit as including spouses (including de facto partners), children, siblings, parents, and grandparents.

A child or adolescent repatriated from El Paso could find themselves with a complete stranger assigned as their guardian, as opposed to an uncle or aunt with whom they would feel comfortable and protected, simply because of the definition of the family unit used in El Paso. If the same child were being repatriated from Georgia or North Carolina, their kinship would be recognized and this problem would be avoided. While this may seem to be a minor issue, its implications could have far reaching effects on the psychological and physical well-being of the child in question. The El Paso agreement does contain special guidelines for guaranteeing the human rights of children, as it requires consular interviews with children three times per day.

In any case, the deficiencies of the agreements based on the MOU are evident. These agreements, however well intentioned, cannot be applied uniformly unless mechanisms are generated to homogeneously guarantee the rights of migrants and migrant children on the national level in the United States. In this sense, it is fundamental to once again take into account that none of these local agreements include substantial and procedural human rights guarantees based on the best interests of the child.

## *3. A human rights focus for local agreements regarding consular protection and child welfare*

In general, it is evident that the majority of local agreements based on the 2004 MOU demonstrate some of the serious deficiencies of international cooperation to address the rights of migrant children and adolescents. In the best of cases, agreements are centered on ensuring some protective measures during repatriation. However, other agreements have been signed that are not related to immigration control in the United States, and they have not been signed as a consequence of the 2004 MOU.

These are local agreements with specific Mexican consulates that, to a certain extent, seek to protect the rights of children and adolescents by involving local child protection services. It is important to analyze these agreements because they not only involve the protection of the rights

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<sup>37</sup> By virtue of repatriation agreements, local agreements are generally available in the database of the FOIA/ICE library. Retrieved from <http://www.ice.gov/foia/library/>.



of migrant children and adolescents, but also reveal what type of protection can be put into place when agreements are centered on protection rather than control and expulsion.

These agreements touch on the protection of potential child and adolescent victims of human trafficking. They are extensions of the 1997 *Flores v. Reno* Settlement Agreement. This agreement was the result of a class action lawsuit submitted on behalf of Lisette Flores in the U.S. Federal Court for the Central District of California. Together with the guidelines established in *Flores*, the TVPRA (2008) requires that migration control have a minimum baseline for respecting the human rights of children.

A series of MOU have been signed between particular Mexican consulates and social services or child welfare departments in some counties. These agreements demonstrate problems with the regulation of child and adolescent welfare on the local level. Unlike the repatriation agreements, these MOU are centered on the welfare of children and adolescents while under the custody of U.S. institutions. Repatriation is a possible result of these proceedings, but unlike the repatriation agreements, local authorities have more freedom to pursue independent measures in line with human rights.

These MOU include such human rights principles as: “The commitment to the safety and well-being of Mexican minors in the custody of the Social Security Administration; the obligation to protect the rights of Mexican nationals and their children within the consular district; preventing situations that may jeopardize the safety, dignity and human rights of Mexican minors involved in legal proceedings; and the mutual interest in” establishing protocols and procedures to provide and share information, deliver services and resolve problems at the local level concerning child protection issues.<sup>38</sup>

These MOU seek a higher level of internal cooperation and application of child welfare protocols established in the social services manual for children. This is to be carried out by existing family services agencies with the help and cooperation of Mexican consular personnel during repatriation proceedings. The best interests of the child plays a central role in determining what type of procedure to apply. The principle of family unity goes beyond the division of families on different buses during repatriation, and can be a fundamental factor in determining the best interests of the child.

In spite of their many limitations, these types of MOU represent a more adequate perspective for mainstreaming human rights in bilateral agreements between the United States and Mexico. These advances are possible precisely because these MOU are not migration or repatriation policy tools. They address these issues as part of a more comprehensive context of child welfare for nationals and non-nationals residing in signatory counties.

#### *4. Concerns with local consular protection and child welfare MOU*

All signed MOU are invariably produced within the context of international law for consular protection, in light of the Vienna Convention and the Consular Convention between the United

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<sup>38</sup> These direct quotes come from the Memorandum of Understanding between Orange County, California, and the Mexican Consulate in Santa Ana, California.

States and Mexico. The latter is interpreted by means of the aforementioned Memorandum of Understanding on Consular Protection of the United States and Mexican Nationals, signed in 1996.

The agreement includes some principles and objectives regarding protection: (1) to provide any individual detained by migration authorities with notice of his/her legal rights and options, including the right to contact his/her consular representatives, to facilitate communication between consular representatives and their nationals, and to ensure that specific notification to consular representatives is given in cases involving the detention of minors, pregnant women, and people at risk; (2) to allow and facilitate the presence of consular officials at all times at the trials or judicial proceedings concerning their respective nationals, including those involving minors; and (3) to promote bi-cultural sensitivity and understanding related to human rights protection through the Border Liaison Mechanisms and the Consultation Mechanisms on Immigration and Naturalization Service Activities and Consular Protection, and to encourage the participation of local authorities in these entities.

However, in spite of the positive elements described in the Convention, their application to the series of local MOU on consular assistance is severely limited. Exit mechanisms are difficult to adopt for both parties, and these agreements are subject to the continuity of social services policies.

In the Shattered Families Report, this particular MOU is cited by a consular staff person as an example of the relationship between the child welfare department and the consulate: “We [the consulate] have a Memorandum of Understanding but it really does not say much. All it says is that we will work together to exchange information, and that’s it. It doesn’t say to what extent the social worker has to have contact with us. This has been a black hole for us.”<sup>39</sup>

There is no national legislation that regulates the application of these MOU at any level. There is also no requirement that agreements be negotiated or adopted. Many Mexican consulates have not signed local MOU. As such, there are many counties in the United States in which Mexican nationals—including children and adolescents—do not receive the same protection. Even though protections vary in each MOU, children and adolescents are better protected in counties with formalized agreements.<sup>40</sup>

Furthermore, age and other factors can impede undocumented adolescents from accessing the welfare system. These systems may also lack the funds necessary to satisfy the needs of undocumented youth. Some jurisdictions limit explicit consular protections contained in the MOU to issues related to dependency hearings. Others, such as the memorandum of understanding signed by New Social Services (*Nuevos Servicios Sociales*) Mexico, explicitly cover criminal proceedings of children and adolescents. One memorandum of understanding was signed directly by the Presiding Judge of the Los Angeles Juvenile Court and the Mexican Consulate in Los Angeles.

These memoranda reveal the complexities of a very specific problem for undocumented immigrants in the United States: the precariousness of family unity under a system in which the

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<sup>39</sup> Race Forward: The Center for Racial Justice Innovation. (November 2011). *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, p. 50 (“Shattered Families”). Retrieved from <https://www.raceforward.org/research/reports/shattered-families>.

<sup>40</sup> *Shattered Families*, p.47.

court can determine custody. This system also tends to be very suspicious of the integrity of undocumented persons and their capacity to raise children. When families become involved with social services agencies, or children are taken from their parents and placed under the custody of the State or another guardian, family reunification is dependent on the outcome of parental aptitude tests.

The MOUs provide different levels of protection, benefits, and economic and strategic assistance for parents (and in many cases other family members) to help them participate in the proceedings of children and adolescents. In some cases, parents are granted a court appointed lawyer to represent them, including if they are indigent or live outside the country.

Other MOUs offer assistance to parents during hearings, even if they are in Mexico, such as telephone or videoconference communication. Some MOU consider facilitating family meetings at border crossings. In some cases, the agreements take into account the costs and difficulties of translating court materials. Some MOU express a preference for placing children under the custody of family members, even if they live in Mexico. Some explicitly include the interests of other members of the family in the case, and others limit this to the parents. In some cases, parental notification is required, and in others it is optional.

Finally, it is worth noting that some MOU do not explicitly include participation of the National System for the Integral Development of the Family (*Sistema Nacional para el Desarrollo Integral de la Familia* or DIF) in proceedings related to children. Others limit DIF participation to conducting socioeconomic household studies in order to find possible guardians in Mexico. Other MOUs provide for much more ample and continuous DIF participation in reassigning custody of the child.

#### **IV. Other regional agreements that impact migration: free trade and security**

We have examined a number of bilateral and regional agreements and initiatives that focus specifically on migration, as well as to what extent and how each of these cover the human rights of migrant children. However, as is described in many chapters in this study—such as the first chapter written by the United Nations High Commissioner for Refugees—the migration of children and adolescents and families in the region has increased mainly due to the interrelation of poverty, discrimination, diverse forms of violence, a lack of opportunities, and family reunification. All of this affects the most basic human rights of a considerable portion of the population, including children and adolescents.

The reality of the situation in Central America and Mexico reveals the multidimensional, structural context at the national, regional, and international levels that leads hundreds of thousands of people to migrate every year. This includes the ever-increasing numbers of younger and younger children and adolescents. The introduction of this book, as well as the chapters on those countries, provide detailed information on its causes, modalities, magnitude, and specific impact on children and adolescents, who comprise a high percentage of those countries' populations. Certain factors in destination countries, mainly the United States, such as the informality of parts of the labor market and reunification with parents, contribute to this complex structural situation.

As we noted at the beginning of this chapter, migration—its motives, modalities, quantitative aspects, and impact on individuals, families, and societies in countries of origin and destination countries—is a phenomenon that transcends the framework of nation states. The international and/or regional character of migration is not simply a result of people moving from one country to the other; the majority of factors that characterize this multidimensional phenomenon reflect this. Similarly, the responses to the complexity of migration require a focus that goes beyond the capacities and interests of a single country and includes the factors underlying migration in the region.

Therefore, it is important to observe that to what extent States in the region have promoted initiatives or agreements that impact migration in one way or another. Our interest lies in examining whether these agreements allow for current challenges to be addressed adequately and comprehensively, or whether they contribute to compounding these challenges. We will focus on two types of agreements/initiatives: those regarding the promotion of free trade in the region, and those regarding national, regional, and hemispheric security.

*A. Migration, children, and free trade agreements in Central and North America (NAFTA, CAFTA-DR) and the Puebla-Panama Plan*

Upon examining the ties between migration, the rights of migrants, and free trade agreements promoted and adopted by countries in the region, it is important to note at least two issues: first, whether the content of these agreements explicitly includes migration and, if so, how; and second, whether a change in the patterns and/or modalities of migration in the region is among the effects of these agreements.

The principal agreements in the region are the North American Free Trade Agreement (NAFTA), signed in 1994, and the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), signed in 2004, and ratified by the States parties between 2005 and 2009. Both of these agreements make reference directly and explicitly, as well as tacitly, to migration and migrant workers, although this is limited to certain workers. Their content makes few references—or sometimes no references—to the rights of families and children and adolescents.

The main objective of NAFTA is to establish certain common rules on trade and investment between Canada, the United States, and Mexico. The inclusion of migration issues, and specifically human mobility, is minimal and limited to certain categories of temporary workers. Chapter 16 of NAFTA allows for the temporary entry of States parties' businesspersons. To request temporary entry, a NAFTA citizen must qualify as one of four types of businesspersons: business visitors, treaty traders and investors, intra-company transferees, and professionals.

It is clear that the Agreement only favors or allows for the temporary mobility of certain social actors and professionals from privileged sectors, or, at least not those persons who are most vulnerable or worse off according to socio-economic indicators. This, along with other factors, is a clear indication of whom NAFTA seeks to benefit, and, as we shall see, contributes to the growth of undocumented or irregular migration from Mexico.

Spouses or children may accompany those businesspersons who qualify for a TN Visa, and are therefore able to benefit from temporary entry into the United States from Mexico. Nevertheless, it is important to note that these spouses and children are granted non-immigrant status and, as such, unable to obtain work permits. While these migrant workers are subject to general labor laws, there is not a substantial commitment to their welfare or human rights. There is even less of a commitment to their right to family life and the rights of children and adolescents.

CAFTA-DR explicitly establishes that none of the Agreement's guidelines will take precedence over States parties' migration laws. The agreement does not include any guidelines on migration and ignores the rights of workers without consideration of the concession of temporary visas.

These trade agreements promote integration into a free market economy as a panacea for both countries of origin and destination countries that will provide "a never ending fountain of economic growth and social welfare." This integration is to reduce the costs of general products and merchandise, in turn benefitting all parties, including countries of origin. However, after 20 years of NAFTA and 10 years of CAFTA-DR, the results are to the contrary, with a particular effect on regional migration.

A recent study on the impact of NAFTA on Mexico addresses a series of social ills, many of them tied to the structural causes of migration that are described in various chapters of this study. The report highlights the following findings, among others:<sup>41</sup>

- Mexico ranks 18th of 20 Latin American countries in growth of real GDP per person.
- From 1960-1980, Mexican real GDP per person almost doubled. By comparison, in the past 20 years it has grown by just 18.6 percent, which is about half of the rate of growth achieved by the rest of Latin America.
- Mexico's poverty rate of 52.3 percent in 2012 is almost identical to the poverty rate of 1994. As a result, there were 14.3 million more Mexicans living below the poverty line as of 2012 than in 1994.
- According to statistics from the Economic Commission for Latin America and the Caribbean (ECLAC), the rest of Latin America saw a drop in poverty that was more than two and a half times greater than that of Mexico: 20 percentage points (from 46 to 26 percent) for the rest of Latin America, versus 8 percentage points (from 45.1 to 37.1 percent) for Mexico.
- Unemployment in Mexico is 5.0 percent today, as compared to an average of 3.1 percent for 1990-1994 and a low of 2.2 percent in 2000.

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<sup>41</sup> Weisbrot, M., Lefebvre, S., & Sammut, J. for the Center for Economic and Policy Research. (February 2014). ¿El TLCAN ayudó a México? Una valoración tras 20 años. Retrieved from <http://www.cepr.net/documents/NAFTA-20-years-2014-02-ESPA%C3%91OL.pdf>.

- From 1991-2007, there were 4.9 million Mexican family farmers displaced, while seasonal labor in agro-export industries increased by about 3 million. This meant a net loss of 1.9 million jobs.

To a certain extent, these economic policies create absent States for many sectors of society that cannot exercise their most basic human rights, whereas the State is present to guarantee benefits for a miniscule portion of the population and other external actors. This happens when employment, social services, child protection, rural economies, and family networks in the community, among other factors, are eroded, jeopardized and undermined by other interests. Consequently, as signaled by Márquez Covarrubias and Delgado Wise, “social safety nets for healthcare, education, housing, employment, food, and public services—such as providing potable water, garbage collection, the construction of infrastructure, and public transport—are being dismantled by the State, either all at once or little by little, in order to cede these assets to private capital and, in turn, quench their thirst for profit.”<sup>42</sup>

Mexican salaries did not rise to meet the level of salaries in the United States. At the same time, Mexican producers were undermined by the invasion of cheaper foreign products. Financial relief was not offered in the terms of the trade agreement, or by the Mexican government; rather, it arrived in the form of remittances sent by family members who have migrated to the United States, precisely because of the structural factors that were compounded by NAFTA.

As mentioned earlier, among NAFTA’s ramifications was an increase in undocumented migration from Mexico to the United States in the years following its ratification. In this sense, “judging from the results, Mexico ended up exporting not only more goods, but also more people. In 1990, a few years before NAFTA’s ratification, it was estimated that there were around 4.4 Mexican-born persons in the United States. In 2011, that number was over 11.7 million . . . there was increase of over 150% in just over two decades . . . the promise of reducing migration has not been met.”<sup>43</sup>

It has been affirmed that if NAFTA had successfully reestablished Mexico’s growth rate to pre-1980 levels, it would today be a relatively high-income country. That would have significantly changed the landscape of migration in the region, as relatively few Mexicans would have tried to cross into the United States.

Children and adolescents have been affected in many ways by the exponential growth of migration over the past two decades. This is due, on the one hand, to the growing number of young and adult Mexican migrants who leave their children behind in their country of origin; and, on the other hand, to the increase in Mexican children and adolescents migrating to the United States in recent years due to family reunification, a deprivation of rights and opportunities, and the many forms of increasing violence they face.

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<sup>42</sup> Márquez Covarrubias, H. and Delgado Wise, R. (2011). Una perspectiva del sur sobre capital global, migración forzada y desarrollo alternativo. *Migración y Desarrollo*, 9(16), 18. Retrieved from <http://redalyc.org/articulo.oa?id=66021591001>.

<sup>43</sup> Esquivel, G. (December 2014). El TLCAN: 20 años de claroscuros. *Foreign Affairs Latinoamérica*, 14 (2). Retrieved from <http://revistafal.com/el-tlcan-20-anos-de-claroscuros-2/>.

Analyses of the Northern Triangle of Central America since the ratification of CAFTA-DR demonstrate a similar panorama to Mexico's. There have been negative effects on employment, the loss of rights to land and human development for *campesino* and indigenous communities, and the growing lack of opportunities. Within this context, there are two parallel, interrelated phenomena: a notable increase in violence against children and adolescents; and the increase in both adults and increasingly children and adolescents migrating north.

A few years ago it was deemed that, among the multiple effects of CAFTA-DR was the infringement upon and precariousness of labor rights—especially those of women—as a result of the growth and diversification of the *maquila* system.<sup>44</sup> More recently, it was noted that CAFTA has exacerbated the inequality and social exclusion in the region stemming from earlier neoliberal economic policies, creating a situation in which *campesinos* can no longer compete with subsidized prices from the United States. Within this context, adolescents and young people are more likely to identify joining gangs as a survival strategy.<sup>45</sup>

In order to complement these initiatives, a regional integration plan named the Puebla-Panama Plan (PPP) began in 2001 with the goal of “improving the quality of life of the inhabitants of south-southwest Mexico and Central America.” Its main initiatives are divided among: (1) human development; and (2) economic development and competitiveness. Notwithstanding its stated objectives, the main criticism of this process since its inception has been that its true goal is to meet certain economic, trade, and foreign investment objectives that favor the few key actors already benefiting from free trade agreements, with the support of megaprojects and other initiatives.<sup>46</sup> The rest of the population is left behind.

With the signing of the Villahermosa Declaration in 2008, the PPP was replaced by the Mesoamerican Integration and Development Project.<sup>47</sup> This document establishes certain social programs and objectives for regional integration. It contains three key elements worth highlighting: support for free trade agreements and the need and will to strengthen them; the rhetorical call to address migration and its causes, and ensure the rights of migrants; and, finally, the relationship between this process and regional initiatives on public security, regional security, and anti-organized crime initiatives.<sup>48</sup>

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<sup>44</sup> Centro de Derechos de Mujeres (CDM) y Coalición Hondureña de Acción Ciudadana (CHAAC). (July 2009). Impacto del libre comercio en los derechos laborales de las obreras de la maquila textil en Honduras. Retrieved from [http://derechosdelamujer.org/tl\\_files/documentos/maquila/doc\\_maquila\\_2.pdf](http://derechosdelamujer.org/tl_files/documentos/maquila/doc_maquila_2.pdf).

<sup>45</sup> Abrego, L. (August 2014). Intervention and Displacement, How U.S. involvement in Central America pushes children and families to migrate. Retrieved from <http://stanfordpress.typepad.com/blog/2014/08/migration-from-central-america.html>.

<sup>46</sup> Sandoval Palacios, J. M., Álvarez de Flores, R., y Fernández Moreno, S. Y. (Coord.). (November 2011). Planes geoestratégicos, desplazamientos y migraciones forzadas en el área del proyecto de desarrollo e integración de Mesoamérica (from now on “Planes geoestratégicos”). Retrieved from [http://www.academia.edu/7454005/PLANES\\_GEOESTRAT%C3%89GICOS\\_DESPLAZAMIENTOS\\_Y\\_MIGRACIONES\\_FORZADAS\\_EN\\_EL\\_%C3%81REA\\_DEL\\_PROYECTO\\_DE\\_DESARROLLO\\_E\\_INTEGRACI%C3%93N\\_DE\\_MESOAM%C3%89RICA](http://www.academia.edu/7454005/PLANES_GEOESTRAT%C3%89GICOS_DESPLAZAMIENTOS_Y_MIGRACIONES_FORZADAS_EN_EL_%C3%81REA_DEL_PROYECTO_DE_DESARROLLO_E_INTEGRACI%C3%93N_DE_MESOAM%C3%89RICA).

<sup>47</sup> Declaración de Villa Hermosa. (June 2008). Retrieved from <http://www10.iadb.org/intal/intalcdi/PE/2008/01647.pdf>.

<sup>48</sup> Sandoval, Planes geoestratégicos.

In large part, the Declaration's most salient points on migration issues—the recognition of its causes and respect for rights, the promotion of orderly and safe migration, and the fight against human trafficking and sexual slavery—demonstrate a focus and priorities in line with those seen in our analysis of the RCM. That is, an approach centered on the regulation of migration by means of border controls and controls within transit countries; the identification of human trafficking and sexual slavery as the only risk associated with migration; and the link between migration and security, not from a personal security perspective (before, during, and after migration), but from a myopic public security perspective that seeks to protect the interests and privilege of certain social, political, and economic actors. A review of some regional security initiatives follows.

### *B. Regional security agreements*

As we have seen, migration agreements and trade agreements are not geared toward guaranteeing the rights and dignity of the population, particularly children and adolescents. A series of bilateral and regional security initiatives have contributed to compounding this situation. The rights, lives, and physical integrity of children and adolescents are increasingly at risk in their countries of origin. Similarly, migrant children and adolescents are increasingly vulnerable while in transit or following their return. Most countries in the region have recognized a link between migration and national security for several decades. This has been increasingly accompanied by regional security initiatives that associate human mobility in the region with a series of crimes, such as terrorism, drug trafficking, money laundering, and human trafficking.

Various experts have highlighted how the September 11, 2001 attacks have given impetus to this growing trend.<sup>49</sup> Campos underscores that “the terrorist acts of September 2001 determined the definition of a border security policy in the United States that has influenced its relationship with Mexico, particularly because of the increase of security measures along main border crossings. There have been three fundamental proposals: the Partnership for Prosperity Initiative (2002); Security and Prosperity Partnership of North America (SPP) (2005); and the Merida Initiative (2007).”<sup>50</sup>

The United States has promoted a series of regional (Organization of American States or OAS) and subregional (North America and Central America) initiatives that increasingly associate migration with an array of security problems. Among them is the March 2002 bilateral smart border agreement between Mexico and the United States. There is also a smart border agreement

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<sup>49</sup> See Artola, J. (2006). Las relaciones entre migración y seguridad y su impacto en los flujos migratorios en México. In González Gutiérrez, C. (Coord.). *Relaciones Estado-diáspora: la perspectiva de América Latina y el Caribe, Tomo II*, pp. 191-213. Mexico City: Porrúa. Retrieved from [http://estudiosdeldesarrollo.net/coleccion\\_america\\_latina/relaciones-estado2/RelacionesEstado2\\_6lasrelaciones.pdf](http://estudiosdeldesarrollo.net/coleccion_america_latina/relaciones-estado2/RelacionesEstado2_6lasrelaciones.pdf). See also Benitez Manaut, R. (2011). México, Centroamérica y Estados Unidos: migración y seguridad (from now on “México, Centroamérica y Estados Unidos”). In Amigjo Canto, N. (Ed.), *Migración y seguridad: nuevo desafío en México* (pp. 172-92). Mexico City: Colectivo de Análisis de la Seguridad con Democracia A.C. Retrieved from <http://www.seguridadcondemocracia.org/mys/cap10.pdf>.

<sup>50</sup> Ramos, J. M. (March 2011). Gestión de la seguridad en la frontera norte e Iniciativa Mérida: antecedentes y desafíos, p. 81. In Amigjo Canto, N. (Ed.), *Migración y seguridad: nuevo desafío en México* (pp. 73-90). Mexico City: Colectivo de Análisis de la Seguridad con Democracia A.C. Retrieved from <http://www.seguridadcondemocracia.org/mys/cap4.pdf>.



between the United States and Canada. Additionally, the presidents of Mexico, Canada, and the United States signed the Security and Prosperity Partnership for North America (SPP) in 2005.

Since 2001, the link between migration and regional security has been reaffirmed and strengthened by these and other initiatives. Some are directly geared toward reinforcing border controls, especially the Mexico-United States and Mexico-Guatemala borders, as well as internal migration controls. Recently, some agreements between governments have consisted of increasing the militarization of borders in Mesoamerica—as described in chapters 2 and 6 on Honduras and the southern border of Mexico—with the economic support of the United States.

Other bilateral and regional policies for combatting transnational crimes have also contributed to reinforcing migration controls. These policies have generated at least three effects that have become more and more entrenched: (1) the legal and institutional formalization—especially in Mexico and the United States—of migration policy as a national and regional security issue; (2) the criminalization of irregular migration and its incorrect association with a series of serious crimes, rather than with its multidimensional structural causes; and (3) the combination of these security initiatives at the national, bilateral, and regional level, which has compounded the conditions leading thousands of children and adolescents to migrate every year, and heightened their vulnerability during migration.

The Merida Initiative, ratified in 2008, is one of the main examples of regional cooperation that links security, international crime, and migration. The initiative is an international cooperation and assistance framework designed to fight drug trafficking, transnational organized crime, and money laundering. As Benítez Manaut describes, this initiative has four strategic objectives: (1) strengthening all of the institutions that comprise the Mexican State’s security apparatus (armed forces, Federal Police, intelligence agencies); (2) using technology to reinforce controls along the Mexico-U.S. border; (3) improving the capacity of criminal justice systems; and (4) monitoring the activities of gangs associated with drug trafficking.<sup>51</sup>

As stated by Caballeros, the Merida Initiative constitutes the cornerstone of the previous and current U.S. administrations’ strategic security policies toward Mexico and Central America. Characterized as a new regional security paradigm, the Merida Initiative “manifests the strategic relationship between drug trafficking, organized crime, and human trafficking in a context defined by the closing of the border, the construction of walls along the border, xenophobia, and persecution along the length of the south-north migration corridor (Central America and Mexico).”<sup>52</sup>

In 2007, the United States Senate Foreign Relations Committee published a report on the Merida Initiative entitled “Guns, Drugs and Friends.”<sup>53</sup> The report explicitly addresses the violence and lack of opportunities facing Central American children and adolescents. The report uses the

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<sup>51</sup> Benítez Manaut, *México, Centroamérica y Estados Unidos*, p. 189.

<sup>52</sup> Caballeros, A. (June 2009). *Migración y seguridad: una relación perversa* (from now on “*Migración y seguridad*”). *Serie Insyde en la Sociedad Civil*, 17. Retrieved from <http://torresllamas.com/insyde/wp-content/uploads/2013/08/17.pdf>.

<sup>53</sup> United States Senate, Foreign Relations Committee, *The Merida Initiative: “Guns, Drugs and Friends”: A Report to Members of the Committee on Foreign Relations*, S. Doc. No. 110-35 (1st Sess. 2007). Retrieved from <http://www.gpo.gov/fdsys/pkg/CPRT-110SPRT39644/pdf/CPRT-110SPRT39644.pdf>.

example of Guatemalan children as young as 8 years old involved in gang activities. These children are described as “at risk youth.”<sup>54</sup>

Since 2010, Central American security initiatives derived from the Merida Initiative have fallen under a separate plan known as the Central American Regional Security Initiative (CARSI). Much like the Merida Initiative, the objective of CARSI is to stop the flow of drugs, guns, and money generated by drug trafficking, and to combat gangs and other criminal groups. According to the U.S. Department of State, CARSI’s objective is to “create a more secure region where criminal organizations no longer have the power to destabilize governments or threaten public security, and to stop the flow of illegal drugs, transnational violence, and threats between countries in the region and the United States.”<sup>55</sup>

Since 2008, the United States has provided approximately \$803.6 million to Central America within the framework of CARSI.<sup>56</sup> According to the Department of State, these funds are used to provide “assistance to public security forces to confront drug and weapons trafficking, gangs, organized crime, and security vulnerabilities along borders, as well as to dismantle criminal infrastructure.”<sup>57</sup>

Without a doubt, these initiatives have had limited results. Information collected and analyzed in chapters 2-4 of this report on Honduras, Guatemala, and El Salvador provides ample evidence of this. In addition to security-related limitations, these initiatives have had a negative impact on the general population due to increased militarization in countries, communities, and neighborhoods of origin, and along migration routes. This is not only due to the lack of a comprehensive framework; indeed, some security forces have been found to participate in organized criminal networks and, in the case of Honduras, as responsible for institutional violence that especially impacts vulnerable children and adolescents.

This situation should be viewed together with what was previously stated regarding free trade agreements and other national policies that affect quality of life. In this context, as emphasized by Abrego (2014), the combined implementation of CAFTA-DR and CARSI has resulted in more adolescents and young people viewing gangs as their only option for survival. As such, migration becomes even more appealing, both for adults and, increasingly, children and adolescents.

The levels of violence, social exclusion, and vulnerability of children and adolescents are exacerbated when militarized security forces are employed to contain violence within communities. In these cases, communities become literal battlegrounds for wars between criminal

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<sup>54</sup> United States Senate, Foreign Relations Committee, *The Merida Initiative: “Guns, Drugs and Friends”: A Report to Members of the Committee on Foreign Relations*, S. Doc. No. 110-35 (1st Sess. 2007). Retrieved from <http://www.gpo.gov/fdsys/pkg/CPRT-110SPRT39644/pdf/CPRT-110SPRT39644.pdf>.

<sup>55</sup> See United States Department of State. (2011, March 14). *Regional Initiative for Security in Central America (CARSI): A Solidarity Alliance*. Retrieved from <http://www.state.gov/documents/organization/179055.pdf>.

<sup>56</sup> Eguizábal, C. (2014, October). *La Iniciativa Regional de Seguridad para América Central: Pieza clave de la asistencia de Estados Unidos a El Salvador en materia de seguridad, pero no la única*. Retrieved from [http://www.wilsoncenter.org/publication/CARSI-El\\_Salvador\\_Cristina\\_Eguizabal](http://www.wilsoncenter.org/publication/CARSI-El_Salvador_Cristina_Eguizabal).

<sup>57</sup> See United States Department of State. (2011, March 14). *Regional Initiative for Security in Central America (CARSI): A Solidarity Alliance*. Retrieved from <http://www.state.gov/documents/organization/179055.pdf>.

groups and security forces. In this sense, security agreements that formalize or strengthen police or military presence within these countries contribute to the growing spiral of violence.

Rather than provide protection to local populations, regional security agreements are geared toward consolidating or widening existing social inequalities in each country and the asymmetries between them; preventing or containing responses to this situation, such as migration in search of opportunities or in flight of violence; and protecting foreign investment or other related economic and political interests. These security treaties and agreements do not take into account the complex and fragile nature of the societies in which they are implemented. As such, they can aggravate the growing violence rather than resolve its underlying causes.

Similarly, these initiatives have pushed children and adolescents to use increasingly dangerous migration routes and pay higher costs (monetary and human). For example, Central American migrants, who could once cross the relatively safe border into Chiapas, Mexico, have been pushed by anti-narcotics patrols to more dangerous routes, such as northern Chiapas, Tabasco, and Campeche. Human rights violations against migrants and the vulnerability of migrant children and adolescents have increased as a consequence of the heightened focus on security and border control.

More migration control results in considerably heightened risks. The relationship between increased migration controls and accidents, abuse, and vulnerability to crimes committed by third parties (especially in Mexico) has been stated repeatedly. Discourse that criminalizes migration and migrants makes them targets for individuals and institutions that view them as devoid of rights in a context of impunity, anonymity, and the absence of mechanisms for accessing justice.<sup>58</sup> This is in large part legitimated by erroneous and narrow-sighted national, bilateral, and regional policies that link migration and insecurity, and deprive migrant children and adolescents of their basic rights.

## **V. Final reflections**

In this chapter, we have examined different agreements between countries in the region—both multilateral and bilateral—that are related to or impact migration, both directly and indirectly. The common factor between them is the regrettable lack of attention to the well-being and needs of migrant children and adolescents, as well as other groups of children affected by migration, from a human rights perspective. The absence of serious and firm commitments reveals the persistence of many obstacles—tied to economic and security (and therefore political) factors—that remain in States in the region.

The remaining chapters of this book provide ample evidence of the deficiencies at the local and national levels in terms of the human rights of migrant children, including non-compliance with agreements that provide basic requirements for their repatriation. That is, not only do these initiatives lack key human rights standards and concrete mechanisms for their effective protection, but also their implementation reveals that even logistical guidelines for the return of children and adolescents are not respected.

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<sup>58</sup> Caballeros, *Migración y seguridad*.

These failures at the national level have been complemented by the impact of bilateral and regional initiatives. The agreements and plans promoted by countries in the region are weak and incomplete in terms of the rights of children and adolescents, and, in some cases, contradict the national and international human rights obligations of countries. Bilateral and regional agreements between countries in Central America and North America fail to sufficiently and adequately protect, respect, and guarantee the rights of migrant children and other groups of children affected by migration.

Recent migration initiatives signed within the framework of the RCM have placed more attention on issues related to children, particularly those who are unaccompanied. However, they leave out other groups of children and adolescents affected by migration. These initiatives are also not primarily geared toward guaranteeing the protection of these children and adolescents and ensuring their rights in the short and long term.

When general migration agreements address migrant children, these references are merely superficial. The presence of children and adolescents in their language is simply incidental, as are additions related to their families. Furthermore, regional guidelines and bilateral agreements that do refer exclusively to unaccompanied children and adolescents are limited to addressing practical and logistical issues related to repatriation.

Many agreements and directives have increasingly included specific human rights language, such as the rights of children. However, this has been mostly rhetorical. Operational guidelines are almost exclusively focused on repatriation. An adequate human rights focus would lead to a different type of procedure. This would include, for example, the determination of the best interests of the child and procedural guidelines (guardianship, legal assistance, etc.) to be followed in each proceeding (migration, asylum, child protection) in which the rights of children are in question.

Another series of agreements signed by various Mexican consulates and child welfare agencies in the United States include a more ample approach for protecting the well-being of Mexican children. However, fundamental limitations of the MOU between the United States and Mexico, as well as migration policy priorities in both countries, constitute a serious obstacle for more comprehensive local agreements becoming adequate and effective tools for protecting the rights of migrant children and adolescents.

Regional trade agreements and a more ample regional economic agenda have exacerbated this situation. They do not take into account the social, political, and economic contexts of the communities in which they are implemented, or their impacts on the lives of children and families in the short and long term. To the contrary, the implementation of the global neoliberal model has done nothing but increase disparities between countries. In effect, agreements such as NAFTA, CAFTA-DR, and the SPP contribute to the vulnerability that underlies migration in the region, including the growing number of migrant children and adolescents.

The expanding and varying forms of violence in these countries can be explained by the worsening of living conditions, increased corruption, instability, weak democratic institutions, a lack of transparency and responsibility, and serious limitations in access to justice for victims of crimes and human rights violations.

Bilateral and regional security agreements and initiatives (national, regional, and hemispheric) have contributed considerably to a context in which migrants (adults, children, families) are increasingly victims to violence and threats. Regional security initiatives and security-based migration policies are among the factors impacting the vulnerability of migrants, reducing channels for regular migration, strengthening border controls—including militarization—and reinforcing regional criminal networks.

In addition to compounding the factors that cause migration in the region, these bilateral and regional initiatives have increased the vulnerability of migrants—particularly children—fleeing their countries under harsh conditions. Dialogues and agreements within and between these countries regarding migration, especially that of children and adolescents, have a long way to go to address crucial issues, such as structural causes and guaranteeing human rights.

While governments and other actors have recently expressed increasing worry over the growing number of migrant children and adolescents and their vulnerability, these declarations have not resulted in any concrete measures to comprehensively guarantee their rights. To the contrary, some agreements have strengthened migration control mechanisms, which, as we see throughout this study, exacerbate the vulnerability of children and adolescents and can contribute to the increasing risks and violence in countries of origin and in transit. Additionally, the serious limitations of these national, bilateral, and regional agreements are demonstrated by their prioritization of repatriation as a simplistic solution to this complex, multidimensional, structural, and, no doubt, regional phenomenon.

*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>.*