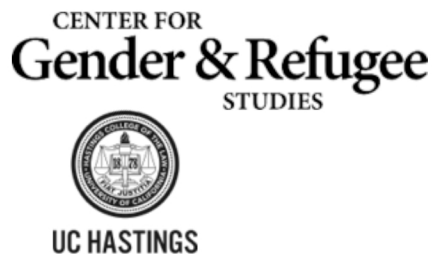


# Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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## Executive Summary

### **I. Introduction**

Migration affects millions of children and adolescents worldwide. Over the past decade, international bodies and agencies, governments, and civil society groups have increasingly engaged in dialogue on children and adolescents affected by migration—either their own or that of their parents. These entities have noted the importance and complexity of the phenomenon, as well as the range of problems these children and adolescents confront. They conclude that there is an urgent need to understand this phenomenon—in particular in those regions or corridors with the highest rates of child migration. One such region is the Central America–Mexico–United States migration corridor that has seen a nearly tenfold growth in child migration in recent years.

With the support of a generous grant from the John D. and Catherine T. MacArthur Foundation supplemented by the Ford Foundation, the current book analyzes the conditions for children and adolescents in Central and North America who are affected by migration throughout every stage of the process, including in their countries of origin, during transit, in destination countries, and following repatriation. It concludes by proposing short-, medium-, and long-term regional, bilateral, national, and local solutions grounded in human rights—including the right to human development, humanitarian principles, and international refugee law.

*Human Rights, Children, and Migration* results from a two-year, multi-partner, multi-national and regional investigation into the treatment of Honduran, Salvadoran, Guatemalan, Mexican, and United States citizen and permanent resident children affected by migration. The book illuminates the overall gaps in protection and in guaranteeing rights for children and adolescents affected by migration. It examines the root causes of children and family migration in the region and its recent spike, and explores whether conditions and policies in children’s countries of origin, transit countries, and destination countries in the region protect their best interests and ensure their rights. It also assesses whether host or destination countries effectively integrate children and adolescents affected by migration, and whether existing programs ensure—on a case-by-case basis—safe and sustainable reintegration of repatriated children and adolescents. Interviews with children and adolescents, parents, and key social and political actors in the five countries studied, combined with the experience of experts working with migrant children and adolescents on a range of issues, form the basis of the book’s findings and recommendations.

This study was directed by the Center for Gender and Refugee Studies at the University of California Hastings College of the Law (CGRS) and the Migration and Asylum Program, Center for Justice and Human Rights at the National University of Lanús, Argentina (CDHUNLa) in partnership with Casa Alianza (Honduras), la Universidad Centroamericana “José Simeón Cañas” (El Salvador); Pastoral de la Movilidad Humana and Asociación Pop No’j (Guatemala); Centro de Derechos Humanos Fray Matías de Córdova and the Programa de Defensa e Incidencia Binacional—including Casas YMCA de Menores Migrantes and Coalición Pro-Defensa del Migrante, A.C. (Mexico); Kids in Need of Defense (KIND) and the Women’s Refugee Commission (USA).

## **II. General findings**

Children and adolescents affected by migration in Central and North America represent an urgent human rights, human development, refugee, and humanitarian challenge. The crux of the problem lies in the sending countries of Honduras, El Salvador, Guatemala, and Mexico where childhood has become synonymous with witnessing or suffering violence; experiencing human rights violations and discrimination on various grounds; suffering from social exclusion; and being deprived of education, employment opportunities, medical services, and even food. These conditions force children and/or their parents to migrate. The challenges continue during transit, especially in Mexico—with governmental actors and criminal syndicates preying on children and families by raping, kidnapping, extorting, or beating them, and with the governmental institutions enforcing migration control policies that are designed to punish and deter migration rather than to protect children and respect their human rights.

The problem endures in the destination countries of Mexico and the United States, where policies focused on migration enforcement take priority over children's best interests and rights, resulting all too often in children and adolescents being repatriated to the very conditions they fled. It also persists in Mexico and the United States for migrant children and children in mixed status families who live in the shadows and on the margins of society, fearing their own or their family members' deportation. Rather than being able to pursue their right to develop, learn, and grow, these children lack access to education, health care and other vital services, and they often land in exploitative labor conditions. Children's rights to family and development are violated when undocumented parents cannot obtain residency status based on having children in regular migration status; are not entitled to work or to other basic rights; and can be deported without consideration of a child's best interests. Finally, the violation of rights comes full circle in children's countries of origin following their return, because the key root causes that forced them to migrate from Central America and Mexico—violence, social exclusion, poverty, and separation from family—remain unchanged.

This complex and multi-faceted human dilemma requires urgent attention and a fundamental paradigm shift. It will only be solved when conditions in children's countries of origin do not force them or their parents to migrate, when increased options exist for children and families to migrate through regular channels, and when policies at the regional, national, and local levels adhere to rights-based principles with the best interests of the child as a core standard and guaranteed access to international protection. Truly resolving this human dilemma may take years, but efforts must begin now.

## **III. Findings by country**

The order of the findings follows the migration route that the majority of children and adolescents take in the Central America–Mexico–United States corridor, traveling from south to north, although some children migrate from south to south (e.g. Northern Triangle countries to Nicaragua, Costa Rica, or Panama). Findings regarding countries of origin focus on the root causes of migration—including rights violations experienced by children left behind by parents who migrate; the role of States in protecting children's welfare and rights before and during migration (through consular officials); and the existence or lack of state-sponsored programs enabling

repatriated children to remain safely in their countries. Multiple intertwined factors drive the migration of children and families from Central America to Mexico. We focus here on the chief factors. Findings concerning Mexico and the United States examine the policies and procedures that affect the rights of children and adolescents in the context of migration—including migrant children and adolescents, as well as children born in those countries.

## *A. Honduras*

### *1. Root causes*

Violence and the threat of violence, deprivation of fundamental human rights—in particular the right to develop—and the right to reunite with family members are the three main factors that propel Honduran children and adolescents to travel north.

Sixty five percent of the 200 Honduran children and adolescents interviewed for this study indicated that violence was the main reason they decided to migrate. Honduran children and adolescents suffer multiple forms of violence perpetrated by numerous different actors in society. They frequently witness violence and murder. Honduras had the world's highest murder rate for a non-war zone in 2013 with 79 homicides per 100,000 inhabitants. In 2013, murder claimed the lives of 187 out of every 100,000 residents in San Pedro Sula, the murder capital of the world.

Children and adolescents primarily flee two types of violence: violence perpetrated by organized criminal syndicates and violence experienced in the home. Gangs and other organized criminal syndicates threaten, stalk, beat, rape, dismember, and murder Honduran children and adolescents with impunity and threaten to harm their families. Rampant intrafamilial violence, including child abuse and incest, as well as widespread gender-based violence, drive many Honduran children and adolescents to run for their lives, and help explain the increase in the number of girls migrating alone. Between 2005 and 2012 there was a massive (246%) increase in the number of femicides or feminicides (both terms are used to define gender-motivated killings of women) of Honduran women and girls, many of whose bodies showed signs of sexual abuse or mutilation. In addition, 9,881 Hondurans under the age of 23 have been murdered since 1998; 767 of them were killed between January 28 and October 31, 2014 alone. This violence occurs in a context in which extrajudicial killings of children and adolescents have become commonplace and children's lives have little value.

Honduran children and adolescents regularly endure deprivation of the very right to survival and of other internationally recognized human rights, in particular the right to develop. Six thousand Honduran children and adolescents live on the streets without any access to services; many of them have taken to the streets to escape violence in the home. Whether homeless or not, lack of access to education, food, health care, job opportunities, and protection from discrimination, compels many Honduran children and adolescents to migrate in order to survive.

Thousands of Honduran children and adolescents have also been left behind by parents who have departed for Mexico or the United States. Typically, extended family members provide informal care for children in this situation, but no one has legal responsibility for them. Without parents to protect and support them, and in the context of either failed or inefficient public social policies,

these especially vulnerable children and adolescents are targeted by gangs. Caregivers themselves may also abuse or neglect them. Despite the dangers involved, children and adolescents will often choose to migrate rather than remain in circumstances of such great vulnerability.

## 2. *Role of the State*

Although Honduras has enacted progressive laws regarding children's rights and protection from harm, in practice the State fails to enforce these laws and to protect its children and adolescents from violence. The Honduran Institute for Children and Family (*Instituto Hondureño de la Niñez y la Familia* or IHNFA), the national child welfare agency, has a weak infrastructure (exacerbated by the fact that it is underfunded) and enforcement powers, and fails to adequately respond when children and adolescents have been subjected to violence and deprivation of fundamental rights. Moreover, in the majority of cases, the criminal justice system does not prosecute cases of intrafamilial and gender-based violence. The absence or failure of social policies aimed at guaranteeing social rights, such as employment opportunities, deepen root causes of migration of both children and families, as well as parents who migrate and leave their children behind.

At the same time Honduran military officials—with training and support from the United States—have begun stopping children and adolescents from attempting to emigrate, regardless of their reason(s) for leaving. Their actions have trapped children in dangerous and harmful situations without any hope of meaningful State intervention. As of October 31, 2014, Honduran military officials had stopped 135 Honduran children and adolescents from leaving the country.

Honduran consular officials also fail to secure the rights of Honduran children and adolescents in transit and destination countries, contrary to the mandates in the Vienna Convention and the Migrant Workers Convention—which require consular officials to defend the rights of their nationals and to ensure special protections for unaccompanied migrant children and children born to migrant parents. The consulate typically sticks to the traditional, unsubstantial role of preparing travel and identity documents for unaccompanied children and adolescents, but does not tend to analyze whether repatriation would be safe or in their best interests. As neither Mexico nor the United States implements a best interests standard in making repatriation decisions, Honduran migrant children and adolescents are detained and repatriated from those countries in violation of their human rights.

## 3. *Lack of support for repatriated children and adolescents*

Honduras does not ensure safe repatriation, and currently has no programs in place to enable returned children and adolescents to remain safely in Honduras. Although IHNFA officials interview all children and adolescents repatriated from Mexico and the United States, they do so in settings that lack privacy and therefore do not elicit reliable information. IHNFA officials return repatriated children and adolescents to families without conducting a home study or using any official process to verify that return is safe and in a child's best interests.

At bus stations, immediately following their deportation from Mexico, smugglers approach children and adolescents to offer their services, while sometimes traffickers attempt to coerce them into exploitative circumstances. IHNFA claims it cannot protect children and adolescents in this

situation. Once children and adolescents have been reunified with family members, IHNFA does not check on them or follow up with services to the child or family. There are no job or skills training programs or targeted education programs for these children.

IHNFA returns children and adolescents repatriated once or twice to their families, but has a policy of placing children and adolescents repatriated a third time in state-run at-risk child shelters. However, no such shelters exist for 12-17 year old boys, the age group which makes up the greatest percent of Honduran migrant children. If these boys leave abusive families, they have nowhere to turn for help.

While root causes remain unaddressed, children are pushed back to the same unsafe environment that they fled. This leads many children and adolescents to migrate again, even though they may face even greater risks than they previously did.

## *B. El Salvador*

### *1. Root causes*

Similar to the case of Honduras, violence and the threat of violence, poverty coupled with deprivation of human rights, and the need to reunify with family members are the three leading reasons Salvadoran children and adolescents leave home.

El Salvador is a highly patriarchal society in which women are subordinate to men; within that context, children are viewed as having even fewer rights. Children are often treated as if they were simply the property of their parents. El Salvador is also one of the most violent countries in the world. Youth, gender, and sexual orientation are factors that increase Salvadorans' vulnerability to violence.

Violence by gangs and organized crime have proliferated in the country, disproportionately victimizing children and adolescents. Intrafamilial violence also pushes children to leave, with 7 out of 10 Salvadoran children and adolescents suffering physical violence in the home. Girls in El Salvador endure frequent sexual abuse, much of it occurring within the home. Additionally, El Salvador has the world's highest rate of femicide/femicide. More than 25% of these killings are of girls under the age of 19.

Within this deeply patriarchal context, children and adolescents confront discrimination and experience habitual deprivation of their right to develop. In particular, children and adolescents do not have access to education, skills training, job opportunities, and health care. Thirty percent of the Salvadoran population live in conditions of poverty. In the context of the widespread poverty that exists in El Salvador, children and adolescents also migrate in order to pursue opportunities for education and employment. They also seek opportunities to survive and thrive in societies not overrun by violence and discrimination against children.

Many Salvadoran children and adolescents have parents who migrated to Mexico or the United States, which leaves them especially vulnerable to abuse, exploitation, and neglect while in the care of extended family members or friends. Some Salvadoran children and adolescents migrate

in order to seek their parents, desiring the care and nurture that is absent in their lives, as well as to escape situations of neglect, abuse, or other harm. In light of the absence of adequate avenues for regular migration based on family reunification, unaccompanied children seeking to reunify with family have no choice but to take dangerous routes, during which they confront multiple dangers and risk being repatriated from the U.S. or Mexico without due consideration of their rights, needs and interests.

## 2. *Role of the State*

Despite El Salvador's progressive laws on both gender and children's rights, the government does not protect its children and adolescents, allowing violent perpetrators to harm them with impunity. El Salvador has been unable to ensure children's right to development and related rights, as well as to prevent the growth or escalation of violence by gangs and organized crime. It also remains either unable or unwilling to protect children and adolescents from intrafamilial violence and gender-based violence. Unlike Honduras, El Salvador's Foreign Ministry recently committed to developing protocols to ensure that consular officials protect and defend the rights of Salvadoran nationals overseas, including their rights as migrants, and will provide nationals with consular assistance. However, budgetary constraints and insufficient training of consular officials have thus far limited the development and implementation of any such protocols.

In addition, little information exists regarding foreign children and adolescents in El Salvador and children born in El Salvador to migrant parents residing in or transiting through El Salvador. Thus, there are no public policies aimed at addressing their needs and rights with respect to health care, education, birth registration, or protection from risks in transit.

## 3. *Repatriation and reintegration*

Children and adolescents repatriated to El Salvador face great challenges reintegrating. Once back in their homes and communities, repatriated Salvadoran children and adolescents often re-experience the violence and rights deprivation that may have caused their initial departure, but lack viable avenues to obtain state protection. Repatriated children and their families often face crushing debts to smugglers from previous migration journeys, which is especially dire for children and adolescents who left in part to escape poverty. As in Honduras, children and adolescents also face significant challenges in returning to school following repatriation.

The National Council for Childhood and Adolescence (*Consejo Nacional de la Niñez y de la Adolescencia* or CONNA) and the Salvadoran Institute for the Comprehensive Development of Children and Adolescents (*Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia* or ISNA) are government agencies tasked with protecting the mental and physical health of El Salvador's children and adolescents. Until recently, however, no one from either agency performed intake interviews with repatriated children and adolescents upon their return to El Salvador. Instead, migration officials, who lack the expertise to adequately meet children's needs and vulnerabilities, would interact with children and adolescents upon their return. These officials did not conduct interviews with the returning child or adolescent alone and automatically placed the children with any family member who arrived to meet them at the bus stop. In July 2014, officials from CONNA assumed responsibility for interviewing repatriated El Salvadoran

children and adolescents. According to advocates, however, CONNA's interviews have focused on dissuading children and adolescents from attempting to migrate again, rather than assessing them for risk—such as past abuse, neglect, or mistreatment—or risk of trafficking in *order to ensure their safety*.

Institutional weakness of state agencies means that the basic health, education, and security needs of returning children and adolescents are not met. CONNA has been largely inactive on the issue of repatriated children and adolescents. The National Council for the Protection and Development of the Migrant Individual and Family (*Consejo Nacional para la Protección y Desarrollo de la Persona Migrante y su Familia* or CONMIGRANTES) was created in 2012 to fill the void left by CONNA's inactivity, but is still relatively new and underfunded. El Salvador lacks programs to assist returning children and adolescents with safe, meaningful, and sustainable reintegration into society, which makes even more problematic the enforcement practices in Mexico and the United States that fail to take into account migrant children's best interests.

Despite its general inactivity, in response to the increase in the number of unaccompanied Salvadoran children and adolescents arriving in the United States, in 2014 CONNA began threatening pecuniary sanctions ranging from \$6,000 to \$12,000 (U.S. dollars) against parents whose children make a subsequent attempt to migrate after having been deported from the United States or Mexico. This policy is driven more by a desire to show goodwill to the United States than to protect the best interest of the child or support the child's reintegration into Salvadoran society. El Salvador lacks programs to assist returning children and adolescents to reintegrate into and remain in society.

### *C. Guatemala*

#### *1. Root causes*

The violation of rights in a context of extreme poverty; ethnic, gender, and other types of discrimination; violence and the threat of violence; and family reunification are the central factors causing children and adolescents to migrate from Guatemala.

Poverty is closely linked to inequality, and Guatemala has one of the highest levels of inequality and poverty in the world. Fifty four percent of the population live in conditions of poverty, and 13% in conditions of extreme poverty. The indigenous population has suffered systematic racism and discrimination, resulting in fewer opportunities for education and employment and greater inequality. The vast majority of children and adolescents who migrate from Guatemala are indigenous; they come from Guatemala's extremely poor regions, often lacking food and access to the most basic medical and other services. Indigenous children and adolescents regularly suffer discrimination and social exclusion. In addition, deeply entrenched discrimination against women and unequal gender relations result in fewer educational and employment opportunities for Guatemalan girls and women. Indigenous girls and women thus suffer from double discrimination. These combined factors of poverty, inequality, and discrimination push children and adolescents out of Guatemala. Some intend to leave permanently, while a significant number of Guatemalan children and adolescents migrate to southern Mexico temporarily in order to work.



High incidences of violence also correlate with increased migration of Guatemalan children and adolescents. In 2010, 49.4% of homicides in Guatemala occurred in the five departments with the highest levels of migration (Guatemala, San Marcos, Huehuetenango, Quetzaltenango, and Jutiapa). Guatemalan children, especially girls, experience high levels of intrafamilial violence, including incest. Between 2003 and 2012, intrafamilial violence grew by more than 500%; the largest proportion of its victims were female. Sexual abuse by family members is common, but it often remains hidden, both because children and adolescents are fearful and ashamed to report it and because they lack confidence that the authorities can protect them. Violence associated with gangs and organized crime has also risen in Guatemala, disproportionately affecting youth. Children and adolescents flee to escape violence in the home or coercion to join violent groups.

Similar to Honduran and Salvadoran children and adolescents, some Guatemalan children and adolescents also migrate in order to reunify with their parents in Mexico and the United States.

## 2. *Role of the State*

The efforts of the Guatemalan State to guarantee basic social rights, justiciability, and the integrity and capacity of public institutions remain weak and limited. Guatemala also lacks a differentiated approach to indigenous migrant children, increasing their vulnerability.

The Guatemalan government must confirm and verify the situation of Guatemalan migrant children in transit and in destination countries in order to guarantee their protection. Consular protection policies are still fragile and lack mechanisms for documenting and monitoring cases of abuse and human rights violations. However, the Ministry of Foreign Relations (*Ministerio de Relaciones Exteriores* or MINEX) is carrying out important and specific efforts concerning child migration, focusing especially on psychosocial needs.

Some public institutions have procedures and guidelines in place for migrant children. However, Guatemala still lacks an inter-institutional protocol to guide the different actions, roles, and competencies of these public institutions. Similarly, with respect to prevention of harms, the Guatemalan government focuses solely on designing and promoting informative campaigns that warn of the dangers and risks faced by migrant children. Guatemala's biggest pending challenge is the development and implementation of short- and long-term rights-based processes for monitoring repatriated children and adolescents.

## 3. *Repatriation*

There is a clear difference between institutional commitment and institutional capacity to address the arrival of unaccompanied children and adolescents repatriated to Guatemala from Mexico or the United States. Both MINEX and the Secretariat of Social Welfare (*Secretaria de Bienestar Social* or SBS) carry out specific actions geared toward increasing the attention and protection provided to migrant children. The Office of the Attorney General is the weakest institution with respect to attention to migrant children. Additionally, public institutions in general lack a mechanism that uses the best interest of the child as the fundamental criterion for making decisions and developing procedural guidelines.

Guatemala faces challenges that must be confronted in the short-, medium-, and long-term. Issues that should be resolved immediately include: the repeated requesting of information from children and adolescents; the lack of interpreters for Mayan languages; provision of emergency psychosocial attention; and reintegration monitoring and follow-up. Solutions should be sustainable in the long-term. During the return process, the utmost priority should be given to the safety and protection of the child, both immediately and in the medium-term. This should be accompanied by measures and policies geared toward guaranteeing access to rights such as education, family life, work opportunities, social assistance, healthcare, psychological care, etc. These measures, as well as the search for and location of appropriate guardians, should be carried out delicately and thoroughly.

Currently, institutions tasked with child protection—with the assistance of other relevant institutions, according to the particularities of each case—do not provide comprehensive monitoring of and follow-up on the reintegration of migrant children and adolescents. It is imperative that they do so. This will require decentralization at the departmental, municipal, and local levels, as well as other measures.

#### *D. Mexico: as a country of origin/sending country*

##### *1. Root causes*

Mexican children and adolescents migrate to the United States to reunify with family members, to seek the opportunity to develop, and increasingly to escape violence and the threat of violence.

Many Mexican children and adolescents live in homes in which one or both parents have migrated to the United States; family separation and disintegration caused by migration motivates many Mexican children to travel to the United States. Deprivation of children's rights to survive and develop because of extreme poverty, as well as a dearth of opportunities to study and work, leads Mexican children and adolescents to leave the country. Indigenous children and adolescents suffer the greatest social exclusion and deprivation of rights.

Violence perpetrated by drug cartels, gangs, and other criminal syndicates causes internal displacement in Mexico as well as the migration of children and adults from Mexico. Drug cartels, gangs, and criminal syndicates have spread throughout the country, and children and adolescents—including migrants from Mexico and Central America crossing the country—have increasingly become their victims. Child abuse, neglect, and abandonment, as well as ingrained, tolerated, and widespread violence against children, and gender-based violence in the home and in the broader society also force Mexican children and adolescents to flee. Mexico had the fifth highest rate of homicide of children and adolescents in the world in 2012.

##### *2. Role of the State*

High levels of impunity and corruption exist in Mexico, particularly for violence by organized criminal syndicates, but also for intrafamilial violence. In addition to failing to protect children and adolescents from different sources of violence, Mexico does not guarantee children the right to develop. It has failed to address the discrimination and social exclusion that indigenous children and adolescents, in particular, experience daily.

Until recently, Mexico's consular policies included very little attention to migrant children's rights. No child-focused program was implemented until the end of 2014, when the Secretary of Foreign Affairs developed a protocol aimed at protecting migrant children's rights in the United States through consular assistance.

### 3. *Repatriation and reintegration of Mexican children and adolescents*

The National Migration Institute (*Instituto Nacional de Migración* or INM) and Mexican consulates have signed numerous bilateral agreements with the United States regarding the repatriation of Mexican nationals. Although the agreements touch on repatriation of "vulnerable migrants," including unaccompanied children and adolescents, they focus on the logistics of return, rather than the protection, welfare, and rights of children and adolescents. Mexican consular officials facilitate the repatriation of Mexican children and adolescents directly from the border, often without investigating the situation to which they will be returned. Mexican consular officials working along the border have recently begun interviewing unaccompanied children and adolescents with the goal of ensuring that they are not returned to danger. While well intentioned, screening by Mexican consular officials cannot relieve the United States of its duty under the Trafficking Victims Protection Reauthorization Act (TVPRA) to screen Mexican children and adolescents for protection needs and other vulnerabilities.

Mexican child welfare officials with the Integral Family Development agency (*Sistema Nacional para el Desarrollo Integral de la Familia* or DIF) take custody of repatriated Mexican children and adolescents and screen them to determine whether they should return to family members. DIF involves social workers and doctors in the determination, but it does not conduct home studies prior to reunifying children and adolescents with family, and it provides no follow-up services to them. Children and adolescents waiting for family members to claim them stay either at state-run shelters or private shelters run by civil society organizations. Family members must show proof of identification in order to take children and adolescents out of the shelters, but no additional screening of adults occurs. Some Mexican children and adolescents leave the shelters "voluntarily," on their own, without any adult claiming them. Some of these children and adolescents attempt to cross the border again, and some become victims of human or drug trafficking rings.

No programs exist to support the sustainable reintegration of children and adolescents into their communities. DIF does not provide job training, financial support, mental health services, or counseling for children and their families.

#### *E. Mexico: as a transit and destination country*

Mexico's laws and policies regarding migrants focus on enforcement rather than human rights and protection needs. These laws and policies apply with equal force to children and adults. With training and support from the United States, Mexico has significantly increased its enforcement efforts along its southern border with Guatemala. Increased enforcement, however, has not deterred migration. If anything, amplified enforcement, particularly in the case of child migrants,

makes children and adolescents even more vulnerable following repatriation and often leads to remigration.

### *1. Detention*

Mexico detains migrants, including unaccompanied children and families, and holds them in migration stations. The country has not implemented the positive reform enacted in 2011 that requires the INM to transfer children to DIF following apprehension. Children and adolescents detained in migration stations lack edible food, have no privacy, are denied access to medical and psychological services, are under constant surveillance, and are detained along with adult non-relatives. Children and adolescents seeking asylum are detained throughout the asylum process—which can take several months—leading many children to abandon their applications out of frustration with their detention. Those who abandon their application risk *refoulement* (return to persecution).

### *2. Lack of due process*

Mexico does not provide migrant children or adolescents with counsel and does not give children any information about their rights. In addition, Mexico does not appoint a guardian or child advocate for unaccompanied children and adolescents. Migration authorities interview children and adolescents and later decide how to handle their cases based on information obtained during the interview; however, children and adolescents have no access to legal proceedings in which to challenge their detention, demand their rights, or seek immigration relief. Without information and an attorney or other adult to help them navigate the system and demand their rights, Central American migrant children suffer regular due process violations in Mexico.

### *3. Lack of access to substantive relief including asylum or humanitarian protection*

Migrants, including children and adolescents, lack access to adequate asylum processes. Migrants must affirmatively request asylum, requiring knowledge on their part that they have the right to seek asylum. Migrant children and adolescents likely lack such knowledge, significantly limiting their access to asylum. Children and adolescents who seek asylum face other challenges as well. Mexico keeps asylum seekers detained throughout the process, deprives them of the opportunity to participate in the process—for example by not allowing them to submit evidence and not informing them of the date of their asylum interview—and provides them with little to no information about the status of their cases. In addition, Mexico approves only about 20% of all asylum applications; it does not maintain separate statistics on the number or percent of children's asylum cases.

### *4. Deportation*

INM deports more than 85% of unaccompanied migrant children and adolescents from Central America. Mexico fails to abide by reforms to its migration law in 2011, including a requirement that Mexico develop a procedure to conduct best interests determinations prior to repatriating migrant children and adolescents. Instead, it responds to migrant children and adolescents

primarily by detaining and deporting them. Initiatives aimed at developing a best interests standard as required by Mexico's migration law have begun, but to date the standard does not exist.

#### 5. *Lack of child-sensitive policies for migrant children and families living in Mexico*

Although an increasing number of Central American children and families have settled in Mexico, most of them in Soconusco, Chiapas, there are no policies in Mexico aimed at ensuring the rights of migrant children and adolescents and children born to migrant parents. Many migrant children and adolescents perform child labor, often in exploitative conditions or as victims of trafficking, yet these children generally cannot access child protection programs and generally do not qualify for residence permits. Instead of protecting these particularly vulnerable children and adolescents, Mexico subjects them to harsh detention and deportation mechanisms.

### F. *United States*

#### 1. *Screening*

Customs and Border Protection (CBP), the migration control agency responsible for screening unaccompanied children, fails to fulfil its duty to identify Mexican unaccompanied children with protection needs. Under federal law, unaccompanied Mexican children must be placed in federal custody in the United States if they are at risk of trafficking or persecution, or if they are unable to make an independent and voluntary decision to return to Mexico. Instead, CBP repatriates nearly all Mexican children and adolescents it apprehends, under the presumption that they are not at risk. CBP does not have a specific, adequate protocol for working with children and adolescents and lacks the training, sensitivity, and child welfare framework essential to interviewing children and adolescents. Additionally, CBP uses expedited removal (summary expulsion) procedures for adults, including adults traveling with their children and adolescents, from Central America and Mexico. These expedited procedures place children and adolescents traveling with their parents at risk of return to persecution or torture, or to situations harmful to their best interests. Despite international and domestic commitments to *non-refoulement*, CBP tends not to interview children separately from their parents to determine if they have an independent claim for international protection.

#### 2. *Detention*

CBP temporarily detains the migrants apprehended at and near the border, including unaccompanied children and families. CBP officers and conditions in CBP holding cells violate children's rights under federal law and international human rights law. Some CBP agents have verbally, physically, or sexually abused children and adolescents. CBP holding facilities deprive children of adequate nutrition, bedding, recreation, and fresh air, and lack basic medical care and psychological services. The holding rooms, essentially jail cells, are often kept at extremely cold temperatures.

CBP transfers unaccompanied children, other than Mexican children designated for immediate repatriation, to the Office of Refugee Resettlement (ORR) for longer-term custody. ORR aspires to protect, not punish, unaccompanied children until they can be reunified with family members,

but falls short of protection in many respects. ORR has moved toward greater institutionalization of children in recent years, both by using larger facilities and by increasing security measures at smaller facilities. In addition, many ORR facilities are located far from legal, medical, and mental health services, impeding detained children's access to services. ORR has significantly expedited the release process of children and adolescents in its custody in order to respond to the increase in unaccompanied children arriving in the United States in recent years. Some children and adolescents are released to adults that ORR does not adequately screen, leaving them vulnerable to abuse and exploitation. Once released, only a small percentage of children and adolescents receive follow-up services to help them adjust to their new life and family in the United States, or to address any prior trauma suffered during migration or in their home countries.

In 2009, the United States closed a large family detention facility in Texas that had been the focal point of lawsuits, advocacy, and critical media—in recognition that detaining families is inhumane. At that time, the United States committed to using alternatives to detention for migrant families apprehended at or near the border. However, in response to the increase in children and families arriving in the United States in the summer of 2014, the United States instead made the regressive decision to return to jailing migrant families once again.

CBP releases some families it apprehends, and transfers others to Immigration and Customs Enforcement (ICE) detention facilities. CBP's process for determining which families to release and which to detain is arbitrary. The decision hinges not on an individual family's circumstances, but rather on the availability of beds in facilities. Children and adolescents held in family detention centers face daily violations of their rights under federal law and detention standards, as well as under international human rights law. Rather than detain families—many of whom have fled violence or other violations of their human rights—the U.S. government should protect them.

### *3. Procedural deficiencies*

The United States has not adopted the best interests of the child standard for migrant children and adolescents; accordingly, procedures in place for migrant children and adolescents are not based on any assessment under that standard. In addition, the United States places migrant children and adolescents in removal proceedings without the right to appointed counsel, in violation of their due process rights. The lack of counsel renders many of children's rights under U.S. immigration law meaningless, as children and adolescents lack the skill, knowledge, and maturity to secure these rights on their own. Additionally, the vast majority of unaccompanied children have no child advocate (or guardian) to advise or support them through the immigration process, contrary to international standards.

### *4. Insufficient forms of immigration relief*

U.S. immigration remedies were not designed for children and adolescents, and existing immigration relief options do not cover all migrant children in need of protection. The United States does not set out a separate standard for children's claims for relief; does not require a child-sensitive analysis of applications for relief; and in the case of asylum and Convention against Torture claims, applies overly restrictive interpretations of the law that are inconsistent with

international norms and interpretations. Most importantly, perhaps, the United States does not offer immigration relief, simply based on the fact that repatriation is not in a child's best interests.

### *5. Family separation*

The United States tears families apart without considering the best interests of the child, in complete contravention of international law. U.S. migration law does not prioritize family reunification, and avenues for regular immigration status for family members of those residing in the United States fall far short of the need for relief. Increased immigration enforcement—through an emphasis on detention and deportation, greater criminalization of immigrants who have committed minor crimes, and use of local law enforcement to administer immigration law—has led to the detention and deportation of many more parents of U.S. citizen children. Once placed in immigration detention or deported, parents lose control of decisions regarding the custody and care of their children and face immense challenges maintaining contact with them. Thousands of U.S. citizen children land in foster care as a result of immigration enforcement actions against their parents. These parents risk termination of their parental rights even though they have not abused, abandoned, or neglected their children.

Although President Obama's November 2014 executive action on immigration will offer legal reprieve to some undocumented parents of U.S. citizens and permanent residents, many individuals will fail to qualify as a result of exclusions under the program. For example, residence requirements, criminal history ineligibility, and travel limitations are projected to exclude millions of individuals who might otherwise qualify. Moreover, as of this writing, it remains to be seen how the executive action will be implemented.

### *6. Deportation, repatriation, and reintegration*

Despite significant advances in U.S. law intended to ensure the safe repatriation and sustainable reintegration of unaccompanied children, the United States continues to repatriate migrant children and adolescents without considering the best interests of the child. The United States has returned some children back to persecution or death, and returns children and adolescents to the very circumstances that compelled them to leave. Following repatriation, the United States provides no support for children's reintegration, despite the great need for medical, mental health, educational, and job training support, as well as the need for basic safety.

A major deficiency in the U.S. repatriation program is its failure to address root causes of migration. Another major problem is the false belief underlying the U.S. repatriation system that deportation deters future migration. Sending children back to desperate conditions does not stop others from coming, nor even stop returned children and adolescents from re-entering the United States. The United States has also not developed a model for repatriating and reintegrating children, although federal law requires it to do so.

### *G. Regional approach*

Although the regional phenomenon of children in the context of migration in Central and North America must be addressed through regional responses, existing bilateral and regional accords

regarding migration in Central and North America fall far short of an adequate response. Existing accords lack a binding rights-based approach, or enforcement mechanisms to ensure compliance. Current accords do not focus on, provide for, or require substantive protection of children's rights. For example, they do not include concrete obligations for transit and destination countries to respect the rights and guarantees of children and adolescents in migration procedures, such as by prohibiting detention, guaranteeing due process, and requiring formal best interests determinations. They also do not require countries of origin to design and implement adequate reintegration policies in coordination with the other countries.

Instead, regional and bilateral agreements regarding migration procedures tend to be logistical in nature, focusing, for example, on the logistics of repatriation. Even these accords, however, are not respected, repatriating children and adolescents in and to very risky circumstances, making them even more vulnerable than they may have been before they migrated. In addition, regional and bilateral security initiatives have exacerbated the vulnerability of migrant children and adolescents. Increased security measures are associated with growing inequality and exclusion of broad sectors of the population in the countries of origin. They have also led to growing militarization of the borders and the reinforcement of migration controls, which has strengthened organized criminal networks, made the journey more dangerous, and resulted in detention and deportation of migrant children and adolescents in need of international protection. Finally, regional and bilateral economic accords contribute directly to the root causes of the migration of Central American and Mexican children. Agreements such as the North American Free Trade Agreement (NAFTA) and the Central America Free Trade Agreement (CAFTA) benefit multinational companies and the U.S. economy generally, at the expense of the economies and communities in Central America and Mexico. The results—unemployment, extreme poverty, and a decaying socioeconomic structure—reinforce and exacerbate the violence and other factors that cause migration.

#### **IV. Overarching recommendations**

##### *Comprehensive regional plan of action*

El Salvador, Guatemala, Honduras, Mexico, and the United States should immediately develop and implement a *Comprehensive Regional Plan on Children, Migration, Human Rights, Refugee Rights, and Human Development* focused on addressing the root causes of migration in sending countries. Civil society organizations and international organizations with expertise in human rights, migration, and refugee protection should participate in creating and evaluating the plan.

##### *Best interests of the child*

National governments throughout the region should review and amend their laws, policies, procedures, and practices to require and ensure that the best interests of the child is a primary consideration in all actions and decisions regarding children and adolescents, including migrant children and adolescents. Local governmental bodies should review and amend their laws, policies, practices, and procedures to reflect this change in national law.



### *Family unity*

Regional and national migration policies should promote family unity. National governments throughout the region, especially Mexico and the United States, should provide avenues for regularizing immigration status based on family ties, time spent in the territory, labor roots or ties, and the best interests of the child.

### *Alternatives to detention*

Children and families should never be detained for reasons of migration status. National governments throughout the region should develop alternatives to detention. Child welfare agencies should take custody of unaccompanied migrant children and adolescents until they can be reunited with family members or until child welfare officials find another appropriate placement.

### *Non-deportation*

Migrant children and adolescents should never be deported; deportation is a punitive measure that comes with future immigration consequences, and children should not be punished for their forced migration. Any child or adolescent being returned to his or her country should be returned through non-punitive measures, such as voluntary return, rather than deportation. More importantly, children and adolescents should only be returned when return is in their best interests. Although migrant children and adolescents may not qualify for immigration relief, repatriation may not be in their best interests. National governments should develop a best interests of the child determination (BID) procedure for all migrant children and adolescents. Migrant children and adolescents should only be repatriated following a BID, conducted by a child-sensitive agency, when the agency finds that repatriation is in their best interests.

### *Cease summary / expedited removal*

Transit and destination states, especially Mexico and the United States, should cease all expedited or summary removal procedures used with unaccompanied migrant children and adolescents and/or migrant families. These proceedings have proven inadequate to identify children in need of protection. Expedited proceedings return children and adolescents to dangerous situations, sometimes in violation of their right to *non-refoulement*. Mexico, the United States, and other transit and destination countries should grant all unaccompanied children and adolescents and migrant families access to full and fair legal proceedings in which they can seek asylum and other forms immigration relief. In order to make proceedings meaningful, Mexico and the United States should ensure that all migrant children and adolescents (unaccompanied or not) have free legal representation and a guardian or child advocate assigned to their cases.

### *Child-sensitive procedures*

Mexico and the United States and other destination countries should issue regulations requiring a child-sensitive analysis of applications for immigration relief filed by migrant children and adolescents.

*Violence prevention*

Countries of origin, working closely with civil society organizations, should design and develop policies to prevent and sanction all forms of violence: gender-based violence, intrafamilial violence including child abuse, violence against children and adolescents in schools and other institutions, and violence against children and adolescents by gangs and other criminal syndicates. Policies should address the many factors which have resulted in weak and ineffective justice systems, and should include strategies to reduce corruption in police, military, and judicial agencies. States should invest in programs to provide youth with alternatives to joining gangs and support for leaving gangs and reintegrating into communities. International organizations—including aid organizations—should support these efforts with a rights-based, comprehensive approach, rather than with a narrow one focused on enforcement and militarization.

*National development plans*

Countries of origin, working closely with civil society organizations, should design national development plans that address migration, human security, and human rights in order to respond to the problem of children and adolescents affected by migration in a holistic manner. Plans should include increasing access to education, developing job skills and training programs, and work opportunities. Plans should also include greater dedicated resources to strengthen child welfare systems. International aid should support these efforts.

*Sustainable reintegration*

Countries of origin, working closely with civil society organizations, and with financial support from the United States and other countries of the region and international organizations, should develop and implement programs to ensure the sustainable reintegration of repatriated migrant children and adolescents. Reintegration programs should address and provide support for social integration, family reintegration and challenges, educational needs, labor-reintegration (if age appropriate), and services such as mental health and medical services.

*Binding regional accord*

El Salvador, Guatemala, Honduras, Mexico, and the United States should develop a binding regional accord on migration to ensure the respect, protection, and rights of migrant children and adolescents and of children of migrants throughout the region.

*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>.*