



THE COST OF STEMMING THE TIDE:

HOW IMMIGRATION ENFORCEMENT PRACTICES IN SOUTHERN MEXICO LIMIT MIGRANT CHILDREN'S ACCESS TO INTERNATIONAL PROTECTION

A PRODUCT OF

GEORGETOWN LAW HUMAN RIGHTS INSTITUTE
FACT-FINDING PROJECT



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GEORGETOWN LAW HUMAN RIGHTS INSTITUTE

Andrew Schoenholtz

Director and Professor from Practice

Michelle Brané

Adjunct Professor of Law

Jennifer Podkul

Adjunct Professor of Law

Ian Kysel

Dash/Muse Fellow, Adjunct Professor of Law

Members of Human Rights Institute Fact-Finding Project:

Andres Echevarria, Noah Gimbel, Lindsey Keiser,
Odile Leonard, Mary Nelson, Aileen Nguyen, Nick Stefaniak
Authors, Editors

Design: Brent Futrell & Emily Eller

Georgetown Law Office of Communications

**Cover Photo: Fresco at Centro de Derechos Humanos Fray
Matías de Córdova A.C., Tapachula, Mexico**

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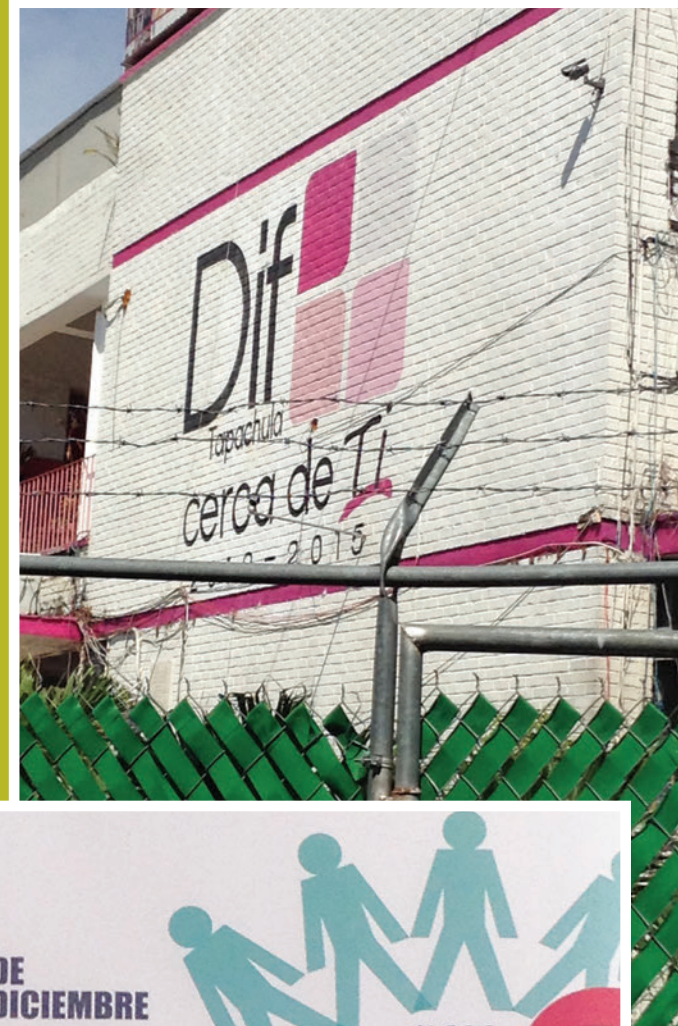
Georgetown University Law Center

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The Cost of Stemming the Tide:

How Immigration Enforcement Practices in Southern Mexico
Limit Migrant Children's Access to International Protection

A Product of the Georgetown Law Human Rights Institute Fact-Finding Project



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Albergue Jesús el Buen Pastor del Pobre y el Migrante	Kids in Need of Defense
Albergue Por la Superación de la Mujer	Lutheran Refugee Service
Albergue Todo por Ellos	Nuestras Raíces
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Centro de Derechos Humanos Fray Matías de Córdova A.C.	United Nations High Commissioner for Refugees
Human Rights Watch	Washington Office on Latin America
International Detention Coalition	Women's Refugee Commission

Most importantly, we would like to thank all of the people, and in particular the migrants, including migrant children and their families, who shared their thoughts, experiences, desires, and fears. It is our hope that this report will result in changes in law and practice in the Americas to ensure that states respect, promote and fulfill the fundamental human rights of all children in harm's way, especially in the context of migration.

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EXECUTIVE SUMMARY

In the summer of 2014, the arrival of Central American children and families traveling from El Salvador, Guatemala, and Honduras (the Northern Triangle countries) at the southern border of the United States became the subject of major media coverage and intense political debate. Over fiscal year 2014, U.S. Customs and Border Patrol apprehended more than 68,000 unaccompanied children, and approximately 69,000 migrants traveling together as families. The Obama administration called the increased migration of children across the U.S.–Mexico border an “urgent humanitarian situation” and took aggressive action to “stem the tide” of unaccompanied minors traveling to the United States.¹

In the fall of 2014, apprehensions of unaccompanied minors and migrant families dropped, and the Obama administration credited increased domestic immigration enforcement measures. Although it garnered less media attention, the administration also credited measures taken outside of the United States for the reduction in migration. For one, the administration pointed to its sponsorship of radio ads in Central America discouraging parents from sending their children to the United States. More importantly, it applauded Mexico’s efforts to interdict Central American migrant children and families at Mexico’s southern border with Guatemala and Belize. With funding, support, and equipment from the United States, Mexico’s detention and deportation of Central American migrants increased from summer to fall, and likely as a result, enforcement numbers in the United States decreased.

The factors causing child migration out of Central America’s Northern Triangle countries are complex. Yet there is broad consensus that increased levels of gang violence, gender-based violence, and deepening poverty cause many children to flee. Two studies released by the United Nations High Commissioner for Refugees (UNHCR) in 2014 found that approximately half of the children fleeing Northern Triangle countries showed signs of a need for international protection. However, despite these humanitarian concerns, the number of applications for asylum and other forms of international protection in Mexico has remained relatively low, even as Mexican immigration officials have massively increased the apprehension and deportation of children. This report documents some of the reasons why so few children apply for and receive international protection in Mexico after they are apprehended and thus sheds new light on the humanitarian consequences of U.S. support for migrant interdiction and enforcement efforts in Mexico and Central America.

¹ Jim Puzzanghera, *U.S. will ‘stem the tide’ of illegal immigration, official says*, LA TIMES, July 6, 2014, <http://www.latimes.com/nation/la-na-deport-kids-20140707-story.html>; Press Release, Department of Homeland Security, Statement by Secretary Johnson About the Situation Along the Southwest Border (Sept. 8, 2014) *available at* <http://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border#> [hereinafter Secretary Johnson].

The report is the product of an investigation of Mexico's compliance with international legal norms in the enforcement of its immigration laws in its southern border region. When Mexican immigration officials apprehend child migrants, they are obligated under international law to: (1) respect children's right to freedom from arbitrary detention; (2) make the best interests of the child the primary consideration in all actions concerning children; and (3) ensure that child migrants in need of asylum or other forms of international protection are identified as such, and receive appropriate care in accessing child-friendly procedures in accordance with international human rights law. Mexico has incorporated these international human rights obligations into several protective laws and regulations. This report examines the degree to which the agencies involved in immigration enforcement are following those laws and regulations and documents a number of violations of the human rights of Central American migrant children.

This report, which was researched and drafted in early 2015 by members of the Georgetown Law Human Rights Institute Fact-Finding Project, is based on interviews with sixty-five individuals, including unaccompanied children, accompanied children and their parents, service providers, members of civil society, and government officials in Tapachula, Chiapas, Mexico, and Guatemala City, Guatemala. Our findings illustrate that migrant children apprehended in southern Mexico, whether unaccompanied or traveling with parents, face significant obstacles that prevent them from accessing international protection. Our findings illustrate the following barriers that children face in accessing international protection in Mexico:

- Children are typically placed in detention after they are apprehended by immigration authorities. These detention practices constitute an arbitrary deprivation of liberty in violation of children's human rights because children are detained for long and unpredictable time periods, and Mexico does not adequately consider alternatives to detention. The detention practices also contravene the principle that states should always consider the best interests of the child as the primary consideration when their actions affect children.
- Although Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility. When Mexican officials repatriate children to their home countries without performing these duties, they run the risk of violating the international human rights obligation of *non-refoulement*.
- Mexican officials often do not inform children of their right to apply for international protection. As a result, non-governmental organizations and UNHCR are left to try to fill the void of informing children of that right. Therefore, it is practically left to chance as to whether or not a child ever learns about her right.
- Children who decide to apply for international protection typically wait in detention for long periods, often in poor conditions, throughout the duration of their asylum proceedings. Excessive length and poor conditions of detention often deter children from applying for international protection.

Based on these conclusions, we have made recommendations to the U.S. government, the Mexican government, international organizations, and NGOs in Mexico. In documenting and analyzing Mexico's immigration practices within a human rights framework, we seek to spur remedial measures to ensure protection of the fundamental rights of migrant children in the Americas.

We recommend:

To the Mexican Government:

Eliminate the possibility of prolonged detention of migrant children. Implement alternatives to detention so that no child's liberty is deprived for immigration-related reasons. End the practice of detaining children in facilities—such as Siglo XXI—designed primarily for adults.

Increase the capacity of the National System for Integral Family Development (*Sistema Nacional para el Desarrollo Integral de la Familia* (DIF)) to expedite the transfer of children from immigration stations to appropriate shelters. Allow children to safely leave DIF shelters to interact with the larger community and attend school.

Increase the capacity of the Mexican Commission for Refugees (*Comisión Mexicana de Ayuda a Refugiados* (COMAR)) to investigate and adjudicate asylum claims by increasing personnel and ensuring age-appropriate procedures to address the vulnerabilities of child migrants.

Ensure sufficient staffing of Child Protection Officers (*Oficiales de Protección de la Infancia* (OPIs)) across Mexico—and particularly in Tapachula, which because of its proximity to the southern border, is likely to have greater numbers of child migrants—to accommodate all migrant children. Improve the training of OPIs to ensure that they can effectively assess children's best interests and screen all children for international protection. Implement a formal Best Interests Determination procedure to ensure that the primary consideration in immigration proceedings is the best interests of the child.

Amend the screening procedures in place in the Immigration Regulations and the new Child Welfare Law to require protection screening for all children, not just unaccompanied children.

Ensure all child migrants apprehended by the Mexican government are informed by Child Protection Officers or another government agent about their right to seek asylum.

Allow NGOs regular access to detention facilities so that they are able to help migrant children by providing information on rights and offering legal representation and advice.

To Mexican Civil Society:

Continue to advocate for increased access to detention facilities in order to better assist child migrants who are detained. Continue to improve legal services available to migrant children in order to help them with asylum claims and appeals.

Collect and disseminate data to supplement the limited data released by COMAR and to provide a more accurate picture of the humanitarian situation on the ground.

Monitor the involvement of U.S. agencies and the investment of U.S. aid in the Mexican immigration enforcement apparatus.

To UNHCR:

Increase funding and resources to the UNHCR field office in southern Mexico, so that it can more effectively monitor Mexico's implementation of the Refugee Convention.

Raise awareness about alternatives to detention and encourage the Mexican government to pursue the implementation of alternatives to immigration detention.

Continue to provide training for Mexican staff and government employees working on migrant issues. Monitor and enhance the effectiveness of COMAR and OPIs, ensuring they are adequately screening for international protection needs. Advocate for improved training for OPIs. Train Mexican immigration officials on the implementation of a child-friendly Best Interests Determination procedure.

To the U.S. Government:

Stop encouraging Mexico and other Central American countries to interdict migrants merely in order to prevent them from reaching U.S. territory. Any funding disbursed for the purpose of fortifying borders in Central America and southern Mexico should be conditioned on the receiving country's consideration of affirmative efforts to protect the rights of migrants, including the right to seek and enjoy asylum or other forms of international protection.

To the extent that the United States continues to fund immigration enforcement in Mexico and Central America, ensure that a substantial proportion of the funds are directed toward screening for and identifying migrants with international protection needs, providing alternatives to detention, and protecting vulnerable populations.

Promote and support Mexico and other Central American countries in their efforts to screen migrants and ensure that those identified as having international protection needs have ready access to a status determination procedure. In particular, the United States should channel funding toward increasing the capacity of COMAR to investigate and adjudicate asylum applications, and toward improving the training and increasing the quantity of OPIs.

METHODOLOGY

This report is the product of a year-long research project undertaken by a research team from the Georgetown Law Human Rights Institute investigating the protection of the human rights of Central American migrant children and their access to international protection in the Mexican immigration system. Using testimony from interviews, the project assesses whether children have adequate access to international protection, and proposes ways in which Mexico's immigration enforcement practices can be improved to comply with both domestic and international law. Although much research has been conducted on the conditions of immigration detention in Mexico and the many causes of the migration of Central American children, much less is known about safeguards designed to protect the international human rights of children migrating through Mexico. Our report aims to help bridge this knowledge gap.

In January of 2015, we conducted a week-long fact-finding mission to Tapachula, Chiapas, Mexico, and Guatemala City, Guatemala. In Tapachula, we interviewed migrants, members of civil society, and government officials and agency staff. In Guatemala, we conducted interviews with government and NGO representatives who work with child deportees. We focused on these groups in order to generate first-hand accounts of the realities of the immigration system. Our methodology was designed to systematically identify and document the lived experiences of individuals whose human rights have been violated; our research protocol was vetted and approved by the Georgetown University Institutional Review Board. Before embarking on the fact-finding mission, we crafted question sets tailored to each category of interview subjects in order to gather information on the same issues across interviews.

All interviews were conducted using convenience sampling in a two-stage process: First, we arranged visits with civil society actors or government entities whose work related to our research topic and with facilities or shelters which we knew to likely have migrant populations; then, we recruited among those populations by describing our project to prospective interviewees and inviting them to participate. A large portion of the interviews we conducted with migrants in Mexico took place in shelters run by state and local social services agencies under the National System for Integral Family Development (*Sistema Nacional para el Desarrollo Integral de la Familia* (DIF)). We also interviewed government officials and agency staff on site at the shelters. We attempted to interview children detained in immigration stations, including Siglo XXI in Tapachula, Mexico. However, Mexico's National Migration Institute (*Instituto Nacional de Migración* (INM)) denied us access to conduct these interviews. INM also denied us access to interview its staff members and officials.

Interviews included a thorough informed consent process, and we communicated to all prospective interviewees that involvement in the study would not result in any direct benefit to the interviewee, including legal assistance. All interviews were conducted out of earshot of other individuals—often in separate rooms—in order to protect interviewees' privacy and ensure confidentiality. In order to minimize the personal risks and maintain confidentiality of interviewees with precarious legal status, the testimony of all migrants was reported anonymously, and all names in the report are pseudonyms. Expert members of NGOs and government officials were given the option of providing information using their name, title, and/or a description of their function.

We conducted a total of sixty-five interviews: twenty with government officials and members of civil society, and forty-five with migrants. Thirty of the migrants were minors, and over half of these minors were unaccompanied. Here and throughout the report, numbers of interviews are provided to illustrate substantive issues or to provide a sense of the breadth of the study and not to suggest that our interviews yielded statistically significant data.

GLOSSARY

Child/Minor: Any individual under 18 years of age.

Unaccompanied Minor: Any individual under 18 years of age who is not accompanied by an adult relative or legal guardian.

Accompanied Minor: Any individual under 18 years of age who is accompanied by an adult relative or legal guardian.

Refugee: An individual who has been granted refugee status.

Asylum-Seeker: Any individual who is seeking international protection.

International Protection: The protection that a state offers to a migrant because, in her or his country of nationality or habitual residence, that individual's human rights are threatened or violated and she or he is unable to obtain due protection there because it is not accessible, available and/or effective. The expression international protection comprises: i) the protection received by asylum-seekers and refugees on the basis of the international conventions or domestic law; ii) the protection received by asylum-seekers and refugees on the basis of the broadened definition of the Cartagena Declaration; iii) the protection received by any foreign person based on international human rights obligations, and in particular the principle of *non-refoulement*, as well as complementary protection.²

Humanitarian Visa: In Mexico, a complementary protection established by the immigration legal framework for migrants who present a particular vulnerability and require international protection due to specific humanitarian concerns. Under the humanitarian visa, migrants are granted lawful status, family reunification rights, and work permission for renewable periods. Among those eligible for international protection under the humanitarian visa are: i) unaccompanied migrant children; and ii) asylum applicants whose applications are still pending.³

Detention: The deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including prisons or purpose-built detention, closed reception or holding centers, or facilities.⁴

² Advisory Opinion OC-21/14, Inter-Am. Ct. H. R. (ser. A) No. 21, ¶ 85 (Aug. 19, 2014) at 37 [hereinafter Inter-Am. Ct. H. R. OC-21/14] (focusing on the "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection").

³ Ley de Migración [Immigration Act] *as amended*, art. 52, V, Diario Oficial de la Federación [DO], 25 de Mayo de 2011 (Mex.) [hereinafter Immigration Act].

⁴ U. N. High Comm'n for Refugees, *Guidelines on Applicable Criteria and Standards relating to Detention of Asylum Seekers and Alternatives to Detention*, para. 5 (2012) [hereinafter *Detention Guidelines*] available at <http://www.unhcr.org/505b10ee9.html>. See also U. N. Human Rights Comm., 112th Sess., Oct. 7–31, 2014, General Comment No. 35: Article 9 (Liberty and security of person), 5, U.N. Doc. CCPR/C/GC/35 (2014) [hereinafter HRC General Comment 35].

Immigration Station: Facilities within Mexico's territory operated by the National Migration Institute (*Instituto Nacional de Migración* (INM)), the main purpose of which is the confinement of migrants until their immigration status is determined or until their deportation or assisted return is effectuated.

The Principle of Best Interests of the Child: Under international law, this principle encompasses a state's obligation to make the best interests of the child a primary consideration in all actions concerning children.⁵ In the specific context of the enforcement of migration laws, it includes the obligation to make an assessment of the child's identity, cultural and family life, the reasons for leaving country of origin, and any fears the child may have.⁶ In the case of unaccompanied children, these assessments should be followed by a Best Interests Determination (BID), which is a "formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment."⁷ Assessments and BIDs ensure an adequate understanding of the child's needs and desires and that the child's rights are protected, particularly any needs for international protection.⁸ Under the UN Convention on the Rights of the Child (CRC), return to the country of origin of unaccompanied children may only be arranged if it is in the best interests of the child.⁹

⁵ Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

⁶ Comm. on the Rights of the Child General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, para. 20, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005) [hereinafter CRC General Comment 6]; C.R.C., General comment No. 14 On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), para. 48-79, U.N. Doc. CRC/C/GC/14 (May 29, 2013) [hereinafter CRC General Comment 14]. The IACtHR recently elaborated that these "initial assessment procedures must be performed in a friendly environment and must provide guarantees of security and privacy, as well as be performed by qualified professionals who are trained in age and gender sensitive related interviewing techniques." Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, ¶ 85.

⁷ CRC, General comment 14, *supra* note 6, para. 48.

⁸ *Id.* at para. 4, 6.

⁹ CRC, General Comment 6, *supra* note 6, para. 84.

INTRODUCTION: THE RIGHTS OF CHILDREN IN THE CONTEXT OF MIGRATION

At the age of seventeen, Ricardo fled Honduras because gang members were threatening his life. When he arrived in Mexico, he turned himself in to authorities at the first immigration checkpoint, and immediately asked the officials there for asylum. He explained, “I came fleeing my country. I didn’t want to go to the U.S. . . . I want to stay here [in Mexico] as a refugee.”

After Ricardo turned himself in to Mexican authorities, he was taken to an immigration station. Initially, no one followed through with his request to file an application for asylum. After two weeks of being held in an immigration station, he again asked to apply for asylum. Finally, he was referred to the Mexican Commission for the Aid of Refugees (COMAR), the government entity charged with processing asylum claims. Ricardo did not receive any legal representation or help with his asylum application. COMAR interviewed Ricardo and investigated his asylum claim over the course of nearly three months and ultimately denied his claim.

Fearing return to his country, Ricardo appealed his denial through an alternative legal mechanism called amparo with the help of lawyers from a local human rights organization. In total, Ricardo spent ten months detained in immigration stations and government-run shelters. Ricardo was unable to leave any of the facilities and was unable to even attend school. “Two or three months went by and I was getting desperate,” he told us, “you are like a fish in a glass of water. There is no place to go.” Eventually, the local human rights organization that represented him through the amparo process helped him apply for a humanitarian visa so that he could await the resolution of his case out of detention after he turned eighteen.

He was granted the humanitarian visa and released from the government shelter upon becoming an adult. After ten months of struggle, his humanitarian visa allowed Ricardo to finally live freely and go to school legally in Mexico. “The truth is, I love to study,” he reported with a smile. “I like math and I like to draw . . . I want to be an architect.” But the humanitarian visa does not give Ricardo the stability of a permanent residency status. It only allows Ricardo to live freely in Mexico for one year.

In the summer of 2014, the arrival of Central American children and families traveling from El Salvador, Guatemala, and Honduras (the Northern Triangle countries) at the southern border of the United States became the subject of major media coverage and intense political debate. Children like Ricardo, however, who were seeking to escape violence in their home country and desperate to seek asylum in Mexico, received far less attention. While the number of unaccompanied children apprehended at the southwest U.S. border has since decreased, that trend does not necessarily indicate a significant drop in child migration from Central America. The number of children from the Northern Triangle apprehended and sent home from Mexico has increased.

Total Unaccompanied Children (0-17 Years Old) Apprehended in the United States

	March 2013- Sept. 2013 ¹⁰	Oct. 2013- Feb. 2014	March 2014- Sept. 2014	Oct. 2014- Feb. 2015 ¹¹
	26,611	21,403	47,200	12,509
% Change from previous year			+77%	-42%

Number of Children (0-17) Returned from Mexico

	March 2013- Sept. 2013 ¹²	Oct. 2013- Dec. 2013	March 2014- Sept. 2014	*Oct. 2014- Dec. 2014 ¹³
	4,558	2,712	12,097	4,467
% Change from previous year periods			+60%	+64%

* Oct-Dec. period does not overlap with U.S. period.

¹⁰ Statistics from March 2013 through September 2014 are from: U.S. Border Patrol Total Monthly UAC Apprehensions by Month, by Sector (FY 2010–FY 2014), *available at* <http://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20UACs%20by%20Sector%2C%20FY10.-FY14.pdf>. There was a 712% increase in the number of asylum-seekers from Northern Triangle countries arriving in Mexico, Panama, Costa Rica, Nicaragua, and Belize in between 2009–2013. WASHINGTON OFFICE ON LATIN AMERICA, THREE MYTHS ABOUT CENTRAL AMERICAN MIGRATION TO THE UNITED STATES (June 17, 2014), *available at* http://www.wola.org/commentary/3_myths_about_central_american_migration_to_the_us.

¹¹ Statistics from October 2014 through February 2015 are from: U.S. Customs and Border Patrol, Southwest Border Unaccompanied Children, *available at* <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

¹² It should be noted that Mexican officials track “events” of the return of children, rather than a count of individuals. This means that a child returned twice in the same year may be counted twice. INM, BOLETÍN DE ESTADÍSTICAS MIGRATORIAS 2013, 125 (2013), *available at* http://www.wola.org/files/2013_inm_stats.pdf [hereinafter INM BOLETÍN 2013].

¹³ INM, BOLETÍN DE ESTADÍSTICAS MIGRATORIAS 2014, 133 (2014), *available at* http://www.wola.org/sites/default/files/Boletin2014_.pdf [hereinafter INM BOLETÍN 2014].

Several reports indicate that among the complex set of factors causing children to migrate from the Northern triangle, increases in gang violence, gender-based violence, and deepening poverty are prominent among the reasons that cause many children to flee. This report proceeds under the assumption that all migrant children who are increasingly being apprehended in Mexico should be respected as full and independent rights-holders subject to protection under international human rights law.¹⁴

Among the rights to which migrant children are entitled include: (1) the right to be free from arbitrary detention; (2) the right that their best interests be the primary consideration in any government action that affects them; and (3) the right to access asylum or other forms of international protection and receive appropriate assistance in accordance with international human rights law. This report examines the degree to which the agencies involved in immigration enforcement in Mexico are respecting these rights and documents a number of violations of the human rights of Central American migrant children.

The background section of this report lays out the connection of the United States government to the increased enforcement at the southern border of Mexico, some of the reasons children are leaving their home countries, and the legal framework of Mexico's immigration system and system for considering international protection needs. This provides context for our findings on detention and access to international protection. Finally, this report presents conclusions and recommendations for changes to law and practice in both Mexico and the United States to ensure that the rights of Central American migrant children are promoted and fulfilled.

¹⁴ Comm. on the Rights of the Child, Report on the 2012 Day of General Discussion, para. 4 (2012), available at <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf> [hereinafter Day of General Discussion].

BACKGROUND

MIGRATION OF UNACCOMPANIED MINORS AND FAMILIES TO THE UNITED STATES, AND THE OBAMA ADMINISTRATION'S SUPPORT FOR THE FORTIFICATION OF THE SOUTHERN MEXICAN BORDER.

“The Guatemalan border with Chiapas is now our southern border.”¹⁵

– Alan Bersin, Assistant Secretary for Policy U.S. Department of Homeland Security for Policy, September 2012

Since 2011, the number of unaccompanied children and families migrating to the United States from Central America has increased exponentially.¹⁶ During fiscal year 2014,¹⁷ U.S. Customs and Border Patrol (CBP) apprehended approximately 68,000 unaccompanied children, and approximately 69,000 migrants traveling together as families at the U.S. border with Mexico, most of whom came from El Salvador, Guatemala, and Honduras—the “Northern Triangle” of Central America.¹⁸ These figures marked 77% and 356% increases over fiscal year 2013.¹⁹

Apprehensions of Unaccompanied Children and Migrant Families at the Southwest U.S. Border

	2010	2011	2012	2013	2014
Unaccompanied Minors	18,411	15,949	24,403	38,759	68,541
Family Units				15,056	68,684

¹⁵ Steve Taylor, *Our southern border is now with Guatemala*, LATINA LISTA, Sept. 20, 2012, <http://latinalista.com/2012/09/historic-partnership-agreements-signed>.

¹⁶ PETER J. MEYER, ET. AL, CONG. RESEARCH SERV., R43702, UNACCOMPANIED CHILDREN FROM CENTRAL AMERICA: FOREIGN POLICY CONSIDERATIONS 1 (2015), available at <http://www.fas.org/sgp/crs/homsec/R43702.pdf>.

¹⁷ A period of time ranging from October 1, 2013 through September 30, 2014.

¹⁸ Press Release, U.S. Customs and Border Protection, Southwest Border Unaccompanied Alien Children (FY 2014) (Oct. 2014) available at <http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf>.

¹⁹ See MEYER, *supra* note 16, at 1.

In response to the increase, President Obama declared an “urgent humanitarian situation”²⁰ and identified “deter[ring] migration” and “stem[ming] the flow of migrants taking the dangerous trip to the United States” as policy goals.²¹ The President directed government officials to “respond aggressively” to the situation.²² Secretary of the U.S. Department of Homeland Security (DHS) Jeh Johnson, in coordination with several other high-level administration officials, developed a plan to “stem the tide” of children migrating to the United States.²³ The plan included measures such as increased border security, reimplementation of family-based detention, and advertisements broadcast in Central America urging parents not to send their children to the United States.²⁴ In a press release describing the inter-agency plan, Secretary Johnson also noted, “[w]e are also pleased that the Mexican government has itself taken a number of important steps to interdict the flow of illegal migrants from Central America bound for the United States.”²⁵

The Obama administration continues to signal an increased interest in helping Mexico fortify its southern border. Last December, Secretary Johnson told the House Committee on Homeland Security that he intended to visit Mexico to work with Mexican officials on interdicting migrants.²⁶ In January of 2015, President Obama met with Mexican President Enrique Peña Nieto and praised Mexico’s efforts to help limit the migration of unaccompanied minors by saying, “I very much appreciate Mexico’s efforts in addressing the unaccompanied children who we saw spiking during the summer. In part because of strong efforts by Mexico, including at its southern border, we’ve seen those numbers reduced back to much more manageable levels.”²⁷ That same month, Vice President Biden launched a campaign to increase funding by \$1 billion for “education and economic opportunities” in Central American countries.²⁸ Out of the \$1 billion in appropriations that the administration is requesting in that plan, \$300 million will be used for “improving security conditions,” which includes funding more secure borders.²⁹

²⁰ Press Release, White House, Presidential Memorandum – Response to the Influx of Unaccompanied Alien Children Across the Southwest Border (June 2, 2014), *available at* <http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>.

²¹ Press Release, White House Office of the Press Secretary, U.S. Response to Central American Migrants at Southwest Border (Aug. 1, 2014), *available at* <http://iipdigital.usembassy.gov/st/english/text-trans/2014/08/20140802304773.html>.

²² Secretary Johnson, *supra* note 1.

²³ *Id.*; Puzzanghera, *supra* note 1.

²⁴ Secretary Johnson, *supra* note 1.

²⁵ *Id.*

²⁶ *Immigration and Border Security*, C-SPAN (Dec. 2, 2014), <http://www.c-span.org/video/?322974-1/secretary-jeh-johnson-testimony-immigration-policy>.

²⁷ Press Release, White House, Remarks by President Obama and President Peña Nieto after Bilateral Meeting, (Jan. 6, 2015) *available at* <http://www.whitehouse.gov/the-press-office/2015/01/06/remarks-president-obama-and-president-pe-nieto-after-bilateral-meeting>.

²⁸ Joseph Biden, *Joe Biden: A Plan for Central America*, NEW YORK TIMES, Jan. 29, 2015, http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?_r=0.

²⁹ MEYER, *supra* note 16, at 11.

The U.S. commitment to securing Mexico's southern border is not a new phenomenon, and has been built in to U.S. aid packages to Mexico for years. From 2009 through 2013, the United States sent over \$112 million in equipment to Mexico through Mérida Initiative funding in order to increase border security and supply biometric tracking equipment.³⁰ In 2014 alone, the Bureau of International Narcotics and Law Enforcement (INL) announced an additional \$86.6 million in security funding for Mexico.³¹ In the summer of 2013, DHS officials discussed providing extra support for a plan that, through Mérida Initiative funding, would help Mexican immigration officials create three tiers of security within 100 miles of its border with Guatemala and Belize.³² Despite the fact that Congress has expressed concern over Mexico's respect for human rights,³³ it has responded to the Obama administration's call to increase support for border security in southern Mexico by funding the Mérida Initiative at \$79 million beyond the administration's fiscal year 2015 request.³⁴

³⁰ For an itemized list of equipment and training that the United States has provided Mexico to secure its southern border, see JESUIT REFUGEE SERVICE & WASHINGTON OFFICE ON LATIN AMERICA, U.S. SUPPORT AND ASSISTANCE FOR INTERDICTIONS, INTERCEPTIONS, AND BORDER SECURITY MEASURES IN MEXICO, HONDURAS, AND GUATEMALA UNDERMINE ACCESS TO INTERNATIONAL PROTECTION 6 (2014), *available at* http://www.jesuit.org/Assets/Publications/File/US_Border_Externalization_2014_v1.pdf.

³¹ *Id.*

³² Bill Gertz, *Obama Administration Considers Plan to Bolster Mexico's Southern Border*, THE WASHINGTON FREE BEACON, Aug. 22, 2013, <http://freebeacon.com/national-security/obama-administration-considers-plan-to-bolster-mexicos-southern-border/>.

³³ Clare Ribando Seelke, Cong. Research Serv., R42917, Mexico: Background and U.S. Relations (2014) (for example, under the Foreign Assistance Act "Leahy" requirements, 22 U.S.C. § 2378d, the U.S. Department of State must vet foreign security units who receive United States training, and it must report on gross human rights violations), *available at* <http://fas.org/srg/crs/row/R42917.pdf>.

³⁴ *Id.*

REASONS FOR CHILD MIGRATION FROM NORTHERN TRIANGLE COUNTRIES

The interdiction efforts that the United States is supporting at the southern Mexican border is intended to stop unaccompanied children fleeing El Salvador, Guatemala, and Honduras from reaching the U.S. border. While the reasons behind the increase in children migrating out of the Northern Triangle countries are complex and varied, numerous studies have identified gang violence, domestic violence, and deepening poverty as major drivers of migration.³⁵ The fact that a significant number of Central American migrant children are fleeing violence has been corroborated by non-governmental organizations,³⁶ scholars,³⁷ and the U.S. Government Accountability Office.³⁸

The United Nations High Commissioner for Refugees (UNHCR) has conducted multiple studies and has identified serious international protection concerns raised by the role of violence in the northward migration flows of Central American children. In one 2014 study, based on a statistically-significant set of interviews with 404 Central American children who had migrated to the United States, UNHCR determined that 58% had international protection needs.³⁹ A subsequent UNHCR study based on interviews with 200 Central American children in Mexico found that nearly half, 48%, had international protection needs.⁴⁰ After the UNHCR interviewers explained the right to seek asylum in Mexico to interviewees, nearly 28% of all interviewed unaccompanied child migrants expressed interest in applying.⁴¹

³⁵ For a detailed explanation of the causes of child migration from the Northern Triangle, see UNIVERSITY OF CALIFORNIA HASTINGS CENTER FOR GENDER AND REFUGEE STUDIES, CHILDHOOD AND MIGRATION IN CENTRAL AND NORTH AMERICA: CAUSES, POLICIES, PRACTICES AND CHALLENGES (Karen Musalo, et al. eds., 2015) [hereinafter CGRS]. The CGRS report is available in English at http://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf. The remainder of this report will refer to untranslated chapters in the Spanish version of the CGRS report, available at http://cgrs.uchastings.edu/sites/default/files/Ninez-Migracion-DerechosHumanos_Espanol.pdf.

³⁶ JENNIFER PODKUL, ET. AL. WOMEN'S REFUGEE COMMISSION, FORCED FROM HOME: THE LOST BOYS AND GIRLS FROM CENTRAL AMERICA (2012), available at <https://womensrefugeecommission.org/resources/document/844>.

³⁷ DENNIS STINCHCOMB, ET. AL., AMERICAN UNIVERSITY, UNACCOMPANIED MIGRANT CHILDREN FROM CENTRAL AMERICA: CONTEXT, CAUSES, AND RESPONSES (2014); ELIZABETH KENNEDY, NO CHILDHOOD HERE: WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES (2014), available at: http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

³⁸ US GOV'T ACCOUNTABILITY OFFICE, GAO-15-362, CENTRAL AMERICA: INFORMATION ON MIGRATION OF UNACCOMPANIED CHILDREN FROM EL SALVADOR, GUATEMALA, AND HONDURAS, 4-7 (2015) ("All nine of the State, USAID, and DHS officials' responses identified crime and violence as a cause" of migration. Only five thought perception of U.S. immigration policies was a cause of migration), available at <http://www.gao.gov/assets/670/668749.pdf>.

³⁹ UNHCR, CHILDREN ON THE RUN 6 (2014), available at http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20On%20the%20Run_Executive%20Summary.pdf.

⁴⁰ UNHCR, ARRANCADOS DE RAÍZ 11, 14 (2014) <http://www.acnur.org/t3/noticias/noticia/mexico-acnur-presenta-el-estudio-arrancados-de-raiz/>. In that study, 100% of Hondurans children interviewed had either witnessed or been the victim of a violent crime. *Id.* at 50.

⁴¹ *Id.* at 61.

MEXICO'S RESPONSE TO THE INCREASE IN MIGRATION OF UNACCOMPANIED MINORS AND FAMILIES

Amidst the increase in children migrating from the Northern Triangle through Mexico, Mexican President Enrique Peña Nieto has openly indicated Mexico's commitment to securing the country's southern border with U.S. encouragement.⁴² In July, President Peña Nieto announced a new Southern Border Program (*Plan Frontera Sur*) and a Coordination Office for Comprehensive Attention for Migration on the Southern Border to implement this plan.⁴³ The actual details of the Program and the specific tasks undertaken by the Coordination Office have not been released to the public.

What is apparent is that Mexican immigration enforcement at the southern border has increased dramatically. In September of 2014, for example, over 100 troops of the highly specialized, and militarized, *Gendarmerie* unit of the Mexican Federal Police were deployed to Tapachula with the mission of securing the border.⁴⁴ Checkpoints have popped up throughout southern Mexico with the purpose of immigration enforcement.⁴⁵ Railroad lines that migrants have traditionally used to travel northward through Mexico have increased the speed of the major northbound trains—popularly known as *La Bestia*—to prevent migrants from traveling on top of cars.⁴⁶ Recently, the National Institute of Migration (*Instituto Nacional de Migración* (INM)) in Mexico boasted about increased surveillance on *La Bestia*, and having conducted 153 raids on trains in 2014.⁴⁷ The once porous and open border is now closing, with most of the enforcement efforts occurring in the last few years.⁴⁸

⁴² *Pone en marcha el Presidente Enrique Peña Nieto el Programa Frontera Sur*, PRESIDENCIA DE LA REPÚBLICA (Jul. 7, 2014), <http://www.presidencia.gob.mx/articulos-prensa/pone-en-marcha-el-presidente-enrique-pena-nieto-el-programa-frontera-sur/>. Recently, Adam Isacson, a senior analyst from the Washington Office of Latin America noted that, "Migration is not a political issue in Mexico. They would not have grabbed on to it without increasingly loud complaints and prodding from the U.S. to do something about it. Frontera Sur is only about catching migrants, and sending them back before they make it to the U.S." Nina Lakhani, *Mexico Deports Record Numbers of Women and Children in US-driven Effort*, THE GUARDIAN, Feb. 4, 2015, <http://www.theguardian.com/world/2015/feb/04/mexico-deports-record-numbers-women-children-central-america>.

⁴³ *Pone en marcha el Presidente Enrique Peña Nieto el Programa Frontera Sur*, PRESIDENCIA DE LA REPÚBLICA (Jul. 7, 2014), <http://www.presidencia.gob.mx/articulos-prensa/pone-en-marcha-el-presidente-enrique-pena-nieto-el-programa-frontera-sur/>.

⁴⁴ Fredy Martín Pérez, *Llegan gendarmes a Tapachula, Chiapas*, EL UNIVERSAL, Sep. 1, 2014, <http://www.eluniversal.com.mx/estados/2014/llegan-gendarmes-a-tapachula-chiapas-1034787.html>.

⁴⁵ Rodrigo Domínguez Villegas, *Routes, Dangers, and Government Responses*, MIGRATION POLICY INSTITUTE, Sept. 10, 2014, <http://www.migrationpolicy.org/article/central-american-migrants-and-la-bestia-route-dangers-and-government-responses>.

⁴⁶ *Id.*

⁴⁷ *Mexico Raided Migrant Train 'La Bestia' 153 Times Last Year*, EL UNIVERSAL, March 4, 2015, <http://www.eluniversal.com.mx/in-english/2015/mexico-la-bestia-102407.html>.

⁴⁸ *See generally*, ADAM ISACSON, ET AL., WASHINGTON OFFICE ON LATIN AMERICA, MEXICO'S OTHER BORDER 10 (2014), available at <http://www.wola.org/sites/default/files/Mexico%27s%20Other%20Border%20PDF.pdf>.

Not surprisingly, then, Mexican immigration officials deported Salvadorans, Guatemalans, and Hondurans at a record pace in 2014. According to recently released statistics, Mexico deported 107,814 migrants in 2014, 97% of whom were from Northern Triangle countries.⁴⁹ This figure represented a 35% increase from 2013⁵⁰ and was more than double the number of deportations recorded in 2010.⁵¹ The increase in immigration enforcement disproportionately affected child migrants, many of whom were apprehended during raids of trains and bus routes.⁵² INM statistics reveal that 18,169 children were deported in 2014,⁵³ more than double the 2013 total of 8,350.⁵⁴ The number of children held in immigration stations in Mexico also surged by 230% in 2014, to over 23,000.⁵⁵

This marked increase in the detention and deportation of children in Mexico implicates Mexico's international treaty obligations, which require it to protect vulnerable migrants who flee their home countries. Mexico is a party to the Refugee Convention,⁵⁶ the Convention Against Torture and Other Cruel and Degrading Treatment,⁵⁷ The Convention on the Rights of the Child,⁵⁸ and the Cartagena Declaration.⁵⁹ Mexico has attempted to implement these treaties through protective legislation, including the Immigration Act of 2011, the Refugee Law, and the General Law on the Rights of Boys, Girls, and Adolescents, passed in December of 2014.⁶⁰

⁴⁹ INM BOLETÍN 2014, *supra* note 13 at 126.

⁵⁰ CLAY BOGGS, WASHINGTON OFFICE ON LATIN AMERICA, UPDATE ON MEXICO'S SOUTHERN BORDER PLAN: NEW ROUTES, MORE DEPORTATIONS, AND WIDESPREAD HUMAN RIGHTS VIOLATIONS (March 19, 2015), *available at* http://www.wola.org/commentary/update_on_mexico_s_southern_border_plan_new_routes_more_deportations_and_widespread_human. Mexico deported 80,079 in 2013. INM BOLETÍN 2014, *supra* note 13 at 113. For more statistics on deportation from Mexico, see José Meléndez, *Se Dispara el Número de Deportados en 2014*, EL UNIVERSAL, Dec. 27, 2014, <http://www.eluniversal.com.mx/nacion-mexico/2014/se-dispara-numero-de-deportados-en-2014-1064483.html>.

⁵¹ MAUREEN MEYER, ET. AL. WASHINGTON OFFICE OF LATIN AMERICA, ON THE FRONT LINES BORDER SECURITY, MIGRATION, AND HUMANITARIAN CONCERNS IN SOUTH TEXAS, 14 (2015).

⁵² Lakhani, *supra* note 42.

⁵³ INM BOLETÍN 2014, *supra* note 13 at 127.

⁵⁴ INM BOLETÍN 2013, *supra* note 12 at 125.

⁵⁵ Lakhani, *supra* note 42.

⁵⁶ Convention Relating to the Status of Refugees, Geneva, July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954) [hereinafter Refugee Convention].

⁵⁷ Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, pmbl., Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT].

⁵⁸ CRC, *supra* note 5.

⁵⁹ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22, 1984, OEA/Ser.L/V/II.66/doc.10 [hereinafter Cartagena Declaration].

⁶⁰ This new law codifies the rights of unaccompanied minor children. Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law on the Rights of Boys, Girls, and Adolescents] Secs. 89–101, Diario Oficial de la Federación, 4 de Diciembre de 2014 (Mex.). The regulations implementing this law, however, have not yet been implemented. Phone Interview with Rafael Zavala, in Washington, DC (March 11, 2015).

Yet, statistics released by Mexico's Commission for the Assistance of Refugees (COMAR) show that relatively few applicants receive international protection in Mexico:⁶¹

COMAR STATISTICS				
	2013	%	Jan.-Sept. 2014	%
Applicants	1296		1525	
Yet to be Decided	N/A	–	360	–
Cases Decided	1296	100%	1165	100%
Abandoned or Desisted	543	41.9%	496	42.6%
Not Recognized	455	35.1%	383	32.9%
Recognized	270	20.8%	247	21.2%
Complementary Protection	28	2.2%	39	3.3%

Through the first eight months of 2014, COMAR received 17% more asylum applications than it received in all of 2013.⁶² Despite the significant increase in need, COMAR's budget increased by only 4% between 2014 and 2015.⁶³ The number of humanitarian visas issued rose from 205⁶⁴ to a still low 332 in 2014.⁶⁵

This report examines some of the reasons why—despite the large increase in the number of children fleeing violence from El Salvador, Guatemala, and Honduras, and the large increase in the number of detentions and deportations of children from the Northern Triangle—so few children are seeking and receiving asylum or other forms of international protection in Mexico. It evaluates these reasons in light of Mexico's international human rights obligations and documents significant violations of the human rights of child migrants.

After a brief overview of the Mexican immigration system and its processes by which migrants apply for international protection, the findings section of this report will describe the situation of migrant children as they navigate this system and the violations of children's human rights that result when the system fails.

⁶¹ Statistics are compiled from, SECRETARY OF GOVERNANCE, *COMAR Statistics*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (last updated Dec. 19, 2014). Through email correspondence with INM, the Congressional Research Service reported that the number of child asylum-seekers from El Salvador, Guatemala, and Honduras rose from 124 in 2008 to 883 in 2013. See MEYER, *supra* note 16 at 21.

⁶² SECRETARY OF GOVERNANCE, *COMAR Statistics*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (last updated Dec. 19, 2014).

⁶³ COMAR's budget is currently at approximately US \$1.73 million. See PROYECTO DE PRESUPUESTO DE EGRESOS DE LA FEDERACIÓN 2014 (2013), *available at* http://www.diputados.gob.mx/PEF2014/temas/tomos/04/r04_apurog.pdf.

⁶⁴ INM BOLETÍN 2013, *supra* note 12, at 15.

⁶⁵ INM BOLETÍN 2014, *supra* note 13, at 15.

MEXICAN IMMIGRATION ENFORCEMENT AND THE PROCESS OF APPLYING FOR INTERNATIONAL PROTECTION

Migrants who enter Mexico without authorization may be apprehended by either the Federal Police or the National Migration Institute (*Instituto Nacional de Migración* (INM)).⁶⁶ INM is in charge of controlling and supervising migration in Mexico and administers all immigration proceedings, including border and domestic control, admission, enforcement,⁶⁷ apprehension, holding, deportation, and repatriation of migrants.⁶⁸ Upon apprehension, migrants may be placed in immigration stations until their status is determined.⁶⁹

Legal Requirements Relating to Migrant Children

Under the Mexican Immigration Act, unaccompanied children in immigration stations must be interviewed by Child Protection Officers (*Oficiales de Protección de la Infancia* (OPIs)) to assess their best interests and screen them for international protection needs.⁷⁰ INM is required to immediately transfer all unaccompanied children to shelters run by the federal, state, or local social services agency, known as the National System for Integral Family Development (*Sistema Nacional para el Desarrollo Integral de la Familia* (DIF)), while their immigration status is being resolved.⁷¹ This requirement can be circumvented only when there is no space available in any nearby federal, state, or local DIF shelter, or in any other private shelters.⁷² Accompanied children are to stay in detention at the immigration stations along with their family members.⁷³

Asylum and International Protection

Under Mexican law, all migrants apprehended by INM must be informed of their right to apply for asylum.⁷⁴ All asylum applications must be filed within thirty days of the applicant's entry

⁶⁶ Immigration Act, *supra* note 3, art. 101.

⁶⁷ *Id.* art. 81.

⁶⁸ Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, ¶ 470–80.

⁶⁹ Immigration Act, *supra* note 3, art. 101.

⁷⁰ Decreto por el que se expide el Reglamento de la Ley de Migración y se reforman, derogan y adicionan diversas disposiciones del Reglamento de la Ley General de Población y del Reglamento de la Ley de Asociaciones Religiosas y Culto Público [Immigration Regulations] art. 173, Diario Oficial de la Federación [DO], 28 de septiembre de 2012 [hereinafter Immigration Regulations].

⁷¹ Immigration Act, *supra* note 3, art. 122(I).

⁷² Immigration Regulations, *supra* note 70, art. 176.

⁷³ Immigration Act, *supra* note 3, art. 99 (stating that all migrants whose immigration status has not been determined may be placed in immigration stations). One exception the law provides is for unaccompanied minors—as opposed to accompanied minors—who may be placed in DIF shelters, instead of immigration stations. *Id.* art. 112.

⁷⁴ Immigration Act, *supra* note 3, art. 109.

into Mexico.⁷⁵ Asylum-seekers in immigration stations may submit an application to an agent in the immigration station, who must then submit the application to the Mexican Refugee Aid Commission (*Comisión Mexicana de Ayuda a Refugiados* (COMAR)) within seventy-two hours.⁷⁶ COMAR, the independent agency in charge of adjudicating claims for asylum and complementary protection,⁷⁷ must then conduct an eligibility interview⁷⁸ and issue a decision within forty-five business days.⁷⁹ A migrant who has not been apprehended by INM may submit an application for asylum to INM or COMAR without being sent to an immigration station.⁸⁰

Euphemisms in Mexican Immigration Law

The Mexican immigration legal framework uses a number of euphemisms to describe its policies and practices: instead of using the terms “detention,” “apprehension,” or “deportation” it uses “housing,” “presentation,” and “assisted return.”⁸¹ Non-governmental organizations (NGOs) in southern Mexico have opined that these euphemisms mask the true nature of the detention and deportation policies and undermine transparency in public policy.⁸² They have emphasized that what Mexican law refers to as “assisted return” is in reality deportation.⁸³

The Inter-American Commission on Human Rights (IACHR), part of the Organization for American States (OAS), has pointed out that under international human rights law and the inter-American standards on the right to personal liberty, the situations to which Mexican law refers as “presentation” and “housing” are “forms of deprivation of personal liberty because they prevent irregular migrants from exercising their freedom of movement.”⁸⁴ The Commission referred to “housing” in immigration stations, like Siglo XXI (which holds up to 990 people), as “detention” in its 2013 report on migration through Mexico.⁸⁵ The remainder of this report will use the term “detention” when referring to what is defined as “housing” in immigration stations under Mexican law, as did the IACHR.⁸⁶

⁷⁵ Immigration Regulations, *supra* note 70, art. 18.

⁷⁶ Immigration Act, *supra* note 3, arts. 16 (II) & (V); art. 17(I) & (IV). The same qualifications apply to DIF. *Id.* art. 18.

⁷⁷ Immigration Regulations, *supra* note 70, art. 15(III).

⁷⁸ *Id.* art. 24.

⁷⁹ *Id.* art. 24, 27, 62. Asylum applicants may not be deported while their application is pending.

⁸⁰ *Id.* art. 24.

⁸¹ Immigration Act, *supra* note 3, arts. 99–111.

⁸² PABLO CERIANI CERNADAS, NIÑEZ DETENIDA 22 (2012).

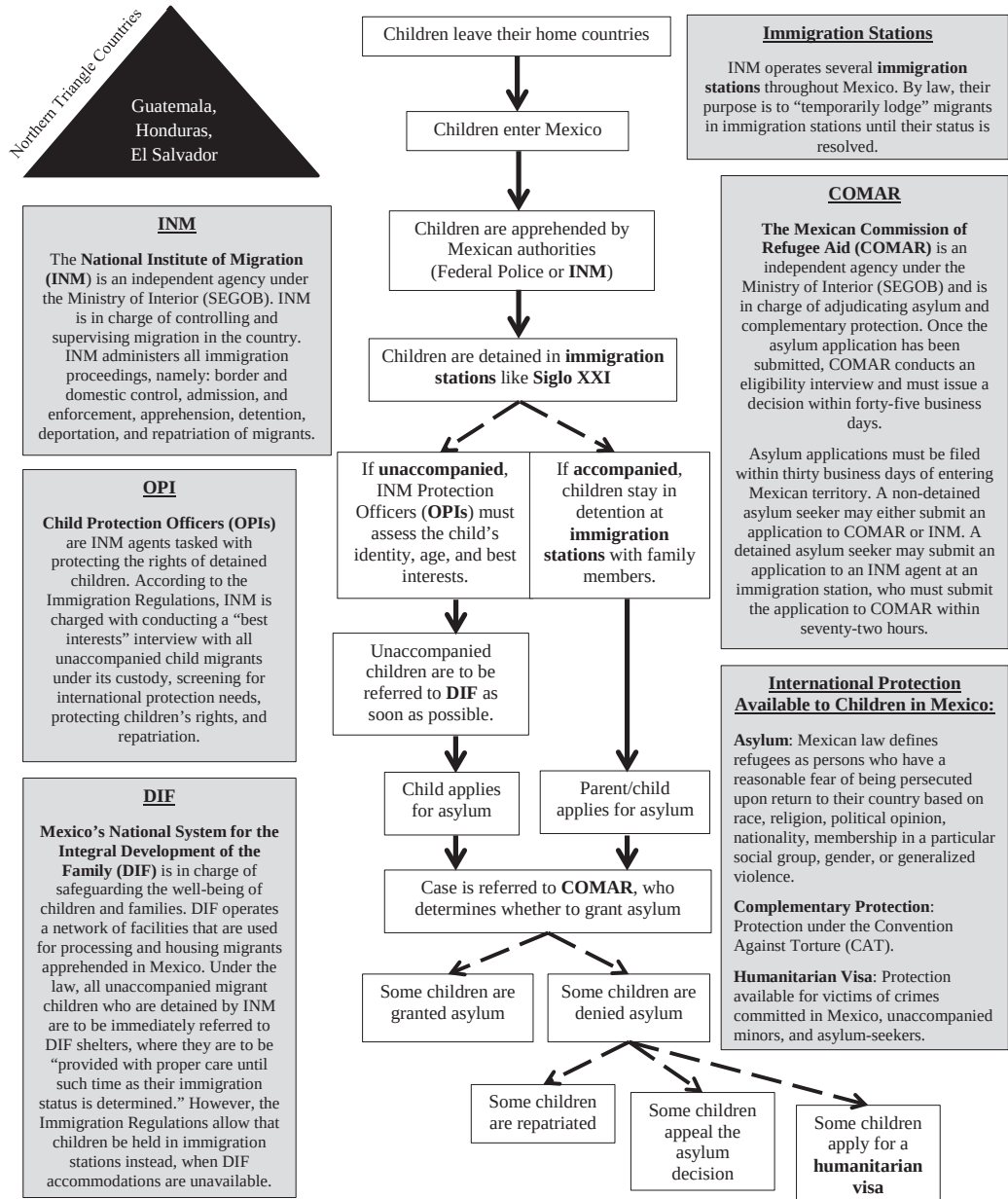
⁸³ CGRS, *supra* note 35, at 244.

⁸⁴ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [IAHCR], HUMAN RIGHTS OF MIGRANTS AND OTHER PERSONS IN THE CONTEXT OF HUMAN MOBILITY IN MEXICO para. 411 (Dec. 2013) [hereinafter IAHCR HUMAN MOBILITY IN MEXICO], available at www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf.

⁸⁵ *Id.* INM's Siglo XXI immigration detention center in Tapachula is the largest such facility in Latin America, with a capacity to hold 990 migrants. ISACSON, *supra* note 48 at 33.

⁸⁶ IAHCR HUMAN MOBILITY IN MEXICO, *supra* note 84.

The Mexican Immigration and Asylum Process



FINDINGS

Despite strong laws in place to meet Mexico's international legal obligations to protect migrant children, we found that significant obstacles prevent those children from accessing such protection. First, child migrants taken into Mexican custody are being detained arbitrarily, violating their basic human rights. The length and conditions of detention are deterring children from seeking asylum. Second, children are not routinely informed about their rights or screened for international protection concerns as is required by Mexican law. Absent these protective measures, current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum. These barriers to accessing the right to seek and enjoy asylum are reflected in high rates of deportations from Mexico to Northern Triangle countries. Below, we will address each of these issues in turn, incorporating a discussion of the applicable human rights standards and our findings, and analyzing how our findings comport with international law and standards.

DETENTION OF MIGRANT CHILDREN

We found that migrant children are systematically detained following apprehension by immigration officials in southern Mexico. Their detention constitutes a violation of their human rights. As we will show below, Mexico's systematic detention of migrant children in the context of immigration enforcement constitutes an arbitrary deprivation of liberty and contravenes the principle of the best interests of the child. In nearly all of our interviews with child migrants, we found that INM had ignored the domestic legal procedures governing the treatment of minors. As a result, the children we interviewed had been detained for long, unpredictable periods of time. Additionally, we found that Mexico's detention of child migrants deters them from seeking asylum. Faced with the option of remaining in detention for an extended period of time if they apply for asylum, or returning to their countries of origin to begin the journey anew, many children choose the latter. After providing a brief overview of the international legal framework applicable to the detention of child migrants by Mexican authorities, this section presents our detailed findings on detention.

Arbitrary Detention Against the Best Interests of the Child

All human beings have a right to liberty and security of person and as a result, are protected against arbitrary deprivations of liberty. The liberty rights of migrant children are subject to special measures of international legal protections with respect to the human right to freedom from arbitrary detention.⁸⁷ Children are additionally protected generally, and in the context of deprivation of liberty, by the international principle of the best interests of the child.⁸⁸

Legal Framework

Arbitrary Detention

In order to comply with the international law protecting individuals against arbitrary detention, liberty may only be deprived "on such grounds and in accordance with such procedure as established by law."⁸⁹ Expert bodies charged with interpreting international human rights law have suggested that, although states can legitimately deprive children of liberty, including (in narrow circumstances) in the context of immigration enforcement, such detention is subject to strict limitations.⁹⁰ Detention that exceeds these limitations or violates states' established legal procedures can be considered arbitrary and violate fundamental rights.

The Committee on the Rights of the Child, the expert body charged with interpreting the Convention on the Rights of the Child (CRC), has suggested that, according to applicable

⁸⁷ See International Convention on Civil and Political Rights, Dec. 19, 1966, art. 9, 999 U.N.T.S. 171 [hereinafter ICCPR]; American Convention on Human Rights, art. 7, Nov. 21, 1969, 1144 U.N.T.S. 143 [hereinafter American Convention].

⁸⁸ See CRC, *supra* note 5, art. 3.

⁸⁹ ICCPR, *supra* note 87, art. 9.

⁹⁰ For the definition of detention used for the purposes of this report, see *supra* note 4 and accompanying text.

international law, in any instance where a child migrant is deprived of liberty, that detention must be executed: (a) for the shortest possible time, (b) using the least restrictive means necessary.⁹¹ When the detention of a child contravenes either prong of the Committee's stated governing standard, or violates domestic detention procedures established by law, it constitutes an arbitrary deprivation of liberty.

Best Interests of the Child

In addition to the right to be free from arbitrary detention, the CRC requires that "the best interests of the child shall be a primary consideration" in all state dealings with minors.⁹² The Committee on the Rights of the Child elaborates on this principle in the context of child migration, finding that "regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests, and is not justifiable."⁹³ Under this standard, the detention of child migrants is always carried out "in spite of the legal obligations under the convention."⁹⁴

Nevertheless, the Committee recognizes that states do detain migrant children in practice and identifies standards to govern that detention in the best interests of the child. With respect to unaccompanied children, the Committee has interpreted the best interests principle to demand that "all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation."⁹⁵

The detention of accompanied children with their parents raises slightly different best interests concerns around the right to family unity. Respecting the right of the child to family unity, the CRC mandates that states "ensure that a child shall not be separated from his or her parents against their will, except when . . . such separation is necessary for the best interests of the child."⁹⁶ The Committee on the Rights to the Child has urged that this measure be effectuated by ensuring that migration detention centers "[vary] from policies of age and gender separation in cases where this would be in the best interests of the children concerned."⁹⁷

⁹¹ Day of General Discussion, *supra* note 14, paras. 78–80 (2012); *see also* CRC, *supra* note 5, art. 37(b) ("The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."). We understand the Committee's interpretation of the CRC to be an authoritative one and therefore binds states parties with respect to the liberty rights of migrant children given the Committee's mandate in the interpretation of the Convention with respect to states parties' compliance.

⁹² CRC, *supra* note 5, art. 3.1.

⁹³ Day of General Discussion, *supra* note 14, para. 32.

⁹⁴ *Id.* para. 34.

⁹⁵ CRC, General Comment 6, *supra* note 6, para. 61.

⁹⁶ CRC, *supra* note 5, art. 9.

⁹⁷ Day of General Discussion, *supra* note 14, para. 39.

Some states have cited the right to family unity as justifying the detention of migrant families where international and domestic law provide for the lawful detention of unauthorized migrant adults. However, the Committee on the Rights of the Child has unequivocally stated that “family unity [is] not a justification for detaining children and alternative measures should be found for the whole family.”⁹⁸

Focusing in particular on asylum-seekers, the following findings trace the paths of unaccompanied and accompanied child migrants in Mexico to illustrate the degree to which Mexico's immigration practices adequately protect their rights.

Detaining Child Asylum-Seekers

Unaccompanied Minors in Mexican Law

Mexico's Immigration Law provides special protections for unaccompanied children apprehended by immigration authorities designed to meet international standards for the treatment of this vulnerable population.⁹⁹ Initially, migrants who are apprehended are detained in immigration stations from which they cannot leave.¹⁰⁰ As soon as a migrant detainee is determined to be an unaccompanied minor, by law, an immigration agent trained in the protection of children's rights must conduct a best interests interview during which she explains and proposes alternatives to detention to the child.¹⁰¹ Thereafter, INM is required by law to immediately transfer all unaccompanied children into shelters run by the federal, state, or local social services agency, known collectively as the National System for Integral Family Development (*Sistema Nacional para el Desarrollo Integral de la Familia* (DIF)).¹⁰² The immediate transfer requirement can only be circumvented when there is no space available in any nearby DIF shelter, nor in any other private shelters.¹⁰³

The law's insistence that transfer be immediate speaks to the commitment—at least as a matter of law—that unaccompanied children be detained in the immigration stations for the shortest possible time. The transfer requirement also responds to the international legal requirement that the migrant children in immigration detention be moved so that they can be held under the least restrictive conditions. This commitment to compliance with international standards depends, however, on the characterization of DIF as an alternative to detention.

Even though the children we interviewed in DIF uniformly reported better conditions there than at Tapachula, Siglo XXI, they are denied freedom of movement to enter and exit the shelters,

⁹⁸ *Id.*

⁹⁹ *See generally* Immigration Act, *supra* note 3, cap. VI.

¹⁰⁰ *Id.* cap. V.

¹⁰¹ Immigration Regulations, *supra* note 70, art. 173(V).

¹⁰² Immigration Act, *supra* note 3, art. 122(I).

¹⁰³ Immigration Regulations, *supra* note 70, art. 176.

even to go to school.¹⁰⁴ Because children’s movement is so substantially curtailed, we found that DIF constitutes a deprivation of liberty incompatible with the international legal standard for alternatives to detention. Moreover, the children we interviewed who had spent significant periods of time in DIF expressed the psychological effects of the deprivation of liberty they experienced there. Thirteen-year-old Martín, who had been in DIF for seven months, captured the feeling shared by all such children when he told us, “stuck here with nothing to do, you get desperate sometimes and want to escape.”¹⁰⁵ As discussed above, Mexican law does not formally treat “housing” at immigration stations nor accommodation at DIF shelters as detention.¹⁰⁶ Given the substantial restrictions on liberty in both, however, this report finds that both Siglo XXI and DIF shelters constitute forms of detention as defined under international law and standards.¹⁰⁷

Although we found both situations to constitute detention as a matter of law, given the differences between detention of migrant children at the Immigration Station Siglo XXI and the state and local DIF shelters in Tapachula, the following findings will treat the two separately. First we will report our findings on the duration of detention for unaccompanied child asylum-seekers at each location. Thereafter we will describe our findings on the transfer of unaccompanied child migrants from the detention center at Siglo XXI to DIF shelters. Finally, we will analyze the ways in which these findings support the conclusion that the detention of unaccompanied migrant children in southern Mexico is arbitrary, and against the best interests of the child.

Duration of Detention

We found that unaccompanied children who seek asylum in Mexico are detained for excessive periods of time, first in the immigration station and subsequently at DIF.

Duration of Detention at Siglo XXI

All of the unaccompanied asylum-seekers we interviewed in the DIF shelters in Tapachula had spent a considerable amount of time detained in Siglo XXI before being transferred to DIF, despite the law’s requirement that transfer be immediate. Fourteen-year-old Mario had one of the longest stays in Siglo XXI of all the children interviewed for this report.¹⁰⁸ Upon arrival there, he asked to apply for asylum and was told by an INM official that he needed to wait thirty days to file his application. The fact that Mario thought he was unable to apply immediately unnecessarily prolonged his detention. After applying, he waited in Siglo XXI throughout the entire forty-five business day pendency period—about three months—to receive the ultimate denial of his claim.¹⁰⁹

¹⁰⁴ Interview with Cristian Álvarez, in Tapachula, Mex. (Jan. 5, 2015).

¹⁰⁵ Interview with Martín (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁰⁶ See *supra* notes 84–86 and accompanying text.

¹⁰⁷ See *supra* note 4 and accompanying text.

¹⁰⁸ Interview with Mario (pseudonym) in Tapachula, Mex. (Jan. 7, 2015).

¹⁰⁹ *Id.*

Brothers Jacobo and Eduardo, ages fourteen and fifteen, spent twenty-seven days detained in Siglo XXI before submitting their asylum application, and they were brought to DIF just two days later.¹¹⁰ Among asylum-seekers, Jacobo and Eduardo's twenty-seven day detention in Siglo XXI was the shortest of any unaccompanied child we interviewed. Girls were kept in Siglo XXI for long periods as well. Helena, an unaccompanied seventeen-year-old, reported spending one month and ten days detained in Siglo XXI after being apprehended by INM.¹¹¹

The prolonged detention of children in Siglo XXI is not a new phenomenon. A recent publication by the Center for Human Rights Fray Matías de Córdoba, an NGO that advocates for migrants' rights in southern Mexico, documented the number of children detained in Siglo XXI, and the amount of time they spent there in detention.¹¹² They observed that in 2013, a total of 6,718 children were detained in Siglo XXI.¹¹³ As many as 5,601 children were kept there up to fourteen days; 1,032 children were kept between fifteen and sixty days; sixty-eight children were kept between sixty-one and 120 days; seventeen children were kept between 121 and 200 days; and four children were detained in Siglo XXI up to 300 days.¹¹⁴ Despite the fact that Mexican law requires immediate transfer to DIF shelters, many unaccompanied children spend a month or more detained in Siglo XXI.

Duration of Detention at DIF

What we found to be the excessive duration of detention of unaccompanied children in the Immigration Station Siglo XXI is comparatively short relative to the stretches of time unaccompanied asylum-seekers are detained in DIF shelters as they await the final resolution of their cases. Seventeen-year-old Ricardo, for example, spent over ten months at DIF as he exhausted the appeals processes in pursuit of asylum.¹¹⁵ Eduardo and Jacobo had been in DIF for six months when we spoke to them.¹¹⁶ Jacobo spent his fourteenth birthday there.¹¹⁷ When we

¹¹⁰ Interview with Jacobo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015); interview with Eduardo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹¹¹ Interview with Helena (pseudonym), in Tapachula, Mex. (Jan. 5, 2015). Unaccompanied girls who were not seeking asylum but rather were awaiting deportation spent considerably less time in Siglo XXI. One seventeen-year-old pregnant girl we spoke to was transferred to DIF after just one day in Siglo XXI, while another twelve-year-old unaccompanied girl was transferred after ten days in Siglo XXI. Interview with Jessica (pseudonym), in Tapachula, Mex. (Jan. 9, 2015); interview with Cristina (pseudonym), in Tapachula, Mex. (Jan. 9, 2015). Because the Municipal DIF shelter in Tapachula houses only girls and women, and the unaccompanied boys at the Chiapas State DIF shelter were all asylum-seekers, we are unable to report independent findings on the duration of detention for unaccompanied boys detained in Siglo XXI who did not seek asylum prior to being deported.

¹¹² CGRS, *supra* note 35, at 275.

¹¹³ *Id.*

¹¹⁴ *Id.* A breakdown by duration of migrant child detention is not yet available for 2014, during which apprehension and deportation of migrant children in Mexico more than doubled. See *supra* notes 53–55 and accompanying text.

¹¹⁵ Interview with Ricardo (pseudonym), *supra* note 110.

¹¹⁶ Interview with Jacobo (pseudonym), *supra* note 110.

¹¹⁷ *Id.*

spoke to Mario, he had been in DIF for just one month after a long stint in Siglo XXI.¹¹⁸ Barring an early resolution of his appeal or his transfer to another facility, the normal appeals process would leave Mario in DIF at least another one to two months during which he would turn fifteen.¹¹⁹

The duration of detention for accompanied child asylum-seekers raised similar concerns to that of unaccompanied asylum-seekers.¹²⁰ All of the migrants detained as family units whom we spoke to at the Chiapas State DIF shelter had spent two to three months (forty-five business days) in Siglo XXI awaiting resolution of their families' asylum claims before being transferred to the shelter.¹²¹ For those whose asylum claims were denied, upon appeal, the families were transferred to DIF where they spent at least another three months detained awaiting resolution of their appeals. For example, sixteen-year old Mateo's family had been at DIF for two months, and was still awaiting the resolution of their initial appeal.¹²² Beyond the denial of those appeals, several of the accompanied children and parents we interviewed at DIF remained in detention there while pursuing judicial review of their asylum cases. Martín's family had been denied asylum twice, and was one month into what they understood would be a six-month judicial review of their claim.¹²³ They had been at DIF for seven months by the time we interviewed Martín.

Both in Siglo XXI and in DIF shelters, the children we interviewed were detained for periods far in excess of the "shortest possible time" required by international law.

Transfer to DIF Shelters

Mexican law calls for all unaccompanied minors to be immediately transferred to DIF, so long as the DIF shelters have the capacity to accommodate them.¹²⁴ The transfer requirement, in addition to ensuring that detention in the highly restrictive immigration stations be limited to the shortest possible time, holds the promise of giving effect to the international legal requirement that detention of migrant children be under the least restrictive conditions.¹²⁵ As discussed above, however, in practice, the majority of unaccompanied children apprehended

¹¹⁸ Interview with Mario (pseudonym), *supra* note 108.

¹¹⁹ *Id.*

¹²⁰ In practice, accompanied children cannot themselves be "asylum-seekers" per se in the Mexican immigration system, as their parents are treated as the principal applicants. Interview with Diego Lorente, in Tapachula, Mex. (Jan. 7, 2015).

¹²¹ *See, e.g.*, Interview with Martín (pseudonym), *supra* note 105.

¹²² Interview with Mateo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹²³ Interview with Martín (pseudonym), *supra* note 105.

¹²⁴ Immigration Act, *supra* note 3, art. 109(I). The Immigration Act does provide that children may be detained in immigration stations under "exceptional circumstances." *Id.* Having been denied access to Siglo XXI and access to interview a representative from INM, the research team was unable to uncover what "exceptional circumstances" existed to justify the placement of unaccompanied children in Siglo XXI.

¹²⁵ *See supra* note 91 and accompanying text.

by Mexican immigration authorities are detained in Siglo XXI for long periods of time before being transferred. Previous researchers have already identified this “systematic abrogation” of the obligation to transfer unaccompanied children from INM custody to DIF, concluding that the requirement is “merely a legal prescription that has not permeated practice.”¹²⁶ Our findings confirm the systematic failure to immediately transfer unaccompanied minors to DIF.

Our observations suggest that transferring *only* asylum-seekers and extremely vulnerable women and girls—and not all migrant children—was not an issue of capacity. Other than the pregnant women, young mothers, and young girls who had been transferred to DIF Municipal, we did not encounter any unaccompanied children in DIF shelters who were *not* seeking asylum. At the time of our visit, the DIF shelters in Tapachula were operating below capacity.¹²⁷ At the same time, according to consular officials and lawyers with regular access to Siglo XXI, the detention center there was replete with unaccompanied children, most of whom would be deported rather than be transferred to DIF.¹²⁸ For example, the Guatemalan consul in Tapachula told us that, the day before we spoke to him, a bus of eighteen Guatemalan minors left Siglo XXI for Guatemala just three days after the having arrived there.¹²⁹ Those children were never transferred to DIF.

Data released recently by INM supports our findings on the lack of systematic transfer of migrant children to DIF. Fray Matías’ study of the detention of migrant children in Tapachula based on this data found that in 2013, 6,723 children were detained in Siglo XXI, compared to just 422—only 6%—who were placed in DIF shelters.¹³⁰ Transfer to DIF is the exception rather than the rule, even though Mexican law calls for the immediate transfer of all unaccompanied children to DIF shelters.¹³¹ If a child does not apply for asylum or is not flagged as potentially needing international protection, she may stay detained in Siglo XXI from apprehension through return to her home country.¹³²

¹²⁶ CERIANI CERNADAS, *supra* note 82, at 15.

¹²⁷ Interview with Cristian Álvarez, in Tapachula, Mex. (Jan. 5, 2015); interview with Jorge Choi, in Tapachula, Mex. (Jan. 7, 2015).

¹²⁸ Interview with Central American Consular Official, in Tapachula, Mex. (Jan. 2015); interview with Diego Lorente, in Tapachula, Mex. (Jan. 6, 2015).

¹²⁹ Interview with Héctor Sipac Cuín, in Tapachula, Mex. (Jan. 7, 2015).

¹³⁰ CGRS, *supra* note 35, at 271. In 2012, INM placed 4,212 children in Siglo XXI, and only 114 (2.7%) in DIF; in 2011, 3,036 children in Siglo XXI and only 131 (4.3%) in DIF—from 2011 to 2013, INM more than doubled the number of children it detained there. *Id.*

¹³¹ Interview with Central American Consular Official, in Tapachula, Mex. (Jan. 6, 2015); interview with Diego Lorente, in Tapachula, Mex. (Jan. 2015). Consular officials who prepare the return travel and home-country reception of child deportees, and the directorship of Fray Matías—the only organization that provides independent legal counsel to asylum-seekers in Tapachula—are uniquely poised to make long-term observations such as this on Mexican immigration practices.

¹³² Interview with Central American Consular Official, *supra* note 131; interview with Diego Lorente, *supra* note 131.

The failure to transfer unaccompanied children from INM immigration stations to DIF is a violation of the right to be free from arbitrary detention. As discussed above, detention in violation of domestic legal procedures constitutes arbitrary deprivation of liberty under international law and standards.¹³³ Additionally, given the relatively greater restrictions on freedom of movement and association in Siglo XXI, failing to transfer migrant children to DIF constitutes a violation of the responsibility to detain child migrants using the least restrictive means necessary.¹³⁴

Accompanied Child Asylum-Seekers and Family Units

Under Mexican immigration law, children who are apprehended and detained along with their parents are not entitled to the same protective measures as unaccompanied children.¹³⁵ Indeed, the Mexican Immigration Act does not deal specifically with family detention, resulting in an *ad hoc* administration of immigration detention for migrant families apprehended together.¹³⁶ This sub-section presents our findings on the detention of accompanied child migrants in the context of the international and domestic legal rights they *are* guaranteed.

Family Separation

When migrant families are taken into INM custody and detained at Siglo XXI, their members are placed in different sections of the immigration station by age and gender, which frequently results in their separation. All adult males over age 18 are kept in the “men’s section.”¹³⁷ Women, girls, and small children under 12 are sent to the “women’s section,” while adolescent boys aged 12–17 go to the “youth section.”¹³⁸ Contact between family members detained apart from one another is limited to closely supervised encounters in the hallways and common areas of the immigration station for approximately one hour each evening.¹³⁹

¹³³ See *supra* note 95 and accompanying text.

¹³⁴ *Id.*

¹³⁵ See *generally* Immigration Act, *supra* note 3, tit. 6, cap. VI.

¹³⁶ CERIANI CERNADAS, *supra* note 82, at 230.

¹³⁷ Interview with Héctor Sipac Cuín, *supra* note 129; interview with Mateo (pseudonym), *supra* note 122.

¹³⁸ See Immigration Regulations, *supra* note 70, art. 236.

¹³⁹ See CENTRO DE DERECHOS HUMANOS FRAY MATIAS DE CÓRDOVA A.C., SEGUNDO INFORME SOBRE DERECHOS HUMANOS Y CONDICIONES DE VIDA DE LAS PERSONAS MIGRANTES EN EL CENTRO DE DETENCIÓN DE LA CIUDAD DE TAPACHULA, CHIAPAS, 29–30 (2013); CERIANI CERNADAS, *supra* note 82, at 230–31.

If and when members of family units detained in Siglo XXI are transferred to DIF shelters, families for which adult male family members (a father, brother) form part of the family unit apprehended, remain divided because adult males are barred from DIF shelters.¹⁴⁰ The geographical distance and strict limits on visitation between adult males detained in Siglo XXI and their family members in DIF make it practically impossible for family contact between children held at DIF and adult male family members held at Siglo XXI.¹⁴¹ For example, Mateo, sixteen, told us he had not seen his father in the two months since he had been transferred to DIF with his mother and siblings.¹⁴² Fifteen-year-old Enrique told us, “[m]y brother was separated from us because he is eighteen. I don’t know where he is.”¹⁴³

The protection measures built into Mexico’s immigration laws for unaccompanied children fail to protect the rights of migrant children detained with their families. Although girls and young children are detained together with their mothers, adolescent males are systematically separated from their mothers at Siglo XXI. They are reunited only in the event that the family is transferred to DIF, or upon deportation. In the case of children traveling with their fathers, family separation is a consequence of detention both in Siglo XXI and in DIF.

While INM may have varied from compliance with general age and gender separation norms by allowing young boys under age twelve stay in the women’s section with their mothers, they have not instituted the kind of flexibility required to meet the best interests of the child standard developed above. The uniform and mandatory separation of many children from their parents in detention is not implemented in a way that considers the best interests of the child. It therefore constitutes a violation of the right to family unity.

¹⁴⁰ Interview with Jorge Choi, in Tapachula, Mex. (Jan. 7, 2015); *see also* Ceriani Cernadas, *supra* note 82, at 230–1.

¹⁴¹ CERIANI CERNADAS, *supra* note 82, at 230–1.

¹⁴² Interview with Mateo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁴³ Interview with Enrique (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

Detention as a Deterrent to Seeking Asylum

In addition to violating the human rights of child migrants in the ways discussed above, we found that the detention of unaccompanied migrant children and family units in southern Mexico acts as a deterrent to their right to seek and enjoy asylum. Both the duration and conditions of detention weigh heavily on children apprehended by INM. Unaccompanied children frequently must decide for themselves whether to apply for international protection or return to their country of origin to potentially face harm—or start the perilous journey northward anew. Children detained with their families must ultimately bear the consequences of whatever decision their parents make; detention, and the possibility of family separation and psychological trauma it carries, certainly factor into parents’ risk assessments.

Legal Framework

Under the ICCPR, children are not to be detained as part of a mandatory rule for a broad class of people.¹⁴⁴ Indeed, UNHCR has stated that, “[d]etention policies aimed at deterrence are generally unlawful under international human rights law as they are not based on an individual assessment as to the necessity to detain.”¹⁴⁵ Instead, detention is only to be used if absolutely necessary and must include an individual assessment that takes into account conditions, duration, and the effect of those aspects of detention on children.¹⁴⁶ As such, Mexico has a duty to consider the best interests of the child as well as how conditions and length of detention may impact the decision to seek asylum. Indeed, we found that these two factors—conditions and length of detention—were the most significant in shaping how children perceived detention as a deterrent to seeking international protection.

Conditions of Detention

While not the primary focus of our research, as our request to access INM facilities was denied by the Mexican authorities, through interviews with migrants who had been detained there, we found that conditions of detention in Siglo XXI deter them from applying for asylum. As will be further elaborated below, most children are not actively screened by INM for protection needs, nor are they informed of their rights to apply for asylum and to be housed in a shelter outside of the immigration station.

¹⁴⁴ ICCPR, *supra* note 87, para. 18.

¹⁴⁵ Detention Guidelines, *supra* note 4, para. 3 (2012).

¹⁴⁶ ICCPR, *supra* note 87, para. 18.

Fifteen-year-old Enrique provided a typical description of the conditions at Siglo XXI, telling us, “it’s an awful place. People are crammed, it’s very hot, the food is terrible, and it’s dangerous for us teenagers because they put us together with *maras* (Central American gang members).”¹⁴⁷ We received a number of accounts of gang presence in the youth section of Siglo XXI, where children fleeing violence were detained in the same cells as members of the groups from which they had fled.

Thirteen-year-old Martín was one of those children, describing how “there are a lot of gang members there [at Siglo XXI]. They beat me very badly there.”¹⁴⁸ We also heard some accounts from migrants of INM officials engaging in verbal abuse or inappropriately disciplining migrant children.

Sixteen-year-old Jacobo reported being yelled at and laughed at by INM officials in Siglo XXI, and also said, “they treated us like dogs . . . we slept on a mat on the cement floor and whenever we talked back they would take away the mat and our food.”¹⁴⁹

Mario, a fourteen year-old male was detained in Siglo XXI for the duration of his initial asylum application and only learned about the possibility of being transferred to DIF after that application was denied.¹⁵⁰ When we interviewed him in DIF while he was awaiting resolution of his appeal, he told us, “I wish I had been here the whole time.” He told us he thought that, “refugee applications would go up if kids could [apply for protection] from a shelter” instead of being required to do so from Siglo XXI.¹⁵¹

¹⁴⁷ Interview with Enrique (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁴⁸ Interview with Martín (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁴⁹ Interview with Jacobo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁵⁰ Interview with Mario (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁵¹ *Id.*

Length of Detention

A psychologist who works with child migrants in the DIF Municipal shelter told us that many of the children she worked with at the Chiapas DIF shelter were apprehensive about applying for asylum because they expected to have to wait in detention conditions similar to those in Siglo XXI.¹⁵² She observed that their fear was compounded by concern about the length of time they would spend in detention if they applied for asylum.¹⁵³ She explained:

Very few [children request asylum]. What scares them is the prospect of being detained for three months. We try to tell them the length of the process in days or weeks because when we say three months, it sounds like a long time to them. They don't want to request asylum mostly because of having to wait in detention three months.¹⁵⁴

A consular official who regularly visited children in Siglo XXI and DIF facilities in Tapachula said that children also told him that the length of detention deterred them from seeking asylum. As he explained, "...the problem is that you can explain that people are eligible, but they have to wait forty-five days—three months—this is a critical time; they have to be locked up for that time. As soon as they hear that, they go back—even risking their life."¹⁵⁵

We heard from multiple children in DIF shelters about their concerns regarding the length of time it takes for the government to process asylum claims. Several children spoke about the length as it related to their idleness in detention, that they were unable to go to school—and that they could not leave. Jose told us, "The process was long and very boring. Here with nothing to do, you get desperate sometimes and want to escape. . ."¹⁵⁶ Other children explicitly recognized the length of time they spent in detention as a deterrent to seeking asylum. When Maria, seventeen, was asked if she had heard of asylum, she responded, "Yeah they told me I could apply but they said it would take three months and I do not want to go that long without talking to my family . . . If they would let me talk with my family, I might consider applying for refugee status."¹⁵⁷ Fifteen-year old asylum-seeker Paulina believed that other kids don't apply for asylum because they are "afraid that they will have to stay here three months in detention."¹⁵⁸ Whether accompanied or unaccompanied, children we interviewed saw the months of detention they would face as a consequence of applying for asylum as too high a price for the uncertain possibility that they would be granted asylum in Mexico.

¹⁵² Interview with Cony Nazaria Moreno Sol, in Tapachula, Mex. (Jan. 9, 2015).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Interview with a Central American Consular Official, in Tapachula, Mex. (Jan. 2015).

¹⁵⁶ Interview with José (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁵⁷ Interview with Maria (pseudonym), in Tapachula, Mex. (Jan. 5, 2015).

¹⁵⁸ Interview with Paulina (pseudonym), in Tapachula, Mex. (Jan. 5, 2015).

The human rights of Central American migrant children in Mexico are violated by their systematic detention by immigration enforcement authorities. As our findings have shown, children are spending lengthy periods of time deprived of their liberty in Siglo XXI and DIF, and the legal procedures in place for their detention and transfer are being almost universally ignored. As a result, their detention is arbitrary under international law. The Mexican government has also failed to act in a manner consistent with the principle of best interests of the child—for thousands of child migrants, detention is the rule rather than the exception. The separation of families held by Mexican immigration authorities violates their right to family unity. Finally, the poor conditions of detention combined with the fact that children who seek asylum will be deprived of their liberty for a long period of time, together, effectively deter children from seeking international protection. As will be discussed in more detail below, these circumstances also contribute to create significant barriers to migrant children's right to access international protection in Mexico, compounding, rather than alleviating, the humanitarian situation facing Central American migrant children.

ACCESS TO INTERNATIONAL PROTECTION

We found that migrant children who are apprehended and detained in southern Mexico often lack access to international protection. First, they are not routinely screened for international protection needs, and they are not adequately informed of their rights to apply for international protection, as required under international human rights law. In light of the fact that so many children in this situation are leaving Guatemala, El Salvador, and Honduras—where it is well-documented that many children are fleeing violence and have international protection needs—the failure to provide such access to international protection means that Mexico is not meeting its responsibilities to assist refugees and risks violating the international norm of *non-refoulement* when it returns children to Northern Triangle countries. Finally, as will be discussed in more detail below, the form of complementary protection that Mexican law provides to protect all unaccompanied child migrants, the humanitarian visa, is implemented in a manner that does not effectively ensure that Mexican officials will never violate the norm of *non-refoulement* when it returns unaccompanied children.

Legal Framework

The Committee on the Rights of the Child has interpreted the CRC to provide that, “[a]sylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age.”¹⁵⁹ In order for children to enjoy this right, states must comply with international legal norms relating to refugee recognition, international protection, and *non-refoulement*. For children, states must ensure that the best interests of the child are considered in all actions taken that affect the child. This obligation requires that states allow children to express their views openly and freely, and to participate in proceedings in an informed manner.

International Protection and *Non-Refoulement*

Under the United Nations Declaration of Human Rights, “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁶⁰ In implementing this right, the Convention and Protocol Relating to the Status of Refugees (Refugee Convention) defines a refugee as a person who is unable or unwilling to return to her country of origin owing to a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion.¹⁶¹ Among other things, the Refugee Convention instructs states to protect recognized refugees by offering the opportunity to assimilate and naturalize.¹⁶² This has been widely interpreted to impose a duty on states to offer durable solutions to refugees in order to help them rebuild their lives.¹⁶³

¹⁵⁹ CRC, General Comment 6, *supra* note 6, para. 66.

¹⁶⁰ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/217(III), art. 14 (Dec. 10, 1948) [hereinafter UDHR].

¹⁶¹ Refugee Convention, *supra* note 56, art. 33.

¹⁶² *Id.* art. 34.

¹⁶³ UNHCR, *Guidelines in International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees*, in GUIDELINES HANDBOOK AND GUIDELINES ON

The Cartagena Declaration on Refugees, to which Mexico and other Latin American countries are parties, and which Mexico has incorporated into domestic law, expands the definition of refugees entitled to protection to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”¹⁶⁴

Under both the Refugee Convention and the Cartagena Declaration, states must observe the principle of *non-refoulement*, which prohibits the expulsion or return of refugees to their countries of origin.¹⁶⁵ In addition, the principle of *non-refoulement* is recognized as a norm of customary international law and binds all states, regardless of their having ratified any particular treaty.¹⁶⁶ The principle of *non-refoulement* is not limited to the refugee context. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), states may not return any person to a state “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁶⁷

PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS 99 (2011), available at <http://www.refworld.org/pdfid/4f33c8d92.pdf>.

¹⁶⁴ Cartagena Declaration, *supra* note 59, concl. 3.

¹⁶⁵ Refugee Convention, *supra* note 56, art. 33; Cartagena Declaration *supra* note 59; Ley Sobre Refugiados y Protección Complementaria [Refugee Act], as amended, art. 15 (xx), Diario Oficial de la Federación, 27 de Enero de 2011 (Mex.). The class of refugees entitled to protection from return under the principle varies according to the host state's treaty obligations, resulting in broader protections in states parties to the Cartagena Declaration where the recognized definition of refugee is broader.

¹⁶⁶ Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, ¶ 211.

¹⁶⁷ States should in particular take into account the existence of “a consistent pattern of gross, flagrant or mass violations of human rights” in the State of origin. CAT, *supra* note 57, art. 3; see also UDHR, *supra* note 160, art. 5; ICCPR, *supra* note 87, art. 7; American Convention, *supra* note 87, art. 5.2.

The Committee on the Rights of the Child expands states' obligations with respect to migrant children under the principle of *non-refoulement* in its General Comment 6.¹⁶⁸ The Committee interprets the CRC, in conjunction with the other international legal instruments on *refoulement* discussed above, to prohibit states from returning children to a country where there are "substantial grounds for believing that there is a real risk of irreparable harm to the child."¹⁶⁹

In addition to refugee protection and *non-refoulement* obligations under the CAT and the CRC, states may offer complementary protection. This extra protection may be granted when a state acknowledges an individual's needs and risks and identifies a need for protection, even though her situation may not fit within any traditional definition of refugee protection.¹⁷⁰

Best Interests of the Child

In addition to containing an obligation of heightened *refoulement* protections for children, the CRC requires that states implement special measures to assure that these rights are provided to children, by stating that child asylum-seekers "shall, whether unaccompanied or accompanied by his or her parents . . . receive appropriate protection and humanitarian assistance" in the enjoyment of all rights set forth in the CRC.¹⁷¹ Key among those rights that the CRC protects is the right to have the best interests of the child as a primary consideration when making immigration-related decisions.¹⁷² States must consider the child's best interests as the primary consideration in decisions relating to asylum, immigration, and other forms of humanitarian protection.¹⁷³

¹⁶⁸ For an explanation of the expansiveness of *non-refoulement* obligations as stated by CRC, General Comment 6, see Alice Farmer, *A Commentary on the Committee on the Rights of the Child's Definition of Non-Refoulement for Children: Broad Protection for Fundamental Rights*, in THE FORDHAM LAW SCHOOL INSTITUTIONAL REPOSITORY 39 (2011).

¹⁶⁹ CRC, General Comment 6, *supra* note 6, paras. 26–27 (citing Refugee Convention, *supra* note 56; CAT, *supra* note 57; CRC, *supra* note 5, arts. 6, 37 (The obligations apply "apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction," and assessments under this standard should determine whether a child would suffer serious consequences related to inadequate food or health services upon return). This definition cites CRC Article 6, which recognizes that children have the inherent right to life, and Article 37, which recognizes children's rights to be free from torture or other inhumane or degrading treatment; arbitrary and unlawful deprivation of liberty; and right to be treated with dignity and receive legal help if it is necessary to deprive the child of liberty.

¹⁷⁰ Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, ¶ 238.

¹⁷¹ CRC, *supra* note 5, art. 22.1.

¹⁷² CRC, *supra* note 5, art. 3.1.

¹⁷³ Day of General Discussion, *supra* note 14, paras. 27-28 (recognizing "the need for consistent and harmonised Convention-compliant practice for asylum-seeking child migrants to be established and the heightened need for the principle of the best interests of the child to be interpreted and applied carefully for unaccompanied migrant children including refugee or asylum seeking children"); UNHCR, CRC Day of General Discussion 2012 Background Paper 20 (2012), available at <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/2012DGDBackgroundPaper.pdf> [hereinafter Background Paper]; CRC, General Comment 14, *supra* note 6,

In order to ensure that the best interests of unaccompanied children are considered in all decisions that affect them, states must conduct on-going best interests determinations (BID).¹⁷⁴ The process of assessing a child's best interests must be conducted by the state in a friendly and safe atmosphere.¹⁷⁵ According to international law and standards, state officials assessing a child's best interests should also be part of a multidisciplinary team of professionals who specialize in child and adolescent development.¹⁷⁶

Informed Participation

In order to effectuate the legal principle of the best interests of the child, the CRC also requires states to allow children to freely express their views in all matters that concern them.¹⁷⁷ To ensure that child migrants' right to free expression is protected in the determination of their migration status, states must provide them with information about the right to apply for international protection in language appropriate for the child's maturity level.¹⁷⁸ Moreover, such determinations should be conducted in an age and gender-sensitive manner.¹⁷⁹

In providing that information about their right to international protection, children must be informed of all of their immigration-related options, including the right to apply for asylum or other form of international protection, but also including the possible consequences of the decision.¹⁸⁰ As the Inter-American Commission on Human Rights recently stated in its Advisory Opinion on the Rights of Children in the Context of Migration and/or In Need of International Protection:

[I]n the case of children, a language that is adapted to their maturity and age should be used. Children must be provided with all the necessary information, adapted to their age and maturity, on their rights, the services available to them, and the procedures they may assert. In particular, they should be informed of their right to request asylum. . . .¹⁸¹

para. 30 (noting that the scope of decisions made by administrative bodies in which the child's best interests shall be the primary consideration is "very broad" and includes asylum and immigration-related decisions).

¹⁷⁴ A BID is a "formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment." CRC, General Comment 14, *supra* note 6, para. 48. (BIDs are based on the "child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs").

¹⁷⁵ CRC, General Comment 14, *supra* note 6, para. 94.

¹⁷⁶ *Id.*

¹⁷⁷ CRC, *supra* note 5, art. 12.1; *see also* UNHCR, Guidelines on Determining the Best Interests of the Child 59–60 (2008) <http://www.unhcr.org/4566b16b2.pdf>.

¹⁷⁸ CRC, General Comment 6, *supra* note 6, para. 25; *see also* Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, ¶ 197.

¹⁷⁹ CRC, General Comment 14, *supra* note 6, para. 94.

¹⁸⁰ Background Paper, *supra* note 173, at 11.

¹⁸¹ Inter-Am. Ct. H. R. OC-21/14, *supra* note 2, para. 197.

Screening for International Protection

An important part of the BID involves screening children for international protection needs.¹⁸²

Screening for international protection includes uncovering:

All available information to determine the potential existence of international protection needs, including those: due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” in the child’s country of origin . . . deriving from external aggression, occupation, foreign domination or events seriously disturbing public order . . . or relating to the indiscriminate effects of generalized violence.¹⁸³

Focusing in particular on children who have been detained in either Siglo XXI or DIF shelters, the following findings evaluate whether Mexican immigration officials are providing access to international protection to child migrants, and, if so, whether they are doing so in a manner consistent with international law and standards.

¹⁸² CRC, General Comment 6, *supra* note 6, para. 20.

¹⁸³ *Id.* para. 31.

The Right to Access International Protection in Mexico

Given the increase in the number of children traveling through Mexico from the Northern Triangle who are fleeing violence and may need international protection,¹⁸⁴ it is important that each child migrant apprehended in Mexico is screened for potential international protection needs. When unaccompanied children are detained in Mexican immigration stations, that job falls on INM immigration agents known as OPIs, who are supposed to screen all unaccompanied minors for international protection needs.¹⁸⁵ Moreover, OPIs are obligated to inform all unaccompanied children of their right to apply for asylum.¹⁸⁶ While Mexican law does not explicitly provide that accompanied children should have a formal screening from an OPI, it does provide that any child in an immigration station should receive help from an OPI in all immigration proceedings,¹⁸⁷ and that all migrants in general should be given information about the right to apply for asylum.¹⁸⁸

Mexican law also codifies a form of complementary protection for unaccompanied minors. When it is determined that it would be in the best interests of the child, an unaccompanied minor may be granted a humanitarian visa.¹⁸⁹ Victims of crimes, asylum-seekers, and others whom INM finds grounds to grant protection for humanitarian reasons may also qualify for humanitarian visas.¹⁹⁰ This form of protection allows a child to remain in Mexico for one year, but must be re-authorized upon expiration if the reason to grant the child the visa still exists.¹⁹¹

This section presents our findings on children's access to international protection. First, we will describe how Mexican immigration officials fail to screen children for international protection needs. Next, we will describe that in the absence of such screenings, Mexican immigration officials also fail to inform children of their rights to apply for international protection. Finally, although Mexican law provides that unaccompanied minors may qualify for humanitarian visas, we explain our finding that the procedures for acquiring a humanitarian visa are ineffective.

¹⁸⁴ See *supra* notes 35–42 and accompanying text.

¹⁸⁵ Immigration Act, *supra* note 3, art. 112(IV); Immigration Regulations, *supra* note 70, arts. 169–77; Circular No. 001/2010, For the Instruction of the Procedure of the attention of Unaccompanied Children, Art. 3 (Dec. 10, 2010), available at <http://www.inm.gob.mx/static/pdf/DOF-OPIS.pdf> [hereinafter OPI Circular].

¹⁸⁶ Immigration Act, *supra* note 3, art. 109(ii); OPI Circular, *supra* note 185, art. 7.III.

¹⁸⁷ Immigration Regulations, *supra* note 70, art. 230(v).

¹⁸⁸ Immigration Act, *supra* note 3, art. 109(ii).

¹⁸⁹ Immigration Act, *supra* note 3, art. 52(V); 74.

¹⁹⁰ *Id.* art. 52(V).

¹⁹¹ Lineamientos para trámites y procedimientos migratorios [Guidelines for Immigration Procedures] as amended, art. 50, Diario Oficial de la Federación [DO], once de Augusto de 2012 (Mex), available at http://dof.gob.mx/nota_detalle.php?codigo=5276967&fecha=08/11/2012

Screening for International Protection

One unaccompanied child we spoke with, fourteen-year-old Mario from Honduras, reported that he met with an OPI more than once, and thought the OPI was helpful.¹⁹² Unfortunately, this was not the case with most children we interviewed. More typically, we spoke with children like fifteen-year-old Eduardo and his brother who spent a total of twenty-seven days in Siglo XXI and reported that he did not get screened or even know what an OPI was.¹⁹³ In fact, most of the unaccompanied children we spoke with who had been detained in Siglo XXI had never met with an OPI or had never heard of OPIs, and were not interviewed for a best interests assessment or screened for international protection needs.¹⁹⁴ None of the accompanied children we interviewed reported having met with an OPI, or having received any assistance from an OPI.

A recent study by the Center for Human Rights Fray Matías de Cordoba (Fray Matías), reported that child migrants in detention in Tapachula rarely have contact with OPIs.¹⁹⁵ One reason, the group noted, was that out of 437 total OPIs spread out over all thirty-two Mexican Federal Districts, there are only 28 of OPIs working in Tapachula.¹⁹⁶ A 2013 study of INM similarly found that only 6% of all OPIs were located in the state of Chiapas, where Tapachula sits.¹⁹⁷ This is a low number in light of the fact that more than a third, or 37%, of all children detained for immigration-related reasons in Mexico were detained in Chiapas in 2014.¹⁹⁸

¹⁹² Interview with Mario (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁹³ Interview with Eduardo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

¹⁹⁴ Anonymous Interviews, in Tapachula, Mex., (Jan. 6–7, 2015).

¹⁹⁵ CGRS, *supra* note 35, at 273.

¹⁹⁶ *Id.*

¹⁹⁷ INSYDE, DIAGNÓSTICO DEL INSTITUTO NACIONAL DE MIGRACIÓN 244 (2013).

¹⁹⁸ Out of 23,096 children detained, 8,682 were in Chiapas; the next highest total was less than half—Vera Cruz had 4,332 children detained in 2014. INM BOLETÍN 2014, *supra* note 13, at 123. It should also be noted that OPIs work with children repatriated from the United States. OPI Circular, *supra* note 185. While this accounts for some of the reason that OPIs are spread throughout the country and not concentrated in the southern regions, the distribution of OPIs reflects a misplacement of resources as was noted in a 2013 comprehensive study of INM. INSYDE, DIAGNÓSTICO DEL INSTITUTO NACIONAL DE MIGRACIÓN 244 (2013).

A study conducted by UNHCR from October through December of 2013 and for which 72 migrant children detained in immigration stations in Mexico were interviewed, found that nearly 80% of children had no knowledge of OPIs.¹⁹⁹ A Central American consular official based in Tapachula who regularly visits Siglo XXI to work with migrant children opined that being an OPI is basically an “administrative job.”²⁰⁰ Despite the fact that OPIs are supposed to safeguard children’s rights, the official said that OPIs “do not interact with the children. You see them [at Siglo XXI] . . . but they do not work with the population.”²⁰¹ A UNHCR protection officer based in Tapachula suggested that OPIs do not spend enough time working with children because they are too busy processing deportations.²⁰²

The end result is that many migrant children fleeing violence from El Salvador, Guatemala, and Honduras are apprehended and detained by INM but never meet an immigration official from INM—an OPI—that is legally charged with screening them for international protection needs before they are deported. Without effectively determining whether children will be returned to a risk of harm that qualifies them for protection under international (and domestic) law, the Mexican government has no way of knowing whether it is complying with its *non-refoulement* obligations.

¹⁹⁹ UNHCR, *supra* note 40, at 62.

²⁰⁰ Interview with a Central American Consular Official, in Tapachula, Mex. (Jan. 2015).

²⁰¹ *Id.*

²⁰² Phone Interview with Rafael Zavala, in Washington, DC (March 11, 2015).

No Best Interests Determination

One reason why children are not screened for international protection is that such a determination should be the consequence of a formal, binding, Best Interests Determination (BID).²⁰³ Mexican law charges OPIs with the duty to assess the best interests of all unaccompanied children,²⁰⁴ but Mexico has not yet codified a formal procedure for making a BID.²⁰⁵ Instead, Mexican law dictates that OPIs screen children for international protection needs during a best interests interview for which there is no formal, objective procedure in place.²⁰⁶ While the Mexican government is in the process of creating a more specific and formal protocol for determining the best interests of Central American children in immigration proceedings, at the time of our interviews with migrants (and at the time of this writing), it had yet to implement a formal, binding BID procedure.²⁰⁷ A UNHCR protection officer based in Tapachula noted that, “a BID impacts all decisions on migrant child protection. When you look at asylum files, there is no document that shows a BID has been done. This gap between the law and the practice prevents effectuating meaningful protection of children.”²⁰⁸

Arguably another challenge with regard to BIDs has to do with the structure of the immigration agency itself and the fact that the law places OPIs within INM, the agency in charge of immigration enforcement. Some observers suggest that OPIs tend to focus more on detention and deportation than the actual needs of children.²⁰⁹ A BID procedure that is compliant with international standards on the best interests of the child, however, should be performed by a multidisciplinary team—as opposed to locating the entire responsibility within one agency—and at least one participant that specializes in child protection.²¹⁰

²⁰³ For further explanation of the BID, see *supra* note 172–176 and accompanying text.

²⁰⁴ Immigration Regulations, *supra* note 70, art. 172.

²⁰⁵ CGRS, *supra* note 35, at 282.

²⁰⁶ Immigration Regulations, *supra* note 70, arts. 169–177.

²⁰⁷ Natalia Gómez Quintero, *Mexico alista plan para los niños migrantes*, EL UNIVERSAL, Jan. 7, 2015, <http://www.eluniversal.com.mx/nacion-mexico/2015/impreso/mexico-alista-plan-para-ninos-migrantes-221958.html>.

²⁰⁸ Phone Interview with Rafael Zavala, in Washington, DC (March 11, 2015).

²⁰⁹ Interview with Diego Lorente, in Tapachula, Mex. (Jan. 7, 2015) (Lorente told us that due to high deportation rates, OPIs become “mere deportation bureaucrats” because “they do not really have time to do anything else”); see also CGRS, *supra* note 35, at 244. UNICEF, on the other hand, has proposed that OPIs become part of DIF, an agency in Mexico that specializes in child protection rather than immigration enforcement. CGRS, *supra* note 35, at 273; see also CERIANI CERNADAS, *supra* note 82, at 190 (criticizing the Mexican government for placing OPIs within an organization—INM—in charge of immigration enforcement). For an explanation of DIF, see *supra* chart: The Mexican Immigration and Asylum Process.

²¹⁰ CGRS, *supra* note 35, at 282.

Access to Information about the Right to Apply for International Protection

OPIs are not only obligated to screen children for international protection needs, they are obligated to inform children of their right to apply for it as well.²¹¹ None of the children we interviewed who had been detained in Siglo XXI reported that an OPI (or any other INM official) informed him or her of their right to apply for international protection. Fourteen-year-old Mario reported to us that an INM official informed him of his right to apply for asylum when he was apprehended in Arriaga, a city that is located several hours north of Tapachula, but only after he expressed fear of returning to Honduras.²¹² The official at the immigration station who informed him of his right was not an OPI, and told him that in order to apply for asylum, Mario would have to go to an immigration station in Tapachula—Siglo XXI.²¹³

Both children in shelters and staff members who work with migrants reported that migrant children are often not aware of their rights to seek asylum or international protection. Eighteen-year-old Ricardo, who had been detained in immigration stations and DIF shelters for ten months while applying for asylum and then appealing his denial, shared his view of why many children do not apply: “They don’t know about it. They don’t know about COMAR.”²¹⁴ The director of Casa del Migrante Scalabrini—a shelter for both passing migrants and returned migrants—in Guatemala City, said that most migrants he meets who have been deported from Mexico do not know they had asylum rights there.²¹⁵ This failure to provide children information means that many children never learn of their right to apply for international protection.

Our findings are corroborated by a UNHCR report that was researched in 2013.²¹⁶ In that study, 73% of children interviewed did not know of their right to apply for international protection.²¹⁷ As our research team found, UNHCR noted that some children are simply not being informed about their rights by the Mexican government.²¹⁸ UNHCR’s study further explained that children who are informed after being apprehended during migration and detained in an immigration station may be traumatized by the experience of being apprehended and detained, and unable to pay attention when presented with the information.²¹⁹ Moreover, those children who receive some information from government officials may simply not understand the information they are given.²²⁰

²¹¹ Immigration Act, *supra* note 3, arts. 109(ii); 2010 OPI Circular, *supra* note 185, art. 7.III.

²¹² Interview with Mario (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

²¹³ *Id.*

²¹⁴ Interview with Ricardo (pseudonym), in Tapachula, Mex. (Jan. 9, 2015).

²¹⁵ Interview with Juan Luis Carvajal, Casa del Migrante, in Guatemala City, Guat. (Jan. 5, 2015).

²¹⁶ UNHCR, *supra* note 40, at 60.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* For an explanation of the conditions of detention, see *supra* Conditions of Detention.

²²⁰ *Id.*

A lawyer from Fray Matías who represents child asylum-seekers confirmed to us that sometimes COMAR informs children of their right to apply for international protection by giving them a written document explaining the right in a way that they do not understand.²²¹ A UNHCR protection officer from Tapachula noted that, while some information about asylum is being distributed by the Mexican government, children do not understand it.²²²

By failing to provide information that is understandable, INM is not meeting its obligation to inform children of their right to apply for asylum or international protection in a way that is meaningful. Many detained children never learn of their right to apply for asylum. OPIs are not fulfilling their duty under international law to inform children of their right to seek asylum by informing children in both an age appropriate manner and in language that they can understand. As a consequence, many children go through the apprehension and detention stages of the deportation process without receiving adequate information about how to apply for international protection.

Filling the Void: Children Learn about Asylum from Other Sources

We found that many children who learn about their right to apply for international protection learn from representatives of Fray Matías or UNHCR rather than from OPIs or other immigration agents.²²³ Unfortunately, Fray Matías has extremely limited access to the Immigration Station Siglo XXI and, therefore, is limited in its staff's ability to inform children of their asylum rights.²²⁴ UNHCR has regular access to the immigration station and regularly conducts rights explanations and hangs posters explaining asylum rights in the immigration station. Neither Fray Matías nor UNHCR, however, is legally responsible for ensuring that Mexico meets its international legal commitment to protect the rights of migrant children, as is INM.

²²¹ Interview with Ana Isabel Nigenda Cervantes, in Tapachula, Mex. (Jan. 9, 2015).

²²² Phone Interview with Rafael Zavala, in Washington, DC (March 11, 2015).

²²³ Anonymous Interviews, in Tapachula, Mex. (Jan. 3–9, 2015).

²²⁴ Interview with Diego Lorente, in Tapachula, Mex. (Jan. 7, 2015).

We also found that children who do learn of their rights to apply for asylum often do so from other migrants. Ricardo, for example, learned about his rights from another child.²²⁵ When he asked immigration officials about his rights, he was given a listing of his rights from COMAR that he did not completely understand.²²⁶ Eduardo and his brother Jacobo, who were fleeing gang violence in El Salvador, also learned about asylum from other migrants.²²⁷ These children, whose asylum claims were denied, reported that an incomplete understanding of their asylum rights prevented them from effectively presenting an asylum case.²²⁸

The 2013 UNHCR study characterized those who did learn of their right as having learned in a “stroke of luck.”²²⁹ In Tapachula, this luck is due to the fact that staff from Fray Matías and UNHCR, along with other migrants, are filling a void that should be filled by INM—informing children of their right to apply for asylum and international protection.

²²⁵ Interview with Ricardo (pseudonym), in Tapachula, Mex. (Jan. 9, 2015).

²²⁶ *Id.*

²²⁷ Interview with Eduardo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

²²⁸ *Id.*; interview with Jacobo (pseudonym), in Tapachula, Mex. (Jan. 7, 2015); interview with Ricardo (pseudonym), in Tapachula, Mex. (Jan. 9, 2015).

²²⁹ UNHCR, *supra* note 40, at 59.

The Humanitarian Visa

Our research found that, in practice, very few migrants get a humanitarian visa.²³⁰ Just as children lack knowledge about asylum rights, we also found that children are poorly informed about the possibility of obtaining protection under the humanitarian visa program. Few children we encountered were even aware of the existence of humanitarian visas. For example, Mario, who reported fearing returning to Honduras because he received threats from a gang that had already kidnapped his sister and who had already lost his asylum claim, was unaware of the humanitarian visa as an option to temporarily stay in Mexico.²³¹

Further, the children we identified who had applied for humanitarian visas were only able to do so while living in a DIF shelter after their applications for asylum were denied following appeal—making for a very lengthy process beginning with apprehension and detention in Siglo XXI. Indeed, the combination of applying for asylum, appealing a denial, and then applying for a humanitarian visa may stretch for many months.²³² The prolonged process is difficult for children who are forced to wait for a humanitarian visa while living in a DIF shelter. This aspect may further deter those children who know about it from seeking the humanitarian visa.

Statistics released by INM confirm that the humanitarian visa is not a widely-used mechanism for protecting vulnerable migrants. In 2014, Mexico granted 332 people humanitarian visas,²³³ up from 205 in 2013.²³⁴ According to a comprehensive study of INM published in 2013, the few migrants who obtained a humanitarian visa in 2013 did so on the grounds of being the victim of a crime, as opposed to obtaining it on the grounds of being an asylum-seeker or an unaccompanied minor.²³⁵

²³⁰ See COMAR Statistics, *supra* note 61.

²³¹ Interview with Mario (pseudonym), in Tapachula, Mex. (Jan. 7, 2015).

²³² Interview with Ricardo (pseudonym), in Tapachula, Mex. (Jan 9, 2015); CGRS, *supra* note 35, at 275.

²³³ INM BOLETÍN 2014, *supra* note 13, at 15.

²³⁴ INM BOLETÍN 2013, *supra* note 12, at 15.

²³⁵ INSYDE, *supra* note 198, at 253–56 (2015).

Central American children migrating through Mexico are denied their right to access international protection by immigration authorities. As our findings have shown, the immigration officials legally tasked with screening children for international protection—OPIs—often fail to meet with children. Further, OPIs should be informing children of their right to apply for asylum or other form of international protection. The failure of OPIs to meet with children means that children are often uninformed of their rights to protection under international and Mexican law. As a result, children often go through apprehension and detention without being screened for international protection, or informed of their rights to apply. Further, while the humanitarian visa should ensure that no unaccompanied child is *refouled* in violation of international law, in reality few children are able to take advantage of that form of protection. Unaccompanied children are either uninformed that they may be eligible for a humanitarian visa, or they would not apply for the visa due to the prospect of prolonged detention during the application process. When children from El Salvador, Guatemala, and Honduras are not screened for international protection needs and uninformed of their right to apply for international protection, the Mexican government runs the risk of violating its *non-refoulement* obligations when it returns them to their home countries.

CONCLUSIONS:

In the last few years, Mexican immigration law has undergone significant reform, including many improvements that, on paper, better ensure the protection of the rights of migrant children, including to international protection. However, our findings show that the relevant institutions fail to comply with important provisions of the reformed laws as well as with international law and standards. Unfortunately, the reality for most migrant children apprehended by immigration authorities in Mexico is characterized by the violation, rather than the protection, of human rights.

Mexico is currently in breach of its international human rights obligations to protect children's rights against arbitrarily deprivation of liberty. Migrant children in Mexico are placed in detention immediately after apprehension by immigration officials. Both in Siglo XXI and in DIF shelters, child migrants are being detained for periods far in excess of the "shortest possible time" required by international law. Confinement of children in the Siglo XXI immigration station also frequently surpasses the limits established by Mexican domestic law.

The Mexican government has also failed to implement alternatives to detention that are adequate under international law. Our findings show that DIF shelters—considered alternatives to detention under Mexican law—continue to deprive children of their liberty. Unfortunately, even if the necessary reforms to the DIF system were made to bring confinement there into compliance with international law, the situation would not be adequately remedied: Mexican immigration authorities are systematically abrogating their legal obligation to transfer unaccompanied children from the immigration stations to DIF shelters.

In addition to arbitrarily depriving migrant children of their liberty, Mexican immigration authorities are detaining them in conditions that violate their fundamental human rights. In Siglo XXI, migrants are subjected to family separation and, reportedly, the risk of gang violence. These detention practices directly contravene the principle that states should have the best interests of the child as the primary consideration whenever their actions affect children. Not only is such prolonged immigration detention never in the best interests of the child, but there is also no child-specific procedure in place to make a best interests determination that should govern decisions that are made regarding the child.

In addition to arbitrarily depriving child migrants of their liberty and acting without consideration for their best interests in the conduct of immigration enforcement, the detention of migrant children in Mexico operates as a deterrent to seeking asylum. The prospect of spending lengthy stretches of time in a detention facility while waiting for a pending asylum application or appeal causes many children not to pursue an asylum claim. By implementing immigration detention policies that affect children's right to asylum, Mexico is in breach of its international legal obligations to protect both children and refugees.

Mexico is also failing to meet its duty to screen migrant children for international protection needs and to meaningfully inform them of their right to seek asylum. As a result, non-governmental organizations (NGOs) and UNHCR are left to attempt to fill the void of providing children with this information. This situation leads to many children learning about their right to seek asylum from other migrants, or being deported without ever learning about these rights. Additionally, Mexican immigration officials fail to screen children for international protection needs. As the Mexican government deports children to their home countries without performing these duties, they are at risk of violating the international human rights obligation of *non-refoulement*.

The Best Interests Determination (BID) is an essential component of international legal obligations respecting children's rights. According to Mexico's immigration laws the BID is determinant of virtually all decisions that are made regarding the child as he or she navigates the immigration procedures. However, in contravention of international law and in spite of its own domestic law, Mexico does not currently have any procedure in place to make BIDs. The lack of a BID procedure leads to children being deported against their best interests, even when many of them may be in need of international protection. Similar to its failure to screen migrant children for protection needs, Mexico's failure to determine the best interests of migrant children may result in the violation of the international law against *refoulement*, as well as the principle of the best interests of the child.

RECOMMENDATIONS:

Based on our findings and conclusions, we have made recommendations to the U.S. government, the Mexican government, international organizations, and NGOs in Mexico. In documenting and analyzing Mexico's immigration practices within a human rights framework, we seek to spur remedial measures to ensure protection of the fundamental rights of migrant children in the Americas.

We recommend:

TO THE MEXICAN GOVERNMENT:

Eliminate the possibility of prolonged detention of migrant children. Implement alternatives to detention, so that no child's liberty is deprived for immigration-related reasons. End the practice of detaining children in facilities designed primarily for adults, such as Siglo XXI.

Increase the capacity of the National System for Integral Family Development (*Sistema Nacional para el Desarrollo Integral de la Familia* (DIF)) to expedite the transfer of children from immigration stations to appropriate shelters. Allow children to safely leave DIF shelters to interact with the larger community and attend school.

Increase the capacity of the Mexican Commission for Refugees (*Comisión Mexicana de Ayuda a Refugiados* (COMAR)) to investigate and adjudicate asylum claims by increasing personnel and ensuring age-appropriate procedures to address the vulnerabilities of child migrants.

Ensure sufficient staffing of Child Protection Officers (*Oficiales de Protección de la Infancia* (OPIs)) across Mexico—and particularly in Tapachula, which because of its proximity to the southern border, is likely to have greater numbers of child migrants—to accommodate all migrant children. Improve the training of OPIs to ensure that they can effectively assess children's best interests and screen all children for international protection. Implement a formal Best Interests Determination procedure to ensure that the primary consideration in immigration proceedings is the best interests of the child.

Amend the screening procedures in place in the Immigration Regulations and the new Child Welfare Law to require protection screening for all children, not just unaccompanied children.

Ensure all child migrants apprehended by the Mexican government are informed by Child Protection Officers or another government agent about their right to seek asylum.

Allow NGOs regular access to detention facilities so that they are able to help migrant children by providing information on rights and offering legal representation and advice.

TO MEXICAN CIVIL SOCIETY:

Continue to advocate for increased access to detention facilities in order to better assist child migrants who are detained. Continue to improve legal services available to migrant children in order to help them with asylum claims and appeals.

Collect and disseminate data to supplement the limited data released by COMAR and to provide a more accurate picture of the humanitarian situation on the ground.

Monitor the involvement of U.S. agencies and the investment of U.S. aid in the Mexican immigration enforcement apparatus.

TO UNHCR:

Increase funding and resources to its UNHCR field office in southern Mexico, so that it can more effectively monitor Mexico's implementation of the Refugee Convention.

Raise awareness about alternatives to detention and encourage the Mexican government to pursue the implementation of alternatives to immigration detention.

Continue to provide training for Mexican staff and government employees working on migrant issues. Monitor and enhance the effectiveness of COMAR and OPIs, ensuring they are adequately screening for international protection needs. Advocate for improved training for OPIs. Train Mexican immigration officials on the implementation of a child-friendly Best Interests Determination procedure.

TO THE U.S. GOVERNMENT:

Stop encouraging Mexico and other Central American countries to interdict migrants merely in order to prevent them from reaching U.S. territory. Any funding disbursed for the purpose of fortifying borders in Central America and southern Mexico should be conditioned on the receiving country's consideration of affirmative efforts to protect the rights of migrants, including the right to seek and enjoy asylum or other forms of international protection.

To the extent that the United States continues to fund immigration enforcement in Mexico and Central America, ensure that a substantial proportion of the funds are directed toward screening for and identifying migrants with international protection needs, providing alternatives to detention, and protecting vulnerable populations.

Promote and support Mexico and other Central American countries in their efforts to screen migrants and ensure that those identified as having international protection needs have ready access to a status determination procedure. In particular, the United States should channel funding toward increasing the capacity of the COMAR to investigate and adjudicate asylum applications, and toward improving the training and increasing the quantity of OPIs.





GEORGETOWN UNIVERSITY LAW CENTER
600 NEW JERSEY AVENUE NW
WASHINGTON, DC 20001

