



HUMAN
RIGHTS
WATCH

CLOSED DOORS

Mexico's Failure to Protect Central American Refugee
and Migrant Children



Closed Doors

**Mexico's Failure to Protect Central American Refugee and
Migrant Children**

Copyright © 2016 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-6231-33306

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>



MARCH 2016

ISBN: 978-1-6231-33306

Closed Doors

Mexico’s Failure to Protect Central American Refugee and Migrant Children

- Map of Mexico..... i**
- Map of Central America ii**
- Glossary..... iii**
- Summary 1**
 - Key Recommendations7
- Methods 9**
- I. Central American Migrant Children in Mexico 16**
 - The Number of Migrant Children in Mexico 17
 - Why They Flee.....18
 - Abuses During the Journey..... 35
 - Mexico as a Country of Destination38
 - The Role of the United States39
- II. Barriers to Access to Asylum and Other Protection..... 48**
 - Inadequate Screening for Children’s Protection Needs 49
 - The Failure to Inform Children of Their Rights53
 - Responses That Discourage Children from Seeking International Protection57
 - Detention as a Deterrent to Seeking Asylum 61
 - The Need to Recognize that Children May Have a Combination of Motives for Leaving Their Countries of Origin..... 64
 - The Failure to Provide Children with Adequate Assistance and Support in Preparing and Presenting Applications..... 71
 - The Small Number of Children’s Claims Heard by COMAR74
 - The Limited Use of Humanitarian Visas74
- III. The Impact of Detention 80**
 - Immigration Detention Centers 81
 - DIF Shelters91

Lack of Access to Education	93
The Consequences for Mental Well-Being.....	94
The Failure to Ensure Access to Alternatives to Detention	95
IV. Deportation and Return	100
The Failure to Assess Whether Returns Are in Children’s Best Interests.....	100
The Need for Durable Solutions.....	102
Separation of Families on Return	104
V. Mexico’s Obligations under Domestic and International Law.....	105
Mexico’s System of Refugee Protection	106
Children’s Right to a Fair Process in the Determination of Asylum Claims.....	110
The Prohibition on Immigration Detention of Children	117
The Obligation to Provide Unaccompanied and Separated Children with Care and Accommodation	120
The Prohibition on Refoulement	123
The Right to Education	126
Conclusion and Recommendations	129
Recommendations.....	130
Appendix: Analysis of Apprehension, Returns, and Refugee Recognition Data	134
Arrivals of Central American Children to the United States	135
Apprehension and Detention of Central American Children in Mexico	141
Return of Children to Their Countries of Origin.....	146
Children’s Claims for International Protection in Mexico	148
Acknowledgments.....	151

Map of Mexico



Map of Central America



Glossary

Adolescent	As used in Mexican law, a child between the ages of 12 and 17.
Child	As used in this report and in international law, any person below the age of 18 years. Mexican law frequently uses the term “child” to refer to children under the age of 12.
COMAR	Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados), the government agency that adjudicates applications for refugee recognition and complementary protection.
<i>Coyote</i>	A slang term for a person who engages in the smuggling of migrants; such persons are also called <i>polleros</i> .
DIF	National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia), Mexico’s child protection agency.
“Holding”	The official term (in Spanish, <i>alojamiento</i>) for the detention of a migrant.
Immigration station	The official term (in Spanish, <i>estación migratoria</i>) for an immigration detention center.
INM	The National Institute of Migration (Instituto Nacional de Migración), the government agency charged with enforcement of the immigration laws.
<i>Mara</i>	A slang term for gang, often used to refer to a group that controls a large area, undertakes a range of criminal operations, and has transnational links.

Mara 18	The 18 th Street Gang (Barrio 18), one of the largest and most well-known of Central America’s gangs, with a presence in El Salvador, Guatemala, Honduras, and the United States.
Mara Salvatrucha	Another large, well-known Central American gang; like the Mara 18, the Salvatrucha (sometimes referred to as the MS-13 or the 13) has a presence in El Salvador, Guatemala, Honduras, and the United States.
<i>Marero</i>	A gang member.
MS-13	Another name for the Mara Salvatrucha.
OPI	Child protection officer (<i>oficial de protección a la infancia</i>), officials within the National Institute of Migration.
<i>Pandilla</i>	A gang, usually a loosely organized, local operation.
<i>Pollero</i>	A slang term for a person who engages in the smuggling of migrants.
“Presentation”	The official term (in Spanish, <i>presentación</i>) for the INM’s order for “holding” (<i>alojamiento</i>), or detention, of a migrant until his or her status is regularized or he or she is removed from Mexico.
Refugee	As used in this report, a person who has a well-founded fear of persecution because of race, religion, nationality, membership of a particular social group, or political opinion, who is outside of the country of nationality and is unable or unwilling, because of that fear, to return (the standard in the 1951 Refugee Convention and its 1967 Protocol) or have fled his or her country because his or her life, safety, or freedom has been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously

disturbed public order (the standard in the Cartagena Declaration on Refugees, which has been incorporated into Mexican law).

Separated child A child who has been separated from both parents, or from the previous legal or customary primary caregiver, but not necessarily from other relatives.

Unaccompanied child A child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

Zetas A criminal syndicate based in Nuevo Laredo, Tamaulipas, said to be Mexico's largest drug cartel, with operations along Mexico's northern and southern borders and the states of Guerrero, Michoacán, Oaxaca, and Veracruz, along with Guatemala and parts of the United States.

Summary

Gang violence has plagued Central America's "Northern Triangle" countries of El Salvador, Guatemala, and Honduras for more than a decade. Children are particularly targeted by gangs in these three countries. In Honduras, for example, over 400 children under age 18 were killed in the first half of 2014, most thought to be the victims of gang violence. Many more are pressured to join gangs, often under threat of harm or death to themselves or to family members. Girls face particular risk of sexual violence and assault by gang members.

As a result of these and other risks to their lives and safety, children have been leaving these three countries, on their own and with family members, for years. The story of Edgar V., age 17, indicates the perils they face.

"I left Honduras because of problems with the gang. They wanted me to join them, and I didn't want to, so I had to flee," Edgar told Human Rights Watch. The intimidation he faced at school was intense, and shortly after one of his classmates was killed for wearing a shirt of a color associated with a rival gang, Edgar stopped attending. Even though Edgar tried not to attract attention to himself, the gang continued to pressure him to join their ranks. "They came to my house and told me, 'Join the gang,'" he said. "They hit me. They hit me and I fell to the ground. From then on, they didn't hit me again, but they threatened my mother. They said they would kill me and my mother."

His mother took him to the police station to make a complaint, and he took refuge for a time in a shelter run by missionaries. "I spent two months and 21 days there," Edgar said. "I needed to be there for my protection, because they [the gang] were hunting for me. But I would have been there my entire life. I would lose the rest of my adolescence. I wouldn't be able to study. I would become an adult and wouldn't know anything. I told myself, 'I can't do this. I have to leave.'"

He estimates that it cost his family about US\$1,000 for him to travel from Tegucigalpa to San Pedro Sula and then by bus to the border with Guatemala. "In Guatemala I stayed in a hotel one night and then took another bus. Then another hotel—I don't remember the name of the town—and then another bus. I kept doing this."

He made it as far as the Mexican state of Oaxaca. “I was on a bus in Oaxaca, and we reached a point where there were three or so immigration police on the road. They stopped the bus. They asked everybody, ‘Do you have papers? Where are you from?’ Those of us who said El Salvador or Honduras had to get off the bus.

“At the station, they asked me all these questions. They asked me if I came alone. Who gave me the money. All these things they asked me. How I crossed the border.

“I told the immigration official that I couldn’t return here,” Edgar said. He showed the official a copy of the complaint he and his mother had filed. “Then they said, ‘You know, you can ask for asylum.’ I said yes. But I was already locked up, and they said it would be a long time before I heard. I couldn’t handle that. At least two months, up to six months [longer in detention], just for the response.

“When they told me it would be six months before I heard back, I said no, I don’t want that. They sent me here,” he said, referring to the reception center in San Pedro Sula where he spoke to Human Rights Watch the day he was returned to Honduras.

Tens of thousands of children travel from Central America to Mexico each year, most from El Salvador, Guatemala, and Honduras. To be sure, many children migrate only for economic reasons and do not qualify for refugee status or other recognized forms of international protection from return to their countries of origin; these children may be returned to their home countries in a manner that complies with international and Mexican law.

But as many as half are fleeing threats to their lives and safety, meaning that they have plausible claims to international protection, the United Nations High Commissioner for Refugees (UNHCR) has estimated. As Edgar did, many of the children we spoke with told us that they fled to escape violence and pervasive insecurity. We heard accounts of children who left in search of safety, with or without their parents and other family members, after they or their families were pressured to join local gangs, threatened with sexual violence and exploitation, held for ransom, subjected to extortion, or suffered domestic violence. In some instances, children left after their grandparents or other elderly caregivers died, or

left because they feared that there would be no one to care for them in their home countries when these relatives passed away.

By law, Mexico offers protection to refugees as well as to others who would face risks to their lives or safety if returned to their countries of origin. Mexican government data suggest, however, that less than 1 percent of children who are apprehended by Mexican immigration authorities are recognized as refugees or receive other formal protection in Mexico.

International standards call for a fair hearing on every claim for refugee recognition. Resolving claims by children requires an appreciation of child-specific bases for international protection—including, in the Central American context, the ways that children are targeted by gangs. Unaccompanied and separated children should receive legal representation and other assistance in making claims for refugee recognition.

Children should never be detained as a means of immigration control; international standards call on states to “expeditiously and completely cease the detention of children on the basis of their immigration status.” Compliance with this standard does not mean that Mexico must allow unaccompanied and separated children to roam freely throughout the country; to the contrary, Mexico has an obligation to provide these children with appropriate care and protection.

On paper, Mexican law and procedures reflect international standards in many respects. When agents of the National Institute of Migration (Instituto Nacional de Migración, INM), Mexico’s immigration agency, encounter children, INM’s child protection officers should screen them for possible protection needs. While Mexico’s Immigration Law requires the holding of adult migrants who are undocumented, it requires children to be transferred to shelters operated by Mexico’s child protection system, the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, DIF).

In addition, under Mexican law, any INM or other government official who receives a verbal or written request for asylum from a migrant of any age must forward the application to the Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, COMAR), Mexico’s refugee agency. Children and adults who are not apprehended by INM agents and who instead submit applications for refugee recognition directly to COMAR are

not detained while their applications are pending. Unaccompanied children, children and adults who apply for refugee recognition, and migrants of any age who are the victims of serious crime in Mexico can also apply to the INM for a humanitarian visa, a status that allows them to live and work in Mexico for one year, and which may be renewed indefinitely.

Human Rights Watch conducted multiple research missions in 2015 to examine how Mexico is applying its own and international law in its treatment of Central American migrants, particularly children. We spoke with 61 migrant children, more than 100 adults, and representatives of UNHCR and nongovernmental organizations. We were not able to meet with senior officials with INM's enforcement department despite multiple requests for interviews, but we did meet with government officials with COMAR and DIF, senior INM officials in the agency's regularization department, as well as the INM official in charge of the agency's detention center in Acayucan, Veracruz.

Our research found wide discrepancies between Mexico's law and the way it is enforced. Children who may have claims for refugee recognition confront multiple obstacles in applying for refugee recognition from the moment they are taken into custody by INM. As one UNHCR official told us, "the biggest problem in Mexico is not the [asylum] procedure itself, but access to the procedure."

The first is the failure of INM agents to inform migrant children of their right to seek refugee recognition. A 2014 UNHCR study found that two-thirds of undocumented Central American children in Mexico are not informed of their rights by INM agents. We heard the same in our own interviews, and research by groups that work with asylum seekers and migrants, including the Fray Matías Human Rights Center, La 72, and Sin Fronteras, made similar findings. INM agents also do not as a rule inform children that they can seek humanitarian visas, as is likewise required by Mexican law.

The second is the failure of government authorities properly to screen child migrants to determine whether they may have viable refugee claims. INM agents, including INM child protection officers, rarely actively question children about their reasons for migrating. Proper screening of migrant children would reveal that many have valid claims for refugee recognition.

Third is the absence of legal or other assistance for most children who do apply for refugee recognition, unless they are fortunate enough to be represented by one of the handful of nongovernmental organizations that provide legal assistance to asylum seekers. The processes for determining applications are not designed with children in mind and are frequently confusing to them.

A fourth obstacle, perhaps the most daunting, is the practice of holding all child migrants in prison-like conditions. Although Mexican law provides that migrant children should be transferred to DIF custody and should be detained only in exceptional circumstances, detention of migrant children is the rule, according to our interviews and the findings of the Inter-American Commission on Human Rights, UNHCR, and nongovernmental organizations. Over 35,000 children were held in immigration detention centers in 2015; more than half of that total were unaccompanied. Even those children lucky enough to be handed over by INM agents to DIF shelters experienced a form of detention. Children in most DIF shelters do not attend local schools, are not taken on supervised visits to local playgrounds, parks, or churches, and do not have other interactions with the community; unless they need specialized medical care, they remain within the four walls of the shelter 24 hours a day, seven days a week, for the duration of their stay.

Detention—never appropriate for children—is particularly problematic for those who want to apply for refugee recognition. Children report being told by INM agents that merely applying for recognition will result in protracted detention, either in INM-run facilities or in the virtual detention of DIF shelters, while their applications are considered. We heard from children and parents who decided not to apply or who withdrew applications because they did not want to remain locked up. Some children remained in immigration detention centers for a month or more, and those who exercise their right to appeal adverse decisions on their applications for refugee recognition might be held in immigration detention centers for six months or more.

These obstacles are serious barriers for children who have claims for refugee recognition. Where the indirect pressure on individuals is so intense that it leads them to believe that they have no access to the asylum process and no practical option but to return to countries where they face serious risk of persecution or threats to their lives and safety, these factors in combination may constitute constructive refoulement, in violation of international law.

Moreover, in cases where children have been targeted by gangs or reasonably fear that they will suffer violence or other human rights abuses in their countries of origin, their return is almost certainly not in their best interests. The same is true where family members in their countries of origin are unable or unwilling to care for the children. The return of children to their home countries under these circumstances breaches Mexico's obligations to protect children and ensure that its actions are in their best interests.

We saw some good practices by Mexican officials. In northern Mexico, unaccompanied children appeared to be quickly and routinely housed in DIF-run shelters, rather than in INM-run detention centers. DIF officials in every part of Mexico we visited displayed a strong understanding of Mexico's children's rights law, and we heard of cases in which they had identified and referred children with possible international protection needs to COMAR. We heard other individual accounts of positive experiences with other Mexican officials—of one police officer who took a family to a migrant shelter, another who helped a 15-year-old boy who had been abandoned by the guide he had paid to take him through Mexico, an INM agent who meticulously advised a 17-year-old boy of his right to apply for refugee recognition.

Although such experiences are unfortunately not the norm for most children who come into contact with INM agents, these exceptions demonstrate that Mexico is capable of complying with its international obligations and the requirements of its own laws in the treatment of Central American children and adults who are fleeing violence in their home countries.

The United States government support for Mexico's immigration enforcement capacity increased after mid-2014, when record numbers of Central American unaccompanied children and families with children arrived in the United States.

US Secretary of Homeland Security Jeh Johnson praised the Mexican government for taking "important steps to interdict the flow of illegal migrants from Central America bound for the United States." If US policy objectives were to "interdict the flow" by shifting enforcement responsibilities to Mexican immigration authorities, as Secretary Johnson's and other US officials' remarks suggest, they were successful through the remainder of 2014 and much of 2015. US apprehensions of unaccompanied children from the Northern Triangle fell during this period while Mexican apprehensions rose, suggesting that the

United States had effectively persuaded Mexico to take a greater role in immigration enforcement along its border with Guatemala.

Key Recommendations

To address the serious shortcomings identified in this report, Mexico should ensure that children have effective access to refugee recognition procedures, including by providing them with appropriate legal and other assistance in the preparation and presentation of applications. The government should expand the capacity of COMAR, the Mexican refugee agency, including by establishing a presence across Mexico's southern border.

Mexico has a right to control its borders and to apprehend people who enter the country irregularly, including children. However, migrant children should in no circumstances be held in detention. Mexico should make greater use of alternatives to detention already available under Mexican law—in particular, by expanding the capacity of DIF shelters and by giving DIF discretion to place unaccompanied children in the most suitable facilities, including open institutions or community-based placements. To be sure, some children will need a greater degree of supervision and may well need to be housed in closed facilities, but DIF should be empowered to identify, on a case-by-case basis, the housing arrangement that is most consistent with an individual child's best interest.

Mexico can provide appropriate care and protection to unaccompanied and separated children in a variety of ways, whether by housing children with families or in state or privately run facilities. But locking children up in prison-like settings does not meet international standards.

The US government, which has pressured Mexico to interdict Central Americans and has spent considerable sums to enhance Mexico's immigration enforcement capacity, should provide additional funding and support to improve and expand Mexico's capacity to process asylum claims and to provide social support for asylum seekers and refugees. The US government should link funding of Mexican entities engaged in immigration and border control to their demonstrated compliance with national and international human rights standards and anti-corruption measures. And the US government should also expand its Central American Minors Program to allow children to apply from Mexico and other

countries where they have sought safety, and to allow applications based on a relationship to extended family members, not only parents, in the United States.

Additional recommendations are set forth at the end of this report.

Methods

This report is based on field research in Mexico and Honduras between April and December 2015. Human Rights Watch undertook field research in Mexico from April 24 to May 8, May 18 to 20, June 16 to July 2, August 25 to 30, October 19 to November 2, and November 29 to December 3, 2015, and field research in Honduras from May 9 to 17 and June 8 to 15, 2015. In the course of this investigation, Human Rights Watch researchers visited the Mexican states of Chiapas, Chihuahua, Oaxaca, Sonora, Tabasco, Tamaulipas, and Veracruz, as well as the Federal District, and, in Honduras, the cities of San Pedro Sula and Tegucigalpa.

Three Human Rights Watch researchers interviewed a total of 61 children (49 boys and 12 girls) between the ages of 11 and 17 who were refugees, asylum seekers, or migrants from El Salvador, Guatemala, and Honduras. Forty-six of the 61 were unaccompanied or separated children, meaning that they were not accompanied by parents or legal guardians but may have traveled from their countries of origin with siblings, other relatives, or partners close to their age. Sixteen children were asylum seekers at the time of our interview. Two other children had been denied recognition as refugees and were unsuccessful on administrative review. Two children, one of whom had been denied refugee recognition on administrative review and the other an asylum seeker, had received humanitarian visas. One had become eligible for regularization based on a relationship to a Mexican national, although she had not yet received a residence permit at the time of our interview. None of the children we spoke with had been recognized as refugees at the time we interviewed them.

Our researchers also interviewed over 100 adult refugees, asylum seekers, and migrants from El Salvador, Guatemala, and Honduras, including some who were 18 or 19 years old at the time of our interview and recounted experiences they had had while still under the age of 18.

We interviewed most children and adults in shelters run by local entities of Mexico's child protection system, the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, DIF), or civil society groups and, in Honduras, in the Edén reception center (now known as the Belén Attention Center) for children and

families returned from Mexico. For several of our interviews in Honduras, we arranged to interview children in other locations they and their parents chose.

We entered one immigration detention center, in Acayucan, Veracruz, in October 2015, where we viewed the living areas for adolescent boys between the ages of 12 and 17 and for women (which also holds girls and boys who are under the age of 12, including those who are unaccompanied and separated), spoke with an additional 15 boys in the adolescents' section, met with the National Institute of Migration (Instituto Nacional de Migración, INM) commissioner responsible for the detention center and with DIF protection officials who work in the detention center. The 15 boys we spoke to in the Acayucan immigration detention center are not included in the total number of interviews given above because these conversations were not individual, detailed interviews, although they were out of the earshot of guards and provided useful information about conditions of detention, individual children's reasons for leaving their home countries, and the status of their applications for refugee recognition for those who had made such applications.

Earlier, in February 2015, we had made a written request to the INM for access to Siglo XXI, the immigration detention center in Tapachula.¹ We applied for access under provisions of Mexico's immigration regulations that allow such access for members of nongovernmental organizations and other individuals.² We did not receive a reply in writing. When we called the INM in March 2015, the director of the INM's Press and Outreach Office told us orally that our request for access had been denied on grounds of national security and privacy and because the INM considered that only consular officials, the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH), and the office of the United Nations High Commissioner for Refugees (UNHCR) had the authority to make such

¹ Letter from Bill Frelick, director, Refugee Program, Human Rights Watch, to Lic. Sofia Aurora Vega Gutiérrez, director, Press and Outreach Office (Director de Comunicación Social), National Institute of Migration (Instituto Nacional de Migración, INM), February 18, 2015, resent March 6, 2015.

² Reglamento de la Ley de Migración [Regulations for the Immigration Law], arts. 224 (IV), (IX), *Diario Oficial de la Federación*, September 28, 2012, as amended, *Diario Oficial de la Federación*, May 23, 2014, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf (accessed January 29, 2016).

visits.³ We also spoke in person with the director of Siglo XXI to request permission to visit the detention areas of the facility, but our request was again denied.⁴

Two male researchers conducted interviews in Honduras, southern Mexico, and the Federal District. One conducted interviews in Spanish; the other used male interpreters. Two Spanish-speaking researchers, one male and one female, conducted interviews in northern Mexico. We explained to all interviewees the nature and purpose of our research, that the interviews were voluntary and confidential, and that they would receive no personal service or benefit for speaking to us, and we obtained verbal consent from each interviewee.

All names of migrants, asylum seekers, and refugees used in this report are pseudonyms. In some cases we have withheld other details, such as the location of the interview or information that would enable the identification of those who spoke to us. We have also withheld the names and other identifying information of some government officials who spoke to us off the record.

We also interviewed more than 35 Mexican government officials at various levels, including officials with the INM's General Directorate of Regulation (Dirección General de Regulación y Archivo Migratorio); the Undersecretariat for Population, Migration, and Religious Affairs (Subsecretaría de Población, Migración y Asuntos Religiosos) of the Ministry of the Interior (Secretaría de Gobernación, SEGOB); the Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, COMAR); DIF national, state, and local officials; and the National Commission on Human Rights. We also met with officials with the Directorate of Childhood, Adolescence, and Family (Dirección de Niñez, Adolescencia y Familia, DINAF) in Honduras; United States embassy officials in Mexico City and Tegucigalpa; Honduran and Salvadoran consular officers in Mexico, and officials with UNHCR's offices in Mexico and its regional office in Panama.

³ Human Rights Watch telephone interview with Lic. Sofia Aurora Vega Gutiérrez, director, Press and Outreach Office, INM, March 12, 2015. The regulations state that members of civil society organizations may be authorized to enter immigration detention centers to visit detainees and carry out "extraordinary activities," and members of academic institutions and individuals may receive such authorization "to carry out studies or research." Regulations for the Immigration Law, art. 224.

⁴ Human Rights Watch interview with director, Siglo XXI, Tapachula, Chiapas, May 4, 2015.

In addition to meeting with us, COMAR and DIF officials provided detailed responses to our requests for additional information after our face-to-face meetings. We attempted but failed to meet with officials at the INM's General Directorate for Control and Verification (Dirección General de Control y Verificación), which carries out immigration enforcement activities, including the apprehension and detention of migrants. General Directorate for Control and Verification officials did not reply to requests in writing for meetings made in February and March 2015, and declined email requests in November 2015, citing scheduling conflicts.⁵ We made an additional written request for a meeting on January 12, 2016, to which General Directorate for Control and Verification officials replied on February 5 offering us a meeting on February 9.⁶ Our researcher was unavailable on that date but offered to meet with the General Directorate for Control and Verification on any date between February 11 and 19, 2016.⁷ General Directorate for Control and Verification officials agreed to reschedule the meeting⁸ but did not do so during the period we had offered and had not done so at time of writing. At time of writing, General Directorate for Control and Verification officials also had not responded to our written requests for information or comment on summaries of preliminary findings we sent them in August 2015 and January 2016.⁹ In total, between February 2015 and January 2016, we made ten attempts in writing and by phone to meet with INM officials, to request access to detention centers, and to seek information and comment on our findings.

In addition, we interviewed over 30 staff members with nongovernmental organizations working with refugees and migrants in Mexico and returnees in Honduras. We also reviewed case files, including administrative decisions taken by COMAR and the review of

⁵ Human Rights Watch telephone interview with Lic. Sofia Aurora Vega Gutiérrez, March 12, 2015; Email from Lic. Jorge Hiram Zavala Vázquez, director of migration stations, INM, to Michael Garcia Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, November 27, 2015.

⁶ Email from Lic. Jorge Hiram Zavala Vázquez, director of migration stations, INM, to Michael Garcia Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, February 5, 2016.

⁷ Email from Michael Garcia Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, to Lic. Jorge Hiram Zavala Vázquez, director of migration stations, INM, February 5, 2016.

⁸ Email from Lic. Jorge Hiram Zavala Vázquez, director of migration stations, INM, to Michael Garcia Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, February 6, 2016.

⁹ See Letter from Bill Frelick, director, Refugee Program, Human Rights Watch, to Lic. Sofia Aurora Vega Gutiérrez, director, Press and Outreach Office (Director de Comunicación Social), INM, August 13, 2015; Letter from Michael Garcia Bochenek, senior counsel, Children's Rights Division, Human Rights Watch, to Lic. Mario Madrazo Ubach, director general of control and verification, INM, January 12, 2016 (by email and international courier), resent by international courier January 15, 2016 (delivery confirmed January 18, 2016).

those decisions by federal courts, as well as data collected by COMAR and the INM and evaluations and reports prepared by nongovernmental organizations.

Mexico adopted its Immigration Law and its refugee law (first called the Law on Refugees and Complementary Protection and, since 2014, the Law on Refugees, Complementary Protection, and Political Asylum) in 2011. Amendments to each of these laws took effect on November 1, 2014.¹⁰ These amendments did not materially change the provisions cited in this report, meaning that the provisions of these two laws cited in this report were in force and should have been applied by immigration and other authorities in the case of every migrant child and adult referred to in this report. In addition to these two laws, Mexico's General Law on the Rights of Girls, Boys, and Adolescents, which took effect on December 3, 2014, and its regulations, adopted in December 2015,¹¹ include provisions applicable to migrant children. This report cites the General Law on the Rights of Girls, Boys, and Adolescents and its regulations to reflect the legal framework in effect at time of writing this report, but citations to this law and its regulations should be taken to apply only after their effective dates.

In line with international standards, the term “child” refers to a person under the age of 18.¹² This use differs from Mexican law, which uses the term “child” to mean a person under the age of 12 and refers to those between the ages of 12 and 17 as “adolescents.”¹³ As the Committee on the Rights of the Child and other international authorities do, we use the term “unaccompanied children” in this report to refer to children “who have been separated from both parents and other relatives and are not being cared for by an adult

¹⁰ See Ley de Migración [Immigration Law], *Diario Oficial de la Federación*, May 25, 2011, as amended, *Diario Oficial de la Federación*, October 30, 2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_301014.pdf (accessed January 29, 2016); Ley sobre Refugiados, Protección Complementaria y Asilo Político [Law on Refugees, Complementary Protection, and Political Asylum], *Diario Oficial de la Federación*, January 27, 2011, as amended, *Diario Oficial de la Federación*, October 30, 2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf (accessed January 29, 2016).

¹¹ Ley General de los Derechos de Niñas, Niños y Adolescentes [General Law on the Rights of Girls, Boys, and Adolescents], art. 5, *Diario Oficial de la Federación*, December 4, 2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_041214.pdf (accessed January 29, 2016); Reglamento de la Ley General de Los Derechos de Niñas, Niños y Adolescentes [Regulations for the General Law on the Rights of Girls, Boys, and Adolescents], *Diario Oficial de la Federación*, December 2, 2015, http://www.dof.gob.mx/nota_detalle.php?codigo=5418303&fecha=02/12/2015 (accessed January 29, 2016).

¹² Convention on the Rights of the Child, adopted November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990), art. 1.

¹³ See General Law on the Rights of Girls, Boys, and Adolescents, art. 5.

who, by law or custom, is responsible for doing so.”¹⁴ “Separated children” are those who are “separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives,”¹⁵ meaning that they may be accompanied by other adult family members. This use differs slightly from Mexican law, which uses the term “unaccompanied child” to refer to any child who is not accompanied by a blood relative or a legal representative.¹⁶

This report uses “refugee” to mean a person who meets either (1) the criteria in the 1951 Refugee Convention and its 1967 Protocol or (2) the definition set out in the 1984 Cartagena Declaration on Refugees. Under the 1951 Refugee Convention and its 1967 Protocol, a refugee is a person with a “well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion,” who is outside of the country of nationality and is unable or unwilling, because of that fear, to return.¹⁷ The Cartagena Declaration definition, reflected in Mexican refugee law, includes as refugees people 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.”¹⁸

People are refugees as soon as they fulfill the criteria in the 1951 Refugee Convention and its 1967 Protocol or meet the definition contained in the 1984 Cartagena Declaration on Refugees. UNHCR explains:

¹⁴ United Nations Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Doc. CRC/GC/2005/6 (September 1, 2005), para. 7; United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), et al., *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (Geneva: ICRC, 2004), p. 13, http://www.unicef.org/protection/IAG_UASCs.pdf (accessed January 29, 2016).

¹⁵ Committee on the Rights of the Child, General Comment No. 6, para. 8; *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, p. 13. See also *Separated Children in Europe Programme, Statement of Good Practice* (Copenhagen: Save the Children, UNHCR, and UNICEF, 4th rev. ed. 2009), <http://www.separated-children-europe-programme.org/images/18/219.pdf> (accessed January 29, 2016).

¹⁶ Immigration Law, art. 3(XVIII).

¹⁷ Convention relating to the Status of Refugees, done July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954); Protocol relating to the Status of Refugees, done January 31, 1967, 606 U.N.T.S. 267 (entered into force October 4, 1967).

¹⁸ Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, held at Cartagena, Colombia, November 19-22, 1984, concl. 3, https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf (accessed January 29, 2016).

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.¹⁹

¹⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/IP/4/Eng/REV.3 (2011), para. 28, <http://www.unhcr.org/3d58e13b4.html> (accessed January 29, 2016). See also Mexican Supreme Court of Justice, *Protocolo de actuación para quienes imparten justicia en casos que afecten a personas migrantes y sujetas de protección internacional* (México, DF: Suprema Corte de Justicia de la Nación, 2013), p. 34 n. 17 (“What Mexico does is to *recognize* or not—instead of to *grant* or not—the status.”).

I. Central American Migrant Children in Mexico

On their own and with their families, migrant children travel from Central America to Mexico in large numbers. In October 2015, the Mexican government estimated that at least 27,000 unaccompanied and separated children had entered Mexico in the first 10 months of the year.²⁰ That number is likely to be a significant underestimate—United States authorities apprehended 28,000 unaccompanied and separated children from El Salvador, Guatemala, and Honduras on its border with Mexico in the 12 months from October 2014 to September 2015.²¹ Counting those children who come with their families, the total is much higher.

As many as half the total number of migrant children from these three countries are fleeing threats to their lives and safety, the United Nations High Commissioner for Refugees (UNHCR) has estimated.²² They join others who travel for a combination of reasons, including the desire to seek better economic opportunities and to join family members living in Mexico or the United States.

Children who face specific threats to their lives and safety, including those who are threatened by gangs or who face domestic violence, and who cannot rely on protection from their own governments are refugees; under Mexico's refugee law they should receive international protection.²³ The same is true of those who flee situations of insecurity or generalized violence that puts their lives, security, or freedom in danger.²⁴ In addition, authoritative guidance on international and regional human rights treaties provides that

²⁰ National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, DIF Nacional), "En el Gobierno de Enrique Peña Nieto se aplica la Ley de los Derechos de Niñas, Niños y Adolescentes: Angélica Rivera de Peña," , October 20, 2015, <http://sn.dif.gob.mx/en-el-gobierno-de-enrique-pena-nieto-se-aplica-la-ley-de-los-derechos-de-ninas-ninos-y-adolescentes-angelica-rivera-de-pena/> (accessed January 29, 2016).

²¹ United States Department of Homeland Security, Customs and Border Protection (CBP), "Southwest Border Unaccompanied Alien Children Statistics FY 2016," undated, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (accessed January 16, 2016). For an analysis of Mexican and US apprehension data, see Appendix.

²² Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), *Arrancados de raíz* (México, DF: Oficina de ACNUR en México, 2014), p. 12.

²³ See Refugee Convention, art. 1; Law on Refugees, Complementary Protection, and Political Asylum, art. 13(I). See generally Chapter V, "Mexico's System of Refugee Protection" section.

²⁴ See Cartagena Declaration on Refugees, concl. 3; Law on Refugees, Complementary Protection, and Political Asylum, art. 13(II).

the return of children to their home countries when return is not in the child's best interests would breach the principle of nonrefoulement. This may be the case, for instance, when the child lacks a caregiver in the home country and a relative in Mexico is willing and able to care for the child.²⁵

Under Mexican law, migrants who are victims of serious crimes in Mexico are eligible for humanitarian visas, a status that allows them to remain in the country for one year,²⁶ and some of the children interviewed by Human Rights Watch were victims of such crimes, including extortion, abduction for ransom, sexual and other forms of violence, trafficking, labor exploitation, and other abuses at the hands of criminals, local gangs, and organized criminal operations.

The Number of Migrant Children in Mexico

Accurate estimates of the population of migrant children in Mexico at any given time are difficult to make, but at least 20,000 unaccompanied children have entered the country each year since 2008.²⁷ Most are boys between the ages of 12 and 17, although a significant number of adolescent girls, perhaps one-quarter of all child migrants, also travel to Mexico.²⁸ Younger children also make the journey, generally with their families but sometimes on their own.

Mexico's National Institute of Migration (INM), the agency responsible for enforcing the country's immigration laws, made nearly 36,000 apprehensions of children under the age of 18 between January and the end of December 2015. Of that total, more than 18,000, or

²⁵ See Chapter V, "The Prohibition on Refoulement" section, "The Best Interests Principle as a Constraint on the Return of Children" subsection.

²⁶ See Chapter II, "The Limited Use of Humanitarian Visas" section. Unaccompanied children and applicants for refugee recognition are also eligible for humanitarian visas.

²⁷ See Catholic Relief Services, *Child Migration: The Detention and Repatriation of Unaccompanied Central American Children from Mexico* (Baltimore: Catholic Relief Services—United States Conference of Catholic Bishops, 2010), p. 9; International Organization for Migration, "New Centre for Unaccompanied Minors Opens on Mexico's Southern Border," July 31, 2009, <https://www.iom.int/news/new-centre-unaccompanied-minors-opens-mexicos-southern-border> (accessed January 29, 2015).

²⁸ Since 2007, when the INM began providing statistics on unaccompanied children held in detention and returned to their countries of origin, some 25 percent of the unaccompanied children detained and returned have been girls. María Dolores París, Diana Peláez, and René Zenteno, "Procesos de alojamiento y devolución de niños, niñas y adolescentes (NNA) migrantes no acompañados," *El Colegio de la Frontera Norte*, 2013, p. 7. Similarly, approximately 25 percent of 12- to 17-year-old unaccompanied migrants interviewed for a 2010 Catholic Relief Services report were girls, and the ratio of 1 unaccompanied girl for every 3 unaccompanied boys was consistent with other studies and statistics from the Mexican government. See Catholic Relief Services, *Child Migration*, p. 4.

just over half, were unaccompanied. Just under two-thirds of the total was between the ages of 12 and 17, and boys outnumbered girls by two to one.²⁹ The INM made 23,000 apprehensions of children in all of 2014 and 9,600 apprehensions of children in 2013. This means that apprehensions of children in 2015 increased by 52 percent over the whole of 2014 and by nearly 275 percent over the total for 2013.³⁰

In combination, Mexican and US authorities apprehended almost 75,000 children from Central America's Northern Triangle in calendar year 2014 and 68,000 in calendar year 2015, figures that include accompanied as well as unaccompanied children.³¹

These numbers do not include children who never came into contact with the INM or with US authorities—those who are living undetected in Mexico or who attempted and possibly succeeded in crossing into the United States. They also do not include children who apply for recognition of refugee status at one of the three offices of the Mexican Commission for Refugees (COMAR) without ever being apprehended by immigration authorities, because children and adults who apply directly with COMAR are not taken into INM custody.

Why They Flee

Gang violence has plagued El Salvador, Guatemala, and Honduras for more than a decade.³² The governments of these three countries have proven unable or unwilling to control gangs: as UNHCR observed in an October 2015 report, “[i]n large parts of the

²⁹ Secretaría de Gobernación (SEGOB), *Boletín Estadístico 2015*, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos (accessed January 16, 2015). These numbers are apprehension “events”; a single child may have been apprehended more than once during the year, so the numbers are not necessarily the total number of children apprehended. For a fuller analysis of Mexican apprehension data, see Appendix.

³⁰ See Appendix, “Apprehension and Detention of Central American Children in Mexico” section.

³¹ CBP, “Southwest Border Unaccompanied Alien Children Statistics FY 2015,” SEGOB, *Boletín Estadístico 2015*, Table 3. These data are analyzed in the Appendix, “Apprehension and Detention of Central American Children in Mexico,” Figure 7. See also Rodrigo Domínguez Villegas and Victoria Rietig, *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile* (Washington, D.C.: Migration Policy Institute, September 2015), p. 1.

³² See Ana Arana, “How the Street Gangs Took Central America,” *Foreign Affairs*, May/June 2005, <https://www.foreignaffairs.com/articles/central-america-caribbean/2005-05-01/how-street-gangs-took-central-america> (accessed January 29, 2016); Douglas Farah, “Central America’s Gangs Are All Grown Up, and More Dangerous Than Ever,” *Foreign Policy*, January 19, 2016, <http://foreignpolicy.com/2016/01/19/central-americas-gangs-are-all-grown-up/> (accessed January 29, 2016).

territory [of El Salvador, Guatemala, and Honduras], the violence has surpassed governments' abilities to protect victims and provide redress."³³

The murder rates in El Salvador and Guatemala were in the range of 40 per 100,000 in 2012, making them the fourth- and fifth-highest in the world that year. Honduras, with a rate of 90 per 100,000, has had the world's highest homicide rate for several years running,³⁴ although recent reports suggest that El Salvador may now hold that dubious distinction.³⁵

Children are specifically targeted by gangs in these three countries. In Honduras, for example, over 400 children under age 18 were killed in the first half of 2014, most thought to be the victims of gang violence.³⁶ It is not uncommon to hear reports of 13-year-olds, or even younger children, being shot in the head, having their throats slit, or being tortured and left to die.³⁷

It is unsurprising, then, that children have been leaving El Salvador, Guatemala, and Honduras, on their own and with family members, for years. Nearly half of the children who spoke to Human Rights Watch told us that they chose to leave their homes to escape violence or because they were targeted by local gangs. When children fled together with their families, they or their parents often spoke of specific concerns for the children's lives or safety—including gang recruitment; sexual violence, particularly against girls; and domestic violence that had an effect on children in the household. Three of the children

³³ UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Washington, D.C.: UNHCR, October 2015), p. 2.

³⁴ United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2013: Trends, Context, Data* (Vienna: UNODC, 2014), pp. 24, 46, 150.

³⁵ "Rivers of Blood," *Economist*, October 10, 2015, <http://www.economist.com/news/americas/21672337-crackdown-gangs-has-so-far-made-things-worse-rivers-blood> (accessed January 29, 2016). El Salvador's homicide rate was 68.6 per 100,000 in 2014, according to the US Department of State's 2015 crime and safety report for El Salvador, and may have been as high as 104 per 100,000 in 2015, figures released by the Salvadoran government indicated. US Department of State, Bureau of Diplomatic Security, "El Salvador 2015 Crime and Safety Report," May 20, 2015, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17691> (accessed January 29, 2016); Nina Lakhani, "Violent Deaths in El Salvador Spiked 70% in 2015, Figures Reveal," *Guardian*, January 4, 2016, <http://www.theguardian.com/world/2016/jan/04/el-salvador-violence-deaths-murder-2015> (accessed January 29, 2016). A Venezuelan nongovernmental organization has estimated that Venezuela's homicide rate also surpassed Honduras's in 2015. See "Venezuela: Murder Rate for Year May Be World's Worst, Report Says," *New York Times*, December 28, 2015, http://www.nytimes.com/2015/12/29/world/americas/venezuela-murder-rate-for-year-may-be-worlds-worst-report-says.html?ref=americas&_r=0 (accessed January 29, 2016).

³⁶ Frances Robles, "Fleeing Gangs, Children Head to US Border," *New York Times*, July 9, 2014, http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?_r=0 (accessed January 29, 2016).

³⁷ Óscar Martínez, "Why the Children Fleeing Central America Will Not Stop Coming," *Nation*, July 30, 2014, <http://www.thenation.com/article/why-children-fleeing-central-america-will-not-stop-coming/> (accessed January 29, 2016).

who traveled to Mexico alone told us that they were hoping to reunite with mothers, fathers, or siblings because their grandparents or other elderly caregivers were no longer able to care for them.

Elizabeth Kennedy, a Fulbright scholar who examined Salvadoran children's stated reasons for migrating, found that "crime, gang threats, or violence appear to be the strongest determinants for children's decision to emigrate. When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list one of those factors as a reason for their emigration."³⁸

A 2014 UNHCR study found that some 48 percent of the unaccompanied Central American children interviewed in Mexico in 2013 cited some form of violence (including beatings, threats or other acts of intimidation, and insecurity) as among the reasons they left their countries and concluded that these children were potentially in need of international protection.³⁹ Of the children interviewed for the UNHCR study, Hondurans were most likely to be fleeing violence and insecurity.⁴⁰

Similarly, a study coordinated by the Center for Gender and Refugee Studies of the University of California Hastings College of the Law and the Migration and Asylum Program of the National University of Lanús, in Argentina, included interviews with 200 children between the ages of 10 and 17 who were deported from Mexico to Honduras. Sixty-five percent of the Honduran children interviewed for the study said that the desire to escape violence was the main reason they decided to migrate. "The most common forms of violence they mentioned included death threats from criminal groups, the continuous fighting between rival gangs, common crime, and domestic violence," the study found.⁴¹

These findings match those of another 2014 UNHCR study, which examined the international protection needs of unaccompanied or separated children who had arrived in

³⁸ Elizabeth Kennedy, "No Childhood Here: Why Central American Children Are Fleeing Their Homes," American Immigration Council, July 2014, p. 1.

³⁹ ACNUR, *Arrancados de raíz*, p. 12.

⁴⁰ *Ibid.*, pp. 12-13 (59.5 percent of Honduran children interviewed as compared with 40 percent of Salvadorans and 33.3 percent of Guatemalans).

⁴¹ Luis Gerardo Rivera et al., "Honduras," in Karen Musalo, Lisa Frydman, and Pablo Ceriani Cernadas, eds., *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges* (San Francisco and Buenos Aires: Center for Gender and Refugee Studies, University of California Hastings and Universidad Nacional de Lanus, 2015), p. 83.

the United States from El Salvador, Guatemala, and Honduras, as well as Mexico, and concluded that 58 percent had “suffered or faced harms that indicated a potential or actual need for protection.”⁴² Of the children from Honduras, 57 percent raised potential international protection concerns. Children from El Salvador were even more likely to have international protection needs, with 72 percent of those interviewed raising such concerns.⁴³

Gang Recruitment

One of every five children we interviewed told us that pressures to join gangs were the primary motive for them to migrate. For example, Byron O., age 15, said he left his home in the Cortés department of Honduras together with his parents and other family members because the gang in his area was trying to recruit him. After several attempts to persuade him to join, a group of gang members surrounded him while he was walking on the street near his home. “They said they were going to kill me if I didn’t join them,” he said. “The next day, we left.” He and his family spent 10 days in Tecún Umán, in Guatemala just across the border with Mexico, before crossing and traveling to Tapachula. They had applied for asylum but had not yet been interviewed at the time we spoke.⁴⁴

Gabriel R., another 15-year-old from the Honduran department of Cortés, had a similar account. “I was in school, in the ninth grade. One day the gang came up to me near the school where I was studying. They told me that I needed to join the gang. They gave me three days. If I didn’t join them, they’d kill me. . . . It was a group of six or eight guys. Some were 14, 18, 21 years old. The oldest was about 26.” He left Honduras on his own before the three days were up.⁴⁵

Other children, including 17-year-old Lionel Q. and 15-year-old Marco A., from Honduras, and 16-year-old Hugo R., 16-year-old Rudy B., 17-year-old Joseph H., and 17-year-old Charly

⁴² UNHCR Regional Office for the United States and the Caribbean, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, DC: UNHCR, 2014), p. 6. The authors of the study explain, “The study was specifically designed to be representative and statistically significant for drawing conclusions and inferences, and as such, this finding that 58% of the children raised potential international protection means that in general, 58% of all the unaccompanied and separated children in the same age range, from these four countries, arriving in the US would likewise raise potential international protection needs.” Ibid.

⁴³ Ibid., pp. 9-10.

⁴⁴ Human Rights Watch interview with Byron O., Tapachula, Chiapas, May 8, 2015.

⁴⁵ Human Rights Watch interview with Gabriel R., Reynosa, Tamaulipas, June 24, 2015.

T., from El Salvador, gave accounts that were substantially similar,⁴⁶ and which correspond with the findings of other researchers.⁴⁷ “They wanted me to join the gang,” said Lionel, who left San Pedro Sula in September 2014. “When I told them no, they started to threaten me. They said they would kill me and my family. I was living in a lot of fear. To the gangs, a life isn’t worth a sandal. I mean, it isn’t worth anything.”⁴⁸ Rudy and Charly each showed us scars on their abdomens from operations that saved their lives after they were shot by gang members after they refused to join.⁴⁹

We heard accounts that suggested that pressure to join gangs was the norm in many communities in Honduras and El Salvador. “All of the young people are approached to join the gangs,” said Enrique J., a 17-year-old from La Ceiba, Honduras.⁵⁰

Parents also mentioned fears that gangs would try to recruit their children as among the reasons they fled. Esther A., age 39, fled El Salvador in December 2014 after her children were targeted in a variety of ways, including efforts by the Mara 18, a regional gang, to recruit her 11-year-old son to deliver and sell drugs in his school.⁵¹ Karla V., whose primary motivation for leaving Honduras was to escape domestic violence at the hands of her husband, told us that she was also afraid of what would become of her children if they grew up in Honduras. “There, nine-year-old children are obligated to join the gangs,” she said. “I realized that if I stayed, my son would become a gang member.”⁵²

⁴⁶ Human Rights Watch interviews with Lionel Q., Tenosique, Tabasco, October 21, 2015; Marco A., Acayucan, Veracruz, November 2, 2015; Joseph H., Ixtepec, Oaxaca, October 31, 2015; Charly T., Acayucan, Veracruz, November 2, 2015. In addition, we heard similar accounts from Central Americans held in US immigration detention. See, for example, “US: Trauma in Family Immigration Detention,” Human Rights Watch news release, May 15, 2015 (referring to the case of an 11-year-old boy who had been threatened with forced recruitment by gangs in Honduras), <https://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention-o>.

⁴⁷ See, for example, Frank de Waegh, *Unwilling Participants: The Coercion of Youth into Violent Criminal Groups in Central America’s Northern Triangle* (n.p.: Jesuit Conference of Canada and the United States, 2015), http://jesuits.org/Assets/Publications/File/Report_UnwillingParticipants_v4.pdf (accessed January 29, 2016).

⁴⁸ Human Rights Watch interview with Lionel Q., Tenosique, Tabasco, October 21, 2015.

⁴⁹ Human Rights Watch interviews with Rudy B., Ixtepec, Oaxaca, October 31, 2015; Charly T., Acayucan, Veracruz, November 2, 2015.

⁵⁰ Human Rights Watch interview with Enrique J., Reynosa, Tamaulipas, June 24, 2015.

⁵¹ Human Rights Watch interview with Esther A., Tapachula, Chiapas, May 7, 2015.

⁵² Human Rights Watch interview with Karla V., Tapachula, Chiapas, May 6, 2015.

Rape and Sexual Harassment, Abuse, and Exploitation

A related motivation for some is the desire to escape ongoing or threatened sexual harassment, rape, and other sexual abuse by gangs.

Esther A., the 39-year-old woman from El Salvador, told us that a group of gang members tried to rape her 15-year-old daughter. Her 11-year-old son drove off his sister's attackers, but police were indifferent to the family's attempt to report the attempted rape and the beating her son suffered. She told Human Rights Watch:

He saw her purse lying near the cemetery and then he saw five guys trying to rape her. He got a stick and started swinging it at the rapists. The rapists, the five, they grabbed my son. When he came back, I said, "What happened to you?" I saw he was all beaten up. His right leg was punctured. I took him to the police. The police just told him to keep out of trouble. They told him, "You should have let them rape your sister."⁵³

Heidy D. told us that she left Honduras with her family after gang members started expressing interest in her older daughter. "My daughter—at 13 years old, she'll be considered a woman. The gangs are recruiting girls of that age to be their women. I said, 'Please, she's 12 years old,'" she recounted. "The gang comes to the house. If they see something they like, you have to give it to them." She had told her daughters to stay inside the house as much as possible to avoid drawing the attention of gang members, but her 12-year-old daughter had grown unwilling to stay indoors for most of the day. "When my daughter left the house, I thought they would take her too. I said, 'Don't play like that.' . . . Things are really hot in the neighborhood where we live."⁵⁴

Alejandra M., a 39-year-old Salvadoran woman, told us that she stopped sending her 17-year-old daughter to school because she feared that her daughter would be sexually assaulted. "Five guys wanted to abuse her. They were from the gang. . . . They were going to rape her," she reported. As discussed below, she left El Salvador with her family when gang members threatened her family after she fell behind on extortion payments.⁵⁵

⁵³ Human Rights Watch interview with Esther A., Tapachula, Chiapas, May 7, 2015.

⁵⁴ Human Rights Watch interview with Heidy D., San Pedro Sula, Honduras, June 8, 2015.

⁵⁵ Human Rights Watch interview with Alejandra M., Tapachula, Chiapas, May 6, 2015.

When Human Rights Watch interviewed Hondurans deported from the United States in late 2014, we heard similar fears. Cecilia N., a 14-year-old who had left Honduras with her mother, said of the gangs in her neighborhood, “I’m terrified because they have taken girls from my school and raped them.”⁵⁶

Crimes of violence against women and girls are high in all three countries of Central America’s Northern Triangle. In Honduras, for example, violent deaths of women in Honduras increased by 263 percent between 2005 and 2013. Impunity is the rule for femicide and crimes of sexual violence, the United Nations special rapporteur on violence against women found during a visit to the country in July 2014.⁵⁷ Similarly, the special rapporteur found during her 2011 visit to El Salvador that murders of women had nearly doubled between 2004 and 2009.⁵⁸ El Salvador, Honduras, and Guatemala have the first-, second-, and fourth-highest female homicide rates in the world, respectively, according to the 2015 Global Burden of Armed Violence report.⁵⁹

Abduction for Ransom

Several of the children Human Rights Watch spoke with said that they fled, alone or with their families, after they or their family members were held for ransom or threatened with kidnapping.

Karina J., 17, was one of two children, among the 61 we interviewed, who was kidnapped. She was abducted in San Salvador by a local gang in 2013 and held for ransom. “They beat me all over and punched me in the face. The guy who hit me said, ‘This is so your family knows I’m not kidding,’” she reported. She was held for three weeks while the gang demanded \$10,000 for her return. After she was rescued by the police, her family fled to

⁵⁶ Human Rights Watch interview with Cecilia N., San Pedro Sula, Honduras, September 8, 2014, quoted in Human Rights Watch, *“You Don’t Have Rights Here”: US Border Screening and Returns of Central Americans to Risk of Serious Harm* (New York: Human Rights Watch, 2014), p. 13, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>.

⁵⁷ “Special Rapporteur on Violence against Women Finalizes Country Mission to Honduras and Calls for Urgent Action to Address the Culture of Impunity for Crimes against Women and Girls,” July 7, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E> (accessed January 29, 2016). See also *Childhood and Migration in Central and North America*, p. 82.

⁵⁸ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on Violence against Women: Follow-up Mission to El Salvador, UN Doc. A/HRC/17/26/Add.2 (February 14, 2011), para. 27.

⁵⁹ Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence 2015* (Geneva: Geneva Declaration Secretariat, 2015), p. 94.

Guatemala, but they had to return to El Salvador six months later when their money ran out. “We spent another year in San Salvador,” Karina said. “We didn’t leave the house unless we had to. We were so afraid. I was terrified.”⁶⁰

Johanna H., 17, had a similar account. She left Guatemala in April 2014 with her extended family after she was kidnapped by a local gang and released only after her family paid ransom for her safe return. In addition, one of her brothers had been kidnapped five years before, when he was 16, and another had been killed. After her kidnapping, “we couldn’t go to school,” she said, referring to herself and her two sisters. “There were too many risks. We couldn’t stay in Guatemala anymore.”⁶¹

In other cases, the children of abducted parents were threatened if the families did not pay the ransom. Elena L. was one of five people interviewed by Human Rights Watch who had an immediate family member abducted. Her 33-year-old daughter was held for two weeks and repeatedly raped by members of the Mara 18 in June 2014. “They told me I would have to pay 50,000 lempiras [\$2,235] or they would kill the children too,” Elena L. reported, referring to her grandchildren, ages 15, 13, and 11. The family, six in all, left Honduras after her daughter was rescued by police.⁶²

Two parents told us that they relocated their families in response to direct threats that their children would be abducted. For instance, Patricia A. told us that and her family left Honduras after a local gang threatened to kidnap her nine-year-old son.⁶³ In addition, when Human Rights Watch interviewed children who had been deported from the United States to Honduras for a 2014 report, one parent told us:

[T]hey [the local gang] tried to kidnap my son in June 2014. I usually come early to school to pick up my son at lunchtime. They got there maybe 10 or

⁶⁰ Human Rights Watch interview with Karina J., Tapachula, Chiapas, May 7, 2015.

⁶¹ Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

⁶² Human Rights Watch interview with Elena L., San Pedro Sula, Honduras, May 15, 2015. Amounts are given in the currency reported to Human Rights Watch or published in sources reviewed by Human Rights Watch, with their equivalent in US dollars based on the prevailing exchange rate as this report was being finalized. In early January 2016, one US dollar was equal to 7.65 Guatemalan quetzals, 22.35 Honduran lempiras, and 17.35 Mexican pesos. US dollar equivalents are rounded to the nearest 25 cents for amounts under \$10, to the nearest dollar for amounts between \$10 and \$100, and to the nearest five dollars for higher amounts (with the exception of amounts in excess of 1 million, which are rounded to the nearest hundred thousand).

⁶³ Human Rights Watch interview with Patricia A., San Pedro Sula, Honduras, June 15, 2015.

20 minutes before the kids come out. I recognized them. They had already told me that something was going to happen to my son and to my wife. I didn't hesitate. I jumped the school fence with my son. I pushed him over and then I jumped. Later in the day, the teachers told me that [the gang members] were looking for a kid of my son's age. I didn't send him back to school. . . . We had some savings from three or four years so I sent my son and my wife to the United States. Once I knew they were safe, I fled too.⁶⁴

Extortion

Almost ten percent of the children with whom we spoke with fled their homes, with their families or sometimes on their own, after extortion payments became too high or their families fell behind on payments, prompting threats or reprisals from gangs.

Carlos G.'s situation is an example. He told Human Rights Watch that he left San Salvador alone in 2011, when he was 17. "There were many problems there—crime, gang violence," he said. His father, who owned a small store, paid local gang members a "rent" of \$100 per week. "He did this so that the gang wouldn't do anything to my two brothers and me," Carlos G. said. "He had to pay or they would take us from our school." His father was able to keep up these payments until April 2009, when he could no longer afford it. As soon as his father missed a payment, the family started finding letters on their doorstep demanding payment in full. "This happened three times—we didn't pay them three weeks in a row, so we owed \$300," he told Human Rights Watch.

Early one morning, Carlos's father was shot and killed on the street as he left the house. "I saw it happen," he said. "Some men came up to him and shot him eight times. Then they ran away." After his father was killed, he started to receive threats. "Two notices came for me. They were going to kill me. My family had to hand me over to the gang or I would be killed. I had to get out of there and find a place where I could stay. I was very scared. I left the house and went to stay with my grandmother, but the same gang was there too. They're everywhere in El Salvador," he said. He was able to stay with his grandmother until September 2011, when he started to get threats again. He left El Salvador shortly after the threats resumed.⁶⁵

⁶⁴ Human Rights Watch, *"You Don't Have Rights Here,"* p. 16.

⁶⁵ Human Rights Watch interview with Carlos G., México, DF, April 30, 2015.

We heard other accounts that were similar to Carlos's. "Every week we had to pay 100 or 200 lempiras [between \$4.50 and \$9] to the gang," 17-year-old Samy O. from Honduras told us. "They walk around with guns, so we had to pay them. This was going on since January. Every week in January, February, March, April, May, up until when we left."⁶⁶ Samy O.'s family decided to leave Honduras in mid-May 2015 because they did not think they could continue to make the payments.

In other cases, children told us that gangs targeted them after they or their employers refused to make work-related extortion payments. Joel E., a 16-year-old from La Ceiba, Honduras, collected bus fares from passengers. "The gang wanted a war tax [*impuesto de guerra*] from the driver and each of the assistants. The war tax was for the bus route. To cross the gang's territory, you have to pay the war tax. They said we had to give them money or they would kill us. They gave us three days to pay." Realizing that he could not afford the amount they demanded, he fled La Ceiba before the three days were up.⁶⁷

Some families in this situation told us that they took the decision to relocate as a group to Mexico when their children were threatened.

For instance, Alejandra M., age 39, fled El Salvador in December 2014 after members of the Mara 18 threatened to harm her children if she did not pay them. "They showed up with revolvers and AKs. 'Where is the rent?' they demanded. 'I don't have any money,' I told them. 'Go find the money.' They gave me 72 hours to pay them \$7,500. If I didn't, they would kill two of my children." She also feared that her daughter would be raped.

Alejandra put her house up for sale and accepted the first offer she received. "At 8 a.m. the next day I sold my house for \$6,000. At 4 p.m. I handed \$5,500 to the gang members. I couldn't give them the full \$7,500."

When she realized that the gang expected the full amount, she traveled with her 17-year-old daughter and 11-year-old son to Mexico, where she was apprehended and placed in detention. She said she had little hope for her pending asylum application, because other migrants have told her that approvals are rare. "I told the people here that I had been

⁶⁶ Human Rights Watch interview with Samy O., San Pedro Sula, Honduras, June 15, 2015.

⁶⁷ Human Rights Watch interview with Joel E., Tenosique, Tabasco, October 21, 2015.

threatened, but they didn't take me seriously. I've been here for three months," she said. "I still owe \$1,500 to the gang. I don't have a house anymore. I don't have anywhere to live. The Mara 18 show no mercy."⁶⁸

Gang Violence and Barriers to Education

Several children and parents told us that children were at risk of recruitment and other abuses by gangs as they walked to and from school. "To get to school, we had to pass by the place where the gang members were," said Carlos G., who left San Salvador in 2011, when he was 17.⁶⁹

As a result, some children stopped attending classes in order to avoid the gangs as they went to and from school. "The kids couldn't go to school because there's a lot of crime," said Bianca H.⁷⁰ "The gangs are waiting on the corner outside the school," Patricia A., the mother of a nine-year-old boy, told us.⁷¹ Maikel O., 19, said that he left Honduras in May 2015 because he hoped to finish his education in Mexico. "I didn't go to school because there are many problems . . . many gangs" around his school, he said.⁷² Esther A., the woman whose 11-year-old son was beaten by gang members when he prevented them from raping his sister, withdrew her daughter from school after the attack.⁷³ And as noted above, Alejandra M. kept her 17-year-old daughter out of school after she began to fear that her daughter would be sexually assaulted by gang members.⁷⁴

Generalized Violence

Nearly half of the children and adults we interviewed told us that the general insecurity in their home countries was a major factor in their decision to depart. "Life is ugly where I live," said 11-year-old Omar C., from Ocotepeque, Honduras, near the border with El Salvador and Guatemala; he told us that his grandparents decided that he would be safer if they sent him to join his mother in the United States.⁷⁵ "The boys in the gangs are

⁶⁸ Human Rights Watch interview with Alejandra M., Tapachula, Chiapas, May 6, 2015.

⁶⁹ Human Rights Watch interview with Carlos G., México, DF, April 30, 2015.

⁷⁰ Human Rights Watch interview with Bianca H., San Pedro Sula, Honduras, June 8, 2015.

⁷¹ Human Rights Watch interview with Patricia A., San Pedro Sula, Honduras, June 15, 2015.

⁷² Human Rights Watch interview with Maikel O., San Pedro Sula, Honduras, June 15, 2015.

⁷³ Human Rights Watch interview with Esther A., Tapachula, Chiapas, May 7, 2015.

⁷⁴ Human Rights Watch interview with Alejandra M., Tapachula, Chiapas, May 6, 2015.

⁷⁵ Human Rights Watch interview with Omar C., San Pedro Sula, Honduras, June 15, 2015.

walking around in the *colonias* [neighborhoods] as if they were the police, walking around armed,” 34-year-old Heidi D. said of the community where she lived with her children in La Ceiba, Honduras.⁷⁶ Marjorie B., 21, told us that she, her 17-year-old brother, and their 15-year-old sister left their home in El Paraíso, Honduras, because of the high level of crime where they lived. “It’s not safe there,” she told Human Rights Watch.⁷⁷ Similarly, Bianca H., age 38, explained why she left Honduras with her three teenage children: “We couldn’t live here. The violence, the crime, it’s constant.”⁷⁸

Such fears are reasonable. Four children we interviewed had been victims of violent crime at the hands of gang members, and many others personally knew victims of violence. “There’s a lot of crime in my neighborhood, a lot of gang activity. They robbed my mother’s house and raped one of my sisters” in 2007, reported Enrique J., 17. His sister left Honduras shortly afterward and joined their father in the United States, where she received asylum; other relatives have settled in Mexico. Even then, he stayed in Honduras until he was beaten and robbed by gang members while working as a mechanic. “They assaulted me and robbed me,” he said. And when he spoke to his mother the day after immigration authorities apprehended him in northern Mexico, “she gave me the bad news that one of my cousins was just killed by the same gang,” he told Human Rights Watch.⁷⁹

Enrique J. and his girlfriend have a son together. “Originally I didn’t want to leave Honduras, because I didn’t want my child to give up his dad the way I had to. I didn’t want him to grow up not knowing his father. But the way things are now, the situation is really ugly,” he said.⁸⁰

After its December 2014 country visit to Honduras, the Inter-American Commission on Human Rights (Inter-American Commission, IACHR) observed: “The widespread context of violence and citizen insecurity makes Honduran children and adolescents especially vulnerable. The IACHR received information from civil society indicating that 454 children

⁷⁶ Human Rights Watch interview with Heidi D., San Pedro Sula, Honduras, June 8, 2015.

⁷⁷ Human Rights Watch interview with Marjorie B., San Pedro Sula, Honduras, June 15, 2015.

⁷⁸ Human Rights Watch interview with Bianca H., San Pedro Sula, Honduras, June 8, 2015.

⁷⁹ Human Rights Watch interview with Enrique J., Reynosa, Tamaulipas, June 24, 2015.

⁸⁰ Human Rights Watch interview with Enrique J., Reynosa, Tamaulipas, June 24, 2015.

and adolescents had died between January and June of this year [2014] because of the violence in the country.”⁸¹

In all, 1,031 children and youth up to the age of 23 were killed in Honduras in 2014, the Observatorio de Derechos de los Niños, Niñas y Jóvenes en Honduras and Casa Alianza found, approximately the same as the previous year. Five departments—Cortés, Francisco Morazán, Atlántida, Yoro, and Santa Bárbara—accounted for 90 percent of these violent deaths in 2014, with Cortés alone accounting for nearly half the total.⁸² (That is not to say that children (or adults) can seek safety elsewhere in the country—in fact, as discussed in subsequent sections of this report, those who relocate within the country are frequently thought to belong to rival gangs, meaning that they face no less serious risks.⁸³) Most of these deaths were caused by firearms, knives and other bladed weapons, or blunt instruments. Asphyxiation was the cause of death in 8 percent of these cases, with many bodies showing signs of torture before death. The two groups observed that many of the asphyxiated victims were “inside sacks, plastic bags, tied up with rope, or wrapped up in sheets; the victims were strangled to death.”⁸⁴

Domestic Violence

We heard several accounts from children who fled abusive situations at home and could not find protection within their own country, meaning that they had potential grounds for recognition as refugees in Mexico. For instance, Wendy V., a 16-year-old girl from Copán, Honduras, told us that she left an abusive relationship with the father of her child. She had reported the abuse to the police, who sent the man a notice to appear in court but did nothing when he failed to appear, and she did not pursue the case because the man threatened to harm their child if she continued to report the abuse against her.⁸⁵ When

⁸¹ “Preliminary Observations Concerning the Human Rights Situation in Honduras,” Inter-American Commission on Human Rights press release, December 5, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2014/146A.asp (accessed January 29, 2016).

⁸² Observatorio de Derechos de los Niños, Niñas y Jóvenes en Honduras and Casa Alianza, *Situación de derechos de niños, niñas y jóvenes en Honduras: Niñez, migración y violencia, resumen enero-diciembre 2014* (Tegucigalpa: Casa Alianza and Proyecto “Construyendo Ciudadanía por los Derechos de la Niñez y Juventud,” 2015), p. 18. San Pedro Sula is in the department of Cortés, Tegucigalpa is in Francisco Morazán, and La Ceiba is in Atlántida.

⁸³ See Chapter II, “The Need to Recognize That Children May Have a Combination of Motives for Leaving Their Countries of Origin” section, “The Unavailability of Internal Flight Alternatives” subsection.

⁸⁴ Observatorio de Derechos de los Niños, Niñas y Jóvenes en Honduras and Casa Alianza, *Situación de derechos de niños, niñas y jóvenes en Honduras*, p. 18.

⁸⁵ Human Rights Watch interview with Wendy V., Tenosique, Tabasco, October 21, 2015.

UNHCR interviewed Central American children in the United States, 21 percent of Salvadorans, 23 percent of Guatemalans, and 24 percent of Hondurans reported that domestic abuse was a reason for fleeing.⁸⁶

We also heard from one teenager who left his home after experiencing violence at the hands of relatives because of his sexual orientation. “I’m gay,” 17-year-old Arturo O., from Guatemala, told Human Rights Watch. “My father couldn’t accept me. He couldn’t accept that I’m attracted to people of the same sex. I said, ‘I am who I am. I can’t change.’ Things with my father were very difficult. My brothers also harassed me. After a while, I couldn’t continue to live at home. I needed to get out, to get away from the problems I was having with my father.”⁸⁷

An official of a local government agency dedicated to family development told us of similar cases. “I’ve seen young people who leave when they suffer abuses at home. A 12- or 13-year-old says, ‘I’m gay,’ comes out to the family. They can suffer abuses at any moment. An uncle shows up and says, ‘Come with me, you’re confused,’ and the situation becomes violent. I’ve seen boys of ages 12, 13, 14 in this situation,” an official with a local entity of Mexico’s child protection system, the National System for Integral Family Development (DIF) told Human Rights Watch, speaking of Central American children with whom she had come into contact.⁸⁸

A couple of the women who said that they left to escape domestic violence told us that they took the decision to leave when they realized that their children were affected, either because the children had started to become aware of the abuse or because they were subjected to physical violence themselves.

For example, Karla V., a 29-year-old Honduran woman, told us that after she had been beaten several times by her husband, “I made a complaint to the police. They detained him for 24 hours and then let him go. They told me that the next time they would lock him up for 48 hours. What does that do for me? He always hit me. If I made another complaint, he would go back to beating me. He used cables, rocks, whatever. He hit me whenever he

⁸⁶ UNHCR, *Children on the Run*, pp. 9-10.

⁸⁷ Human Rights Watch interview with Arturo O., Tapachula, Chiapas, October 23, 2015.

⁸⁸ Human Rights Watch interview, May 2015. The name of this individual and the date and location of this interview have been withheld on the individual’s request.

was angry about something. If I responded, he would hit me again.” She left for Mexico in March 2015 with her children, hoping to live with her aunt and her cousin in Mexico City. “The father of my child threatened to kill me if I return to Honduras. That’s why I’m afraid to return. There, the death of a human being is like the death of a dog: it’s never punished. I knew when I left that I ran a big risk. I knew I risked danger. If I go back, my children will be left orphans.”⁸⁹

Women and girls are often unable to secure effective state protection against domestic violence in the three countries of Central America’s Northern Triangle. In Honduras, for example, the country’s special prosecutor for women described the police as “ineffective” in a 2012 interview with *Proceso*, a national newspaper, noting that of “the 66,000 complaints [of violence against women] filed every year with the National Directorate of Criminal Investigations [Dirección Nacional de Investigación Criminal, DNIC], only a few are investigated by the police.”⁹⁰ At the conclusion of a July 2014 country visit to Honduras, the UN special rapporteur on violence against women noted:

[A] lack of effective implementation of legislation, obstacles such as gender discrimination in the justice system, inconsistencies in the interpretation and implementation of legislation, and the lack of access to services that promote safety and also address prevention of future acts of violence. Moreover, corruption, the lack of political will, and the failure of authorities to exercise due diligence in investigating, prosecuting and punishing perpetrators of violence against women contributes to an environment of impunity, resulting in little or no confidence in the justice system.⁹¹

Women and girls in El Salvador and Guatemala confront similar obstacles. A 2011 investigation by the Inter-American Commission on states’ responses to sexual violence found that in all three countries, as well as in Nicaragua:

⁸⁹ Human Rights Watch interview with Karla V., Tapachula, Chiapas, May 6, 2015.

⁹⁰ “Fiscal de la Mujer: Inoperancia en la investigación policial ha fortalecido la delincuencia,” *Proceso*, May 23, 2012, <http://www.proceso.hn/component/k2/item/37555.html> (accessed February 20, 2016).

⁹¹ “Special Rapporteur on Violence against Women Finalizes Country Mission to Honduras and Calls for Urgent Action to Address the Culture of Impunity for Crimes against Women and Girls,” July 7, 2014, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E> (accessed January 29, 2016). See also UN General Assembly, Human Rights Council, Report of the Special Rapporteur on Violence against Women: Mission to Honduras, UN Doc. A/HRC/29/27/Add.1 (March 31, 2015), paras. 54-82.

a woman victim of violence who, after wrestling with her own circumstances, decides to report the violence she has experienced, then has to contend with a justice system in which stereotypes and prejudices are pervasive; a justice system that blames her, discriminates against her, and ends up rendering a judgment slanted against her. She also has to deal with an understaffed and underfunded system for the administration of justice, tied up in procedural formalities; a system that forces her into mediation to settle her dispute, is incapable of securing the necessary medical evidence, requires witnesses, and fails to coordinate with the other institutions involved in the investigation, among other problems.⁹²

Lesbian, gay, bisexual, and transgender persons, particularly children, often face similar obstacles in reporting and securing effective state protection against acts of violence, including domestic violence.⁹³

Elderly Caregivers

In many cases, children are cared for by grandparents or other relatives after their parents leave the country. Three children in this situation told us that their elderly caregivers had died or had become increasingly concerned about their ability to look after the children as they aged. Particularly given the general context of insecurity, elderly caregivers and children themselves may decide that the children will be better off if they can join one or both parents or other relatives in Mexico or the United States.

“I lived with my grandmother, but then my grandmother died,” Daniel L., a 15-year-old boy from El Salvador, told Human Rights Watch. “My grandmother never wanted me to have any vices. She always made sure I never smoked. She told me, ‘If I die, you go to Mexico, where you can have a better life.’ I have my father, but he is an alcoholic.”

⁹² Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II.Doc 3 (Washington, DC: December 9, 2011), para. 348, <https://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf> (accessed January 29, 2016). See also UN Human Rights Council, Report of the Special Rapporteur on Violence against Women: Follow-up Mission to El Salvador, para. 59 (“The pervasiveness of patriarchal attitudes in the law enforcement and justice system, coupled with a lack of resources and insufficient knowledge on existing applicable legislation, has led to inadequate responses to cases of violence against women and the persisting social acceptance of such acts.”); UNHCR, *Women on the Run*, pp. 16-17.

⁹³ See generally Comisión Interamericana de Derechos Humanos, *Violencia contra personas lesbianas, gays, bisexuales, trans y intersex en América*, OAS/Ser.L/V/II.rev.1, Doc. 36 (Washington, D.C.: Comisión Interamericana de Derechos Humanos, November 12, 2015), pp. 184-195, 227-90.

His grandmother died in October 2014. The next day, Daniel learned that she had arranged for him to be taken to Mexico as soon as she passed away. “My grandmother had paid for everything. I didn’t know this, but well beforehand she had paid all the expenses for my travel.”

The man with whom his grandmother had made the arrangements told him that he would be going to work in Cancún. “I don’t know what kind of work it was,” Daniel told us. When they reached Comitán, he recounted, “The man went to go eat something in a restaurant. He drove off, and he never returned for me. . . . I felt very anxious because I didn’t know anybody there. I didn’t know what to do. Somebody helped me find the municipal police. They treated me well. They took me to Immigration, and I told my story to somebody from the Salvadoran consulate. He told me to seek help from COMAR.”

Daniel applied for asylum and was awaiting a decision when we interviewed him in May 2015. “I don’t want to return to El Salvador,” he said. “I would have to stay in a shelter, and there are all the gangs.”⁹⁴

Similarly, Omar C., age 11, had been living with his grandparents in Ocotepeque, Honduras, before he left at the end of May 2015, accompanied only by a smuggler, intending to go to the United States. “Life is bad where I lived,” he said, explaining that his grandparents feared they could not protect him from gang violence. His mother has been living in Virginia since he was three years old, and he hoped to join her there.⁹⁵

Catarina H., a 13-year-old girl from Olancho, Honduras, gave a similar account. “I was living with my grandmother in Honduras, but she is sick,” she said. “If my grandmother dies, what am I going to do?” She decided to make her way to the United States, where her mother and father both live; her father, whom she has not seen since she was a baby, is a US citizen.⁹⁶

Caseworkers in Mexico described similar situations they had seen with Central American children. “In September 2014, I saw two brothers who had been living with their great-

⁹⁴ Human Rights Watch interview with Daniel L., Tapachula, Chiapas, May 8, 2015.

⁹⁵ Human Rights Watch interview with Omar C., San Pedro Sula, Honduras, June 15, 2015.

⁹⁶ Human Rights Watch interview with Catarina H., Reynosa, Tamaulipas, June 24, 2015.

grandmother until she died. The grandmother is in the United States. They don't have anybody else to care for them," one local DIF official told us.⁹⁷

Abuses During the Journey

Central Americans' journey to and through Mexico is arduous and risky. In every country they pass through, migrants are vulnerable to being preyed on by gangs, criminals, and the people they have paid to guide them to their destination. "It's dangerous because you can be assaulted. The gangs kidnap people. We spent days walking, hiding, going around the immigration checkpoints," said Kevin B., a 15-year-old from El Salvador, of the journey he and his 14-year-old brother made through Mexico with the aid of a *coyote*, or smuggler, before they were apprehended near Tijuana.⁹⁸

When migrants are the victims of serious crime in Mexico, they are eligible for "humanitarian visas," which allow them to remain in Mexico for one year at a time, with the possibility of renewal for further one-year intervals.⁹⁹ Human Rights Watch spoke to 15 children and adults who were victims of crimes such as extortion and armed robbery, sexual violence, abductions for ransom, and other violent crime in Mexico.

Edwin L., a 16-year-old from Honduras, told Human Rights Watch that he and the group he traveled with were held for ransom near Coatzacoalcos, Veracruz, in May 2015. He spent eight days captive and was released only after his family wired \$2,000 to his captors. "If I didn't pay them, they were going to kill me," he said. He described the experience:

We arrived in Coatzacoalcos with our guide. The same guide turned us over to the [armed gang known as the] Zeta. There were 15 of us in the group. All 15 were kidnapped. . . . It was the morning after we arrived. Some men came to the place we were staying. Some had guns; others had machetes. They started threatening us. 'If we don't get the money, we'll kill you.' . . . We had to pay the money. There wasn't any other way. They burned me with an electric cord to get me to call my family. I called, and my family arranged

⁹⁷ Human Rights Watch interview, May 2015. The name of this individual and the date and location of this interview have been withheld on the individual's request.

⁹⁸ Human Rights Watch interview with Kevin B., Tapachula, Chiapas, May 8, 2015.

⁹⁹ Humanitarian visas are discussed more fully in Chapter II, "The Limited Use of Humanitarian Visas" section.

to send 43,000 lempiras [approximately \$1,950]. They gave us a name to send the money to.¹⁰⁰

After his family paid the ransom, he continued his journey north. “We didn’t report the kidnapping,” he said, explaining that he thought he would be deported if he did so. “If you report a crime to the police, they would only turn you over to Immigration. They’re not going to help you.” He was apprehended by INM agents as he tried to cross the Rio Bravo del Norte, the river known as the Rio Grande north of the border, to enter the United States. He was awaiting deportation to Honduras when we interviewed him in June 2015.¹⁰¹

Edwin’s account is by no means unusual: the Mexican National Human Rights Commission (CNDH) has found that migrants are subject to abduction for ransom in large numbers.¹⁰²

Others described being the victims of armed robbery or extortion. For instance, armed men robbed Rodrigo L., a 30-year-old Salvadoran man, taking nearly \$2,000, shortly after he crossed into Mexico at El Ceibo, near Tenosique, together with his wife, 12-year-old son, and eight-year-old daughter.¹⁰³ Seventeen-year-old Arturo O., from Guatemala, had a similar account. “I was assaulted at the border,” he said. “They took my money and my phone.”¹⁰⁴

¹⁰⁰ Human Rights Watch interview with Edwin L., Nuevo Laredo, Tamaulipas, June 25, 2015.

¹⁰¹ Human Rights Watch interview with Edwin L., Nuevo Laredo, Tamaulipas, June 25, 2015.

¹⁰² In a 2011 report, the Mexican National Human Rights Commission (CNDH) documented 198 collective abductions involving 9,758 victims between September 2008 and February 2009. See Comisión Nacional de Derechos Humanos, *Informe especial sobre los casos de secuestro en contra de migrantes* (México, DF: CNDH, 2009). The 9,758 migrant victims of abduction represent 28 percent of the 34,388 undocumented migrants apprehended and detained in Mexico during this six-month period. See SEGOB, *Boletín estadístico 2008*, Table 3.1.1; *Boletín estadístico 2009*, Table 3.1.1. In a subsequent report, the commission documented 214 collective abductions involving 11,333 migrants between April and September 2010. See Comisión Nacional de Derechos Humanos, *Informe especial sobre secuestro de migrantes en México* (México, DF: CNDH, 2011), p. 11, http://200.33.14.34:1033/archivos/pdfs/Var_51.pdf (accessed January 29, 2016). The 11,333 victims of abduction during this period represented 29 percent of the 38,761 undocumented migrants apprehended and detained between April and September 2010. See SEGOB, *Boletín estadístico 2010*, Table 3.1.1. See also Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, Doc. 48/13 (2013), para. 110, <http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf> (accessed January 29, 2016); “Cancillería presenta informe sobre violaciones de derechos humanos y delitos graves contra personas migrantes salvadoreñas en tránsito hacia Estados Unidos,” April 4, 2011, http://www.rreee.gob.sv/index.php?option=com_%20k2&id=1336&lang=es&view=item&print=1&tmpl=component (accessed January 29, 2016).

¹⁰³ Human Rights Watch interview with Rodrigo L., Tenosique, Tabasco, October 21, 2015.

¹⁰⁴ Human Rights Watch interview with Arturo O., Tapachula, Chiapas, October 23, 2015.

A 2013 analysis by the Jesuit Refugee Service/USA (JRS) of data collected by the Mexican Migration Southern Border Survey (Encuesta sobre Migración en la Frontera Sur de México, EMIF Sur) found that over a four-year period, almost 15 percent of migrants interviewed by EMIF Sur reported extortion in Mexico. Nearly 12 percent of migrants reported attacks or robbery in 2012, the first year that EMIF Sur included these categories on its survey.¹⁰⁵

Sexual violence is another risk, for boys as well as girls. UNHCR observed in its report on children who had traveled through Mexico to reach the United States: “A troubling note is that staff members at two different ORR [the US government’s Office of Refugee Resettlement] facilities stated they are seeing an increase in male residents reporting incidents of sexual abuse, occurring particularly during their journey to the US.”¹⁰⁶

Other groups, including Amnesty International, Centro Prodh, i(dh)eas, and Sin Fronteras, have also documented abuses against migrants during their journey in Mexico, including kidnappings, sexual violence, other forms of violence, and extortion.¹⁰⁷ In addition, the Working Group on Enforced or Involuntary Disappearances has observed that migrants are at risk of enforced disappearance—abduction by a state agent or with the state’s acquiescence, followed by a refusal to acknowledge the abduction or the whereabouts of the abductee¹⁰⁸—as they travel through Mexico.¹⁰⁹

¹⁰⁵ See Joanna Foote and Mary Small, *Persistent Insecurity: Abuses against Central Americans in Mexico* (Washington, DC: Jesuit Refugee Service/USA, 2013), p. 10, https://www.jrsusa.org/Assets/Publications/File/Persistent_Insecurity.pdf (accessed January 29, 2016).

¹⁰⁶ UNHCR, “Children on the Run: Unaccompanied Children Leaving El Salvador, Guatemala, Honduras, and Mexico and International Protection,” in *Childhood and Migration in Central and North America*, p. 93.

¹⁰⁷ Amnesty International, *Invisible Victims: Migrants on the Move in Mexico* (London: Amnesty International, 2010), <https://www.amnesty.org/en/documents/AMR41/014/2010/en/> (accessed January 29, 2016); Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh) and Casa del Migrante de Saltillo, *Cuaderno sobre secuestro de migrantes: Dimensión, contexto y testimonios de la experiencia de la migración en tránsito por México* (México, DF: Centro Prodh and Casa del Migrante de Saltillo, 2011), http://observatoriocolef.org/_admin/documentos/Cuaderno_Secuestros.pdf (accessed July 30, 2015); i(dh)eas, *Víctimas entre fronteras: La ausencia del estado en la defensa de los derechos de las personas migrantes en México* (México, DF: i(dh)eas, Litigio Estratégico en Derechos Humanos, A.C., 2013), http://observatoriocolef.org/_admin/documentos/migraciones.pdf (accessed January 29, 2016); i(dh)eas, *En tierra de nadie: El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco* (México, DF: i(dh)eas, Litigio Estratégico en Derechos Humanos, A.C., 2011), <http://www.corteidh.or.cr/tablas/r26831.pdf> (accessed January 29, 2016); INCIDE Social and Sin Fronteras, *Construyendo un modelo de atención para mujeres migrantes víctimas de violencia sexual en México* (México, DF: INCIDE Social and Sin Fronteras, 2012), http://www.sinfronteras.org.mx/attachments/article/1418/Modelo_Mujeres_WEB_BR.pdf (accessed January 29, 2016). See also Catholic Relief Services, *Child Migrants*, pp. 33-37.

¹⁰⁸ “[E]nforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” International Convention for the

Mexico as a Country of Destination

Mexico is often thought of as a transit country for migrants seeking to reach the United States. But it received Central American refugees in large numbers in the 1980s—some 150,000 from Guatemala alone between 1980 and 1984 and 120,000 or more from El Salvador during this period.¹¹⁰ In recent years, nationals of these three countries of Central America’s Northern Triangle have again arrived in Mexico in substantial numbers, as measured by apprehensions, which have increased from 80,000 in 2013 to 118,000 in 2014 and 170,000 in 2015.¹¹¹ The number that submits claims for international protection is much lower but is also increasing: COMAR received just under 1,300 applications for refugee recognition in 2013, some 2,100 in 2014, and 3,044 in the first 11 months of 2015.¹¹²

The United States continues to be the destination of choice for many Guatemalans, Hondurans, and Salvadorans, a consequence not only of its strong economy and relative proximity but also of their sense that they will receive a fair hearing and the strong family ties that many Central Americans have in the country.¹¹³ Nevertheless, Mexico and other countries in the region—Belize, Costa Rica, Nicaragua, and Panamá—have seen significant increases in asylum applications. Taken as a whole, these countries report a 432 percent increase in asylum applications since 2008.¹¹⁴

An asylum seeker’s choice of destination is influenced in part by the presence of family members in that country. Six children fleeing violence in their home countries told Human

Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, 2716 U.N.T.S. 3 (entered into force December 23, 2010), art. 2.

¹⁰⁹ UN General Assembly, Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances: Addendum: Mission to Mexico, UN Doc. A/HRC/19/58/Add.2 (2011), para. 69, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf (accessed January 29, 2016).

¹¹⁰ See Americas Watch Committee, *Guatemala Refugees in Mexico, 1980-1984* (New York and Washington, DC: Americas Watch Committee, 1984), p. 17; María Christina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada* (Oakland: University of California Press, 2006), p. 33.

¹¹¹ See Secretaría de Gobernación (SEGOB), *Boletines estadísticos 2013, 2014, 2015*, Table 3.1.1.

¹¹² Mexican Commission for Refugee Assistance (COMAR), *Estadísticas 2013, 2014, 2015*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (accessed February 24, 2016).

¹¹³ Salvadorans have particularly strong ties to the United States. In one illustration, when UNHCR interviewed unaccompanied and separated Central American children in Mexico, 40 percent of Salvadoran children reported that their father lived in the United States, and 50 percent said their mother was living there. Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), *Arrancados de raíz*, p. 39.

¹¹⁴ *Ibid.*, p. 30; UNHCR, *Children on the Run*, p. 4.

Rights Watch that they hoped to live with family members already in Mexico. An additional 12 children who fled violence had relatives in the United States whom they hoped to join.

The Role of the United States

Record numbers of unaccompanied children and families from El Salvador, Guatemala, and Honduras arrived in the United States in the first half of 2014, in what was widely referred to as a “surge.”

The US policy response to this sharp spike in Central American arrivals included a redoubling of efforts to promote immigration enforcement and deterrence measures in Mexico and the countries of the Northern Triangle. US policymakers often referred to the Central Americans who transit Mexico as “illegal migrants,” but, as earlier sections of this chapter illustrate, there is considerably more to the story than this pejorative term suggests.

These efforts appear to have had their intended effect, at least through much of 2015. As detailed below, US apprehensions of unaccompanied children from the Northern Triangle fell by 22 percent in 2015 compared to 2014, while Mexican apprehensions increased by 70 percent during the same period. Although the US aid to Mexico included some funds for measures intended to combat the victimization of migrant children, the increased US funding was primarily to support immigration enforcement and did little, if anything, to help strengthen Mexico’s system for ensuring that children in need of refugee protection are able to access it.

Despite increased US support for immigration enforcement in Central America and Mexico, arrivals in the United States of Central American unaccompanied children began rising again at the end of 2015.

The Increase in Arrivals

An increasing number of unaccompanied children started arriving at the southern border of the United States in 2012, with the number up sharply in 2014. US Customs and Border Patrol (CBP) apprehended nearly 52,000 unaccompanied children from El Salvador, Guatemala, and Honduras during FY 2014, the 12-month period beginning October 1, 2013,

nearly three times as many as in FY 2013. Most of these apprehensions took place from February to June 2014, peaking in the last two months of this period.¹¹⁵

In addition, the profile of unaccompanied children apprehended along the US-Mexico border began to change after 2011. In each of FY 2009, 2010, and 2011, Mexican children made up three-quarters or more of all unaccompanied children apprehended at the US-Mexico border. Starting with FY 2012, unaccompanied children from El Salvador, Guatemala, and Honduras represented an increasing proportion of the total, and in FY 2014 and 2015 three out of four unaccompanied children apprehended along the US-Mexico border were from these three countries.¹¹⁶

Families from the three countries were also apprehended in significantly larger numbers during FY 2014.

CBP apprehended some 28,000 unaccompanied children from Central America's Northern Triangle in FY 2015, a significant decrease from the 52,000 reported for the previous fiscal year but still more than the 21,000 apprehensions of unaccompanied children from these countries in FY 2013.

As measured by apprehensions, arrivals of Central American unaccompanied children again rose at the end of 2015. In October and November 2015, CBP apprehended 10,500 unaccompanied children along the US-Mexico border, more than double the number of such apprehensions during the same two months in 2014.¹¹⁷

US Promotion of Enforcement and Deterrence Measures

To address the increase in Central American arrivals, which he described as “an urgent humanitarian situation on both sides of the Southwest border,” US President Barack Obama requested Congressional authorization for \$3.7 billion in emergency supplemental appropriations in July 2014, most of which would fund increased immigration enforcement,

¹¹⁵ For a detailed analysis of US border apprehensions of Central American children, see Appendix, “Arrivals of Central American Children to the United States” section.

¹¹⁶ See Appendix, Figure 3.

¹¹⁷ See, for example, Jerry Markon and Joshua Partlow, “Unaccompanied Children Crossing Southern Border in Greater Numbers Again, Raising Fears of New Migrant Crisis,” *Washington Post*, December 16, 2015, <https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/> (accessed January 29, 2016).

adjudication, detention, and other activities in the United States. A portion of these requested appropriations were for activities to be taken in Mexico and Central America, including “funding to address the root causes of migration” and “public diplomacy and international information programs.”¹¹⁸

In addition to the appropriations request, and in direct response to the summer 2014 increase in unaccompanied Central American children arriving at US border, the US Department of Homeland Security (DHS) launched Operation Coyote, which it said was “designed to stem the flow of illegal Central American migration.”¹¹⁹ The operation involved the deployment of DHS investigators to Mexico and Central America “to share criminal intelligence with foreign partners and build capacity in human smuggling and human trafficking enforcement.” By the end of May 2015, this effort had resulted in 1,037 criminal arrests in Mexico and the region.¹²⁰

The United States had already generously funded Mexican border security and migration-control programs prior to 2014. Through the Mérida Initiative, a cooperative bilateral security agreement between the United States and Mexico that dates from 2008, the US Congress had appropriated about \$2.5 billion in assistance to Mexico, of which more than \$1.3 billion in equipment and training had been delivered to Mexico as of April 2015.¹²¹ The Congressional Research Service estimated that US State Department funding for equipment and training to support immigration enforcement on Mexico’s southern border would exceed \$86.6 million prior to the enactment of the FY 2015 appropriation.¹²²

The appropriations measure enacted by the US Congress in December 2014 included funding for the implementation of “a strategy to address the key factors in the countries in

¹¹⁸ See Letter from Barack Obama to the Hon. John Boehner, July 8, 2014, https://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf (accessed January 29, 2016). See also The White House, Office of the Press Secretary, “Letter from the President—Efforts to Address the Humanitarian Situation in the Rio Grande Valley Area of Our Nation’s Southwest Border,” June 30, 2014, <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle> (accessed January 29, 2016).

¹¹⁹ Testimony of Assistant Director of International Operations of US Immigration and Customs Enforcement Lev J. Kubiak before the House Subcommittee on Border and Maritime Security, June 2, 2015, pp. 7-8, <https://www.ice.gov/sites/default/files/documents/Testimony/2015/150602kubiak.pdf> (accessed January 29, 2016).

¹²⁰ *Ibid.*

¹²¹ Clare Ribando Seeke and Kristin Finkler, “U.S.-Mexico Security Cooperation: The Mérida Initiative and Beyond,” Congressional Research Service, May 7, 2015, <https://www.hsdl.org/?view&did=765713> (accessed January 29, 2016).

¹²² *Ibid.*, p. 16.

Central America contributing to the migration of unaccompanied, undocumented minors to the United States”¹²³ that would “address the need for greater border security for the countries in Central America and for Mexico, particularly the southern border of Mexico.”¹²⁴ The appropriations measure also provided that the strategy would include economic and social development programs, judicial and police reform and capacity-building programs, and activities to combat trafficking in persons in Central America,¹²⁵ and would “address the need for the safe repatriation and reintegration of minors into families or family-like settings.”¹²⁶

In enacting the December 2014 appropriations measure, the US Congress increased the President’s \$115 million request for Mérida Initiative for FY 2015 by another \$79 million.¹²⁷ Additional funds also flowed to Mexico’s military from the US Department of Defense’s counter-narcotics budget to bolster its capacity to control Mexico’s southern border.¹²⁸ The Obama Administration requested \$1 billion in foreign assistance for Central America in FY 2016, including \$400 million for efforts to increase trade, reduce poverty, and provide education and vocational training; \$300 million for improving security conditions; and \$250 million for strengthening governance.¹²⁹ The FY 2016 request included significant funding for Mérida Initiative programs in Mexico.¹³⁰

¹²³ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2656, § 7045(a)(1) (December 16, 2014). See also Peter J. Meyer et al., *Unaccompanied Children from Central America: Foreign Policy Considerations* (Washington, D.C.: Congressional Research Service, February 10, 2015), pp. 10-11, <https://fas.org/sgp/crs/homesec/R43702.pdf> (accessed January 29, 2016).

¹²⁴ Consolidated and Further Continuing Appropriations Act, 2015, § 7045(a)(2).

¹²⁵ *Ibid.*, §§ 7045(a)(3)-(5).

¹²⁶ *Ibid.*, § 7045(a)(6).

¹²⁷ Clare Ribando Seeke and Kristin Finkler, “US-Mexico Security Cooperation: The Mérida Initiative and Beyond,” p. 7; Peter J. Meyer et al., *Unaccompanied Children from Central America: Foreign Policy Considerations*, p. 10.

¹²⁸ In FY 2011, the US Department of Defense (DOD) provided Mexico \$50 million “to improve security along the Mexico-Guatemala-Belize border” out of \$84.7 million in DOD counternarcotics support funding to Mexico that year. DOD’s Mexico-Guatemala-Belize border initiative provides training to troops patrolling Mexico’s southern border, communications equipment, and support for development of Mexico’s surveillance capacity. DOD counter-narcotics funding for Mexico continued thereafter with \$83.5 million in FY 2012, \$68.8 million in FY 2013, and \$50.8 million in FY 2014. See Clare Ribando Seeke and Kristin Finkler, “US-Mexican Security Cooperation: The Mérida Initiative and Beyond,” p. 24.

¹²⁹ See Peter J. Meyer et al., *Unaccompanied Children from Central America: Foreign Policy Considerations*, p. 11.

¹³⁰ The US Department of State’s FY 2016 budget request included \$39 million for the Mexico Economic Support Fund to support the continued US-Mexico partnership under the Merida Initiative “to address security threats stemming from drug trafficking and violent crime”; \$81.5 million for Central American Regional Security Initiative (CARSI) and \$26 million for the Caribbean Basin Regional Security Initiative (CBSI); \$80 million for International Narcotics Control and Law Enforcement (INL) Mexico funds for the purposes of “institutionalizing the rule of law, disrupting and dismantling criminal organizations, creating a 21st Century border, including Mexico’s southern border, and building strong and resilient communities through the Mérida Initiative;” \$225 million for INL for CARSI activities such as land border and maritime interdiction programs (and “support[ing] civil society through access to justice [and] protection of human rights”); and \$20 million for INL’s support to

The appropriations measure enacted by the US Congress on December 18, 2015, reduced the total amount to \$750 million in assistance to Central American countries, with the proviso that “the Secretary of State and Administrator of the United States Agency for International Development (USAID) shall prioritize such assistance to address the key factors in such countries contributing to the migration of unaccompanied, undocumented minors to the United States.”¹³¹ Commenting on this allocation, US Vice President Joseph Biden stated, “[A]s we were reminded in the summer of 2014 when 50,000 unaccompanied children risked their lives to escape crime, corruption, violence and poverty to find their way to our southwestern border—the security and prosperity of Central America are inextricably linked with our own.”¹³²

The same day that President Obama made his emergency supplemental request, July 8, 2014, Mexican President Enrique Peña Nieto announced the start of the Programa Frontera Sur (Southern Border Program). The Mexican government established a new administrative body within the Ministry of the Interior, the Coordination for Comprehensive Migration in the Southern Border, to coordinate border control and migration management, and federal officials were designated to manage migration policy in the southern Mexican states of Campeche, Chiapas, Quintana Roo, and Tabasco.¹³³

Programa Frontera Sur began to take shape in August and September 2014. In September 2014, the *New York Times* reported that “under pressure from the United States . . . Mexico in recent weeks has taken a rare step toward stemming the flow of migrants, sweeping

CBSI “to continue efforts to combat illicit trafficking and organized crime, increase port and border security, and strengthen the rule of law through training and technical assistance.” See Department of State Budget Justification for FY 2016, February 2, 2015, pp. 90-109, <http://www.state.gov/s/d/rm/rls/ebs/2016/> (accessed January 29, 2016).

¹³¹ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (December 18, 2015), § 7045(a)(1). The act also appropriates \$4 million “for DNA forensic technology programs to combat human trafficking in Central America.” *Ibid.* § 7034(b)(4)(B).

¹³² The White House, Office of the Vice President, “Statement by Vice President Biden on the Budget Deal,” December 18, 2015, <https://www.whitehouse.gov/the-press-office/2015/12/18/statement-vice-president-biden-budget-deal> (accessed January 29, 2016).

¹³³ “Poder Ejecutivo: Secretaría de Gobernación: Decreto por el que se crea la Coordinación para la Atención Integral de la Migración en la Frontera Sur,” *Diario Oficial de la Federación*, July 8, 2014, pp. 1-2. The Coordination for Comprehensive Migration in the Southern Border closed its offices on August 19, 2015. “Desaparecen coordinación de temas migrantes,” *El Economista*, August 19, 2015, <http://eleconomista.com.mx/sociedad/2015/08/06/desaparecen-coordinacion-temas-migrantes> (accessed January 29, 2016).

[Central American migrants] off trains, setting up more roadway checkpoints and raiding hotels and flophouses where they congregate on their journey north.”¹³⁴

While additional resources were poured into bolstering Mexico’s border and immigration enforcement capacity, no comparable expansion of resources was made to enhance its capacity to provide decent reception conditions, process asylum claims, and integrate refugees. While the new government agency that was created as a coordinating body for Programa Frontera Sur was provided with a budget of 102 million pesos (approximately \$5.9 million) and 94 employees in 2015,¹³⁵ Mexico’s refugee assistance agency, COMAR, had only 15 officers who were qualified to make refugee status determinations.¹³⁶ Despite a 65 percent increase in asylum applications in 2014, COMAR received a budget increase of less than 5 percent for 2015.¹³⁷ The area director of COMAR told Human Rights Watch, “We get no financing from the United States.”¹³⁸

As early as September 2014, with the number of Central American appearing at the US border falling, US Secretary of Homeland Security Jeh Johnson issued a press release showing the statistical drop and saying that the US government is “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.”¹³⁹

¹³⁴ Paulina Villegas and Randal C. Archibold, “Mexico Makes Route Tougher for Migrants,” *New York Times*, September 21, 2014, <http://www.nytimes.com/2014/09/22/world/americas/mexico-makes-route-tougher-for-migrants.html> (accessed January 29, 2016).

¹³⁵ Desaparecen coordinación de temas migrantes,” *El Economista*.

¹³⁶ See Manu Ureste, “México recibe 67% más solicitudes de refugio, pero sólo tiene 15 oficiales para atender 2 mil casos,” *Animal Político*, June 19, 2015, <http://www.animalpolitico.com/2015/06/mexico-recibe-67-mas-de-solicitudes-de-refugio-pero-solo-tiene-15-oficiales-de-comar-para-atender-2-mil-casos/> (accessed January 29, 2016).

¹³⁷ COMAR registered 1,296 applications for recognition of refugee status in 2013 and 2,137 applications in 2014. COMAR, *Estadísticas 2013, 2014*. COMAR’s budget increased from 24.8 million Mexican pesos (\$1.4 million) in 2014 to 26 million pesos (\$1.5 million) in 2015, an increase of 4.61 percent. Compare Mexican Finance Ministry, “Presupuesto de Egresos de la Federación 2014”, 2014, p. 5, http://www.apartados.hacienda.gob.mx/presupuesto/temas/ppef/2014/temas/tomos/04/ro4_afpe.pdf (accessed January 29, 2016), with Mexican Finance Ministry, “Presupuesto de Egresos de la Federación 2015”, 2015, p. 3, http://www.apartados.hacienda.gob.mx/presupuesto/temas/pef/2015/docs/04/ro4_reurgfpp.pdf (accessed January 29, 2016).

¹³⁸ Human Rights Watch interview with Cinthia Pérez Trejo, area director, COMAR, April 28, 2015.

¹³⁹ US Department of Homeland Security, Statement by Secretary Jeh Johnson about the Situation along the Southwest Border, September 8, 2014, <http://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border> (accessed January 29, 2016).

The US government characterized the efforts to stem the flow of Central American migrants to the US border as a success, and has given much of the credit for this success to Mexico for its enhanced enforcement efforts. As President Obama said at a joint White House press conference with Mexican President Peña Nieto on January 6, 2015:

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.¹⁴⁰

If US policy objectives were to “interdict the flow” by shifting enforcement responsibilities to Mexican immigration authorities, as Secretary Johnson's and President Obama's remarks suggest, they were successful in the short term. US authorities apprehended 22 percent fewer unaccompanied children in calendar year 2015 than in the 2014 calendar year. Mexican authorities, in turn, increased apprehensions of unaccompanied children by 70 percent in 2015 as compared with 2014.¹⁴¹

But, as detailed in this report, Mexico's increased enforcement efforts have not been matched by adequate efforts to screen children (and adults) for protection needs. As a report commissioned by the Transatlantic Council on Migration noted:

Fundamentally, a balanced response to a mixed migration flow requires a fair and complete review, on a case-by-case basis, of every immigrant's claim to humanitarian relief—regardless of where he or she enters the immigration enforcement system. Yet available evidence suggests that many Central Americans apprehended while in transit to the United States are returned to Central America with limited humanitarian screening. The United States should not support efforts to apprehend and return immigrants in transit without insuring that they have a genuine opportunity to seek humanitarian relief.¹⁴²

¹⁴⁰ White House, Office of the Press Secretary, Remarks by President Obama and President Peña Nieto after Bilateral Meeting, January 6, 2015, <https://www.whitehouse.gov/the-press-office/2015/01/06/remarks-president-obama-and-president-pe-nieto-after-bilateral-meeting> (accessed January 29, 2016).

¹⁴¹ See Appendix, Figure 9.

¹⁴² Marc R. Rosenblum, *Unaccompanied Child Migration to the United States*, p. 21.

In-Country Refugee Processing for Central American Children

In November 2014, the Obama administration announced the establishment of a new “in-country refugee/parole program,” under which a limited number of unmarried children and young adults under age 21 with a parent “lawfully present” in the United States may be approved to travel to the United States as refugees.¹⁴³

As a practical matter, it is nearly impossible for many children to meet the standards for this program. Many Central American children have relatives, but not necessarily a parent, who are lawfully present in the United States, but those relatives cannot submit petitions for them under this program. If they do have parents with the requisite status in the United States, their parents must be able to pay for DNA testing,¹⁴⁴ and children must be able to travel to and from testing centers. Applicant children also attend four interviews and, if they are approved, must remain in their country of origin while they undergo medical examinations and cultural orientation and a resettlement agency visits the parental home in the United States.¹⁴⁵ But Central American children who face the kinds of threats to their lives and safety may not be able to remain in their countries of origin for the many months that these procedures require.¹⁴⁶ Moreover, as the Migration Policy Institute noted in

¹⁴³ See US Department of State, Bureau of Population, Refugees, and Migration, Fact Sheet: In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States, November 14, 2014, <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm> (accessed January 29, 2016). Parents must be at least 18 years of age and lawfully present in the United States as a permanent resident, under Temporary Protected Status (TPS), as a parolee, under a grant of withholding of removal, or as the beneficiary of Deferred Action for Childhood Arrivals (DACA), other deferred action, or deferred enforced departure. US Citizenship and Immigration Services (USCIS), “In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM),” last updated June 1, 2015, <http://www.uscis.gov/CAM> (accessed January 29, 2016).

¹⁴⁴ USCIS notes, “The parent in the US will pay the initial costs of DNA testing and will be reimbursed for testing costs ONLY if ALL claimed and tested biological relationships are confirmed by DNA test results.” Ibid.

¹⁴⁵ See Bill Frelick (Human Rights Watch), “New US Policy of Little Help to Central American Families Who Live in Fear,” commentary, *Los Angeles Times*, July 6, 2015, <http://www.latimes.com/opinion/op-ed/la-oe-0706-frelick-central-american-refugees-20150706-story.html> (accessed January 29, 2016).

¹⁴⁶ See “US Refugee Program Ignores Dangers Children Face, Critics Say,” NPR, March 27, 2015, <http://www.npr.org/2015/03/27/395698425/u-s-refugee-program-ignores-dangers-waiting-children-face-critics-say> (accessed January 29, 2016). In response to a letter from the nongovernmental organization Kids in Need of Defense (KIND), the director of US Citizenship and Immigration Services stated, “The United States Refugee Admissions Program (USRAP) endeavors to cut down processing time within the CAM program, given the concerns you duly noted regarding children in imminent danger. Children who are in immediate danger are strongly encouraged to provide this information to a DOS [US Department of State] Resettlement Support Center (RSC) staff member. The RSC has a Child Protection Officer on staff whose responsibilities include ensuring the well-being of child applicants. DOS works with RSC to identify certain trusted shelters in the region, and, in the appropriate cases, is able to provide the child and his or her caregiver with information on available shelters where they can turn for temporary assistance. We also note that while in some cases, the program may be able to expedite certain steps in the process, there are numerous required elements of the refugee processing protocol that must be satisfied in each case, including in-person interviews, security checks, and medical clearances.” Letter from León Rodríguez,

assessing the new program, “[f]or potential refugees in dangerous countries, traveling long distances and appearing at known application centers can pose major risks.”¹⁴⁷

In an illustration of the lengthy time frame applicants face, the US government had interviewed only 90 of some 4,000 Central Americans who had applied under the program as of October 6, 2015. Most of those interviewed were found eligible, the *Huffington Post* reported, but none had been resettled in the United States at the end of October.¹⁴⁸

In January 2016, US Secretary of State John Kerry announced that the US Refugee Admissions Program would be expanded “to help vulnerable families and individuals from El Salvador, Guatemala, and Honduras, and offer them a safe and legal alternative to the dangerous journey that many are tempted to begin.”¹⁴⁹ Full details of the changes had not been released as this report was being prepared for publication, but news accounts suggested that the United States would admit Central Americans on the basis of screenings conducted by UNHCR, possibly in processing centers set up in other countries in the region.¹⁵⁰

director, US Citizenship and Immigration Services, to Wendy Young, Kids in Need of Defense, December 17, 2015 (on file with Human Rights Watch).

¹⁴⁷ Faye Hipsman and Doris Meissner, *In-Country Refugee Processing in Central America: A Piece of the Puzzle* (Washington, D.C.: Migration Policy Institute, 2015), p. 13.

¹⁴⁸ Elise Foley, “A Program Meant to Keep Kids from Coming to the US Illegally Hasn’t Let Anyone in Legally Yet,” *Huffington Post*, October 28, 2015, http://www.huffingtonpost.com/entry/central-american-minor-refugee-program_563138cfe4b063179910c855 (accessed January 29, 2016).

¹⁴⁹ John Kerry, Secretary of State, Remarks on the United States Foreign Policy Agenda for 2016, National Defense University, Washington, DC, January 13, 2016, <http://www.state.gov/secretary/remarks/2016/01/251177.htm> (accessed January 29, 2016).

¹⁵⁰ See Julia Preston, David M. Herszenhorn, and Michael D. Shear, “UN to Help US Screen Central American Migrants,” *New York Times*, January 12, 2016, <http://www.nytimes.com/2016/01/13/us/politics/un-to-help-us-screen-central-american-migrants.html> (accessed January 29, 2016); David Smith and Nina Lakhani, “US to Expand Refugee Admissions for Central Americans Fleeing Violence,” *Guardian*, January 13, 2016, <http://www.theguardian.com/us-news/2016/jan/13/central-america-refugees-united-states-migrants-admission-john-kerry> (accessed January 29, 2016).

II. Barriers to Access to Asylum and Other Protection

Mexico afforded international protection to only 52 unaccompanied and separated children in the first 11 months of 2015 and to just 25 unaccompanied and separated children in all of 2014.¹⁵¹ These children are a fraction of the total with likely protection claims—tens of thousands of unaccompanied and separated children travel to Mexico each year, most from Central America’s Northern Triangle,¹⁵² and United Nations High Commissioner for Refugees (UNHCR) has found that as many as half of the children from these three countries may well be fleeing threats to their lives or safety.¹⁵³ Even so, children granted international protection represent 0.3 percent of National Institute of Migration (INM) apprehensions of unaccompanied children in 2015.

The main reason for this glaring discrepancy is not inadequate laws; instead, it is likely the result of inadequate implementation of the laws. As a UNHCR official from the Regional Office for Central America, Mexico, and Cuba observed that “the biggest problem in Mexico is not the [asylum] procedure itself, but access to the procedure.”¹⁵⁴

INM child protection officers (*oficiales de protección a la infancia*, OPis) have the responsibility to screen children proactively for protection needs, but most of the children we interviewed had not, as far as they knew, ever spoken to a child protection officer.

Only one of the 61 children we interviewed had been informed by INM officials of his right to seek refugee recognition. In fact, our interviews as well as previous studies by UNHCR, the Georgetown Law Human Rights Institute, and other groups suggest that INM agents who apprehend unaccompanied children regularly fail to inform them of their right to seek recognition as refugees and sometimes do not treat their verbal requests for protection as applications for refugee recognition, even though they are required to do so by law.

¹⁵¹ Mexican Commission for Refugee Assistance (COMAR), *Estadísticas 2014, 2015*. For a fuller analysis of grants of international protection, see Appendix, “Children’s Claims for International Protection in Mexico” section.

¹⁵² See Chapter I, “The Number of Migrant Children in Mexico” section.

¹⁵³ See Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), *Arrancados de raíz*, p. 12; United Nations High Commissioner for Refugees (UNHCR), *Children on the Run*, p. 6.

¹⁵⁴ Human Rights Watch interview with UNHCR official from the Regional Office for Central America, Mexico and Cuba, UNHCR, Tegucigalpa, Honduras, May 14, 2015.

INM agents may also tell prospective applicants for refugee recognition that they will be unsuccessful or that applying for recognition will prolong their time in detention. There is some basis for such statements—most people who apply for recognition after they are apprehended by INM agents remain in immigration detention until their cases are resolved.¹⁵⁵ Nevertheless, INM agents are not equipped to make refugee status determinations and are not tasked with this responsibility; it is not their role to make such assessments. Statements such as these have the effect of discouraging some individuals with potentially meritorious claims from applying for international protection.

Even in the absence of such statements, six children and four adults told us that detention, whether in INM-run facilities or in National System for Integral Family Development (DIF) shelters, is a tremendous disincentive to seek refugee recognition and pursue claims to conclusion. Their accounts are consistent with UNHCR's findings.¹⁵⁶

Mexico has increased its emphasis on immigration enforcement since 2014, as measured by increased funding and greater numbers of apprehensions and deportations, but it has not put additional resources into Mexico's refugee agency. COMAR has had no increase in staffing in recent years even though its caseload has nearly doubled since 2013. As of July 2015, COMAR had only 15 officials who were qualified to make refugee status determinations.¹⁵⁷

Inadequate Screening for Children's Protection Needs

The INM employs child protection officers (OPIs) to conduct best interest assessments and screen children for protection needs. Nevertheless, most of the children we spoke with told us that they did not believe they had ever spoken to an INM child protection officer.

Asked if he had been interviewed by an INM child protection officer, 16-year-old Hugo R. said, "I've never heard of a child protection officer. It's COMAR that's in charge of interviewing you. I was interviewed by COMAR, but nobody else. The COMAR official is the

¹⁵⁵ Those who request refugee recognition when they are detained by INM "are held at the immigration station until a decision is made on their request." Inter-American Commission, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 536.

¹⁵⁶ See ACNUR, *Arrancados de raíz*, p. 14.

¹⁵⁷ See Manu Ureste, "México recibe 67% más solicitudes de refugio, pero sólo tiene 15 oficiales para atender 2 mil casos", *Animal Político*.

only government official who ever asked me about the problems I had in El Salvador.”¹⁵⁸ Seventeen-year-old Ismael P. told Human Rights Watch, “I never spoke to an OPI.”¹⁵⁹ Arturo O., a gay 17-year-old who left Guatemala after suffering abuse at the hands of his father, reported that he was not asked anything other than his name, age, and other identifying details during the time that he spent at the immigration checkpoint and in Siglo XXI. “It was only here [in the DIF shelter] that anybody asked me about my life in Guatemala,” he said.¹⁶⁰

These accounts match the findings of other agencies and groups that have looked into the question. As of 2014, the INM had no established procedures for making best interest determinations, according to the Fray Matías Human Rights Center, the University of Lanús Human Rights Center, and other groups,¹⁶¹ and in July 2015, the Committee on the Rights of the Child called on Mexico to “[e]stablish a best interests determination process for decisions relating to migrant children.”¹⁶²

Moreover, when UNHCR interviewed over 270 unaccompanied Central American children in Mexico for a 2014 study, it found that over 70 percent of boys and over 80 percent of girls interviewed had not met child protection officials when they were held in detention.¹⁶³ The Fray Matías Human Rights Center has reported that children detained in Siglo XXI rarely have contact with child protection officers.¹⁶⁴ And few of the unaccompanied children interviewed by the Georgetown Law Human Rights Institute for an April 2015 report had met with a child protection officer; many had never heard that the agency employed child protection officers.¹⁶⁵

¹⁵⁸ Human Rights Watch interview with Hugo R., Tapachula, Chiapas, October 23, 2015.

¹⁵⁹ Human Rights Watch interview with Ismael P., Tapachula, Chiapas, October 23, 2015.

¹⁶⁰ Human Rights Watch interview with Arturo O., Tapachula, Chiapas, October 23, 2015.

¹⁶¹ See, for example, Pablo Ceriani Cernadas, ed., *Niñez detenida: Los derechos de los niños, niñas y adolescentes migrantes en la frontera México-Guatemala: Diagnóstico y propuestas para pasar del control migratorio a la protección integral de la niñez* (Tapachula, Chiapas, Mexico, and Lanús, Province of Buenos Aires, Argentina: Universidad Nacional de Lanús and Centro de Derechos Humanos Fray Matías de Córdova, 2012), p. 13; *Childhood and Migration in Central and North America*, pp. 21, 213, 245.

¹⁶² Committee on the Rights of the Child, Concluding Observations: Mexico, UN Doc. CRC/C/MEX/CO/4-5 (July 3, 2015), para. 60(c).

¹⁶³ ACNUR, *Arrancados de raíz*, p. 62. Forty boys and 32 girls were interviewed individually and 126 boys and 74 girls were surveyed as part of focus group discussions.

¹⁶⁴ *Childhood and Migration in Central and North America*, p. 273.

¹⁶⁵ Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children’s Access to International Protection* (Washington, DC: Georgetown Law Human Rights Institute, 2015), p. 45.

This may be explained in part by the fact that few child protection officers are assigned to Chiapas even though more children are held in immigration detention in Chiapas than in any other state. Over one-third of all detained children, and four out of ten unaccompanied children, are held in Chiapas.¹⁶⁶ But only 6 percent of the INM's child protection officers are assigned to the state, a 2013 study by the Institute for Security and Democracy (Instituto para la Seguridad y la Democracia, Insyde) found.¹⁶⁷ The INM did not respond to our request for comment on this point.

In addition, these officials are assigned other responsibilities that leave them with little time to carry out their protection mission, lawyers with the Fray Matías Human Rights Center told us.¹⁶⁸ The 2013 Insyde study reached the same conclusion, noting that they are assigned administrative tasks that are unrelated to child protection.¹⁶⁹ We heard the same from UNHCR officials. "OPIs don't only act as child protection officers," a UNHCR official in Mexico City told us. "They have other duties. They should be OPIs only, in our view."¹⁷⁰ Perhaps for this reason, a Central American consular official interviewed by the Georgetown Law Human Rights Institute commented that child protection officials "do not interact with the children. You see them [at Siglo XXI] . . . but they do not work with the population."¹⁷¹

The state DIF officials with whom we spoke gave us diplomatically phrased but substantially similar descriptions of INM child protection officials' engagement with children. For example, during our visit to the Acayucan immigration detention center's DIF "module," a space with games and activities for children as well as interview rooms used by psychologists and health providers, we asked DIF officials when the last time an INM child protection officer had come to the area to interact with children. After some thought,

¹⁶⁶ Chiapas held some 13,800 children under age 18 out of the national total of approximately 35,700 held in immigration detention in 2015. The number of unaccompanied children detained in Chiapas was 7,495 in 2015; in Mexico as a whole, 18,650 unaccompanied children were detained that year. These numbers are detention "events," meaning that a single child may have been held more than once. Secretaría de Gobernación (SEGOB), *Estadísticas Migratorias 2014*, Table 3.1.4.

¹⁶⁷ Instituto para la Seguridad y la Democracia, *Diagnóstico del Instituto Nacional de Migración: Hacia un sistema de rendición de cuentas en pro de los derechos humanos de las personas migrantes en México* (México, DF: Insyde, 2013), pp. 243-44, http://insyde.org.mx/wp-content/uploads/2014/03/Diagnostico_INM_Insyde_2013_Completo (accessed January 29, 2016).

¹⁶⁸ Human Rights Watch interviews, Tapachula, Chiapas, May 6, 2015.

¹⁶⁹ Insyde, *Diagnóstico del Instituto Nacional de Migración*, p. 246.

¹⁷⁰ Human Rights Watch interview with UNHCR official, México, DF, April 27, 2015.

¹⁷¹ Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, p. 46.

the officials recalled an occasion a few months prior when an INM child protection official had stopped by briefly to be photographed while speaking to children.¹⁷²

“In principle we work together,” one state DIF official told us. “The reality” She paused, searching for words, and finally said, “They have many other responsibilities.”¹⁷³

Moreover, the fact that child protection officers are agents of the INM, the agency tasked with enforcement of the immigration laws, complicates their ability to carry out a protection function. Whatever name they go by, they will be seen by children as immigration agents. In fact, the child protection officers we saw in Tapachula wore police-style uniforms that were similar to the uniforms worn by other immigration agents. As UNHCR observed, “Children and adolescents frequently cannot distinguish between the official who is trained to help them from the one who detained them at the immigration checkpoint”¹⁷⁴ Similarly, the Insyde study found that “OPIs are not perceived as protection officers by girls, boys, and adolescents, but rather only as federal [enforcement] agents.”¹⁷⁵

More generally, the placement of officials who are charged with the protection of migrant children within the agency that seeks to return those children to their countries of origin creates an apparent conflict of interest. Child protection officers would more logically be placed with DIF, the agency charged with child protection, a conclusion other organizations have also reached.¹⁷⁶

Children and representatives of nongovernmental organizations who spoke to Human Rights Watch said that other INM officials, particularly those who conduct enforcement operations and are the first, and sometimes the only, INM agents with whom children

¹⁷² Human Rights Watch interview with National System for Integral Family Development (DIF) officials, Acayucan, Veracruz, November 2, 2015.

¹⁷³ Human Rights Watch interview, October 2015. The name and affiliation of this individual and the location of this interview have been withheld on the individual’s request.

¹⁷⁴ ACNUR, *Arrancados de raíz*, p. 62.

¹⁷⁵ Insyde, *Diagnóstico del Instituto Nacional de Migración*, p. 245. See also *ibid.*, p. 370 (“The fact that OPIs carry out immigration control, representing the Mexican state, which is trying to expel undocumented migrants, as well as protection, creates an apparent contradiction that makes it difficult to gain the confidence of minors.”).

¹⁷⁶ See, for example, Pablo Ceriani Cernadas, *Niñez detenida*, ch. 3, pp. 15-16; Diego Lorente and Gabriela Morales, “Introduction to Chapters on Children in the Context of Migration in Mexico,” in *Childhood and Migration in Central and North America*, p. 208.

come into contact, rarely make efforts to screen children for possible protection needs. In an account that was typical of those we heard, when Edwin L., 16, was apprehended by INM agents as he tried to cross the Rio Bravo (or Rio Grande) to enter the United States, “they didn’t ask me anything; they just arrested me,” he said. “They didn’t ask if I suffered any crimes in Mexico. They didn’t say anything about staying in Mexico.”¹⁷⁷ The UNHCR and Georgetown Law Human Rights Institute studies cited above made the same findings.¹⁷⁸

INM officials had not responded at time of writing to our request for comment on the consistent reports we received indicating inadequate screening by child protection officers. The Mexican government’s public statements have not acknowledged any deviation from the procedures set forth in the applicable laws and regulations.¹⁷⁹

The Failure to Inform Children of Their Rights

Mexico’s General Law on the Rights of Girls, Boys, and Adolescents provides that children have the right to know their rights in immigration proceedings,¹⁸⁰ and immigration officials have a duty to inform children of their right to seek international protection.¹⁸¹

Nevertheless, most of the children we spoke to reported that they were not told that they had the right to seek international protection or, in the case of unaccompanied children or those who were victims of serious crime, to apply for a humanitarian visa.

In a typical account, Arturo O., a 17-year-old from Guatemala, told us that he did not receive any information from immigration agents about his right to seek recognition as a

¹⁷⁷ Human Rights Watch interview with Edwin L., Nuevo Laredo, Tamaulipas, June 25, 2015.

¹⁷⁸ See, for example, ACNUR, *Arrancados de raíz*, pp. 60-63; Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, pp. 45-50. See also Diego Lorente and Gabriela Morales, “Introduction to Chapters on Children in the Context of Migration in Mexico—Two Borders: One Childhood,” in *Childhood and Migration in Central and North America*, pp. 208-209.

¹⁷⁹ For example, in a 2012 written submission to the Committee on the Rights of the Child, the Mexican government stated, “Once they are admitted to the holding centres [immigration detention centers] or [DIF] shelters, all foreign children and adolescents in the care of the Institute are administered a questionnaire-interview to identify any situations of vulnerability requiring special assistance. This has led to the discovery of crime victims (human trafficking) and to a substantial increase in the number of asylum seekers.” Committee on the Rights of the Child, Fourth and Fifth Periodic Reports of States Parties Due in 2011: Mexico, UN Doc.CRC/C/MEX/4-5 (July 25, 2014; report received July 19, 2012), para 280.

¹⁸⁰ General Law on the Rights of Girls, Boys, and Adolescents, art. 92(II).

¹⁸¹ Reglamento de la Ley sobre Refugiados y Protección Complementaria [Regulations for the Law on Refugees and Complementary Protection], arts. 16(I), 17, *Diario Oficial de la Federación*, February 23, 2012, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LRPC.pdf (accessed January 29, 2016).

refugee. “It was another migrant who gave me this information,” he said, telling Human Rights Watch that he learned of the possibility of applying for asylum only once he had been transferred to a DIF shelter. “Then I talked to a social worker to ask for more information.”¹⁸²

Hugo R., a 17-year-old from El Salvador, reported that he learned that he could seek recognition as a refugee from a consular officer after he had been in detention for several weeks.¹⁸³

Our interviews are consistent with the findings of the 2014 UNHCR study cited above. Of the detained unaccompanied Central American children interviewed for the study, two-thirds did not receive information about their rights in Mexico, and only one out of four said that they had been notified in a way they understood of the right to seek and receive asylum and to be recognized as a refugee in Mexico. As a consequence of the failure to provide information, “the children and adolescents experienced anxiety and fear during the time that they were kept in immigration stations,” the study reported.¹⁸⁴ Once UNHCR staff explained their rights to them, 28 percent of the children interviewed told UNHCR that they were interested in seeking recognition as refugees.¹⁸⁵

Similarly, the Georgetown Law Human Rights Institute’s April 2015 study of Central American children in Mexico found that “[n]one of the children we interviewed who had been detained in Siglo XXI reported that an OPI [child protection officer] (or any other INM official) informed him or her of their right to apply for international protection.”¹⁸⁶

In fact, groups that work with asylum seekers and migrants in Mexico have reached the same conclusion with respect to adults as well as children.¹⁸⁷ For example, as part of a

¹⁸² Human Rights Watch interview with Arturo O., Tapachula, Chiapas, October 23, 2015.

¹⁸³ Human Rights Watch interview with Ismael P., Tapachula, Chiapas, October 23, 2015.

¹⁸⁴ ACNUR, *Arrancados de raíz*, p. 14.

¹⁸⁵ *Ibid.*, p. 61.

¹⁸⁶ Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, p. 48.

¹⁸⁷ See José Knippen, Clay Boggs, and Maureen Meyer, *Un camino incierto: Justicia para delitos y violaciones a los derechos humanos contra personas migrantes y refugiadas en México* (México, DF: Casa del Migrante de Saltillo “Frontera con Justicia,” AC, et al., November 2015), p. 31; Centro de Derechos Humanos Fray Matías de Córdova, AC, “Tapachula, Chiapas: La experiencia de detención en la frontera sur mexicana,” in Joselin Barja Coria, *Derechos cautivos: La situación de las personas migrantes y sujetas a protección internacional en los centros de detención migratoria: Siete experiencias de monitoreo desde la sociedad civil* (México, DF: Frontera con Justicia AC et al., 2015), p. 61; Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, paras. 520 (noting

2015 evaluation of immigration enforcement practices in seven Mexican states, the Fray Matias Human Rights Center reported that those held in Tapachula’s Siglo XXI detention center “are not appropriately informed of their rights and obligations, neither in written nor verbal form. . . . They are told little or nothing about immigration procedures and available alternatives” to deportation.¹⁸⁸ Sin Fronteras wrote that persons who are apprehended in the state of Oaxaca “are not informed of procedures for voluntary repatriation, asylum applications, or access to humanitarian visas in the case of those who are victims of crime (with the exception of Oaxaca City, where people reported that they had received information about repatriation).”¹⁸⁹ Those apprehended in the Federal District receive a written copy of the detention center rules, but no further information about their rights, Sin Fronteras reported.¹⁹⁰ In the state of Jalisco, “upon entry into the immigration detention center, people are informed in an emphatic manner about their obligations, but not their rights,” the organization Dignidad y Justicia en el Camino observed.¹⁹¹

Organizations that work in the states of Coahuila, Puebla, and Tlaxcala have reported that detained migrants receive written information about their rights, but this information may not be presented in a way they can understand.¹⁹²

that civil society organizations told the Inter-American Commission that “little or no information is given about the grounds or reasons for detaining the migrants in the immigration stations, the administrative proceeding that will be followed, how long detention will last, the right to request asylum, the right to consular assistance and to communicate with family members and the right to receive legal aid and representation”), 535 (“68% of the migrants detained at the Siglo XXI Immigration Station were unaware of their right to apply for recognition of refugee status and had never been given any information in that regard”). See also i(dh)eas, Litigio Estratégico en Derechos Humanos A.C., *En tierra de nadie: El laberinto de la impunidad: Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco* (México, DF: i(dh)eas, 2011), p. 39 (finding that 95 percent of migrants detained at the Siglo XXI detention center reported that INM personnel had not informed them, in writing and in a language they understood, of their right to communicate with a person they trusted or a legal representative); Insyde, *Diagnóstico del Instituto Nacional de Migración*, pp. 337-40 (finding that some immigration detention centers provided little information, others provided none, and others provided some information, but with significant omissions).

¹⁸⁸ Centro de Derechos Humanos Fray Matías de Córdova, AC, “Tapachula, Chiapas: La experiencia de detención en la frontera sur mexicana,” in Joselin Barja Coria, *Derechos cautivos*, p. 63.

¹⁸⁹ Sin Fronteras, “Oaxaca de Juárez, San Pedro Tapanatepec, La Ventosa, y Salina Cruz: La experiencia de detención en el Pacífico,” in Joselin Barja Coria, *Derechos cautivos*, p. 73.

¹⁹⁰ Sin Fronteras, “Distrito Federal: La experiencia de detención en la zona metropolitana del Valle de México,” in Joselin Barja Coria, *Derechos cautivos*, p. 89. See also Sin Fronteras, *La ruta del encierro: situación de personas en detención en estaciones migratorias y estancias provisionales* (México, DF: Sin Fronteras, 2014), p. 46.

¹⁹¹ Dignidad y Justicia en el Camino AC, “Guadalajara: La experiencia de detención en el Occidente,” in Joselin Barja Coria, *Derechos cautivos*, p. 101.

¹⁹² For instance, in the northern state of Coahuila, the Casa del Migrante de Saltillo observed:

A problem that hinders the right to due process and to a dignified stay in the place [of detention] is that information about obligations and rights is given in writing. This, which in principle is a good practice, is an impediment because of its style of writing; it proves to be incomprehensible to detained persons, who are often

In an extreme example of a failure to inform a migrant of his rights, Ismael P., age 25, told us that he turned himself in to the INM in the state of Oaxaca after he was robbed, because he had lost \$1,500 and could not continue his journey. The INM officials he spoke with did not tell him he could report the crime and that he would qualify for a humanitarian visa if he did so. After two days in detention, he was deported to Guatemala.¹⁹³

Indeed, organizations that work with asylum seekers and migrants report that immigration officials do not consistently provide other basic information to those who are apprehended, including the reasons for their detention or transfer from one place of detention to another.¹⁹⁴ Sin Fronteras has explained that in the case of migrants apprehended in the Federal District, “[t]here exists a ‘common’ understanding that [apprehension] was for lack of documents, but in practice there is no standard explanation.”¹⁹⁵

At time of writing, INM officials had not responded to our request for comment on the reports we received indicating that its officials did not provide adequate information to children about their rights, including the right to seek refugee recognition. In response to similar findings with respect to adult migrants by the Inter-American Commission on Human Rights, the Mexican government told the commission that INM officials routinely notify apprehended migrants of their rights in writing.¹⁹⁶ Nevertheless, our interviews and the research of other groups indicates otherwise.

from poor communities, have very basic levels of education, don’t know how to read or write, or may be able to do so only in their indigenous languages.

Frontera con Justicia AC (Casa del Migrante de Saltillo), “Saltillo, Coahuila: La experiencia de detención en el norte del país,” in Joselin Barja Coria, *Derechos cautivos*, p. 110. See also Instituto de Derechos Humanos Ignacio Ellacuría, S.J., Universidad Iberoamericana en Puebla, “Puebla y Tlaxcala: La experiencia de detención en el centro-oriente del país,” in Joselin Barja Coria, *Derechos cautivos*, p. 82. INSYDE made similar observations in its 2013 study of the INM. Insyde, *Diagnóstico del Instituto Nacional de Migración*, p. 337.

¹⁹³ Human Rights Watch interview with Ismael P., Tecún Umán, Guatemala, May 7, 2015.

¹⁹⁴ See Centro de Derechos Humanos Fray Matías de Córdova, AC, “Tapachula, Chiapas,” in Joselin Barja Coria, *Derechos cautivos*, p. 61; Sin Fronteras, “Oaxaca de Juárez, San Pedro Tapanatepec, La Ventosa y Salina Cruz,” in Joselin Barja Coria, *Derechos cautivos*, p. 73; Frontera con Justicia AC, “Saltillo, Coahuila,” in Joselin Barja Coria, *Derechos cautivos*, p. 119. In an exception to this general finding, the organization Dignidad y Justicia en el Camino reported that the majority of those apprehended in the state of Jalisco were informed of the reasons for their detention. Dignidad y Justicia en el Camino AC, “Guadalajara,” in Joselin Barja Coria, *Derechos cautivos*, p. 100. The same was true for those apprehended in Puebla and Tlaxcala. Instituto de Derechos Humanos Ignacio Ellacuría, S.J., Universidad Iberoamericana en Puebla, “Puebla y Tlaxcala,” in Joselin Barja Coria, *Derechos cautivos*, p. 81.

¹⁹⁵ Sin Fronteras, “Distrito Federal,” in Joselin Barja Coria, *Derechos cautivos*, p. 89.

¹⁹⁶ “The State, for its part, insisted that once the immigration authority has instituted the administrative immigration proceeding involving an alien who has violated the immigration law, it conducts a series of procedures, one of which is to take the accused’s statement; before the alien makes his or her case, the immigration authority puts in writing that the accused has been advised of all his or her rights under the Immigration Act and other legal provisions. The State also

Responses That Discourage Children from Seeking International Protection

We repeatedly heard from both children and adults that INM officials responded to their efforts to seek recognition as refugees with indifference, statements that they had not presented sufficient evidence or would be unsuccessful, or suggestions that they should not apply for recognition because it would result in more time in detention. It is not the role of INM agents to prejudge applications for refugee recognition—COMAR has the responsibility to determine, after an in-depth investigation, whether an applicant is a refugee. Such responses are in violation of INM agents' obligation under Mexican law to receive and immediately refer applications for refugee recognition to COMAR. They also have the effect of discouraging children as well as adults from pursuing claims for refugee recognition.

For instance, Johanna H., 17, and her family arrived in Tapachula in April 2014, and attempted to apply for recognition as refugees with the INM. They were placed in an immigration detention center, the Siglo XXI detention center, for a week and then deported to Guatemala even though the family told the INM that they had fled after Johanna was kidnapped and held for ransom. "We tried to explain why we had left Guatemala, but the immigration officials didn't understand our reasons. . . . They didn't care that there's so much violence in our country. We tried to show them the letters and documents [to corroborate their account], but they didn't pay any attention. They just deported us," she told Human Rights Watch. "We were terribly afraid. We had fled our country, and we were being returned to the same place."¹⁹⁷ If true, Johanna's account of her family's experiences in Guatemala is a basis for asylum; at a minimum, immigration officials should have treated her family's explanation as an application for refugee recognition and referred the family to COMAR for consideration of their claim. Johanna and her family returned to Mexico in February 2015. They had learned that applicants for refugee recognition who filed directly with COMAR were not detained, unlike those who requested international protection from the INM, so they made their application at the COMAR office in Tapachula. They were awaiting a decision on their claim at the time of our interview.

asserted that the alien is given a document containing information on his or her rights and obligations, written in his or her native language, and explaining the reason why he or she is being held at the immigration station and the most pertinent questions in the immigration administrative proceeding that will be held in his or her case." Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 523.

¹⁹⁷ Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

In another example, when 60-year-old Elena L. was apprehended in Chiapas with her daughter and grandchildren, the family told INM officials that they fled Honduras after Elena's daughter was held for ransom for two weeks by members of the Mara 18. "The papers I had weren't worth anything to them," Elena told us, referring to the police reports and other documentation she had brought from Honduras to corroborate the family's account. "I tried to explain what had happened. I showed them the documents I had. 'Those papers aren't worth anything,' they said. They said what we went through didn't matter. I told them we needed help." They were finally able to speak to COMAR when a COMAR official visited the women's section of Siglo XXI after they had been in detention for two weeks.¹⁹⁸

In other cases, children told us that INM agents did not seek any explanation of why they had come to Mexico. "They practically don't let you say anything," 16-year-old Mario S. said of the immigration officials who apprehended him and his 19-year-old brother near Huixtla Gutiérrez, in Chiapas about 45 km north of Tapachula. "They didn't ask us why we left Honduras."¹⁹⁹

Among those we spoke with, children detained near Mexico's northern border were more likely to have been asked by INM officials if they feared returning to their home countries. But even on the northern border, some children described cursory interviews with INM agents that did not address possible protection needs. Lucía N., a 17-year-old from Guatemala, reported that when INM agents apprehended her in Tamaulipas, "They didn't ask me any questions. They told me they arrested me because I am not from here. They told me I would return to Guatemala. They didn't ask if I had family in Mexico. They didn't ask if I had a reason not to return to Guatemala."²⁰⁰ Catarina H., age 13, gave a similar account.²⁰¹

In some cases, INM agents told prospective applicants that their applications would not be successful. Sonia A., a 39-year-old woman, said she fled Honduras because of gang threats after gangs killed two of her brothers, one in May 2015. She left her home in the Department of Cortés with 10 members of her extended family, including her children and

¹⁹⁸ Human Rights Watch interview with Elena L., San Pedro Sula, Honduras, May 15, 2015.

¹⁹⁹ Human Rights Watch interview with Mario S., San Pedro Sula, Honduras, May 15, 2015.

²⁰⁰ Human Rights Watch interview with Lucía N., Reynosa, Tamaulipas, June 24, 2015.

²⁰¹ Human Rights Watch interview with Catarina H., Reynosa, Tamaulipas, June 24, 2015.

her sister's children, at the end of May 2015. She showed Human Rights Watch a copy of the autopsy report on their 27-year-old brother, showing that he had died after being shot in the head. She also showed us newspaper clippings corroborating her account of her brother's death.

When the family arrived in Mexico, they sought assistance from INM officials in Palenque. "We went to Immigration to tell them about our case. They told us we couldn't go to COMAR. They told us they couldn't help us," Sonia said. Instead of referring their claim immediately to COMAR, the INM agents held them in detention. "They believed it was all a lie what we told them," she continued. When the family asked about applying for recognition as refugees, she said, "They didn't tell us anything about how we could apply. They just said it would take 45 days and then 30 more days, then more time, all in detention. They said that COMAR wouldn't help us, that we were just wasting our time."²⁰²

We heard similar accounts from others. Antonio L., a 31-year-old Salvadoran, told us that he filed an asylum application during his detention at the Siglo XXI detention center in Tapachula in October 2013 despite what he described as immigration officials' efforts to persuade him not to:

All the officers do the same, psychological harassment. They tell you to go back to your country. They told me I was wasting my time to seek asylum here. They said, "At the end, we will send you back."²⁰³

Others used similar terms to describe INM officials' response to their efforts to seek recognition as refugees. Douglas P., a 26-year-old Honduran, said gangs had demanded a war tax from him, which he could not pay, and that they threatened to kill him. Douglas, who was traveling with his wife and baby, told us:

After we were caught, we asked for refugee status, but they told us it would take three months doing nothing and we would have to show proof of our refugee story. They put us under a lot of psychological pressure. They separated me from my wife and child and I could not communicate except

²⁰² Human Rights Watch interview with Sonia A., San Pedro Sula, June 8, 2015.

²⁰³ Human Rights Watch interview with Antonio L., México, DF, April 29, 2015.

to call across a hall. My wife was treated badly. She said they were going to make her stay two more months. We felt a lot of pressure, so we quit asking for refugee status. I never had an interview with COMAR. I just filled out a form with my name and signed. I didn't read it at all.²⁰⁴

In some instances, migrants we spoke with gave accounts suggesting that INM officials had given them incomplete or incorrect information. Sonia A. and her extended family, who fled Honduras after gangs killed two of her brothers, agreed to an “assisted return” in part because they understood INM officials to say that they would never be able to return to Honduras if they were refugees in Mexico. Speaking to us at San Pedro Sula’s reception center for returnees, Sonia explained, “They told us we wouldn’t be able to return to Honduras if we submitted the claim. How could I never return? My mother is here. My father is here.”²⁰⁵ While it is true that Sonia and her family would not be able to travel out of Mexico while their application was being considered, it is not the case that they would never be able to return to their country of origin if they were recognized as refugees.

Nongovernmental organizations and UNHCR told us that they have received similar reports. A UNHCR official from the Regional Office for Central America, Mexico, and Cuba observed:

Asylum seekers are discouraged from accessing the system. [The] INM tells them they will be detained and eventually denied. They tell them it is easier to go back and try [to cross] again. But this creates a cycle. The asylum seeker agrees to be deported and then they turn around and try to go to COMAR directly, but when they do, COMAR says, “You went back and nothing happened to you.”²⁰⁶

Diana Martínez, coordinator of support and direct services for Sin Fronteras, a legal service provider for asylum seekers, said, “The INM agents are very active about discouraging applications. ‘That’s not the best thing for you,’ they’ll say. It is an achievement just to get to COMAR.”²⁰⁷ Lawyers with Sin Fronteras and other groups that represent asylum seekers

²⁰⁴ Human Rights Watch interview with Douglas P., El Corinto, Honduras, May 15, 2015.

²⁰⁵ Human Rights Watch interview with Sonia A., San Pedro Sula, Honduras, June 8, 2015.

²⁰⁶ Human Rights Watch interview with UNHCR official, Tegucigalpa, Honduras, May 14, 2015.

²⁰⁷ Human Rights Watch interview with Diana Martínez Medrano, coordinator of support and direct services, Sin Fronteras, México, DF, April 29, 2015.

told us that when INM agents do refer applications to COMAR, as they are required by law to do, they often do so only after a delay of days or weeks.²⁰⁸

In fact, some organizations that work with asylum seekers and migrants in Mexico suggest that some INM agents intentionally discourage people from seeking refugee recognition or humanitarian visas. As one example, the Casa del Migrante de Saltillo reported the case of a Honduran boy who was robbed and beaten when INM agents stopped the bus he was on: “Once at the immigration detention center, the youth asked to make contact with his consulate and the National Human Rights Commission; in response, he received threats from INM agents, who told him that if he kept complaining, he would spend more time in detention and that in this place, human rights didn’t exist, and that the only ones in charge were they [the INM].”²⁰⁹ A report compiled by five organizations, including the Casa del Migrante de Saltillo, the Fray Matías Human Rights Center, and Sin Fronteras, concluded that “[a]buse of power, harassment, punishment, and psychological persuasion playing on fears are strategies to dissuade people from seeking alternatives to regularize their stay in Mexico and to convince them to return to their home countries.”²¹⁰

Detention as a Deterrent to Seeking Asylum

Detention is a disincentive to seek refugee recognition even when immigration authorities do not appear to intend to dissuade children or adults from applying.

For instance, Edgar J., the 17-year-old Honduran whose account appears at the beginning of this report, had the opportunity to apply for asylum when he was apprehended in Oaxaca. “I told the immigration official that I couldn’t return” to Honduras, Edgar said. He showed the official a copy of the complaint he and his mother had filed in an effort to seek protection from the gang that controlled his neighborhood. “Then [the immigration official] said, ‘You know, you can ask for asylum.’ I said yes. But I was locked up, and they said it would be a long time before I heard. I couldn’t handle that. At least two months, up to six months [longer in detention], just for the response. When they told me it would be six

²⁰⁸ Human Rights Watch interview with Sin Fronteras, April 29, 2015.

²⁰⁹ Frontera con Justicia AC (Casa del Migrante de Saltillo), “Saltillo, Coahuila: La experiencia de detención en el norte del país,” in Joselin Barja Coria, *Derechos cautivos*, p. 111.

²¹⁰ Joselin Barja Coria, *Derechos cautivos*, p. 28.

months before I heard back, I said no, I don't want that." Instead, he accepted return to Honduras.²¹¹

Other children gave similar accounts. "I don't want to return," said Enrique J., 17, who left Honduras in early 2015 after he and other members of his family were repeatedly attacked by gang members. "But because of the time locked up here, I told myself it's better to return, to go." He had already spent several weeks in a DIF shelter in Reynosa when we spoke to him in June 2015. If he pursued a claim, he explained, "I'd have to spend another 90 to 120 days locked up. I don't want that." He chose to accept deportation even though he did not think he would be safe in his community. "I won't leave the house unless I have to. There are criminals on every corner. They walk around armed as if they were the police appointed by law."²¹²

In the case of Carolina Q., 14, who fled Honduras in late 2014 with her extended family after they started receiving threats from gang members and then watched as family members and other migrants were extorted at gunpoint once they reached Mexico, her family decided not to apply for refugee recognition to avoid months in detention. "They asked a lot of questions—where were we from, where were we going—a lot of questions. Why we left our country," she said. "We presented our papers, and we spent the whole night answering questions. Then we had to decide if we wanted to remain in Mexico, but they told us we would have to wait two months for an answer on our application. My aunt was pregnant, so we decided no. . . . Two months locked up, we couldn't do that."²¹³

We also heard of other adults who decided not to pursue asylum claims to avoid detention. Elena L., the 60-year-old Honduran woman who fled San Pedro Sula with her daughter and grandchildren after her daughter was kidnapped and repeatedly raped by gang members, told us that the family decided not to pursue an asylum claim because it would require more time in detention:

We spent nearly a month [in Siglo XXI]. My daughter didn't want to stay locked up. I thought we should accept COMAR's offer. They offered to

²¹¹ Human Rights Watch interview with Edgar V., San Pedro Sula, Honduras, June 8, 2015.

²¹² Human Rights Watch interview with Enrique J., Reynosa, Tamaulipas, June 24, 2015.

²¹³ Human Rights Watch interview with Carolina Q., San Pedro Sula, Honduras, July 10, 2015.

transfer us to a shelter [while the family’s asylum claim was pending], but [said] you have to be there five or six months. My daughter didn’t want that.²¹⁴

A psychologist who works with children held in Tapachula’s DIF center told researchers from the Georgetown Law Human Rights Institute, “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.”²¹⁵

For those held in immigration detention centers, the prospect of additional time in these facilities may be a particular disincentive to pursue asylum claims because these facilities are not designed for long periods of detention. “These facilities are designed to accommodate people no longer than 15 days,” a UNHCR official told Human Rights Watch, referring to large immigration detention centers such as Siglo XXI. He continued:

A person who is an asylum seeker will be there much longer than that. Under the law the first instance decision should be made within 45 days, plus 10 days for its notification. That period can under exceptional circumstances be extended for another 45 days. So an asylum seeker could be in detention for as long as 100 days waiting for the initial decision. If the decision is negative and the asylum seeker appeals, COMAR has another 45 days, extendable to 90 days, for the second instance decision. If that decision is negative, the asylum seeker can seek judicial review, which takes three to six months or more. The practical effect of detention is that it ends up having a strong deterrent effect against the person continuing his or her asylum procedure.²¹⁶

UNHCR concluded in its 2014 report on Central American children in Mexico that, frequently, “children and adolescents do not access the asylum system in order to avoid being detained during proceedings for recognition as a refugee, instead preferring to be

²¹⁴ Human Rights Watch interview with Elena L., San Pedro Sula, Honduras, May 15, 2015.

²¹⁵ Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, p. 37.

²¹⁶ Human Rights Watch interview with UNHCR official, April 2015.

returned to their countries of origin even when their lives or physical integrity is at risk.”²¹⁷ Similarly, Georgetown Law Human Rights Institute researchers concluded that “both the duration and conditions of detention weigh heavily on children apprehended by [the] INM,” with the result that they are deterred from seeking recognition as refugees.²¹⁸

The Need to Recognize that Children May Have a Combination of Motives for Leaving Their Countries of Origin

Many children who flee persecution, violence, and abuse also want a better future in every sense, and they frequently choose their intended destination based on their best understanding of where they will have the greatest economic and educational opportunities as well as safety. Their intended destination is also heavily influenced by where they have relatives.

As UNHCR has observed, parents or other relatives living in Mexico or the United States often seek to have their children join them when their children are threatened with or experience abductions, recruitment by gangs, extortion, violence, and other abuses: “Family reunification is, more than a cause of departure, a consequence of the systematic violence that affects the daily lives of unaccompanied and separated children and adolescents in their countries of origin.”²¹⁹

Elizabeth Kennedy, a social scientist who has examined the reasons why Salvadoran children migrate, has reached a similar conclusion. Noting that over 90 percent of the children she interviewed had a family member in the United States, she observed:

Most referenced fear of crime and violence as the underlying motive for their decision to reunify with family now rather than two years in the past or two years in the future. Seemingly, the children and their families had

²¹⁷ ACNUR, *Arrancados de raíz*, p. 18 (“los NNAS no acceden al sistema de asilo para evitar estar detenidos durante el procedimiento de reconocimiento de la condición de refugiado, prefiriendo en su lugar la devolución a sus países de origen aun cuando su vida o integridad corre riesgo.”).

²¹⁸ Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, p. 35.

²¹⁹ ACNUR, *Arrancados de raíz*, p. 44 (“en la actualidad, la reunificación familiar se convierte más que en una causa de salida, en una consecuencia, determinada por la violencia sistemática que afecta la vida cotidiana de los NNAS en sus países de origen”). See also *Protocolo de actuación para quienes imparten justicia en casos que afecten a personas migrantes y sujetas de protección internacional*, pp. 96-97.

decided they must leave and chose to go to where they had family, rather than chose to leave because they had family elsewhere. Essentially, if their family had been in Belize, Costa Rica, or another country, they would be going there instead.²²⁰

Accordingly, it is not surprising that almost all children we interviewed, including those who appear to have strong claims for international protection, also cited the desire for greater economic opportunities or family reunification as among their reasons for leaving their countries of origin. This does not diminish their legitimate need for protection.

The Need to Recognize That Children May Give Incomplete Accounts

Those who flee in search of safety do not always explain their full reasons for leaving their countries. This is particularly true in the case of children, especially when they confuse INM child protection officials with INM law enforcement agents. As UNHCR's guidelines for child asylum claims note, "[c]hildren may not be able to articulate their claims to refugee status in the same way as adults and, therefore, may require special assistance to do so."²²¹ In addition, as the Separated Children in Europe Programme's Statement of Good Practice notes, "[c]hildren may give false information to different authorities due to misunderstandings or because they feel under duress or simply because they do not know the requested information."²²²

As one example of this dynamic, Catarina H., a 13-year-old girl, told us that she left her home in Olancho to try to join her mother in the United States because she was concerned that she would have no one to take care of her in Honduras when her elderly, ailing grandmother died. But instead of explaining her circumstances to Mexican authorities when they apprehended her, "I said I wanted to get to the US to study and be a better person," she told us.²²³ Other children gave us similar accounts, almost always telling INM

²²⁰ Elizabeth Kennedy, "No Childhood Here: Why Central American Children Are Fleeing Their Homes," American Immigration Council, July 1, 2014, <http://www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes> (accessed January 29, 2016).

²²¹ UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees ["Guidelines on Child Asylum Claims"], UN Doc. HCR/GIP/09/08 (December 22, 2009), para. 2.

²²² Separated Children in Europe Programme, Statement of Good Practice, Part D2.

²²³ Human Rights Watch interview with Catarina H., Reynosa, Tamaulipas, June 24, 2015.

officials that they wanted to work or study instead of describing the safety concerns that led them to leave their home countries.

Screening children for protection needs requires particular expertise. UNHCR notes that “[c]hildren’s responses to questions, such as why they left home, are often layered, with easier responses shared first.”²²⁴ Frequently, for example:

When questioned by officials of a foreign country about situations or experiences that may be difficult or traumatic to discuss, children may provide answers that are simple, “safe” and more easily repeated. Sometimes children provide information based on what they have heard from someone else. They may feel ambivalent about their decision to leave their homes or despondent about being apprehended by immigration officials, both of which may impact how they relate their situations, experiences, fears and concerns.²²⁵

In addition, as UNHCR notes, “[c]hildren cannot be expected to provide adult-like accounts of situations they have faced and may have difficulty articulating their fears.”²²⁶ In particular, it is important for officials who screen children to take into account how children may cope with trauma and the stress of being questioned:

They may wish to avoid talking about difficult subjects, or they may not directly connect hardships or other experiences or fears with the questions they are being asked. They may provide superficial or even artificial answers about experiences or events that were harmful or traumatizing. . . . And of course, in some cases, children may be too young or immature to be able to understand what information is important or to interpret and convey what they have witnessed or experienced in a manner that is easily understandable to an adult.²²⁷

²²⁴ UNHCR, *Children on the Run*, p. 22.

²²⁵ *Ibid.*

²²⁶ *Ibid.*, p. 21.

²²⁷ UNHCR, “Children on the Run: Unaccompanied Children Leaving El Salvador, Guatemala, Honduras, and Mexico and International Protection,” in *Childhood and Migration in Central and North America*, p. 54.

Moreover, “[s]ome children may not even recognize their experiences as abusive because it is all they have known,” UNHCR observes. “For example, one 17-year-old from Honduras gave a variety of reasons for leaving including numerous attempts by a gang to recruit him, lack of work, and wanting to help his mother. When later asked whether anyone had ever made him suffer, he replied simply that his father beat him regularly.”²²⁸

Under Mexican law, the INM is not only obligated to receive and forward applications for refugee recognition,²²⁹ it is also under a duty to proactively identify possible applicants for recognition as refugees and inform them of their right to solicit recognition.²³⁰ Fulfillment of this duty toward children requires that child protection officials and other INM agents have an appreciation of the ways children may respond to questions and that they make affirmative efforts to examine children’s possible protection needs.

The Unavailability of Internal Flight Alternatives

Five of the individuals we interviewed said that COMAR denied their asylum applications on the grounds that, although the place they came from in their country of origin might be dangerous, they could find safety elsewhere in that country. This notion of an “internal flight alternative” has been used by other governments, including the United States, to deny asylum claims to individuals who would otherwise be eligible. Under this concept, an asylum seeker is recognized as having a valid refugee claim, but one that is based on a localized threat. The idea is that the threatened person could have fled to another safe area within his or her home country, so the claim for asylum can be denied and the person can be returned to another location within the home country to become an internally displaced person.

²²⁸ Ibid., p. 91. “Across all nationalities except Guatemalans, children raised abuse in the home much more frequently as a form of suffering or harm than as an explicit reason for leaving. There are many possible explanations for this, among them that children may have viewed their decision to leave as separate from their maltreatment, even if the maltreatment had caused them to seek a safer life elsewhere; they may have felt ashamed or afraid to talk about the abuse and thus only disclosed it after several probing questions or after developing more rapport with the interviewer; or it may not have seemed out of the ordinary, if it was all the child had known.” Ibid., p. 90.

²²⁹ Regulations for the Law on Refugees and Complementary Protection, art. 16(II). See also Regulations for the Immigration Law, art. 228.

²³⁰ Regulations for the Law on Refugees and Complementary Protection, art. 16(I); Regulations for the Immigration Law, art. 173. INM officials are also under a duty to identify children who are victims of or witnesses to “any crime in the country of origin or habitual residence or in the national territory” (that is, in Mexico). Ibid., art. 173(III).

While a detailed analysis of the “internal flight alternative” concept is beyond the scope of this report, a UNHCR official we spoke with emphasized that Mexico seems to be misapplying it to people fleeing gang violence in El Salvador, Honduras, and Guatemala:

El Salvador is tiny. There is no possible internal flight there. None. Not one organization or UN agency working in Honduras or Guatemala would say there are internal flight alternatives there either. In Guatemala, gangs have been urban-based, but are now spreading to rural areas as well. In many of those rural areas there is no access to education, health care, and jobs. Internal flight alternative is not just about escaping persecution, but about being able to lead a dignified life. In Honduras, gangs have territorial control. If you flee from a gang area, you are discriminated against by the local population in your new location because of the perception of gang association with your place of origin. We are seeing a cycle of forced displacement, moving from place to place.²³¹

As a UNHCR background note on gang violence observed of the three Northern Triangle countries, “[i]t is virtually ‘inconceivable that an individual or an entire family could escape the *maras* through simple relocation and begin a new life without fear of retribution.’”²³²

We heard similar assessments of the possibility of internal flight from representatives of nongovernmental organizations in Honduras. “It’s one thing for a country as big as Mexico or the United States. Honduras is much smaller, and the gangs have a presence throughout the country,” commented José Guadalupe Ruelas García, executive director of Casa Alianza Honduras.²³³

Our interviews suggest that at least some COMAR officials are not taking adequate account of this reality. For instance, Sara C., a Salvadoran widow who spent seven months in detention, told Human Rights Watch:

²³¹ Human Rights Watch interview with UNHCR official, Tegucigalpa, Honduras, May 14, 2015.

²³² Michael Boulton, “Living in a World of Violence: An Introduction to the Gang Phenomenon,” Legal and Protection Policy Research Series (Geneva: UNHCR Division of International Protection, July 2011), p. 24 (quoting Jeffrey D. Corsetti, “Marked for Death: The *Maras* of Central America and Those Who Flee Their Wrath,” *Georgetown Immigration Law Journal*, vol. 20 (2006), pp. 407, 410).

²³³ Human Rights Watch interview with José Guadalupe Ruelas García, executive director, Casa Alianza Honduras, Tegucigalpa, Honduras, May 13, 2015.

In my first denial they said I could go back to another place inside my country. I told them, “I assure you I could not live in another place in my country.” I told them I would not return. The gang gave me one day to leave the country. They told me they would kill me tomorrow. And they do fulfill their promise. That is how they work.²³⁴

Gloria V., a 40-year-old Honduran woman who based her refugee claim on domestic violence and threats from her husband, said that the COMAR interviewer told her, “Your country has 18 departments and you can move to another one.”²³⁵ As discussed above, this is not a realistic assessment of the risks she and other women in her position would face if they attempted to relocate within Honduras.

Paola H., age 33, fled Honduras after she identified the murderers of her two brothers. She was deported without having been given an opportunity to lodge an asylum claim on her first attempt to flee in late January 2015 but was able to lodge a claim on her second attempt. She related what COMAR told her when they rejected her asylum claim the day before our interview:

They said they would send me to some other place [in Honduras]. I told them I moved to three different places for safety. Wherever I went, the *maras* followed. In all of the places there are a lot of *maras*.²³⁶

Linda A., a transgender person from Honduras, said that COMAR denied her claim in part based on the purported availability of internal flight alternatives:

COMAR denied my claim saying, “Why don’t you move to another place within your country?” In Mexico, you can hide, but you can’t hide in Honduras. They said the police can protect you, but in my case, the police

²³⁴ Human Rights Watch interview with Sara C., Tapachula, Chiapas, May 6, 2015. This interview took place in a group at the Fray Matías Human Rights Center.

²³⁵ Human Rights Watch interview with Gloria V., Tapachula, Chiapas, May 7, 2015.

²³⁶ Human Rights Watch interview with Paola H., Tapachula, Chiapas, May 7, 2015.

beat me up. That was part of what they told me. They also told me to dress like a man, and they also told me to shut up.²³⁷

We also heard of children’s cases in which purported internal protection alternatives were part of the basis for denial of refugee recognition, although none of the case files of children we examined explicitly rejected recognition on this basis. Commenting on a case in which COMAR raised the possibility that a child applicant had an internal protection alternative, one caseworker in Mexico explained that internal alternatives are usually not available for children fleeing gang violence:

I saw two youths, 15 and 16. They’re friends. They lived together in the one of their mother’s house. They can’t go anywhere else. The first question is going to be, “Where do you come from? Here we’re with the 18 [a regional gang]. You’re coming from the area where the 13 [another major gang] is? You’re gang members.” It’s not easy to find an in-country alternative. It’s especially hard if you’re trying to get out of the gang. The gang in the new place will search you to look for tattoos. They’ll be suspicious that you might be a spy, an informant. There are some places that are safe, but they’re closed to you because you don’t have the money to live in that zone. So you find yourself having to go from one marginalized zone to another.²³⁸

As UNHCR has clarified, “internal relocation is only relevant where the applicant can access practically, safely and legally the place of relocation.”²³⁹ Whether such an alternative is reasonable is a question that is specific to the applicant, taking into account age and the best interests of a child. In particular, “a proposed site of internal relocation that may be reasonable in the case of an adult may not be reasonable in the case of a child.”²⁴⁰ UNHCR explains:

What is merely inconvenient for an adult might well constitute undue hardship for a child, particularly in the absence of any friend or relation.

²³⁷ Human Rights Watch interview with Lina A., Tapachula, Chiapas, May 6, 2015 (group interview).

²³⁸ Human Rights Watch interview, May 2015. The name of this official and the place and date of this interview have been withheld because this official was not authorized to speak on the record.

²³⁹ UNHCR, Guidelines on Child Asylum Claims, para. 54.

²⁴⁰ *Ibid.*, para. 55.

Such relocation might violate the human right to life, survival and development, the principle of the best interests of the child, and the right not to be subjected to inhuman treatment.²⁴¹

UNHCR adds that “[y]oung people, without adult support, are likely to face even more difficulties relocating without their family’s assistance.”²⁴²

Moreover, as UNHCR notes with respect to victims of organized gangs, “Given that many of the Central American gangs, such as the Maras, have country- or even region-wide reach and organization, there may generally be no realistic internal flight alternative in claims relating to these gangs.”²⁴³

The Failure to Provide Children with Adequate Assistance and Support in Preparing and Presenting Applications

Mexico does not provide anyone—child or adult—with legal representation in refugee recognition proceedings.²⁴⁴ As a result, children who do manage to apply for recognition as refugees must complete their applications and go through the process without legal or any other assistance, unless they are fortunate enough to be represented by one of the few nongovernmental organizations, such as the Fray Matías Human Rights Center and Sin Fronteras, that provide legal assistance to asylum seekers.

For instance, Hugo R., a 17-year-old from El Salvador, described his experience of applying for recognition as a refugee. “You have to submit something in writing. The truth is, no, nobody helps you with the form. They give you the sheet of paper, and you have to fill it out. Really, it’s complicated. It’s hard to understand some of the questions.”²⁴⁵

²⁴¹ Ibid., para. 56.

²⁴² Ibid., para. 54.

²⁴³ UNHCR, Guidance Note on Refugee Claims relating to Victims of Organized Gangs, March 2010, para. 53, <http://www.refworld.org/docid/4bb21fa02.html> (accessed January 29, 2016).

²⁴⁴ See Pablo Ceriani Cernadas, ed., *Niñez detenida*, p. 16.

²⁴⁵ Human Rights Watch interview with Hugo R., Tapachula, Chiapas, October 23, 2015.

“I filled out almost everything myself,” Arturo O., a 17-year-old Guatemalan, told us. “Then a lawyer from Fray Matías read through the form. I hadn’t understood some of the questions, so I was able to change my answers so I was responding to the questions.”²⁴⁶

Daniel L., age 15, came to Mexico with the aid of a smuggler. “The man who brought me left me when we crossed the border and reached Comitán. I went to the authorities for help, to the municipal police station. They called the Grupo Beta [a branch of the INM that provides humanitarian aid, information, and other assistance to migrants]. They told me they couldn’t do anything. They took me to Immigration.” On his own, without the assistance of anybody other than the COMAR representative who interviewed him, he applied for recognition as a refugee and was awaiting a decision on his claim when we interviewed him in May 2015. “I’ve had one interview. They’re going to come and see me one more time this week,” he told us.²⁴⁷

Without legal assistance, children face formidable difficulties in navigating complicated procedures. They are unlikely to know what information is relevant to their claim and may not be able to present it in a manner that is easy to follow. Research in countries such as Australia, Canada, the United Kingdom, and the United States shows that represented children are far more likely to be granted asylum than those who do not have representation.²⁴⁸ There is little reason to expect Mexico to be any different in this respect.

Moreover, we heard frequent complaints from children and nongovernmental organizations who represented children that the procedures for determining applications for recognition as refugees were confusing and not suited to children to navigate alone.

In particular, children told us that they were profoundly unsettled by the length of and lack of information about the process. “They should give more explanation,” said Johanna H., age 17. “Not knowing what would happen made me so anxious I thought of killing myself.

²⁴⁶ Human Rights Watch interview with Arturo O., Tapachula, Chiapas, October 23, 2015.

²⁴⁷ Human Rights Watch interview with Daniel L., Tapachula, Chiapas, May 8, 2015. For the functions and history of Grupos Beta, see “Grupos Beta del INM,” Instituto Nacional de Migración, January 20, 2015, <https://www.gob.mx/inm/acciones-y-programas/grupos-beta-de-proteccion-a-migrantes> (accessed January 29, 2016).

²⁴⁸ See, for example, Jacqueline Bhabha and Mary Crook, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection: A Comparative Study of Laws, Policy and Practice in Australia, the United Kingdom and the United States of America* (Sydney: Themis Press, 2007); Andrew I. Schoenholtz and Jonathan Jacobs, “The State of Asylum Representation: Ideas for Change,” *Georgetown Immigration Law Journal*, vol. 16 (2002), pp. 739-72.

We didn't know what was going to happen from one day to the next. They don't treat people with respect. We all have rights.”²⁴⁹

COMAR conducts some interviews by telephone, including those with unaccompanied children. “There are 29 states without a COMAR presence. For somebody held in a place with no COMAR office, it takes longer for the case to be heard. They'll have an interview by telephone, with an interpreter on the phone as well if one is needed,” Diana Martínez noted. She added, “Sometimes the line isn't clear. It's very difficult when the interview is by telephone.”²⁵⁰

In 2012, the Mexican National Human Rights Commission criticized COMAR for failing to sufficiently examine a refugee claim by a detained, unaccompanied 17-year-old Honduran boy. Among other things, it found that COMAR had conducted the refugee status determination by telephone and not in a face-to-face interview, and had made the status determination while the child was being held in an immigration detention center.²⁵¹

In the absence of information and adequate assistance, children often turn to their consulates for support. For instance, when Daniel L. arrived in Mexico with his younger brother, they first spoke to an INM agent to ask for asylum and were directed to a consular officer. “I told my problem to somebody from the Salvadoran consulate. They told me to go to COMAR for help. I talked to COMAR, and they opened an application for me,” Daniel L. told us.²⁵² We heard of many instances in which consulates were the main source of information on asylum and of some cases in which they facilitated children's or family's access to the procedures for seeking asylum. While the efforts of these consular officials are commendable, it is not their role to provide assistance and support to those who are seeking recognition as refugees.

²⁴⁹ Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

²⁵⁰ Human Rights Watch interview with Diana Martínez, Sin Fronteras, México, DF, April 29, 2015.

²⁵¹ CNDH, Recomendación No. 77/2012, Caso del Niño de Nacionalidad Hondureña a Quien se Negó Refugio, México, DF, November 30, 2012, http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2012/Rec_2012_077.pdf (accessed January 29, 2016). The National Human Rights Commission also faulted COMAR for not conducting a proper best interest determination.

²⁵² Human Rights Watch interview with Daniel L., Tapachula, Chiapas, May 8, 2015.

The Small Number of Children’s Claims Heard by COMAR

The children’s experiences described above may explain in part why COMAR receives relatively few applications for refugee recognition, particularly given the number of Central Americans who travel to and through Mexico each year. It receives even fewer from children—just 78 in 2014 and 131 in the first 11 months of 2015. Even those who do apply often do not see their claims to completion: 35 percent of the applications submitted by unaccompanied children in 2015 were “abandoned” or withdrawn, meaning that the applicant did not pursue the application. In all, two dozen or fewer unaccompanied and separated children received international protection each year in 2013 and 2014, and only 52 unaccompanied and separated children were recognized as refugees or granted complementary protection in the first 11 months of 2015.²⁵³

This number is a fraction of the total number of unaccompanied and separated children apprehended and deported each year. In the first 11 months of 2015, grants of international protection amounted to 0.3 percent of the apprehensions of unaccompanied and separated children from El Salvador, Guatemala, and Honduras in the same period.²⁵⁴

The Limited Use of Humanitarian Visas

Mexico’s Immigration Law authorizes the status of Visitor for Humanitarian Reasons, commonly known as a humanitarian visa, for victims or witnesses to a crime, unaccompanied migrant children under the age of 18, and applicants for refugee recognition and complementary protection, as well as on other “humanitarian grounds in the public interest.”²⁵⁵ Holders of the visa can live, take employment (if they are of working age), and move freely in the community. The visa is valid for one year and may be renewed for additional one-year intervals.

The INM receives and decides on applications for humanitarian visas. The INM has not published the criteria it uses in reaching decisions on humanitarian visas.²⁵⁶ When we

²⁵³ COMAR, *Estadísticas 2013, 2014, 2015*. “International protection” refers to both refugee recognition and grants of complementary protection. “Complementary protection” refers to protection from return to the country of origin or last habitual residence in cases that fall outside of the scope of the 1951 Refugee Convention. For a fuller analysis of applications received and refugee status recognized, see Appendix, “Children’s Claims for International Protection in Mexico” section.

²⁵⁴ See Appendix, “Apprehension and Detention of Central American Children in Mexico” section.

²⁵⁵ Immigration Law, art. 52(V). See also Regulations for the Immigration Law, art. 137.

²⁵⁶ Insyde, *Diagnóstico del Instituto Nacional de Migración*, p. 252.

asked the INM official who heads the directorate responsible for issuing these visas what criteria her staff followed, she told us that the INM simply checked whether the statutory requirements had been met. Those who applied on the basis of being victims of serious crime are required to make a police complaint in order to receive a humanitarian visa, the official said. Asked which crimes qualified for humanitarian visas, she replied that the INM relies on the prosecutor's office to make that determination.²⁵⁷

Indeed, the agency may not keep accurate records of the applications it has received. When Insyde asked the INM for the number of humanitarian visas requested and granted from January 2011 to May 2013, 23 of its 32 federal delegations reported that they had received no applications. These delegations included Coahuila, even though a local nongovernmental organization, the Casa del Migrante in Saltillo, had submitted 25 humanitarian visa applications to that delegation during this period and received denials for 10 of those applications.²⁵⁸

INM data show that in the first 11 months of 2015, the INM issued 824 humanitarian visas to victims of or witnesses to serious crimes, 228 to applicants for refugee recognition, and six to children on the basis of unaccompanied status. The statistics made available to Human Rights Watch do not give a yearly breakdown of how many children received humanitarian visas on bases other than unaccompanied status, but they do show that in the period between January 2012 and the middle of November 2015, 291 children received humanitarian visas as victims of or witnesses to serious crimes and 94 children received visas because they were applicants for refugee recognition.²⁵⁹ In all, 391 children received humanitarian visas in the first 11 months of 2015, a fraction of the 32,000 children apprehended by the INM during the same period.²⁶⁰

²⁵⁷ Human Rights Watch interview with María Fernanda García Villalobos Haddad, director general of regularization, INM, México, DF, December 1, 2015.

²⁵⁸ Instituto para la Seguridad y la Democracia, *Diagnóstico del Instituto Nacional de Migración*, p. 253.

²⁵⁹ Secretaría de Gobernación (SEGOB), Instituto Nacional de Migración, "Trámites y procedimientos relacionados con razones humanitarias," Anexo 2: Gráficas adicionales. These statistics, which Human Rights Watch received in our meeting with the INM's director general of regularization and which the INM also provided to other nongovernmental organizations in a separate meeting, offer a detailed breakdown of the basis for grants of humanitarian visas; the data available on SEGOB's website do not provide this information. See SEGOB, *Boletín estadístico 2015*, Table 2.11.1 (tarjetas de visitantes por razones humanitarias emitidas, según continente y país de nacionalidad).

²⁶⁰ Compare SEGOB, Instituto Nacional de Migración, "Trámites y procedimientos relacionados con razones humanitarias," Anexo 2, with SEGOB, *Boletín estadístico 2015*, Table 3.1.5. See also Appendix, "Apprehension and Detention of Central American Children in Mexico" section.

Most humanitarian visas are granted to victims of serious crime: the INM granted 824 such visas on this basis in the first 11 months of 2015, a number that represented nearly half of the 1,688 humanitarian visas issued during the period.²⁶¹ In fact, many of the advocates and government officials we spoke with mentioned only this avenue for obtaining humanitarian visas. For example, an official with the Mexican Human Rights Commission told Human Rights Watch, inaccurately, “You can’t use a humanitarian visa for an applicant for refugee recognition. It is distinct.”²⁶² Diana Martínez, a staff member with Sin Fronteras, which provides legal services and other support to applicants for refugee recognition, agreed that this was how humanitarian visas operate in practice even though the law on its face allows all applicants for refugee recognition to receive such visas.²⁶³

In many of our interviews, children and adults told us that they had been the victims of abductions, extortion, and other violent crime, serious abuses that would appear to qualify them for humanitarian visas. In many cases, they simply did not know that it was possible to apply; in some of these cases, officials did not notify them of their right to apply for a humanitarian visa even when they told officials what had happened to them.

Lorena N., for example, a 21-year-old Salvadoran woman, told Human Rights Watch that she and her sister were raped shortly after crossing into Mexico in early April 2015. No one informed her that her victimization might qualify her for a humanitarian visa, but simply proceeded with her deportation. She said that she was injured and could hardly walk, but that she received neither minimal medical care while at Siglo XXI migration detention center nor any receptivity to lodging a claim against the perpetrators of the crime or for a humanitarian visa:

The robbers violated us. I was hurt. I was abused. We wanted to tell La Migra what happened to make a complaint against the robbers, but they refused to take our claim. They told us we had no claim, and they didn’t care. They took us to the detention center in Tapachula, El Corralón, to deport us. I was in the part of El Corralón for women. There were not enough beds, so we slept on the floor. There was no blanket. I used my sweater to

²⁶¹ SEGOB, Instituto Nacional de Migración, “Trámites y procedimientos relacionados con razones humanitarias,” Anexo 2.

²⁶² Human Rights Watch interview with CNDH official, Tapachula, Mexico, May 7, 2015.

²⁶³ Human Rights Watch interview with Diana Martínez Medrano, coordinator of support and direct services, Sin Fronteras, México, DF, April 29, 2015.

sleep. They didn't give me any medical service. The guards would not listen to me. They told us the doctor was on vacation for the Easter holidays.²⁶⁴

Others were reluctant to report crimes because they feared going to the Mexican police. "They have to make a complaint. If they don't, they cannot get a visa," explained Sister Leticia of the Scalabrianas Mission for Migrants and Refugees in Mexico City, a group that provides legal and other support to migrants in Mexico. "Many migrants are fearful of filing complaints," said Nadia Nehls Martínez, a lawyer with the Hermanas Scalabrianas.²⁶⁵

By law, those who apply for recognition as refugees should be able to obtain humanitarian visas while their applications are pending. But some government officials told us, erroneously, that it was not possible to receive humanitarian visas in such cases. Further, the fact that the INM, rather than COMAR, issues humanitarian visas may contribute to confusion about the procedures for obtaining humanitarian visas. In the first 11 months of 2015, 228 applicants for refugee recognition received humanitarian visas, up from 198 in 2014, 74 in 2013, and just one in 2012.²⁶⁶ While this trend is positive, only about 10 percent of applicants for refugee recognition in 2015 received the visas.²⁶⁷

Unaccompanied children under the age of 18 should receive humanitarian visas "when it is consistent with the best interests of the child,"²⁶⁸ according to Mexico's Immigration Law. Nevertheless, the INM issued only six humanitarian visas on this basis in the first 11 months of 2015 and three such visas in each of 2014 and 2013. It issued no humanitarian

²⁶⁴ Human Rights Watch interview with Lorena N., Tapachula, Mexico, May 4, 2015.

²⁶⁵ Human Rights Watch interview with Nadia Nehls Martínez, Scalabrianas Misión para Migrantes y Refugiados, México, DF, April 27, 2015.

²⁶⁶ SEGOB, Instituto Nacional de Migración, "Trámites y procedimientos relacionados con razones humanitarias," Anexo 2.

²⁶⁷ COMAR received 2,745 applications for refugee recognition in the first 10 months of 2015. Compare COMAR, *Estadísticas 2015* with SEGOB, Instituto Nacional de Migración, "Trámites y procedimientos relacionados con razones humanitarias," Anexo 2.

²⁶⁸ "Cuando así convenga al interés superior de la niña, niño o adolescente migrante extranjero no acompañado, dicho niño, niña o adolescente será documentado provisionalmente como Visitante por Razones Humanitarias en términos del artículo 52, fracción V, de esta Ley, mientras la Secretaría ofrece alternativas jurídicas o humanitarias temporales o permanentes al retorno asistido." Immigration Law, art. 74.

visas on the basis of unaccompanied status in 2012.²⁶⁹ Only two of the 61 children Human Rights Watch interviewed had received humanitarian visas.²⁷⁰

When we asked INM officials about the low number of visas granted on the basis of unaccompanied status, the official who heads the department charged with issuing humanitarian visas told us that the INM did not accept applications from unaccompanied children who were unrepresented. “My law doesn’t permit a minor to submit an application for regularization. If the minor doesn’t have somebody to represent him, I cannot accept the application.” The official agreed that Mexico’s refugee law and its child rights legislation affirm children’s right to be heard on matters that affect them. Nevertheless, she said, “I am bound by the Immigration Law.”²⁷¹ Neither she nor the other officials present at the meeting could cite the precise provision she was referring to, and our own review of the Immigration Law and its regulations suggests that there is no legal prohibition on accepting applications directly from unaccompanied children. Moreover, as Mexico’s Supreme Court of Justice has stated, all public officials have an obligation to interpret laws in the way that is most consistent with human rights norms.²⁷²

In short, humanitarian visas seem to be issued mostly to victims of crime and, even then, they are infrequently used. One consequence is that most applicants for recognition as refugees, who should be able to obtain the visas, are detained while their applications are heard. This practice violates the principles that detention of asylum seekers should normally be avoided and should only be a measure of last resort,²⁷³ that children should

²⁶⁹ SEGOB, Instituto Nacional de Migración, “Trámites y procedimientos relacionados con razones humanitarias,” Anexo 2. Moreover, according to these statistics, six of the 12 visas based on status as an unaccompanied child that were issued between 2013 and 2015 went to adults—four to persons between the ages of 18 and 35 and two to persons over the age of 45. Ibid.

²⁷⁰ Human Rights Watch interviews with Karina J., Tapachula, Chiapas, May 7, 2015, and Kevin B., Tapachula, Chiapas, May 8, 2015.

²⁷¹ Human Rights Watch interview with María Fernanda García Villalobos Haddad, director general of regularization, INM, México, DF, December 1, 2015.

²⁷² “All authorities of the country, within the scope of their responsibilities, are obligated to safeguard not only the human rights contained in international instruments signed by the Mexican state, but also the human rights contained in the Political Constitution of the United Mexican States, adopting the interpretation that is most favorable to the corresponding human right . . .” Caso Radilla, Exp. Varios 912/2010 (Supreme Court of Justice (plenary) July 14, 2011), para. 27, http://dof.gob.mx/nota_detalle.php?codigo=5212527&fecha=04/10/2011 (accessed January 29, 2016). See also *Protocolo de actuación para quienes imparten justicia en casos que afecten a niñas, niños y adolescentes* (México, DF: Suprema Corte de Justicia de la Nación, 2012), p. 69.

²⁷³ UNHCR, Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention [UNHCR Detention Guidelines] (2012), para. 2.

not be detained solely because of their or their parents' immigration status,²⁷⁴ and that children's best interests should be a primary consideration in all actions that concern them.²⁷⁵ Further, as discussed in the following chapter, detention leads many applicants to withdraw meritorious claims and has the effect of depriving them of the international protection they require.

²⁷⁴ Convention on the Rights of the Child, art. 37(c); Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration (2012), para. 78.

²⁷⁵ Convention on the Rights of the Child, art. 2(1).

III. The Impact of Detention

Detention is the rule for undocumented migrants who are apprehended by the National Institute of Migration (INM), even those who apply for protection. In all, over 18,000 unaccompanied children were apprehended by the INM in 2015 and held in detention centers, with 99 percent coming from the three countries of Central America's Northern Triangle.²⁷⁶

Although Mexican law calls for all unaccompanied and separated children as well as families with children to be transferred to a National System for Integral Family Development (DIF) shelter, our interviews with migrant children and adults as well as organizations that work with asylum seekers and migrants suggest that generally only those who apply for recognition as refugees are actually transferred, and then often only after they have spent several weeks or longer in immigration detention. INM officials did not respond to our request for information on this point, but Mexican Commission for Refugee Assistance (COMAR) officials and organizations that work with migrants told us that INM agents frequently cite lack of available space as a reason for not transferring children to DIF shelters.²⁷⁷

Even those who are housed in DIF shelters are deprived of their liberty, albeit in facilities that are significantly cleaner and more humane than Mexico's immigration detention centers. DIF shelters are custodial settings, and those who are housed there are not free to leave at will unless they accept return to their countries of origin. DIF shelters are therefore places of detention as that term is used in international standards.²⁷⁸ "The government

²⁷⁶ Secretaría de Gobernación (SEGOB), *Boletín estadístico 2014*, Table 3.1.5. These data are discussed in more detail in the Appendix, "Apprehension and Detention of Central American Children in Mexico" section.

²⁷⁷ See, for example, Sin Fronteras, *La ruta del encierro*, p. 50 (noting lack of space in DIF shelters as a basis for not transferring children from immigration detention centers).

²⁷⁸ The Inter-American Commission on Human Rights defines "deprivation of liberty" as

Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority

Principles and Practices on the Protection of Persons Deprived of Liberty in the Americas, OEA/Ser/L/V/II.131 Doc. 26, approved by the Inter-American Commission on Human Rights, 131st sess., March 3-14, 2008, <http://www.oas.org/en/iachr/mandate/Basics/principlesdeprived.asp> (accessed January 29, 2016). Similarly, under UNHCR's Detention Guidelines, "'detention' refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed

speaks of the DIF shelters as if they were alternatives to detention,” said Diego Lorente, of the Fray Matías Human Rights Center. “The reality is that they are alternate places of detention.”²⁷⁹

Detention has adverse effects on mental, and sometimes physical, health. Children in detention also appear to be deprived of the right to education: we heard of no instance in which children had access to regular, appropriate grade-level education in immigration detention centers and DIF shelters, regardless of the length of time they are held.

Under international standards, the detention of any asylum seeker, whether a child or an adult, should normally be avoided and should only be a measure of last resort.²⁸⁰ Children should never be detained solely because of their or their parents’ migration status.²⁸¹ Mexico’s frequent reliance on immigration detention violates these standards. As discussed in the previous chapter, it also has the consequence of discouraging detained children and adults from seeking international protection.

Immigration Detention Centers

The Inter-American Commission on Human Rights has observed that “immigration detention is the rule in law and in practice”²⁸² for undocumented migrants in Mexico.

Human Rights Watch research and the findings of UNHCR and nongovernmental organizations indicate that this is true even for unaccompanied children and even for

reception or holding centres or facilities.” UNHCR Detention Guidelines, para. 5. See also UN Rules for the Protection of Juveniles Deprived of Their Liberty, para. 11(b) (“The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”).

²⁷⁹ Human Rights Watch interview with Diego Lorente, Tapachula, Chiapas, April 7, 2015. Elaborating on this point, the International Detention Coalition has observed:

the comparatively reduced number of migrant children referred to and received by DIF systems have no freedom of movement, since the institution’s shelters and places of stay have closed-door policies, and no outings are permitted. This means that, up to now, referring children to DIF does not constitute an alternative to detention, as such, but rather detention in alternate premises other than formal immigration detention centers.

International Detention Coalition, *Dignity without Exception: Alternatives to Immigration Detention in Mexico* (México, DF: IDC Americas, 2013), p. 62.

²⁸⁰ UNHCR Detention Guidelines, para. 2.

²⁸¹ For a fuller discussion of these international standards, see Chapter V, “The Prohibition on Immigration Detention of Children” section.

²⁸² Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 490.

those who tell immigration officials that they are seeking protection, although unaccompanied children and families with children who make such applications may be transferred to DIF shelters, usually after spending several weeks or more in immigration detention.²⁸³

Mexico operates nearly 60 immigration detention centers throughout the country. The largest of these are Siglo XXI, in Tapachula, with a capacity of 960; Acayucan, in Veracruz, with a capacity of 836; and Iztapalapa, in the Federal District, with a capacity of 430.²⁸⁴ Ten of these immigration detention centers, including these three, are designated to hold children, although we heard of cases in which boys were held in other immigration detention centers together with adult men.

We were able to tour the living areas of one immigration detention center, the facility in Acayucan, Veracruz. Prison-like in layout, the facility has dormitories off long, grey corridors; entry and exit to each section is controlled by guards who must unlock heavy metal doors to allow passage to other areas of the facility. The women's section, which also housed accompanied and unaccompanied boys and girls under the age of 12, held far more people than could fit in the dormitories; women sat with infants on their laps on thin mattresses that filled the corridors. Adolescent boys were held in a separate section of the detention center, also overcrowded. When boys in the section showed us their dormitories, they explained that they used every available space to sleep, including on the floor in between each bunk bed and the space underneath the beds. Detainees could walk freely within each section during the day and had access to open-air courtyards, including a playground for young children in the women's section. Accounts from the children and adults we interviewed as well as reports from nongovernmental organizations indicate that the Acayucan detention center is similar in these respects to other large immigration detention centers in Mexico, including Siglo XXI.

Nearly every child we spoke with described immigration detention in terms that suggested that it had a profoundly negative effect on them. "You're under guard in the immigration stations. I thought I was going crazy. It was so hot, and they don't let you out of the cells" except for meals and other short periods of time, said Johanna H., age 17, of the Siglo XXI

²⁸³ Human Rights Watch interview with UNHCR official, April 2015.

²⁸⁴ Sin Fronteras, *Derechos Cautivos*, p. 41.

detention center in Tapachula, Chiapas. “We’re all human beings with the same rights. They shouldn’t be mistreating people in this way.”²⁸⁵

Detention as the Norm

Under Mexico’s Immigration Law, every migrant who cannot satisfy an INM agent of his or her regular status is “presented” for “holding” (*alojamiento*), meaning he or she is apprehended and ordered detained—until the person can regularize his or her status or be returned to his or her country of origin.²⁸⁶ The Immigration Law specifies that detention is necessary for the “public order”²⁸⁷ and provides that detention orders “shall be issued” whenever the INM identifies a migrant who has entered Mexico irregularly.²⁸⁸ The Immigration Law allows migrants to be detained for 15 working days, although that period can be extended to 60 days if there are practical difficulties in obtaining travel documents or making arrangements for the person’s return. There is no limit to detention if a migrant requests administrative or judicial review.²⁸⁹

The Inter-American Commission on Human Rights has summarized the effect of these provisions in the following terms:

The Immigration Act provides that until the immigration status of a migrant in an irregular situation and who cannot show proof of his or her immigration status can be determined for purposes of regularizing his or her presence within the national territory or arranging for his or her assisted return, said migrant’s presentation (read ‘detention’) in immigration stations or places outfitted for that purpose shall be deemed a matter of public order.²⁹⁰

²⁸⁵ Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

²⁸⁶ Immigration Law, art. 3(XX).

²⁸⁷ *Ibid.*, art. 99.

²⁸⁸ *Ibid.*, arts. 100, 144

²⁸⁹ *Ibid.*, art. 111.

²⁹⁰ Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 472 (parenthetical “(read ‘detention’)” in the original).

Putting to one side the small number of migrants not apprehended by the INM who make applications for refugee recognition directly at one of COMAR's three offices (such individuals typically are not detained²⁹¹), the Inter-American Commission concluded:

The moment the Mexican authorities come into contact with a migrant, asylum seeker, refugee or other person in need of international protection but unable to prove that he or she is in the country legally under the Immigration Act, automatic immigration detention is the rule rather than the exception. Furthermore, once migrants are in immigration detention, they have little chance of being released while their immigration cases are ongoing, especially if they file remedies to challenge their detention, as there is no time limit on immigration detention in such circumstances.²⁹²

Similarly, a 2015 study by five groups that work with migrants in Mexico, including the Fray Matías Human Rights Center and Sin Fronteras, concluded that “in the case of Mexico, deprivation of liberty of irregular migrants and persons with claims for international protection is the rule and not the exception.”²⁹³

In principle, unaccompanied and separated children should be referred to the states' and the Federal District's DIF systems rather than being held in immigration detention centers.²⁹⁴ Nevertheless, the Immigration Law and its regulations allow unaccompanied and separated children to remain in immigration detention centers “in exceptional

²⁹¹ The reason for this practice appears to be that the Immigration Law requires detention of irregular migrants who are detected in INM verification and search efforts. See Immigration Law, art. 100. The Mexican Commission for Refugee Assistance (COMAR) is not part of the INM, and COMAR's receipt of applications for refugee recognition is not an INM verification or search initiative. The Mexican government acknowledged to the Inter-American Commission that it does not detain migrants who make applications directly to COMAR without being apprehended by the INM: “[T]he State commented that those persons who file their application for refugee status with the offices of COMAR or its delegations, or with an INM delegation, are not brought before the immigration authority and are not held in custody at immigration stations. It also asserted that if applicants for refugee status are being held in immigration stations, it is because they were already in custody at an immigration station at the time they filed their application for refugee status.” Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 537. Although the government suggested that the same was true for those who apply “with an INM delegation,” some children and their families told us that they were apprehended and detained when they approached the INM to ask for international protection. For example, Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

²⁹² Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 569.

²⁹³ Joselin Barja Coria, *Derechos cautivos*, p. 27. The study is based on more than 250 individual interviews as well as group interviews by the five organizations in nine INM detention centers. *Ibid.*, pp. 34-37.

²⁹⁴ Immigration Law, art. 112(l); Regulations for the Immigration Law, art. 175.

circumstances,” including in cases when DIF shelters are at capacity or where they cannot provide appropriate attention for a particular child.²⁹⁵

The INM does not publish figures on how many unaccompanied and separated children it refers to DIF each year. But the Mexican government told the Inter-American Commission that only 45 children were sent to DIF shelters in the eight-and-a-half year period between January 2006 and July 2013.²⁹⁶ In comparison, in the seven-month period from January to July 2013 alone, the INM detained over 5,000 children, including 151 unaccompanied children under the age of 12.²⁹⁷ The Inter-American Commission concluded in 2014 that as a practical matter, “[t]he detention of children and adolescents in an irregular situation continue[d] to be routine and widespread.”²⁹⁸ Based on our observations, our interviews with government officials and organizations that work with migrants, and our review of detention statistics, it is still the case that far more children are held in immigration detention centers than are referred to DIF shelters.

INM officials did not respond to our request to provide additional information on its detention policies and practices, including the number of children it has referred to DIF in recent years. Mexican officials told the Inter-American Commission on Human Rights in October 2011 and April 2012 that “the practice of holding persons in immigration stations is a measure necessary to ensure a person’s appearance for the proceeding where his or

²⁹⁵ Regulations for the Immigration Law, art. 176. See also Immigration Law, art. 112(l).

²⁹⁶ Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 510. The true numbers may be higher: the Fray Matías Human Rights Center reported that 190 children were transferred to the DIF system in Chiapas alone in 2013, 54 in 2012, and none in 2011. These numbers include both unaccompanied and accompanied children. See Aldo Ledón Pereyra et al., “Mexico: Southern Border,” in *Childhood, Migration, and Human Rights*, p. 233.

²⁹⁷ See SEGOB, *Boletín estadístico 2013*, Table 3.1.3. Prior to 2014, INM did not publish detention data for unaccompanied children who were 12 to 17 years of age.

²⁹⁸ Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 501. Similarly, a 2012 study by the University of Lanús Human Rights Center and the Fray Matías Human Rights Center found that “[d]espite the fact that the immigration law (and, since 2010, the standards of the operation for the migration centers) requires the INM to immediately transfer (*canaliza*) migrant children and adolescents, the immigration authorities systematically fail to comply with this order.” Pablo Ceriani Cernadas, ed., *Niñez detenida*, p. 14.

her immigration status and possible repatriation will be determined”²⁹⁹ and suggested that legal change would be necessary for detention to be the exception rather than the rule.³⁰⁰

Increased Detention of Children

The INM’s published statistics do not break down its detention figures by detention center and length of stay. But they do show that the number of children under 18 in immigration detention has increased in recent years.

The INM detained some 9,600 children in 2013; the following year, it detained some 23,000 children, a 140 percent increase. Detentions of children again increased in 2015: the INM detained over 35,000 children during the year, of whom 18,650 were unaccompanied.³⁰¹

Conditions of Detention in INM-Run Centers

Mexico’s INM-run immigration detention centers that are authorized to receive children usually have separate sections for adult men, adolescent boys, and women and girls, meaning that families are generally separated when they are detained. For instance, Alex C., a 15-year-old who traveled with his family from Honduras after gang members started threatening them, was separated from his mother and 12-year-old sister for the month the family was held in Siglo XXI.³⁰²

Girls are routinely held with adult women in all immigration detention centers, in violation of the standard that children be separated from unrelated adults in detention.³⁰³ We also heard from some adults and children who had been in detention that some immigration detention centers do not separate adolescent boys from adult males. For instance, Daniel

²⁹⁹ Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 492 (quoting Remarks by the Under Secretary for Population, Migration and Religious Affairs, Dr. René Zenteno, at the Hearing the Commission held on the Follow-up to the Visit to Mexico of the Office of the Rapporteur on the Rights of Migrants, 143rd Session, Washington, D.C., October 27, 2011, and noting that “[t]he Mexican State repeated this line of argument in the information it provided in late April of 2012”).

³⁰⁰ *Ibid.* (“[I]n response to the Rapporteur’s recommendation that future Regulations clearly state that immigration detention is to be the exception, in keeping with inter-American standards, the Mexican State thought that “the point had to be made that such a measure will require amendments to the law.”).

³⁰¹ SEGOB, *Boletines estadísticos 2013, 2014, 2015*. These data are analyzed in more detail in the Appendix, “Apprehension and Detention of Central American Children in Mexico” section.

³⁰² Human Rights Watch interview with Alex C., Tapachula, Chiapas, May 8, 2015.

³⁰³ See Convention on the Rights of the Child, art.37(c). See also Immigration Law, arts. 109(XIV), 112(I).

L., age 15, told us that when he was in Comitán’s immigration detention center in 2014, he and seven other boys, including one who was eight years old and another age 10, were held together with adults.³⁰⁴ These reports are consistent with the findings of other studies of immigration detention in Mexico.³⁰⁵ As Human Rights Watch and other groups have found elsewhere in the world, holding children in immigration detention with unrelated adults increases the risk that they will face abuse.³⁰⁶

Children under the age of 12 are generally assigned to a detention center’s section for women and girls if they have mothers or other family members in that section. Unaccompanied boys under 12 may also be held in the section for women and girls. In Acayucan’s INM-run detention center, for example, the women’s section had two dormitories designated for unaccompanied children under the age of 12, one for unaccompanied boys and the other for unaccompanied girls. These dormitories and all other dormitories in the women’s section were open on the day we visited, allowing all women and children free access to all common areas in the section—meaning that they were not confined to their dormitories during the day, but also meaning that unaccompanied girls and boys were in regular contact with unrelated adult women.

We heard several reports from those held in other detention centers that unaccompanied boys younger than 12 were held in the section for adolescent boys. As one example, when Omar C., age 11, was in INM detention in Tuxtla Gutiérrez for three days, he told us that he was placed in the adolescent boys’ section.³⁰⁷ “There were others there who were 11 years old. The oldest in my area was 17,” he said.³⁰⁸

³⁰⁴ Human Rights Watch interview with Daniel L., Tapachula, Honduras, May 8, 2015. The Comitán immigration detention center is designated as a medium-term detention facility and does not appear to be authorized to receive children. See Global Detention Project, Mexico Detention Profile, List of Detention Sites, January 2013, <http://www.globaldetentionproject.org/countries/americas/mexico/list-of-detention-sites.html> (accessed October 18, 2015).

³⁰⁵ See, for example, Catholic Relief Services, *Child Migration*, p. 6.

³⁰⁶ See, for example, Human Rights Watch, *Two Years with No Moon: Immigration Detention of Children in Thailand* (New York: Human Rights Watch, 2014), p. 44; Human Rights Watch, *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia* (New York: Human Rights Watch, 2013), p. 45; Human Rights Watch, *Boat Ride to Detention: Adult and Child Migrants in Malta* (New York: Human Rights Watch, 2012), pp. 41-42.

³⁰⁷ The Tuxtla Gutiérrez immigration detention center does not appear to be authorized to receive children, according to a list of immigration detention sites compiled by the Global Detention Project. See Global Detention Project, Mexico Detention Profile, List of Detention Sites, January 2013, <http://www.globaldetentionproject.org/countries/americas/mexico/list-of-detention-sites.html> (accessed October 18, 2015).

³⁰⁸ Human Rights Watch interview with Omar C., San Pedro Sula, Honduras, June 15, 2015.

Several children told us that they believed that immigration detention centers do not separate gang members from those who have potential claims for international protection based on gang violence. “There are members of the Mara Salvatrucha inside,” said Oscar P., age 16, speaking of Siglo XXI. “They ask for money. . . . They’ll ask you to buy them cigarettes. You have to do it, or else they’ll make trouble for you.”³⁰⁹ Similarly, Johanna H., age 17, said of Siglo XXI, “There’s no sense of security. It’s all mafia there. . . . You might be locked up with the same people that committed acts of aggression against you. They just hold you together with everybody else from your country. We were so afraid.”³¹⁰ We heard similar reports from lawyers working with the Fray Matías Human Rights Center in Tapachula.³¹¹

We could not confirm these accounts, but the women and adolescent boys we saw in Acayucan’s detention center were assigned to dormitories by nationality and interacted freely with others within their respective sections during the day, meaning that they would likely come into contact with any gang members housed in those sections.

We heard that the same was true for Tapachula’s Siglo XXI detention center. Adolescent boys are generally held in one of four dormitories, one each for Guatemalans, Hondurans, and Salvadorans, with the fourth for nationals of other countries, we heard from children who had been held in the facility as well as from DIF officials, consular officers, and members of nongovernmental organizations who have visited the detention center.

We heard consistent reports of overcrowding in the largest immigration detention centers. In Acayucan’s immigration detention center, women and children were sitting on mattresses in the hallways as we walked past, and officials explained to us that there was not enough space in the dormitories for everybody in the section. The section for adolescent boys held 62 boys between the ages of 13 and 17 on the day of our visit; children in the section told us that some rooms held 14 or more. Asked where everybody slept, they pointed to every bit of available floor space, including under the beds.

³⁰⁹ Human Rights Watch interview with Oscar P., San Pedro Sula, Honduras, May 15, 2015.

³¹⁰ Human Rights Watch interview with Johanna H., México, DF, April 30, 2015.

³¹¹ Human Rights Watch interview with Diego Lorente, Tapachula, Chiapas, October 22, 2015.

The design of the Acayucan detention facility does afford detainees in the women's and adolescent boys' sections access to outdoor space during the day. The women's section of the facility includes two open-air courtyards, one with a playground area for young children, and a small soccer field that adolescent boys are allowed to use several times a week. The section for adolescent boys also includes an open-air courtyard.

Despite the numbers in both sections, the facility was clean on the day of our visit, and the boys we spoke with told us that their section was cleaned regularly. Boys in the Acayucan detention center also reported that they had no complaints about the amount and quality of food they received.

Accounts from children and adults held in Tapachula's Siglo XXI detention center indicate not only that it is overcrowded but also that mattresses are in short supply; moreover, they described conditions that were far less hygienic than those we saw in the Acayucan immigration detention center. (While Human Rights Watch was able to see living conditions in Acayucan's detention center, the INM denied our request to visit Siglo XXI. Although Human Rights Watch was not able to witness conditions of detention at Siglo XXI, we did gather many first-hand accounts from former detainees of the conditions they experienced there.)

In particular, many children told us that they slept on the floor, with no mattress or blanket, while they were in Siglo XXI. In a typical account, Jeison N., age 15, told Human Rights Watch, "We had to sleep on the floor. It was always dirty. Some of us were sleeping on the bathroom floor."³¹² Similarly, Keidy H., a 15-year-old-girl, said, "We didn't have mats. We just slept on the floor," telling us that she spent three days in Siglo XXI's women's section in early June 2015.³¹³

Several of the teenage boys we interviewed mentioned a cell in Siglo XXI known as the *calabozo* ("the lockup"). "It's a punishment cell," said Edgar V., age 17. "They put the kids there that misbehave. There were five kids in the cell the day I arrived. The four days I was there in Siglo XXI, they were there the whole time."³¹⁴ Victor T., a 17-year-old Salvadoran

³¹² Human Rights Watch interview with Jeison N., San Pedro Sula, May 15, 2015.

³¹³ Human Rights Watch interview with Keidy H., San Pedro Sula, Honduras, June 8, 2015.

³¹⁴ Human Rights Watch interview with Edgar V., San Pedro Sula, Honduras, June 8, 2015.

boy, told Human Rights Watch, “It’s near the kitchen. When kids cause problems, they lock them up there.”³¹⁵

The Fray Matías Human Rights Center describes the cell as having no mattresses or sheets, restrictions on access to drinking water, and toilets that do not flush properly, meaning that excrement and urine overflowed onto the floor.³¹⁶ Julio C., now 18, told us that he spent two days in the *calabozo* in 2013, when he was 16, and gave a similar description of the cell. “It was horrible, very dirty. You had to sleep there with everything from the toilet on the floor,” he said.³¹⁷ Ismael P., a 17-year-old from El Salvador, told us that he spent two weeks in the *calabozo* in April 2015. “It’s dark, really dark. Ugly. They treat you like a dog when you’re in there.”³¹⁸

The Fray Matías Human Rights Center documented the case of a 15-year-old Salvadoran boy who was placed in the *calabozo* for several days in September 2012 after he shouted at a guard. The boy told the Fray Matías Human Rights Center, “I began to despair and so they’d let me out, I began to cut my wrists with a piece of a mirror I had in my wallet, I bled a lot, both the OPI [child protection officer] and a police officer came to see me, but they just gave me alcohol [to dress the wound] and left me there.”³¹⁹

Time in Detention

Under the Immigration Act, all children—not just asylum seekers—who are apprehended by the INM should be referred to DIF shelters; their stay in immigration detention facilities should only be in exceptional circumstances.³²⁰ “They are channeled to a shelter during the process,” a DIF official told us.³²¹ In practice, however, as reflected in our interviews

³¹⁵ Human Rights Watch interview with Victor T., Tapachula, Chiapas, May 8, 2015.

³¹⁶ Centro de Derechos Humanos Fray Matías de Córdova (Fray Matías Human Rights Center), *Segundo informe sobre derechos humanos y condiciones de vida de las personas migrantes en el centro de detención de la Ciudad de Tapachula, Chiapas*, (Tapachula: Fray Matías Human Rights Center, September 2013), p. 31.

³¹⁷ Human Rights Watch interview with Julio C., México, DF, August 28, 2015.

³¹⁸ Human Rights Watch interview with Ismael P., Tapachula, Chiapas, October 23, 2015.

³¹⁹ Fray Matías Human Rights Center, *Segundo informe*, p. 31 (“debido que me desesperé y para que me sacaran, comencé a cortarme las muñecas con un pedazo de espejo que tenía en mi cartera, sangré mucho, tanto la OPI y un policía fueron a verme, pero solo me pusieron alcohol y ahí me dejaron”).

³²⁰ Immigration Law, art. 112(I); General Law on the Rights of Girls, Boys, and Adolescents, art. 89 (“En tanto el Instituto Nacional de Migración determine la condición migratoria de la niña, niño o adolescente, el Sistema Nacional DIF o sistema de las entidades, según corresponda, deberá brindar la protección que prevé esta Ley y demás disposiciones aplicables.”).

³²¹ Human Rights Watch telephone interview, May 15, 2015. This DIF official asked that her name not be published because she was not authorized to speak on the record.

with children, representatives, service providers, COMAR, and DIF, and the findings of other investigators, apprehension by the INM almost always means several weeks or longer in immigration detention.³²²

DIF Shelters

Mexican law requires that all unaccompanied children be transferred to a DIF shelter. In practice, this requirement is not observed, as discussed in the previous section. “DIF tells us they don’t have capacity,” a United Nations High Commissioner for Refugees (UNHCR) official in Mexico City told us.³²³ Cinthia Pérez, area director for COMAR, gave a similar account:

If a minor applies for refugee recognition, that minor should be transferred from the migration station to a shelter, whether run by DIF or an NGO. But that doesn’t happen in most cases. The institutions don’t have space, or the NGOs will always have reservations about taking the minor. ‘What happens if he escapes while under my responsibility?’ they’ll say.”³²⁴

Dr. Elva Cárdenas, the national head of DIF, told us that several states were making efforts to expand their capacity for migrant children.³²⁵ Viva México, the shelter in Tapachula run by DIF Chiapas, was undergoing renovation when we visited in May 2015 to expand the available number of beds, and these renovations had largely been completed by the time we returned to the shelter in October 2015. DIF Chiapas also opened a new shelter in Palenque, some 90 kilometers west of Tenosique, in August 2015, which we visited in October 2015.³²⁶ DIF Veracruz had no shelter for migrant children when we visited Acayucan in early November 2015, but DIF and INM officials told us that DIF Veracruz would

³²² See, for example, Human Rights Watch interview with Diego Lorente, Tapachula, Chiapas, October 23, 2015; Human Rights Watch interview with Cinthia Pérez Trejo, area director, COMAR, April 28, 2015; Georgetown Law Human Rights Institute Fact-Finding Project, *The Cost of Stemming the Tide*, pp. 29-30; Aldo Ledón Pereyra et al., “Mexico: Southern Border, in *Childhood, Migration, and Human Rights*, p. 238; Pablo Ceriani Cernadas, ed., *Niñez detenida*, ch. 7.

³²³ Human Rights Watch interview with UNHCR official, México, DF, April 27, 2015.

³²⁴ Human Rights Watch interview with Cinthia Pérez Trejo, area director, COMAR, México, DF, April 28, 2015.

³²⁵ Human Rights Watch interview with Dr. Elva Cárdenas, director general of child protection, DIF Nacional, México, DF, June 18, 2015.

³²⁶ Human Rights Watch interview with DIF official, Palenque, Chiapas, October 19, 2015.

soon open such a shelter in the city of Xalapa, about 100 kilometers northwest of the state capital and 350 kilometers from Acayucan's immigration detention center.³²⁷

Nevertheless, the available capacity within the DIF system as a whole appears to be underutilized. For example, the shelter in Palenque held a total of 15 children between the beginning of August and the middle of October 2015, and it was completely empty on the day of our visit.³²⁸ In northern Mexico, DIF shelters in Reynosa and Nuevo Laredo, both in the state of Tamaulipas, were full when we visited in June 2015, while the shelter in Matamoros, in the same state, held very few children.³²⁹

We spoke to 16 children who had been transferred to DIF shelters. For those apprehended in the northern Mexican states of Chihuahua and Tamaulipas, such transfers appear to be made quickly and routinely. The same does not appear to be true for those apprehended in Chiapas: seven of the eight children we interviewed who had been sent to the DIF shelter in Tapachula were transferred only after they had applied for recognition as refugees, and then only after several additional weeks in an INM-run detention center. For example, Daniel L., the 15-year-old who was left in Comitán by the smuggler who had brought him to Mexico, spent three days in the Comitán immigration detention center before he was transferred to Siglo XXI, where he was held for another month. Because he had applied for asylum, he was then transferred to a DIF shelter at the end of the month. Daniel was still awaiting a decision on his application when we interviewed him in May 2015.³³⁰

The six DIF shelters we saw varied in size and layout; some were built to serve as shelters, while others were converted from other uses. All but one had outdoor space accessible during the day. Many had walls painted in bright colors, games and art supplies, and spaces that could be used for presentations or group discussions. The largest of the facilities we visited, the Viva México shelter in Tapachula, housed women with children as well as unaccompanied and separated children. Viva México was undergoing renovations when we initially visited in April 2015; on our return visit in October 2015, women and children had been moved to new accommodations and had access to a greater range of activities, including exercise equipment that had just been installed in the courtyard.

³²⁷ Human Rights Watch interviews with Horacio Alcocer Rangel, commissioner, INM, Acayucan, Veracruz, November 2, 2015, and DIF official, Acayucan, Veracruz, November 2, 2015.

³²⁸ Human Rights Watch interview with DIF official, Palenque, Chiapas, October 19, 2015.

³²⁹ Human Rights Watch interview with DIF officials, Reynosa, Tamaulipas, June 24, 2015.

³³⁰ Human Rights Watch interview with Daniel L., Tapachula, Chiapas, May 8, 2015.

Although all of these shelters were cleaner and more inviting than the Acayucan immigration detention center, the children (and women, in the case of Viva México) they housed were confined to the premises 24 hours a day, seven days a week. Children did not attend schools in the community, no matter the length of time they remained in the shelter, and we heard of no instance in which children or women received supervised visits to local parks, churches, or other locations outside the shelters.

As a result, even those who are held in DIF shelters told us that the time there took its toll on them. “It’s difficult being locked up, not being able to leave, spending the whole day and night inside,” said Edwin L., 16, interviewed in the DIF shelter in Nuevo Laredo, on Mexico’s northern border. “They treat us well here. That’s not the problem. The problem is being locked up.”³³¹

Lack of Access to Education

The children we spoke with had no access to regular education, whether they were in immigration detention centers or DIF shelters, and children have no access to regular education whatever the length of time they spent in these facilities. At most, they may take part in activities, run on an ad hoc basis, that have a limited educational component—for example, in the Viva México DIF shelter in Tapachula, we saw volunteers run craft sessions and religious discussions, and staff told us that they were seeking ways to get additional community involvement in the detention center.³³²

Daniel L., a 15-year-old Salvadoran asylum applicant who was in the ninth grade when he left for Mexico, said that he had not been able to attend classes during the month he spent in Siglo XXI or in the time he had been held in Tapachula’s Viva Mexico DIF shelter. When he asked DIF officials how soon he would be able to attend school, “They said that I can maybe go when I have some kind of document saying that I’m allowed to be here in Mexico. . . . I want to study. I want to have a career.”³³³ Kevin B., 15, left El Salvador with his

³³¹ Human Rights Watch interview with Edwin L., Nuevo Laredo, Tamaulipas, June 25, 2015.

³³² Human Rights Watch interview with DIF staff, Tapachula, Chiapas, October 23, 2015.

³³³ Human Rights Watch interview with Daniel L., Tapachula, Chiapas, May 8, 2015.

14-year-old brother in August 2014. “It’s been 10 months since I’ve gone to school. I want to study. I want to be an engineer.”³³⁴

Separated and unaccompanied children should have access to education throughout the time they are outside of their countries of origin, including any time they spend in detention.³³⁵ Even for children who are in immigration detention for short periods of time, Mexico can and should provide educational activities that are designed to provide a measure of continuity and give children the opportunity to reenter the formal education system at a later date. Such educational activities include literacy and numeracy classes, life skills education, and other content appropriate to the context as well as children’s age and developmental levels. For those children who are in detention settings for longer periods—including applicants for refugee recognition, who may spend months in detention—Mexico should ensure that they receive access to educational programs that cover at least the curriculum of compulsory education at the primary level, and preferably also at the secondary level.

The Consequences for Mental Well-Being

As research in Australia, Britain, and the United States has found, detained asylum seekers experience extremely high rates of anxiety, depression, and symptoms of post-traumatic stress disorder. Prolonged detention has also adverse effects on mental health that persist for an extended period of time after detention ends.³³⁶ Detained children demonstrated developmental and behavioral problems as well as mental health difficulties that included major depression, suicide ideation, and incidents of self-harm as well as sleep difficulties, anxiety regarding delays in educational progress, and a sense of

³³⁴ Human Rights Watch interview with Kevin B., Tapachula, Chiapas, May 8, 2015.

³³⁵ See Chapter V, “The Right to Education” section.

³³⁶ G.J. Coffey et al., “The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum,” *Social Science and Medicine*, vol. 70 (2010), pp. 2070-79; Katy Robjant, Rita Hassan, and Cornelius Katona, “Mental Health Implications of Detaining Asylum Seekers: Systematic Review,” *British Journal of Psychiatry*, vol. 194 (2009), pp. 306-12, <http://bjp.rcpsych.org/content/194/4/306> (accessed January 29, 2016); M. Ichikawa et al., “Effect of Post-Migration Detention on Mental Health among Afghan Asylum Seekers in Japan,” *Australian and New Zealand Journal of Psychiatry*, vol. 40 (2006), pp. 341-46; Zachary Steel et al., “Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees,” *British Journal of Psychiatry*, vol. 188 (2005), pp. 58-64, <http://bjp.rcpsych.org/content/bjprcpsych/188/1/58.full.pdf> (accessed January 29, 2016). See also Zachary Steel and Derrick M. Silove, “The Mental Health Implications of Detaining Asylum Seekers,” *Medical Journal of Australia*, vol. 175 (2001), pp. 596-99; A.S. Keller et al., “Mental Health of Detained Asylum Seekers,” *The Lancet*, vol. 362 (2003), pp. 1721-23.

shame.³³⁷ The nongovernmental organization Sin Fronteras has observed similar adverse effects for the mental health and well-being of detained children and adults in Mexico.³³⁸

The Failure to Ensure Access to Alternatives to Detention

A key reason children spend time in detention, which dissuades them from pursuing valid protection claims, is the failure to ensure that alternatives to immigration detention are available in practice. Mexican law already authorizes several alternatives to detention:

- Applicants for refugee recognition may be granted humanitarian visas to enable them to stay in the country in regular status until their applications are decided.³³⁹
- Victims of trafficking and other crimes can also be granted humanitarian visas.³⁴⁰
- In cases of individuals who would be vulnerable if kept in immigration detention, the INM should “take . . . measures to grant the privilege of staying in specialized public or private institutions that can provide the required assistance.”³⁴¹
- Separated and unaccompanied children should be immediately transferred to a DIF shelter,³⁴² and they can also be granted humanitarian visas.³⁴³ (As currently administered, however, DIF shelters are effectively places of detention; as discussed in this section, DIF and the INM should take steps to make them true alternatives to detention.)
- An individual can be released into the custody of “the diplomatic representation of his country of citizenship or to a renowned institution whose purpose is linked to protecting human rights.”³⁴⁴
- An individual can also post a bond and accept conditions on where he or she may reside.³⁴⁵

³³⁷ Ann Lorek et al., “The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study,” *Child Abuse and Neglect*, vol. 33 (2009), pp. 573-85, https://www.childrensociety.org.uk/sites/default/files/tcs/research_docs/Yarl'sWoodDoctor'sReport.pdf (accessed January 29, 2016); L.K. Newman and Z. Steel, “The Child Asylum Seeker: Psychological and Developmental Impact of Immigration Detention,” *Child and Adolescent Psychiatric Clinics of North America*, vol. 17 (2008), pp. 665-83; S. Mares and J. Jureidini, “Psychiatric Assessment of Children and Families in Immigration Detention—Clinical, Administrative and Ethical Issues,” *Australia and New Zealand Journal of Public Health*, vol. 28 (2004), pp. 520-26; Aamer Sultan and Kevin O’Sullivan, “Psychological Disturbances in Asylum Seekers Held in Long Term Detention: A Participant-Observer Account,” *Medical Journal of Australia*, vol. 175 (2001), pp. 593-96.

³³⁸ See Sin Fronteras, *La ruta del encierro*, pp. 72-74.

³³⁹ Immigration Law, art. 52(V)(c).

³⁴⁰ *Ibid.*, art. 52(V)(a).

³⁴¹ *Ibid.*, art. 113.

³⁴² *Ibid.*, art. 112.

³⁴³ *Ibid.*, art. 52(V)(b).

³⁴⁴ *Ibid.*, art. 101. See also Regulations for the Immigration Law, art. 214.

Our research suggests that these alternatives are rarely employed in practice. Humanitarian visas are only infrequently granted, as discussed in the previous chapter. The provision relating to the transfer of vulnerable individuals is promising on paper—the International Detention Coalition observes that it “means that detained individuals may be placed in institutions with open-door policies that provide lodging and assistance”³⁴⁶—but appears to be rarely used. In addition, this custody alternative has numerous restrictions “that limit it to the extent of making it practically non-accessible, unviable, and with few opportunities for its use and effectiveness.”³⁴⁷ And we heard of no instance in which an immigration detainee has been released on bond. At time of writing, INM officials had not responded to our questions about whether and how often it applies the alternatives to detention set forth in the Immigration Law.

In addition to these alternatives to detention established in law, the Immigration Law sets a 60-day limit on immigration detention in most cases. If, at the end of that period, the INM has not secured identity or travel documents or has not been able to make travel arrangements for an individual in detention, the INM must grant the individual a work permit and release him or her from detention.³⁴⁸ The significance of the 60-day limit on immigration detention is significantly reduced by two other provisions of the Immigration Law and its regulations. First, under the regulations, asylum seekers may be detained until they are recognized as refugees.³⁴⁹ Second, the 60-day limit does not apply when an individual is detained while an administrative appeal or judicial review is pending.³⁵⁰

With respect to the requirement to transfer separated children to DIF shelters, as we saw repeatedly in the course of our interviews, “in practice and until now, referral to DIF constitutes an exception while immigration detention is the rule,” in the words of the International Detention Coalition.³⁵¹ INM officials had not responded at time of writing to

³⁴⁵ Immigration Law, art. 102. By law, the INM must inform all detainees of their right to request release on bond. *Ibid.*, art. 69.

³⁴⁶ International Detention Coalition, *Dignity without Exception*, p. 63.

³⁴⁷ *Ibid.* p. 66.

³⁴⁸ Immigration Law, art. 111(l)-(IV).

³⁴⁹ Regulations for the Immigration Law, art. 235

³⁵⁰ Immigration Law, art. 111(V); Regulations for the Immigration Law, art. 234.

³⁵¹ International Detention Coalition, *Dignity without Exception*, p. 61.

our request for information on the number of children referred to DIF shelters in 2014 and 2015.

In contrast to Mexico’s approach, “most countries do not rely primarily on detention to manage asylum seekers, refugees and irregular migrants while resolving a migration matter,” a review of migration policies and practices by the International Detention Coalition has found.³⁵² In fact, the experience in many countries is that community-based alternatives—housing in settings that allow asylum seekers, refugees, and other migrants to attend regular schools, work in the community, and otherwise interact regularly with others—are preferable in virtually every respect to immigration detention.³⁵³

In particular, community-based alternatives do not have the adverse health consequences of detention. They may be more cost-effective. And even in transit countries, individuals who are housed in community-based settings have a high rate of appearance at asylum or immigration hearings.³⁵⁴

For children who are separated from caregivers, community-based alternatives should offer adequate supervision and other appropriate care and protection, consistent with Mexico’s obligations to afford special care and protection to children in such circumstances.³⁵⁵ Such concerns may lead states to rely on detention instead of developing acceptable alternatives. As the International Detention Coalition observes, “[s]ufficient protection must be available to children who are released from or who avoid detention. Practically, sufficient guardianship and reception resources must be accessible

³⁵² International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Melbourne: International Detention Coalition, 2011), p. 13.

³⁵³ See, for example, Australian Human Rights Commission, *Community Arrangements for Asylum Seekers, Refugees and Stateless Persons* (Sydney: Australian Human Rights Commission, 2012), pp. 14-16; Committee on Migration, Refugees and Displaced Persons, Parliamentary Assembly, Council of Europe, *The Alternatives to Immigration Detention of Children*, Doc. 13597 (September 15, 2014), pp. 9-12; Jesuit Refugee Service Europe, *From Deprivation to Liberty: Alternatives to Detention in Belgium, Germany and the United States* (Brussels: Jesuit Refugee Service Europe, 2011).

³⁵⁴ Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention” of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants*, Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1 (Geneva: UNHCR Division of International Protection, 2011), <http://www.unhcr.org/4dc949c49.html> (accessed January 29, 2016); Ophelia Field with Alice Edwards, *Alternatives to Detention of Asylum Seekers and Refugees*, Legal and Protection Policy Research Series, POLAS/2006/03 (Geneva: UNHCR Division of International Protection, 2006), <http://www.refworld.org/pdfid/4472e8b84.pdf> (accessed January 29, 2016).

³⁵⁵ See Chapter V, “The Obligation to Provide Unaccompanied and Separated Children with Care and Accommodation” section.

to children to ensure that detention does not represent the better of a bad set of options”³⁵⁶

In the case of Mexico, however, the state has a system for providing protection and support to children who cannot live with their families. The DIF shelters and small group homes for children who have been abused or neglected could also be used to house some unaccompanied and separated children who are seeking recognition as refugees. When we raised this possibility with state and local DIF officials, they told us that the principal obstacle to placing asylum seeking and migrant children in DIF shelters for abused and neglected children is that it is the INM, not DIF, that remains the custodian of asylum seeking and migrant children, and that the INM has the sole authority to decide where these children are housed.³⁵⁷ If that is the case, this barrier should be removed in law and policy in order to give DIF officials the flexibility they need to decide on the type of placement that is in the best interest of a particular child.³⁵⁸

As noted above, DIF shelters for migrant children are, as currently administered, places of detention, albeit with far better conditions of confinement than those of immigration detention centers. DIF can do more, working together with the INM, to provide children with appropriate supervision and care in a way that does not confine them to the premises 24 hours a day. Drawing on the experiences of other countries that house unaccompanied children in less-restrictive settings, DIF shelters can and should work with other appropriate agencies to develop mechanisms that provide children with opportunities to interact with the communities in which they live, including through recreational and religious programs, and permit children who are long-term residents of shelters to attend local schools. The capacity of the DIF system should also be expanded to accommodate a greater number of unaccompanied children.

Foster care and similar arrangements are also possibilities that should be explored. Mexico has well-developed systems for providing protection and support to children who cannot live with their families, offering, for example, foster care or placement in small group homes for children who have been abused or neglected. Such programs could

³⁵⁶ International Detention Coalition, *Captured Childhood* (Melbourne: International Detention Coalition, 2012), p. 35.

³⁵⁷ Human Rights Watch interviews with DIF officials, Nuevo Laredo, Tamaulipas, June 25, 2015.

³⁵⁸ At time of writing, INM officials had not responded to our questions about whether the INM determined which DIF shelter would house individual children and, if so, what policies or practices it follows in making those determinations.

potentially also accommodate unaccompanied and separated children who are seeking asylum.

It is also likely that open facilities or community-based placements will not be appropriate for all children. Those who have just been transferred to DIF custody, for example, may need time to develop trust in the institutions and caregivers they have just met. Children who would be likely to leave DIF care to continue their journeys on their own will also need a greater degree of supervision and may need to be housed in closed facilities. Such determinations should be made on a case-by-case basis to identify the housing arrangement that is most consistent with an individual child's best interest.

Developing and fully implementing an appropriate range of alternatives will take time. In the meantime, it is clear that Mexico will continue to receive far more unaccompanied children than can currently be accommodated in DIF shelters. Even so, the INM can and should now prioritize for transfer to DIF shelters those children who apply for refugee recognition or whom it identifies as potentially in need of international protection, as well as children who are held beyond the 15-day limit envisioned in the Immigration Law, the time period for which immigration detention centers are presumably designed to house migrants.

IV. Deportation and Return

Mexico appears to return unaccompanied and separated children on the assumption that reunification with family in the country of origin is nearly always in children's best interests. Nevertheless, in cases where children have been targeted by gangs or reasonably fear that they will suffer violence or other human rights abuses in their countries of origin, their return is unlikely to be in their best interests. The same is true where family members in their countries of origin are unable or unwilling to care for them.

Instead of assuming that children's best interests are served by return to their country of origin, Mexican protection authorities should work toward an individual solution for each child. In cases in which return would expose a child to serious human rights violations or where the child has no appropriate caregiver in the home country, children should receive protection, care, and the opportunity for local integration in Mexico, or in appropriate cases, in a third country.

The manner of return raises other concerns. Mexican child protection officers accompany children only as far as the Mexican border; no other child protection officials travel with them while they are in transit in Guatemala or after they have entered Honduras. Families may be separated upon return to Honduras, with adult men sent to the border post and women with children sent to San Pedro Sula's Edén (now Belén) reception center. In all cases, when returns take place, they should be carried out with respect and dignity.³⁵⁹

The Failure to Assess Whether Returns Are in Children's Best Interests

As described above, only a tiny fraction of unaccompanied and separated children from Central American countries receive protection in Mexico; most are returned to their country of origin, suggesting that Mexican authorities are operating on the untested assumption that reunification with family in the country of origin is nearly always in children's best interest. As detailed above, past empirical studies and our interviews suggest that the National Institute of Migration (INM) child protection officers, responsible for assessing children's protection needs and making best interest determinations, in practice rarely

³⁵⁹ See United Nations Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, UN Doc. E/CN.4/2005/85 (December 27, 2004), para. 75.

investigate the circumstances children will face if returned.³⁶⁰ A 2012 study by the University of Lanús Human Rights Center and the Fray Matías Human Rights Center concluded that “the vast majority of children and adolescents are repatriated to their respective countries without any prior evaluation based on the principles of the best interest of the child.”³⁶¹

Both the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families have called on Mexico not to deport or return children without determining that return is in the child’s best interest.³⁶²

As the Committee on the Rights of the Child notes, “Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a ‘reasonable risk’ that such a return would lead to the violation of fundamental human rights of the child.”³⁶³ As one example, return would not be in a child’s best interests when the child is a refugee or qualifies for complementary protection; additionally, a return may not be in a child’s best interests in other instances in which return would lead to violations of a child’s rights in ways that would not necessarily give rise to refugee status or complementary protection.³⁶⁴ The United Nations High Commissioner for Refugees (UNHCR) has developed practical guidance on conducting best interest determinations.³⁶⁵

Deportation proceedings are summary in nature, meaning that they offer few due process protections in practice. “They don’t go in front of a judge. The process is administrative,” Diana Martínez of Sin Fronteras told us. “They’re interviewed by INM and asked to show

³⁶⁰ See Chapter II, “Inadequate Screening for Children’s Protection Needs” section.

³⁶¹ Pablo Ceriani Cernadas, ed., *Niñez detenida*, p. 12. In fact, as the study notes, “the procedures do not require OPIs to prepare a report or assessment in every case as to the adequacy of the measures [of deportation] with respect to the obligations to provide integral protection and to respect the principle of the best interest of the child.” *Ibid.*, ch. 3, p. 16.

³⁶² See Committee on the Rights of the Child, Concluding Observations: Mexico, para. 60(c); Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding Observations: Mexico, UN Doc. CMW/C/MEX/CO/2 (May 3, 2011), para. 56(e).

³⁶³ Committee on the Rights of the Child, General Comment No. 6, para. 82.

³⁶⁴ See Chapter V, “The Prohibition on Refoulement” section, “The Best Interests Principle as a Constraint on Children’s Return” subsection.

³⁶⁵ See United Nations High Commissioner for Refugees (UNHCR), *UNHCR Guidelines on Determining the Best Interests of the Child* (Geneva: UNHCR, May 2008), <http://www.unhcr.org/4566b16b2.pdf> (accessed January 29, 2016). See also UNHCR and United Nations Children’s Fund (UNICEF), *Safe and Sound: What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe* (Brussels and New York: UNHCR/UNICEF, October 2014), <http://www.refworld.org/pdfid/5423da264.pdf> (accessed January 29, 2016).

proof that they're here regularly. They don't get a lawyer. INM issues a decision. That could be a deportation order, or authorization to leave the country on their own within a specified number of days, or regularization.”³⁶⁶

Most adult migrants instead choose “assisted return,” an alternative to a deportation proceeding. By law, all children are repatriated as “assisted returns”; they may not be deported.³⁶⁷ “Assisted return means that there’s no record and no restriction on when they can apply to return,” said Diana Martínez.³⁶⁸ In other respects, there is no practical distinction between an “assisted return” and a deportation; in fact, the Immigration Law defines “assisted return” in terms that closely resemble the usual meaning of “deportation.”³⁶⁹

“A challenge we have is the expedited manner in which returns take place,” a UNHCR official in Mexico City told us. “We believe the protocols developed by COMAR should be part of the process, so that migrants are screened for potential international protection needs.”³⁷⁰

The Need for Durable Solutions

Mexican protection authorities should work toward an individual durable solution for each child, a solution that “addresses all their protection needs, takes into account the child’s view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.”³⁷¹ Depending on the child’s individual circumstances, family reunification in the country of origin may well be a durable solution.

When family reunification in countries of origin might be possible, Mexican protection authorities should work with their counterparts in countries of origin to confirm the validity

³⁶⁶ Human Rights Watch interview with Diana Martínez, coordinator of support and direct services, Sin Fronteras, México, DF, April 29, 2015.

³⁶⁷ Immigration Law, art. 120 (providing that unaccompanied children as well as victims of or witnesses to crimes committed in Mexico “shall not be deported, and according to their willingness and their best interest to guarantee their greatest protection, may be subject to proceedings for assisted return or for regularization of their immigration status.”).

³⁶⁸ Human Rights Watch interview with Diana Martínez, coordinator of support and direct services, Sin Fronteras, México, DF, April 29, 2015.

³⁶⁹ “‘Assisted return’ is the proceeding by which the National Institute of Migration causes a foreigner to abandon the national territory, sending him back to his country of origin or of habitual residence.” Immigration Law, art. 3(XXIV).

³⁷⁰ Human Rights Watch interview with UNHCR official, April 2015.

³⁷¹ Committee on the Rights of the Child, General Comment No. 6, para. 79.

of the family relationship and of “the willingness of the child and the family member to be reunited.”³⁷² As part of this verification process, “an assessment should verify that family reunification is in the best interests of the child.”³⁷³

Mexico and other states, including the United States, can do more to facilitate the placement of children with relatives who are willing and able to care for them. Many of the children we interviewed had extended family in either or both of Mexico and the United States. For example, Edgar, the 17-year-old profiled at the beginning of this report, has an uncle who is a permanent resident in the United States.³⁷⁴ Enrique J., 17, who left Honduras after gang members repeatedly attacked him and his siblings, has cousins living in Mexico and two aunts who are US permanent residents.³⁷⁵ Similarly, 15-year-old Gabriel R., in a DIF shelter in Tamaulipas when we interviewed him, has an aunt who has permanent residence in the United States.³⁷⁶

At the very least, relatives who have regular immigration status should be considered as possible candidates for placement. Mexico could readily work within its existing legal framework to place unaccompanied and separated children with suitable family members who are in Mexico. To enable placement with family members in the United States, both countries should undertake to amend legislation as necessary and agree on appropriate protocols. For example, the United States could open its Central American Minors Program, currently open only to children who are in El Salvador, Guatemala, and Honduras at the time of application and for the duration of the lengthy processing of the application, and only to those whose parents are in the United States in regular status,³⁷⁷ to children from those countries who have fled to Mexico and have a member of their extended family in the United States.

³⁷² Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 37.

³⁷³ *Ibid.*, p. 37.

³⁷⁴ Human Rights Watch interview with Edgar V., San Pedro Sula, Honduras, June 8, 2015.

³⁷⁵ Human Rights Watch interview with Enrique J., Reynosa, Tamaulipas, June 24, 2015.

³⁷⁶ Human Rights Watch interview with Gabriel R., Reynosa, Tamaulipas, June 24, 2015.

³⁷⁷ See United States Department of State, Bureau of Population, Refugees and Migration, “In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States,” Fact Sheet, November 14, 2014, <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm> (accessed January 29, 2016); “In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM),” <http://www.uscis.gov/CAM> (accessed January 29, 2016). See generally Chapter I, “The Role of the United States” section, “In-Country Refugee Processing for Central American Children” subsection.

In all cases, Mexico and other states, including the United States, should work to ensure that children have safe and legal means for seeking international protection and family reunification, including with extended family.

If family reunification outside of the country of origin is not possible, protection authorities should move to regularize a child's status in Mexico—by granting them permanent residence—in all cases where return is not in the child's best interest, including when they would face a reasonable risk of gang recruitment or other forms of gang-related violence, intra-family violence, or a situation of generalized violence if returned.

Separation of Families on Return

Mexico's Immigration Law also says that “family preservation principles will be favored” in the course of the return procedure to ensure that “family members travel together.”³⁷⁸ Despite this stated commitment to the principle of family unity, Human Rights Watch heard accounts of families being separated in the course of returns to Honduras. Women with children arrive in San Pedro Sula, at the Edén reception center. Adult men are returned to Corinto, on the border with Guatemala, and left to make their own way from there.

When we interviewed Verónica A. in San Pedro Sula in June 2015, she had just been returned to San Pedro Sula with her children. Her husband, mother, and seven members of her extended family were returned separately. “We don't know where the others are. They only sent the three of us on this bus, because the kids are minors,” she said. “The children's father and my mother stayed there. We don't know where they are. We don't know what's happened to them.”³⁷⁹

In another account, Douglas P., a 26-year-old Honduran man who was separated from his wife and child when they were detained in Villahermosa, was removed to Honduras while his wife and child remained in detention. He said that he had not been able to communicate with her except by occasionally shouting across a hallway. When we interviewed him shortly after his deportation, he said that he had no news about his wife, but he assumed she was still being detained in Villahermosa.³⁸⁰

³⁷⁸ Immigration Law, art. 120.

³⁷⁹ Human Rights Watch interview with Verónica A., San Pedro Sula, June 8, 2015.

³⁸⁰ Human Rights Watch interview with Douglas P., El Corinto, Honduras, May 15, 2015.

V. Mexico's Obligations under Domestic and International Law

Mexico's Immigration Law has the objective of regulating the entry and departure of Mexicans and foreigners and the transit and stay of foreigners "in a framework of respect, protection, and with due safeguards for human rights, of contribution to national development, as well as preservation of sovereignty and national security."³⁸¹ Its immigration policy includes as an operating principle "unconditional respect for the human rights of migrants," with special attention to vulnerable groups, including children and adolescents.³⁸² Its general immigration law is complemented by specific legislation on refugee recognition, complementary protection against refoulement, and the rights of children.³⁸³ In addition, the principle that the best interests of the child should be a primary consideration in all matters that affect him or her is a constitutional norm,³⁸⁴ and human rights treaties ratified by Mexico have constitutional status.³⁸⁵

Our interviews and the findings of the United Nations High Commissioner for Refugees (UNHCR) and nongovernmental organizations suggest that the complementary protection provisions intended to benefit vulnerable groups are often not observed. National Institute of Migration (INM) agents too often do not adequately screen children for protection needs, do not inform them of their rights, and respond to requests for information about international protection in ways that discourage them from seeking recognition as refugees. Many children do not receive adequate assistance and support in preparing and presenting their asylum claims, and they face other barriers in access to asylum and other humanitarian relief, as detailed in earlier chapters of this report.³⁸⁶ As a result, they are denied their right to a fair process in the determination of asylum claims.

³⁸¹ Immigration Law, art. 1.

³⁸² *Ibid.*, art. 2. See also *ibid.*, arts. 66-67.

³⁸³ Law on Refugees, Complementary Protection, and Political Asylum; General Law on the Rights of Girls, Boys, and Adolescents, arts. 89-101.

³⁸⁴ Constitución Política de los Estados Unidos Mexicanos, art. 73(XXIX-P), added by *Diario Oficial de la Federación*, October 12, 2011, http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_198_12oct11.pdf (accessed January 29, 2016).

³⁸⁵ Constitución Política de los Estados Unidos Mexicanos, art. 1, as amended, *Diario Oficial de la Federación*, June 10, 2011, http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_194_10jun11.pdf (accessed January 29, 2016).

³⁸⁶ See Chapter II.

International law prohibits arbitrary detention, including the detention of children solely on the basis of their immigration status. Instead, Mexico is under an obligation to provide children with care and accommodation that does not amount to deprivation of liberty. Community-based care is preferable to institutional care. Concerns about abduction by traffickers or smugglers are not enough to warrant detention; in such cases, the state should develop secure measures such as safe houses that do not amount to detention. The detention of children is a significant deterrent to seeking asylum, as described above.³⁸⁷

In addition, Mexico's detention of migrant children who come to the attention of immigration authorities, combined with proactive interventions by INM agents that have the effect of discouraging children from applying for asylum, may amount to constructive refoulement, in violation of international law, in cases where the indirect pressure on individuals is so intense that it leads them to believe that they have no access to the asylum process and no practical option but to return to countries where they face serious risk of persecution or threats to their lives or safety. Returns should only be carried out when they are in the individual child's best interests.

Mexico's System of Refugee Protection

As a matter of law, Mexico recognizes refugees following criteria that essentially match those set forth in the 1951 Refugee Convention and the 1967 Refugee Protocol.³⁸⁸ In addition, Mexican law recognizes refugee status for those who have fled their country of origin because their lives, security, or liberty have been threatened by generalized violence, foreign aggression, internal conflict, mass violations of human rights, or other

³⁸⁷ See Chapter II, "Detention as a Deterrent to Seeking Asylum" section.

³⁸⁸ Mexico recognizes as refugees those who have a well-founded fear of persecution on account of race, religion, nationality, gender, membership of a particular social group, or political opinion, and are out of their country (or are stateless and out of the country of last habitual residence) and cannot return to it by reason of their well-founded fear. Law on Refugees, Complementary Protection, and Political Asylum, art. 13(I). See also *ibid.*, art. 13(III) (allowing claims based on events that have arisen after an individual has left his or her country of origin or last habitual residence). The Law on Refugees and Complementary Protection was enacted in 2011 and amended in 2014 to include "political asylum," a basis of protection separate from the grounds set forth in the 1951 Refugee Convention and its 1967 Protocol and which refers to persecution "for motives or crimes of a political character" or as the result of charges that are politically motivated. *Ibid.*, art. 2(I). The amendments did not alter the provisions referred to in this section or elsewhere in this report.

circumstances that have seriously affected public order,³⁸⁹ grounds that track those identified in the 1984 Cartagena Declaration on Refugees.³⁹⁰

Mexican law also affords the possibility of “complementary protection” where, even though a person does not qualify as a refugee, their life would be threatened or they would be in danger of being subjected to torture or other ill-treatment.³⁹¹ Mexican law specifically prohibits the return of children under the age of 18 when their lives, safety, or liberty are at risk from persecution, generalized violence, or large-scale human rights violations, or where they may be subjected to torture or other ill-treatment.³⁹²

The applicable regulations explicitly provide that unaccompanied children have the right to present applications for recognition as a refugee. Such applications should be considered as a matter of priority.³⁹³

Any government official who becomes aware of an attempt to seek recognition as a refugee must notify the Mexican Commission for Refugee Assistance (COMAR) in writing within 72 hours.³⁹⁴

The INM is not only obligated to receive and forward applications for refugee recognition,³⁹⁵ it is also under a duty to identify possible applicants for recognition as refugees and

³⁸⁹ *Ibid.*, art. 13(II).

³⁹⁰ Cartagena Declaration on Refugees, concl. 3. For guidance on applying the Cartagena refugee definition, see Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration, Expert Roundtable: Interpretation of the Extended Refugee Definition Contained in the 1984 Cartagena Declaration on Refugees, Montevideo, Uruguay, October 15-16, 2013, <http://www.unhcr.org/53bd4doc9.pdf> (accessed January 29, 2016).

³⁹¹ Law on Refugees, Complementary Protection, and Political Asylum, art. 28; Immigration Law, art. 3(XXI).

³⁹² General Law on the Rights of Girls, Boys, and Adolescents, art. 96.

³⁹³ Regulations for the Law on Refugees and Complementary Protection, art. 35.

³⁹⁴ Law on Refugees, Complementary Protection, and Political Asylum, art. 21 (“Cualquier autoridad que tenga conocimiento de la pretensión de un extranjero de solicitar el reconocimiento de la condición de refugiado, deberá dar aviso por escrito y de manera inmediata a la Secretaría.”); Regulations for the Law on Refugees and Complementary Protection, art. 18 (“Conforme a lo establecido en el párrafo tercero del artículo 21 de la Ley, cualquier autoridad que tenga conocimiento de la pretensión de un extranjero de solicitar el reconocimiento de la condición de refugiado, deberá notificarlo por escrito a la Coordinación en un término no mayor a 72 horas, a efecto de que ésta tome las medidas necesarias para iniciar el procedimiento correspondiente.”). However, under the Regulations for the General Law on Girls, Boys, and Adolescents, DIF must alert the INM and COMAR within 48 hours, rather than 72, when it has reason to believe that a child may have a claim for refugee recognition or complementary protection. See Regulations for the General Law on Girls, Boys, and Adolescents, art. 109.

³⁹⁵ Regulations for the Law on Refugees and Complementary Protection, arts. 16(II), 17.

inform them of their right to seek recognition.³⁹⁶ It should then work with COMAR to ensure that each applicant receives an acknowledgement that the application is in process.³⁹⁷ DIF is under similar obligations.³⁹⁸

The INM should also refer detained applicants who are in situations of vulnerability to specialized institutions.³⁹⁹ In theory, this means that unaccompanied children under the age of 18 or families traveling with children should be transferred from immigration detention centers to National System for Integral Family Development (DIF) shelters. “The child who applies will be channeled to a shelter during the process,” a state DIF official told Human Rights Watch.⁴⁰⁰ In practice, as discussed more fully in the chapter on detention, many unaccompanied children and families with children of all ages remain in immigration detention until their applications are resolved or they accept removal to their countries of origin.

Applications must be submitted within 30 business days.⁴⁰¹ The applicable regulations allow COMAR to accept applications after the 30-day period in exceptional circumstances, when the applicant is unable to submit the claim for reasons out of his or her control.⁴⁰²

Applications may be made verbally⁴⁰³ and in any language.⁴⁰⁴ Applicants have the right to “clear, timely, and free information about the procedures for recognition of refugee status.”⁴⁰⁵ Those who do not speak Spanish have the right to a translator or interpreter.⁴⁰⁶

³⁹⁶ *Ibid.*, art. 16(I).

³⁹⁷ *Ibid.*, art. 16(III).

³⁹⁸ Regulations for the General Law on Girls, Boys, and Adolescents, art. 109.

³⁹⁹ Regulations for the Law on Refugees and Complementary Protection, art. 16(V).

⁴⁰⁰ Human Rights Watch telephone interview with state DIF official, May 15, 2015. This official’s name and place of work have been withheld at her request because she is not authorized to speak on the record.

⁴⁰¹ Law on Refugees, Complementary Protection, and Political Asylum, art. 18 (deadline for application is 30 business days from the business day following entry into the country or from the time it becomes “materially possible” to submit a claim).

⁴⁰² Regulations for the Law on Refugees and Complementary Protection, art. 19 (“Para efectos del cumplimiento del artículo 18 de la Ley, la Coordinación de manera excepcional dará trámite a las solicitudes presentadas fuera del plazo previsto, cuando el extranjero acredite que por causas ajenas a su voluntad no le fue materialmente posible presentarla oportunamente.”).

⁴⁰³ Law on Refugees, Complementary Protection, and Political Asylum, art. 18.

⁴⁰⁴ Regulations for the Law on Refugees and Complementary Protection, art. 17(II).

⁴⁰⁵ Law on Refugees, Complementary Protection, and Political Asylum, art. 19. See also Immigration Law, art. 13(III).

⁴⁰⁶ Immigration Law, art. 14. The General Law on the Rights of Girls, Boys, and Adolescents, which took effect on December 5, 2014, clarifies that all children under 18 have the right to the assistance of a translator or interpreter without charge. General Law on the Rights of Girls, Boys, and Adolescents, art. 92(V).

Unaccompanied and separated migrant children “who require services for their protection” should receive additional assistance.⁴⁰⁷ Under the General Law on the Rights of Girls, Boys, and Adolescents, which took effect in December 2014, all children under the age of 18 have the right to legal assistance and to communicate freely with their lawyers.⁴⁰⁸

Once an application is submitted, no government official may give information to or notify the applicant’s consular authorities without the applicant’s express consent.⁴⁰⁹ While the application is pending, all immigration proceedings against the applicant are suspended, and the applicant may not be returned to his or her country of origin.⁴¹⁰

Applicants are interviewed by COMAR, with the assistance of an interpreter if necessary.⁴¹¹ All accompanying applicants should have the opportunity to be interviewed individually for the purpose of determining if they have a separate claim.⁴¹²

COMAR makes determinations on applications for recognition as a refugee. It also makes grants of complementary protection.⁴¹³ It has 45 business days, extendable by another 45 days, to issue a determination.⁴¹⁴ Applicants should receive notice of determinations in writing within 10 days after they are made.⁴¹⁵

Applications for complementary protection are considered in the same process as applications for recognition as a refugee: an applicant who is unsuccessful in obtaining

⁴⁰⁷ Immigration Law, art. 29(I).

⁴⁰⁸ General Law on the Rights of Girls, Boys, and Adolescents, art. 92(VII). This provision does not specify that children have the right to free legal assistance. Compare *ibid.*, art. 92(VII) (“[t]he right to be assisted by a lawyer”) with art. 92(V) (“the right to be assisted free of charge by a translator and/or an interpreter”).

⁴⁰⁹ Law on Refugees, Complementary Protection, and Political Asylum, art. 21; Regulations for the Law on Refugees and Complementary Protection, arts. 22, 28.

⁴¹⁰ Law on Refugees, Complementary Protection, and Political Asylum, art. 7 (“En caso de haberse iniciado procedimiento migratorio por ingreso irregular al territorio nacional a un solicitante, dicho procedimiento se suspenderá hasta que se emita una resolución sobre el reconocimiento de la condición de refugiado.”); Regulations for the Law on Refugees and Complementary Protection, art. 22 (“Una vez presentada la solicitud, el solicitante no podrá ser devuelto a su país de origen.”).

⁴¹¹ Regulations for the Law on Refugees and Complementary Protection, arts. 29-30.

⁴¹² *Ibid.*, art. 31.

⁴¹³ *Ibid.*, arts. 15(II), (III), (V); 48-50.

⁴¹⁴ Law on Refugees, Complementary Protection, and Political Asylum, art. 24; Regulations for the Law on Refugees and Complementary Protection, arts. 45, 47.

⁴¹⁵ Regulations for the Law on Refugees and Complementary Protection, art. 45.

recognition as a refugee is then evaluated for complementary protection before a final determination is made.⁴¹⁶

Applicants who do not receive recognition as refugees or grants of complementary protection may appeal COMAR's determination within 15 business days.⁴¹⁷ The appeal is heard administratively. "In the majority of cases, the decision is confirmed on administrative appeal," said Diana Martínez of the nongovernmental organization Sin Fronteras.⁴¹⁸

Applicants whose administrative appeals are unsuccessful may be able to seek judicial review through *amparo*, a legal procedure to secure protection of constitutional and other rights,⁴¹⁹ or under a federal law allowing review of administrative acts.⁴²⁰

Recognized refugees and those who receive complementary protection are granted permanent residence.⁴²¹

Children's Right to a Fair Process in the Determination of Asylum Claims

As with adults, children have the right to have access to asylum procedures regardless of their age and regardless of whether they are unaccompanied or with other family members.⁴²² Realization of this right requires that children be referred to asylum procedures when evidence or the totality of circumstances indicates reasonable grounds for concern that a child may be in need of international protection, even if the child is unable to explicitly articulate a concrete fear.⁴²³

⁴¹⁶ Law on Refugees, Complementary Protection, and Political Asylum, art. 29; Regulations for the Law on Refugees and Complementary Protection, art. 46.

⁴¹⁷ *Ibid.*, art. 59.

⁴¹⁸ Human Rights Watch interview with Sin Fronteras, April 29, 2015.

⁴¹⁹ See Constitución Política de los Estados Unidos Mexicanos, arts. 103, 107.

⁴²⁰ See Ley Federal de Procedimiento Administrativo [Federal Law of Administrative Procedure], *Diario Oficial de la Federación*, August 4, 1994, as amended, *Diario Oficial de la Federación*, April 9, 2012.

⁴²¹ Immigration Act, art. 54(l); Regulations for the Law on Refugees and Complementary Protection, art. 87.

⁴²² Committee on the Rights of the Child, General Comment No. 6, paras. 66, 64.

⁴²³ *Ibid.*, para. 66.

Child-Specific Asylum Claims

As UNHCR notes, children may have claims for asylum that are based on “child-specific forms and manifestations of persecution.”⁴²⁴

As one example, recruitment by gangs, an activity that amounts to hazardous labor⁴²⁵ and frequently requires children to engage in criminal activity, may be a basis for recognition as a refugee. The same is true for gang-related violence. UNHCR observes that “[y]oung people, in particular, who live in communities with a pervasive and powerful gang presence but who seek to resist gangs may constitute a particular social group for the purposes of the 1951 Convention.”⁴²⁶

Those who resist, or are seen to resist, gangs include not just those who refuse recruitment but also people who refuse sexual demands by gang members; business owners and other individuals who are unable or unwilling to meet extortion or other demands for money or services; witnesses to crimes committed by gangs; former and current gang members; ethnic minorities; lesbian, gay, bisexual, and transgender persons; and others who are seen as not conforming to gangs’ practices; and the family members of anybody falling into one of these categories.⁴²⁷

UNHCR also notes that “people fleeing gang-related violence may have a well-founded fear of persecution on account of their political opinion, especially where criminal and political activities overlap.”⁴²⁸

Intra-family violence is another example of child-specific abuse that may give rise to a claim for recognition as a refugee. Children have the right to protection from all forms of physical or mental violence, abuse, neglect, and exploitation.⁴²⁹ In some cases, as UNHCR

⁴²⁴ UNHCR, Guidelines on Child Asylum Claims, para. 3. See also Committee on the Rights of the Child, General Comment No. 6, para. 74 (noting persecution of family members, underage recruitment into military service, trafficking of children for sexual exploitation, other forms of sexual exploitation, and subjection to female genital mutilation as other child-specific forms and manifestations of persecution).

⁴²⁵ See, for example, International Labour Organization, “The Worst Forms of Child Labour,” undated, <http://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm> (accessed January 29, 2016).

⁴²⁶ UNHCR, Guidance Note on Refugee Claims relating to Victims of Organized Gangs, para. 65.

⁴²⁷ *Ibid.*, paras. 12-17.

⁴²⁸ *Ibid.*, para. 65.

⁴²⁹ Convention on the Rights of the Child, art. 19.

observes, “[d]omestic violence may also come within the scope of torture and other cruel, inhuman or degrading treatment or punishment.”⁴³⁰ A state’s failure to afford protection from parental abuse may give rise to an asylum claim.⁴³¹

Deprivation of the right to education⁴³² or other economic, social, and cultural rights may also give rise to an asylum claim from children. As UNHCR has noted, “Children’s socio-economic needs are often more compelling than those of adults, particularly due to their dependency on adults and unique developmental needs. Deprivation of economic, social and cultural rights, thus, may be as relevant to the assessment of a child’s claim as that of civil and political rights.”⁴³³

The Requirement to Protect Children’s Best Interests

The Committee on the Rights of the Child calls for the principle of best interests to be “respected during all stages of the displacement cycle. At any of these stages, a best interest determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.”⁴³⁴ All assessments should be “carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.”⁴³⁵

Initial assessments should record, among other details:

- The reasons the child is separated or unaccompanied.
- “Assessment of particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma.”
- “All available information to determine the potential existence of international protection needs.”⁴³⁶

⁴³⁰ UNHCR, Guidelines on Child Asylum Claims, para. 33.

⁴³¹ See *ibid.*, paras. 18, 32-33.

⁴³² Convention on the Rights of the Child, arts. 28-29; International Covenant on Economic, Social and Cultural Rights, opened for signature December 19, 1966, 993 U.N.T.S. 3 (entered into force January 3, 1976), art. 13.

⁴³³ UNHCR, Guidelines on Child Asylum Claims, para. 14. See also Committee on Economic, Social and Cultural Rights, General Comment No. 11: Plans of Action for Primary Education, UN Doc. E/1992/23 (May 10, 1999), para. 4 (“The lack of educational opportunities for children often reinforces their subjection to various other human rights violations.”).

⁴³⁴ Committee on the Rights of the Child, General Comment No. 6, para. 19.

⁴³⁵ *Ibid.*, para. 20.

⁴³⁶ *Ibid.*, para. 31(iii).

Mexico's constitution provides that the principle of the best interest of the child shall be reflected "[i]n all decisions and actions taken by the State,"⁴³⁷ and Mexican law requires that decisions taken in immigration proceedings involving children reflect the children's best interests.⁴³⁸

The Right to Legal and Other Assistance

Unaccompanied and separated children should have guardians appointed "as expeditiously as possible," a step the Committee on the Rights of the Child regards as "a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child."⁴³⁹ When a separated or unaccompanied child is placed in asylum proceedings or any other administrative or judicial proceedings, or whenever a child is the principal applicant in an asylum procedure, the child should also have a legal representative appointed.⁴⁴⁰ The guardian should be "an adult who is familiar with the child's background and who is competent and able to represent his or her best interests."⁴⁴¹ In cases where a legal representative is also required, the legal representative should be provided free of charge.⁴⁴²

⁴³⁷ Constitución Política de los Estados Unidos Mexicanos, art. 4.

⁴³⁸ See Immigration Law, art. 11 ("In proceedings applicable to migrant children, their age shall be taken into account, and their best interests shall be prioritized."); Law on Refugees, Complementary Protection, and Political Asylum, arts. 5(III) (principle of child's best interest to be applied in the application of the law), 9 (child's best interest to be protected in recognition of refugees), and 20 (requiring a best interest determination in the case of an applicant for refugee recognition who is a girl, boy, or adolescent); General Law on the Rights of Girls, Boys, and Adolescents, arts. 92(IX) (migrant children have the right to have immigration decisions that take into account their best interests), 93 (requiring that family unity or family reunification prevail over other considerations as long as not inconsistent with the best interests of the child), and 97 ("Any decision on the return of a girl, boy, or adolescent to the country of origin or a safe third country may only be based on the requirements of her or his best interests."). See also Regulations for the Law on Refugees, art. 35 (providing that child applicants for refugee recognition shall receive a best interest determination, to be conducted by specially trained officials), 36 (setting forth considerations to be taken into account in best interest determinations of unaccompanied and separated children); Regulations for the Immigration Law, arts. 169(I) ("the best interest of the unaccompanied foreign migrant girl, boy, or adolescent shall prevail in all decisions relative to her or his treatment on the part of the immigration authority for the resolution of her or his immigration situation"), 172 (requiring the INM to evaluate best interests in all cases of unaccompanied and separated migrant children), and 173-75 (setting forth steps to be taken in determining best interests), 177 (providing that INM and COMAR share responsibility for determining best interests in a case where an unaccompanied or separated child is an applicant for recognition as a refugee). See generally *Menores de dieciocho años: El análisis de una regulación respecto de ellos debe hacerse atendido al interés superior y a la prioridad de la infancia*, Tesis Num. XLV/2008 (Supreme Court of Justice (plenary) May 12, 2008), <https://www.scjn.gob.mx/pleno/SecretariaGeneralDeAcuerdos1/TesisAisladasdelPleno/2008/TA45-2008.pdf> (accessed January 29, 2016).

⁴³⁹ *Ibid.*, para. 21.

⁴⁴⁰ *Ibid.*, paras. 21, 33-34, 36; UNHCR Detention Guidelines, para. 56; UNHCR, Guidelines on Child Asylum Claims, para. 69.

⁴⁴¹ Committee on the Rights of the Child, General Comment No. 6, para. 69.

⁴⁴² *Ibid.*

Similarly, the Inter-Agency Guiding Principles on Unaccompanied and Separated Children call for “the appointment of a legal representative as well as a guardian to promote a decision that will be in the child’s best interests.”⁴⁴³

The Right of Children to Express Their Views and Participate in a Meaningful Way

Children have the right to be heard “in any judicial and administrative proceedings affecting the child”⁴⁴⁴ and the right to express their views freely “in all matters affecting the child.”⁴⁴⁵ The child’s right to express views freely requires full information, that is, “all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin.”⁴⁴⁶

Adjudicators must take into account and compensate for the fact that children may not be able to express fear and other elements of their claim with the precision that might be expected of an adult. UNHCR’s guidance on child asylum claims states:

It may be the case that a child is unable to express fear when this would be expected or, conversely, exaggerates the fear. In such circumstances, decision makers must make an objective assessment of the risk the child would face, regardless of that child’s fear. . . . When the parent or caregiver of a child has a well-founded fear of persecution for their child, it may be assumed that the child has such a fear, even if s/he does not express or feel that fear.⁴⁴⁷

Fulfillment of this right also requires that adjudicators take into account the reality that “[c]hildren cannot be expected to provide adult-like accounts of their experiences.”⁴⁴⁸ As UNHCR notes:

⁴⁴³ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 61.

⁴⁴⁴ Convention on the Rights of the Child, art. 12(2).

⁴⁴⁵ Ibid., art. 12(1).

⁴⁴⁶ Committee on the Rights of the Child, General Comment No. 6, para. 25.

⁴⁴⁷ UNHCR, Guidelines on Child Asylum Claims, para. 11.

⁴⁴⁸ Ibid., para. 72.

They may have difficulty articulating their fear for a range of reasons, including trauma, parental instructions, lack of education, fear of State authorities or persons in positions of power, use of ready-made testimony by smugglers, or fear of reprisals. They may be too young or immature to be able to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult. Some children may omit or distort vital information or be unable to differentiate the imagined from reality. They may also experience difficulty relating to abstract notions, such as time or distance. Thus, what might constitute a lie in the case of an adult might not necessarily be a lie in the case of a child.⁴⁴⁹

Understanding these and other potential characteristics of children’s testimony is crucial. UNHCR concludes, “It is, therefore, essential that examiners have the necessary training and skills to be able to evaluate accurately the reliability and significance of the child’s account.”⁴⁵⁰ The Committee on the Rights of the Child similarly calls for adjudicators and examiners to receive appropriate training.⁴⁵¹ In particular, as the Separated Children in Europe Programme’s Statement of Good Practice recommends, “Immigration or border police staff and other relevant actors should receive training in conducting child-friendly interviews.”⁴⁵²

The procedures used should allow children to participate meaningfully. As the Separated Children in Europe Programme notes, “[s]eparated children must not be fitted into procedures designed for adults and decision making bodies should design procedures that are appropriate to the needs of children and their levels of understanding.”⁴⁵³

The Separated Children in Europe Programme offers the following useful guidance for adapting proceedings to the age, maturity, and specific circumstances of each child:

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Committee on the Rights of the Child, General Comment No. 6, para. 75. See also *ibid.*, paras. 95-97.

⁴⁵² Separated Children in Europe Programme, Statement of Good Practice, Part B10.

⁴⁵³ *Ibid.*, Part C1.3.

- “Where interviews are required they must be carried out in a child-friendly manner with breaks and in a non-threatening atmosphere, by officers trained in interviewing children.”⁴⁵⁴
- “Separated children should be able to provide testimony through a number of different means. These include oral testimony, drawings and writings, audio and video recorded interviews with independent experts and testimony via video-link.”⁴⁵⁵
- “It is desirable, particularly with younger children, children with a disability or those suffering from psychological trauma, that an independent expert carries out an assessment of the child’s ability to articulate their need for protection or a well-founded fear of persecution and also to identify any difficulties a child may have in recounting painful incidents or disclosing sensitive information.”⁴⁵⁶

Finally, children should be informed of decisions in person, in the presence of their guardian or representative, in a language and manner they understand, and in a supportive and non-threatening environment.⁴⁵⁷

Other Child-Specific Requirements of Refugee Status Determination Procedures

The refugee status determination procedures used in cases involving children should allow the refugee definition to be “interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children,” the Committee on the Rights of the Child has urged.⁴⁵⁸

UNHCR offers the following guidance for the standards employed in such refugee status determinations:

While children may face similar or identical forms of harm as adults, they may experience them differently. Actions or threats that might not reach the

⁴⁵⁴ Ibid., Part D11.2.

⁴⁵⁵ Ibid., Part D11.2.

⁴⁵⁶ Ibid., Part D11.3.

⁴⁵⁷ UNHCR, Guidelines on Child Asylum Claims, para. 77.

⁴⁵⁸ Committee on the Rights of the Child, General Comment No. 6, para. 74.

threshold of persecution in the case of an adult may amount to persecution in the case of a child because of the mere fact that s/he is a child.⁴⁵⁹

Concretely, as UNHCR notes, “[t]he principle of best interests of the child requires that the harm be assessed from the child’s perspective. . . . Ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child.”⁴⁶⁰

Children should be given the benefit of the doubt in assessing their accounts.⁴⁶¹

The Prohibition on Immigration Detention of Children

Under international standards, the detention of any asylum seeker, whether a child or an adult, should normally be avoided and should only be a measure of last resort.⁴⁶²

Mandatory and indefinite detention of children violates the principle that the detention of children should be used only as a matter of last resort and for the shortest appropriate period of time.⁴⁶³

Moreover, children should not be detained solely because of their own or their parents’ immigration status. The United Nations General Assembly has joined the call to states not to detain migrant children solely because they or their parents have breached immigration laws.⁴⁶⁴ The UN Committee on the Rights of the Child, which oversees states’ compliance with the Convention on the Rights of the Child, has concluded that “[d]etention cannot be

⁴⁵⁹ UNHCR, Guidelines on Child Asylum Claims, para. 15.

⁴⁶⁰ *Ibid.*, para. 12.

⁴⁶¹ See Committee on the Rights of the Child, General Comment No. 6, para. 71 (“the child should be given the ‘benefit of the doubt,’ should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision.”); UNHCR, Guidelines on Child Asylum Claims, para. 73 (calling for a “liberal application of the benefit of the doubt”); Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 61 (“the child should be given the benefit of the doubt should there be some concern regarding the credibility of his or her story”); Separated Children in Europe Programme, Statement of Good Practice, Part D12.2 (“A liberal application of the benefit of doubt should be applied when making determinations on the international protection needs of separated children.”).

⁴⁶² UNHCR Detention Guidelines, para. 2. The Inter-American Commission on Human Rights has concluded that the American Convention on Human Rights requires that immigration detention be used only in exceptional circumstances; there should be a presumption in favor of liberty, not of detention. Comisión Interamericana de Derechos Humanos, Informe de Admisibilidad y Fondo No. 51/01, Caso 9903, Rafael Ferrer-Mazorra y otros (Los Cubanos del Mariel) (Estados Unidos de América), April 4, 2001, paras. 216-219.

⁴⁶³ Convention on the Rights of the Child, art. 37(c).

⁴⁶⁴ UN General Assembly, Third Committee, Migrant Children and Adolescents, UN Doc. A/C.3/69/L.52/Rev.1 (November 19, 2014), para. 3.

justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof,”⁴⁶⁵ and it urges states to “expeditiously and completely cease the detention of children on the basis of their immigration status.”⁴⁶⁶ The Working Group on Arbitrary Detention has observed, “Given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of unaccompanied minors would comply with the requirements of article 37(b), clause 2, of the Convention on the Rights of the Child, according to which detention can only be used as a last resort.”⁴⁶⁷ UNHCR notes that children “should in principle not be detained at all.”⁴⁶⁸ The UN special rapporteur on torture has noted that immigration detention of children puts them at risk of cruel, inhuman, or degrading treatment or punishment.⁴⁶⁹ And, as the UN secretary-general confirmed in 2013, “Detention of migrant children constitutes a violation of child rights.”⁴⁷⁰

In the Americas, the Inter-American Court of Human Rights has found that the detention of children solely on the basis of their migration status exceeds the requirement of necessity, is contrary to children’s best interests, and is therefore incompatible with regional human rights treaties.⁴⁷¹ The Inter-American Commission on Human Rights concluded after its 2015 visits to Colombia and Venezuela that even short-term immigration detention of children violates children’s rights and rises to the level of cruel, inhuman, and degrading treatment.⁴⁷²

⁴⁶⁵ Committee on the Rights of the Child, General Comment No. 6, para. 61.

⁴⁶⁶ Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration (2012), para. 78. The Committee’s General Comment on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin also notes:

Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.

Committee on the Rights of the Child, General Comment No. 6, para. 61. Similarly, the Inter-Agency Guiding Principles on Unaccompanied and Separated Children observe, “Refugee or asylum-seeking children should not be detained.” Inter-Agency Principles on Unaccompanied and Separated Children, p. 60.

⁴⁶⁷ Human Rights Council, Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/13/30 (January 18, 2010), para. 60.

⁴⁶⁸ UNHCR Detention Guidelines, para. 51.

⁴⁶⁹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on Torture, UN Doc. A/HRC/28/68 (March 5, 2015), para. 80.

⁴⁷⁰ UN General Assembly, International Migration and Development: Report of the Secretary General, UN Doc. A/68/190 (July 25, 2014), para. 75.

⁴⁷¹ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 of August 19, 2014 (Inter-Am. Ct. H.R.), paras. 154-60.

⁴⁷² “CIDH culmina su visita a la frontera de Colombia con Venezuela,” September 28, 2015, <http://www.oas.org/es/cidh/prensa/comunicados/2015/109A.asp> (accessed January 29, 2016).

Similarly, within Europe, the European Court of Human Rights has concluded that even short-term detention of migrant children violates the prohibition on torture and other ill-treatment,⁴⁷³ and the Council of Europe’s Parliamentary Assembly concluded in 2011 that “no detention of unaccompanied children on migration grounds should be allowed.”⁴⁷⁴

Where, in exceptional circumstances, detention is used, “[a]ll efforts, including prioritisation of asylum processing, should be made to allow for the immediate release of children from detention and their placement in other forms of appropriate accommodation.”⁴⁷⁵

Concerns about abduction by traffickers or smugglers are not enough to warrant detention. As the Separated Children in Europe Programme notes:

Separated trafficked children must not be held in detention facilities in order to protect them from those who have trafficked or who wish to exploit them. Alternative secure measures such as safe houses should be developed in conjunction with child welfare authorities. In order to establish safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purposes of sexual or other forms of exploitation.⁴⁷⁶

The detention of children solely because of their own or their parents’ immigration status constitutes arbitrary detention.

⁴⁷³ *Popov v. France*, App. Nos. 39472/07 and 39474/07 (Eur. Ct. H.R. January 19, 2012); *Rahimi v. Greece*, App. No. 8687/08 (Eur. Ct. H.R. April 5, 2011); *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, App. No. 13178/03 (Eur. Ct. H.R. October 12, 2006).

⁴⁷⁴ Parliamentary Assembly, Council of Europe, “Unaccompanied Children in Europe: Issues of Arrival, Stay and Return,” Resolution 1810 (2011), para. 5.9. In addition, the Separated Children in Europe Programme’s Statement of Good Practice states that separated children “must never be detained for reasons of immigration policy and practice.” Separated Children in Europe Programme, Statement of Good Practice, Part D1. See also *ibid.*, Part D6.1 (“Separated children must never be detained for reasons related to their immigration status or illegal entry. This includes, whether temporary or otherwise, detention at the border or in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people. Judicial oversight must be exercised where it is deemed in a child’s best interests to be placed in a closed centre.”).

⁴⁷⁵ UNHCR Detention Guidelines, para. 57. See also Committee on the Rights of the Child, General Comment No. 6, para. 61 (“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”).

⁴⁷⁶ Separated Children in Europe Programme, Statement of Good Practice, Part D8.1.3.

The Obligation to Provide Unaccompanied and Separated Children with Care and Accommodation

Children who have been deprived of their family environment have the right to special protection and assistance provided by the state.⁴⁷⁷ In addition, children who are seeking recognition as refugees or who are refugees have the right to receive appropriate protection and humanitarian assistance.⁴⁷⁸

In providing assistance to unaccompanied and separated children, “Child protection must be the overriding factor,” the Inter-Agency Guiding Principles on Unaccompanied and Separated Children stress. “All children need security and physical and emotional care in a setting that encourages their general development.”⁴⁷⁹ And as the Separated Children in Europe Programme’s Statement of Good Practice notes:

Separated children must be provided with protection and assistance to ensure that they are adequately clothed, fed and accommodated and that their physical, mental, spiritual and emotional health needs are met. Separated children must be given opportunities to develop, learn and thrive and they must be supported and encouraged to achieve their full potential.⁴⁸⁰

With regard to accommodation, the Inter-Agency Guiding Principles observe, in particular, that “community-based care is preferable to institutional care”⁴⁸¹

The Committee on the Rights of the Child calls on states to observe the following parameters, among others, in making arrangements for unaccompanied and separated children’s care and accommodation:

⁴⁷⁷ Convention on the Rights of the Child, art. 20(1).

⁴⁷⁸ *Ibid.*, art. 22(1).

⁴⁷⁹ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 42.

⁴⁸⁰ Separated Children in Europe Programme, Statement of Good Practice, Part B2.

⁴⁸¹ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 43. Similarly, the Separated Children in Europe Programme’s Statement of Good Practice notes the need for “suitable care placements as soon as possible after arrival or identification,” with a preference for placement within a family if possible or, for those over age 16, “appropriate residential placements.” Separated Children in Europe Programme, Statement of Good Practice, Part D8.1.1.

- Limit changes in residence only when the change is in the best interests of the child, in order to ensure continuity of care.
- Keep siblings together.
- Provide regular supervision and assessment by qualified persons.
- Keep children informed of care arrangements made for them and take their views into account in making those arrangements.⁴⁸²

When unaccompanied and separated children are accommodated in institutions, the Inter-Agency Guiding Principles spell out additional important elements to ensure that they benefit from a safe, supportive environment:

- “Children in institutions should enjoy the same civil and political rights as the rest of the child population. Monitoring should take place to ensure that these rights are respected.”⁴⁸³
- “It must be made clear that care will be provided for a short period while reunification or alternative community-based care is being sought.”⁴⁸⁴
- “Centres should be small, temporary and organized around the needs of the child. Where possible they should be organized in small family-like units. Siblings must be kept together and, where appropriate, friends and those from the same geographical areas or community.”⁴⁸⁵
- “The centre must be integrated into the local community as closely as possible and should liaise with the local authorities where relevant.”⁴⁸⁶
- “The atmosphere should be stimulating, with a structured day including periods of education, recreation and rest, and household chores; the children should be taught appropriate life skills to enable them to survive in wider society.”⁴⁸⁷
- “Access for separated children, including refugee children, to education including vocational training should be promoted and monitored.”⁴⁸⁸

⁴⁸² Committee on the Rights of the Child, General Comment No. 6, para. 40.

⁴⁸³ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 46.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid., pp. 46-47.

⁴⁸⁸ Ibid., p. 49.

- “For children who cannot be reunited with their families, it is important to promote community-based care that builds on local culture and provides continuity in learning, socialization and development.”⁴⁸⁹

As noted in the previous section, children should not as a general rule be deprived of their liberty, and never solely because of their migration status or the fact that they are separated or unaccompanied.⁴⁹⁰ If, in exceptional circumstances, children are detained, “the underlying approach to such a programme should be ‘care’ and not ‘detention.’”⁴⁹¹ They must be treated with humanity,⁴⁹² and they must be separated from adults unless separation is not in the child’s best interests, for example in order to keep families together.⁴⁹³ At a minimum, detention facilities should afford children the following:

- Access to culturally appropriate community resources.⁴⁹⁴
- Prompt access to legal and other appropriate assistance.⁴⁹⁵
- Opportunities to receive regular visits from friends and relatives as well as religious, social, and legal counsel.⁴⁹⁶
- Appropriate medical treatment and psychological counselling.⁴⁹⁷
- Access to education,⁴⁹⁸ “which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release.”⁴⁹⁹

⁴⁸⁹ Ibid., p. 50.

⁴⁹⁰ See “The Prohibition on Immigration Detention of Children” section, above.

⁴⁹¹ Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁴⁹² Convention on the Rights of the Child, art. 37(c); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 31.

⁴⁹³ Convention on the Rights of the Child, art. 37(c); Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁴⁹⁴ Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁴⁹⁵ Convention on the Rights of the Child, art. 37(d); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, princs. 17 and 18.

⁴⁹⁶ UN Rules for the Protection of Juveniles Deprived of their Liberty, rules 59-62; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, princ. 19; Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁴⁹⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, rule 49-55; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, princ. 24; Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁴⁹⁸ International Covenant on Economic, Social and Cultural Rights, art. 13; Convention on the Rights of the Child, art. 28; UN Rules for the Protection of Juveniles Deprived of Their Liberty, rule 38.

⁴⁹⁹ Committee on the Rights of the Child, General Comment No. 6, para. 63. See also UN Rules for the Protection of Juveniles Deprived of Their Liberty, rule 40; UNHCR Detention Guidelines, para. 56.

- Opportunities for recreation and play,⁵⁰⁰ which are “essential to a child’s mental development and will alleviate stress and trauma,” UNHCR’s Detention Guidelines note.⁵⁰¹

The Prohibition on Refoulement

The principle of nonrefoulement prohibits states from transferring anyone, directly or indirectly, to a place where she or he would have a well-founded fear of persecution or would face a risk of torture or other cruel, inhuman or degrading treatment or punishment. Mexico is obliged to respect the principle of nonrefoulement through its obligations under the Refugee Convention,⁵⁰² the Convention against Torture,⁵⁰³ the International Covenant on Civil and Political Rights,⁵⁰⁴ the Convention on the Rights of the Child,⁵⁰⁵ the American Convention,⁵⁰⁶ and customary international law.⁵⁰⁷

⁵⁰⁰ UN Rules for the Protection of Juveniles Deprived of their Liberty, rules 32 and 47; Committee on the Rights of the Child, General Comment No. 6, para. 63.

⁵⁰¹ UNHCR Detention Guidelines, para. 56.

⁵⁰² Refugee Convention, art. 33.

⁵⁰³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987, and ratified by Mexico January 23, 1986), art. 3.

⁵⁰⁴ International Covenant on Civil and Political Rights, opened for signature December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976 and acceded to by Mexico March 23, 1981), art 7; Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), UN Doc. HRI/GEN/1/Rev.7 (1992), para. 9 (“States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”)

⁵⁰⁵ Convention on the Rights of the Child, arts. 3(1) (best interests of the child), 6 (right to life and survival), and 37 (rights to liberty and freedom from torture). See also Committee on the Rights of the Child, General Comment No. 6, para. 27.

⁵⁰⁶ American Convention on Human Rights, adopted November 22, 1969, O.A.S.T.S. No. 36 (entered into force July 18, 1978, and ratified by Mexico March 2, 1981), art. 22(8) (“In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.”)

⁵⁰⁷ Advisory Opinion OC-21/14, para. 211 (concluding that the principle of nonrefoulement constitutes a norm of customary international law). In fact, the 1984 Cartagena Declaration and the 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America recognize the principle of nonrefoulement as a *jus cogens* norm. See Cartagena Declaration, Part III, para. 5; Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, 16 November 2004. For a discussion of states’ nonrefoulement obligations under customary international law, see UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15. See also Conclusion No. 6 (XXVIII) *Non-Refoulement*, ExCom, UNHCR, 28th Session, 1977, para. (a). For an analysis of the principle as a *jus cogens* norm, see Jean Allain, “The *Jus Cogens* Nature of *Non-Refoulement*,” *International Journal of Refugee Law*, vol. 13 (2001), pp. 533-558.

The prohibition on refoulement bars constructive as well as direct state action that results in an individual's return to risk. As a result, states may not indirectly force individuals back to countries where they are likely to face persecution or threats to their lives and safety.⁵⁰⁸

The Committee on the Rights of the Child has determined that the nonrefoulement obligation under the Convention on the Rights of the Child is a broad one:

States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.⁵⁰⁹

This means that “[r]eturn to the country of origin is not an option if it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental human rights of the child,” the committee explains.⁵¹⁰ The obligation to refrain from refoulement includes situations where the risk of harm “originate[s] from non-State actors.”⁵¹¹

Moreover, as the International Commission of Jurists has observed, the protection afforded by the principle of nonrefoulement against threats to life or freedom “is also broader than, and includes, the refugee definition. It has, indeed, been read as encompassing circumstances of generalised violence which pose a threat to the life or freedom of the person but which do not give rise to persecution.”⁵¹²

The Best Interests Principle as a Constraint on the Return of Children

Read together with the best interests principle and other children's rights protections, the principle of nonrefoulement requires, in the words of the Inter-American Court of Human

⁵⁰⁸ See, for example, *M.S. v. Belgium*, App. No. 50012/08 (Eur. Ct. H.R. January 31, 2012).

⁵⁰⁹ Committee on the Rights of the Child, General Comment No. 6, para. 27. See generally Alice Farmer, “A Commentary on the Committee of the Rights of the Child’s Definition of Non-Refoulement for Children: Broad Protection for Fundamental Rights,” *Fordham Law Review*, vol. 80 (2011), pp. 39-48.

⁵¹⁰ Committee on the Rights of the Child, General Comment No. 6, para. 84.

⁵¹¹ *Ibid.*, para. 27.

⁵¹² Massimo Frigo, *Migration and Human Rights Law*, Practitioners’ Guide No. 6, (Geneva: International Commission of Jurists, 2011), p. 97.

Rights, that “any decision about [children]’s return to their country of origin or to a safe third country may only be based on their best interests, bearing in mind that the risk of their rights being violated may be manifested in specific and particular ways given their age.”⁵¹³

In similar terms, the Committee on the Rights of the Child has stated, “Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child.”⁵¹⁴ The committee further observes, “Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a ‘reasonable risk’ that such a return would lead to the violation of fundamental human rights of the child.”⁵¹⁵ In similar terms, the Human Rights Committee has found that the failure to consider a child’s best interest as part of a decision about the child’s return to his or her home country violates the child’s right to protection.⁵¹⁶

Applying this principle in practice requires states to look beyond the rigid constraints of their immigration laws. As UNHCR observes, “Overall an ethic of care—and not enforcement—needs to govern interactions with asylum-seeking children.”⁵¹⁷

The Separated Children in Europe Programme suggests:

A separated child must never be returned or resettled simply because they do not have a legal right to remain in the host country or because they fit into an administrative return, transfer, re-entry or resettlement procedure. In any event a separated child should only return to their country of origin, or be transferred to, or resettled in a third country when that is considered to be in their best interests.⁵¹⁸

⁵¹³ Advisory Opinion OC-21/14, para. 242.

⁵¹⁴ Committee on the Rights of the Child, General Comment No. 6, para. 84.

⁵¹⁵ *Ibid.*, para. 82.

⁵¹⁶ See Human Rights Committee, Views: Communication No. 1564/2007, *X.H.L. v. Netherlands*, UN Doc. CCPR/C/102/D/1564/2007 (September 15, 2011), para. 10.3. See also Human Rights Committee, Views: Communication No. 1554/2007, *El-Hichou v. Denmark*, UN Doc. CCPR/C/99/D/1554/2007 (August 20, 2010), paras. 7.3-7.5.

⁵¹⁷ UNHCR Detention Guidelines, Guideline 9.2, para. 52.

⁵¹⁸ Separated Children in Europe Programme, Statement of Principles, Part D15.

The Inter-Agency Guiding Principles on Unaccompanied and Separated Children, developed by the International Committee of the Red Cross, UNHCR, the United Nations Children’s Fund (UNICEF), and children’s rights nongovernmental organizations, offer the following guidance for when return to the country of origin may be appropriate:

Return to the country of origin should be considered when family reunification can be arranged; or when, having consulted the responsible authorities in the country of origin, an adult care-giver, or an appropriate governmental or non-governmental organization has agreed and is able to provide immediate protection and care upon arrival.⁵¹⁹

Local integration is “the primary option if return to the country of origin is impossible on either legal or factual grounds,” the Committee on the Rights of the Child has observed.⁵²⁰ Resettlement to a third country should also be considered in such cases.⁵²¹

Finally, the committee cautions that “[n]on-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.”⁵²²

The Right to Education

All children have the right to education. As the Committee on Economic, Social and Cultural Rights has observed:

Education is both a right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. . . . But the importance of education is not just practical: a well-educated, enlightened and active mind, able to

⁵¹⁹ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, p. 61.

⁵²⁰ Committee on the Rights of the Child, General Comment No. 6, para. 89.

⁵²¹ *Ibid.*, para. 92.

⁵²² *Ibid.*, para. 86.

wander freely and widely, is one of the joys and rewards of human existence.⁵²³

At the primary level, education should be compulsory and available free to all. Secondary education and vocational training should be available and accessible to every child.⁵²⁴

The Committee on Economic, Social and Cultural Rights has “confirm[ed] that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”⁵²⁵ Similarly, the Committee on the Elimination of Racial Discrimination recommends that states “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the area of education” and “[e]nsure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a state party.”⁵²⁶

Separated and unaccompanied children should have access to education throughout the time they are outside of their countries of origin,⁵²⁷ including any time they spend in detention.⁵²⁸

Realizing the right to education for children who are in immigration detention for short periods of time poses practical challenges. To address those challenges, states can draw on the standards and recommendations of the Inter-Agency Network on Education in

⁵²³ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, UN Doc. E/C.12/1999/10 (December 8, 1990), para. 1.

⁵²⁴ Convention on the Rights of the Child, arts. 28(1)(a), (b), (d); International Covenant on Economic, Social and Cultural Rights, arts. 13(2)(a), (b); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted November 17, 1988, O.A.S.T.S. No. 69 (entered into force November 16, 1999, and ratified by Mexico March 8, 1996), arts. 13(1), 3(a), 3(b).

⁵²⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 13, para. 34.

⁵²⁶ Committee on the Elimination of Racial Discrimination, General Recommendation XXX: Discrimination against Non-Citizens, UN Doc. CERD/C/Misc.11/rev.3 (February 23-March 12, 2004), paras. 29-30. The Committee on the Elimination of Racial Discrimination issues authoritative guidance on the binding content of the obligations set forth in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, 660 U.N.T.S. 195 (entered into force January 4, 1969, and ratified by Mexico February 20, 1975).

⁵²⁷ “Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee.” Committee on the Rights of the Child, General Comment No. 6, para. 41.

⁵²⁸ See UNHCR Detention Guidelines, para. 56 (“During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release.”).

Emergencies. These standards contain useful guidance on ways that states can provide meaningful educational activities, including literacy and numeracy classes and life skills education, for transient children.⁵²⁹ Such activities are important to give children a measure of continuity in education and allow them to resume formal education at a later date.

Children who are in detention for longer periods should receive access to educational programs that cover at least the curriculum of compulsory education at the primary level, and preferably also at the secondary level.⁵³⁰

⁵²⁹ See Inter-Agency Network for Education in Emergencies, *Minimum Standards for Education: Preparedness, Response, Recovery—A Commitment to Access, Quality and Accountability* (New York: INEE, 2010), <http://www.ineesite.org/en/minimum-standards> (accessed December 18, 2015).

⁵³⁰ See UN General Assembly, Human Rights Council, *The Right to Education of Persons in Detention: Report of the Special Rapporteur on the Right to Education, Vernor Muñoz*, UN Doc. A/HRC/11/8 (April 2, 2009), para. 91(a). See also UN General Assembly, Human Rights Council, *The Right to Education of Migrants, Refugees and Asylum-Seekers: Report of the Special Rapporteur on the Right to Education, Vernor Muñoz*, UN Doc. A/HRC/14/25 (April 16, 2010), paras. 72-85.

Conclusion and Recommendations

Children flee El Salvador, Guatemala, and Honduras in large numbers in the face of specific threats to their lives and safety or in response to the general conditions of insecurity and violence in their home countries. These children are not motivated solely by the desire to join family members already living abroad or for better economic opportunities, although such considerations influence their choice of destination. The fact that children who flee in search of safety often choose destinations based on where they have family or where they believe they will have the best economic opportunities does not diminish their legitimate need for international protection.

Mexico's near-automatic detention of children apprehended by the National Institute of Migration (INM) violates its international obligation not to deprive children of their liberty solely on the basis of their migration status. Mexico should move to end immigration detention of children and should make greater use of alternatives to detention already available under Mexican law. In particular, Mexico should expand the capacity of the National System for Integral Family Development (DIF) to house unaccompanied children, including in open centers and community-based placements. Such housing will not be suitable for all children, some of whom may need to be housed in closed facilities, and implementing a full range of alternatives will take time. Even so, Mexico should move as expeditiously as possible to end immigration detention of children except to the extent strictly necessary in the course of conducting returns.

INM child protection officers do not routinely screen detained children for protection needs or inform them of their right to seek asylum. And when children ask for or reveal facts suggesting they are eligible for asylum or other recognized forms of protection, many are not promptly referred to the Mexican Commission for Refugee Assistance (COMAR) to have their claims heard; some INM agents actively discourage them from pursuing such claims.

Detention is a significant factor in discouraging children from pursuing potentially valid asylum claims. The detention of children and the prospect of further time in detention may deter children from applying for asylum and, in some cases, may constitute constructive refoulement, an indirect means of returning children to countries where they would face persecution, threats to their lives or safety, or other human rights violations.

Mexico should also ensure that children have effective access to asylum, including by providing them with appropriate legal and other assistance in the preparation and presentation of applications. COMAR should have enhanced capacity, including a presence in Ixtepec, Oaxaca; Palenque, Chiapas; and Tenosique, Tabasco.

Recommendations

To the National Institute of Migration (INM):

- Ensure that all immigration agents notify migrants, adults as well as children, of their right to seek international protection and to request the status of Visitor for Humanitarian Reasons (humanitarian visas).
Ensure that all immigration agents take affirmative steps to examine children's possible protection needs, as they are required to do by Mexican law.
- Instruct all immigration officers that they should not discourage children or adults from exercising their right to seek asylum. Doing so should be a basis for disciplinary action.
- Immediately transfer unaccompanied and separated children (anyone under the age of 18) to state and local DIF agencies instead of holding them in immigration detention centers. For this purpose, INM agents should treat as children, until otherwise established by appropriate age verification procedures that comply with human rights standards, those who claim to be under the age of 18 but who do not possess identification cards or other documents as evidence of their age.
- Expeditiously consider applications for humanitarian visas, granting them to all unaccompanied and separated migrant children and all asylum seekers, as prescribed by law.
- Take steps to regularize a child's status in Mexico in all cases where return is not in the child's best interest, including when the child would face a risk of gang recruitment or other forms of gang-related violence, intra-family violence, or a situation of generalized violence if returned.
- Ensure that all returns are carried out with respect and dignity. Unaccompanied and separated children should be under the supervision of appropriate child protection authorities until they are transferred to the custody of child protection officials in their countries of origin.
- Transfer the functions of child protection officers (OPIs) to DIF or another appropriate agency. Until such transfer is made, child protection officers should

carry out screening for protection needs and make best interests determination for all children, not just those who are unaccompanied or separated.

- Allow civil society groups, including nongovernmental organizations that work with migrants, to have access to all immigration detention centers.
- Ensure that the protocol on children in immigration administrative proceedings, to be developed in coordination with the Attorney General's office (Procuraduría Federal) under article 105 of the regulations for the General Law on Girls, Boys, and Adolescents, reflects the above recommendations and the principles and requirements set forth in the General Law.
- Ensure that all immigration agents receive basic training in working with children, covering, among other topics, child-specific grounds for international protection and an understanding of how children respond to questioning.

To the Mexican Commission for Refugees (COMAR):

- Develop age-appropriate procedures, with the assistance of the United Nations High Commissioner for Refugees (UNHCR), for interviewing children and other aspects of the asylum process.

To all government agencies that deal with refugee and migrant children, including COMAR, DIF, and INM:

- Ensure access to education services for asylum seeking children while their refugee status claims are pending.
- Ensure access to free legal aid services for all unaccompanied and separated migrant children as well as all asylum seekers, in particular to those in detention.
- Provide access to health and psycho-social services for victims of violence, and to comprehensive post-rape care, including emergency contraception and safe, legal abortion, for victims of sexual violence.
- When family reunification in countries of origin might be possible, Mexican protection authorities should work with their counterparts in countries of origin to confirm of the validity of the family relationship and determine whether return is in the child's best interests.
- In cases in which return to the country of origin is not in a child's best interest, cooperate with DIF to identify and facilitate placement with a family member in Mexico or an appropriate alternative community-based care placement. In cases

where a family member living in a third country is willing and able to care for the child, these agencies should work with the Ministry of Foreign Affairs to arrange for the child's placement with that family member.

To the Ministry of the Interior:

- Expand the presence of COMAR in southern states, particularly in Tabasco, Oaxaca, and elsewhere in Chiapas, in addition to its existing office in Tapachula.

To the General Congress of the United Mexican States:

- Provide by law for the regularization of a migrant child's status in Mexico in all cases where return is not in the child's best interest, including when the child would face a risk of gang recruitment or other forms of gang-related violence, intra-family violence, or a situation of generalized violence if returned.

To the United States:

- Because US pressure on Mexico to stem the flow of Central American migrants to the US border can be reliably expected to put more individuals with asylum claims and protection needs at the mercy of Mexican immigration authorities, the US should help Mexico bolster its capacity to address such claims and needs in a rights-respecting fashion. Any enhanced US funding for Mexican border and immigration enforcement capacity should be coupled with enhanced funding:
 - to improve and expand Mexico's capacity to register and process refugee and other protection claims;
 - to increase Mexico's capacity to provide social support for asylum seekers with pending claims and for other vulnerable migrants; and
 - to integrate recognized refugees and beneficiaries of complementary protection.
- Ensure that US funding for Mexican migration enforcement activities does not erode the right to seek and receive asylum in Mexico.
- Link funding of Mexican entities engaged in immigration and border control to their demonstrated compliance with national and international human rights standards and anti-corruption measures.
- Open its Central American Minors (CAM) refugee processing program to children from El Salvador, Guatemala, and Honduras who have fled to other countries in the

- region, such as Mexico and Costa Rica, and broaden the eligibility criteria for petitioning relatives in the United States to include not only lawfully present parents but other adult relatives who are lawfully present as well.
- Establish a humanitarian immigration program to reunify children within their countries in the Northern Triangle with lawfully present parents and adult relatives in the United States without the requiring child applicants to establish a well-founded fear of persecution in their country of origin.

Appendix: Analysis of Apprehension, Returns, and Refugee Recognition Data

Record numbers of unaccompanied children and families from El Salvador, Guatemala, and Honduras arrived in the United States in the first half of 2014, in what was widely referred to as a “surge.”⁵³¹ As noted earlier in this report, the US policy response to this sharp spike in Central American arrivals included a redoubling of efforts to promote immigration enforcement and deterrence measures in Mexico and the countries of the Northern Triangle, including by providing significant funding for these initiatives.⁵³²

The US response appears to have had its intended effect, at least in the remainder of 2014 and in 2015. The number of apprehensions by US authorities of unaccompanied children from the Northern Triangle fell during this period while Mexican apprehensions rose, suggesting that the United States had effectively persuaded Mexico to take a greater role in immigration enforcement along its border with Guatemala.

Mexico’s apprehensions and detention of children increased by 140 percent from 2013 to 2014, and unaccompanied children accounted for just under half of all children apprehended during 2014. Apprehensions of children by Mexican authorities again increased in 2015: apprehensions of all children rose by 55 percent and apprehensions of unaccompanied children by 70 percent as compared with 2014. The vast majority of these children—over 97 percent—were from El Salvador, Guatemala, and Honduras.⁵³³

The increase in apprehensions and detention was accompanied by a similar increase in returns, or deportations, of children from Mexico to their countries of origin. Returns of

⁵³¹ See, for example, Cindy Chang and Kate Linthcum, “US Seeing a Surge in Central American Asylum Seekers,” *Los Angeles Times*, December 15, 2013, <http://articles.latimes.com/2013/dec/15/local/la-me-ff-asylum-20131215> (accessed January 29, 2016). See generally William A. Kandel and Lisa Seghetti, *Unaccompanied Alien Children: An Overview* (Washington, D.C.: Congressional Research Service, August 18, 2015), p. 3; also Haeyoun Park, “Children at the Border,” *New York Times*, October 21, 2014, <http://www.nytimes.com/interactive/2014/07/15/us/questions-about-the-border-kids.html> (accessed January 29, 2016).

⁵³² See Chapter I, “The Role of the United States” section, “The Increase in Arrivals” subsection.

⁵³³ These figures are apprehension “events” rather than the number of children apprehended; a single child may have been apprehended more than once during the year. Mexico reports apprehensions and deportations by calendar year. These data are taken from the *Boletines estadísticos* of the Secretaría de Gobernación (SEGOB) and are analyzed more fully in “The Apprehension of Central American Children in Mexico” section, below.

children more than doubled from 2013 to 2014, and in 2015, unaccompanied child returns were 75 percent higher than in 2014.

These substantial increases in immigration enforcement have not been matched by an increase in international protection, at least for unaccompanied children. A total of 62 unaccompanied children (including 54 from the three countries of Central America's Northern Triangle) applied for refugee recognition in 2013. The number of applications from unaccompanied children has increased in subsequent years—to 78 in 2014 and 131 for the first 11 months of 2015—but those numbers are still a fraction of the total numbers of unaccompanied children detained and deported each year.

In the first 11 months of 2015, a total of 52 children received international protection, up from 18 in 2013 and 25 in 2014.

In short, significantly more unaccompanied children are apprehended in and deported from Mexico today than three years ago. But the number that receives international protection is still just 0.3 percent of unaccompanied children apprehended each year.

Arrivals of Central American Children to the United States

The increase in arrivals to the United States (as measured by apprehensions) of unaccompanied children and families with children from Central America's Northern Triangle began after 2011.⁵³⁴ In Fiscal Year (FY) 2009, the 12-month period beginning on October 1, 2008, US Customs and Border Protection (CBP) reported 3,304 apprehensions of unaccompanied children who were nationals of El Salvador, Guatemala, and Honduras. Apprehensions of unaccompanied children from these three countries rose slightly during the following two years, to 3,993 for FY 2010 and 3,976 for FY 2011. CBP apprehended 10,146 unaccompanied children from the Northern Triangle in FY 2012 and 17,055 in FY 2013.

⁵³⁴ Unless noted, all statistics referred to in this section are from US Customs and Border Protection (CBP), "Southwest Border Unaccompanied Alien Children Statistics FY 2016," <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (accessed January 12, 2016), and CBP, "Total Monthly UACs by Sector," <https://www.cbp.gov/sites/default/files/documents/BP%20Total%20Monthly%20UACs%20by%20Sector%2C%20FY10-FY15.pdf> (accessed January 12, 2016).

In FY 2014, CBP apprehended 51,705 unaccompanied children from these three countries, nearly three times as many as in the previous 12-month period. CBP apprehended 28,387 unaccompanied children from the Northern Triangle in FY 2015.⁵³⁵

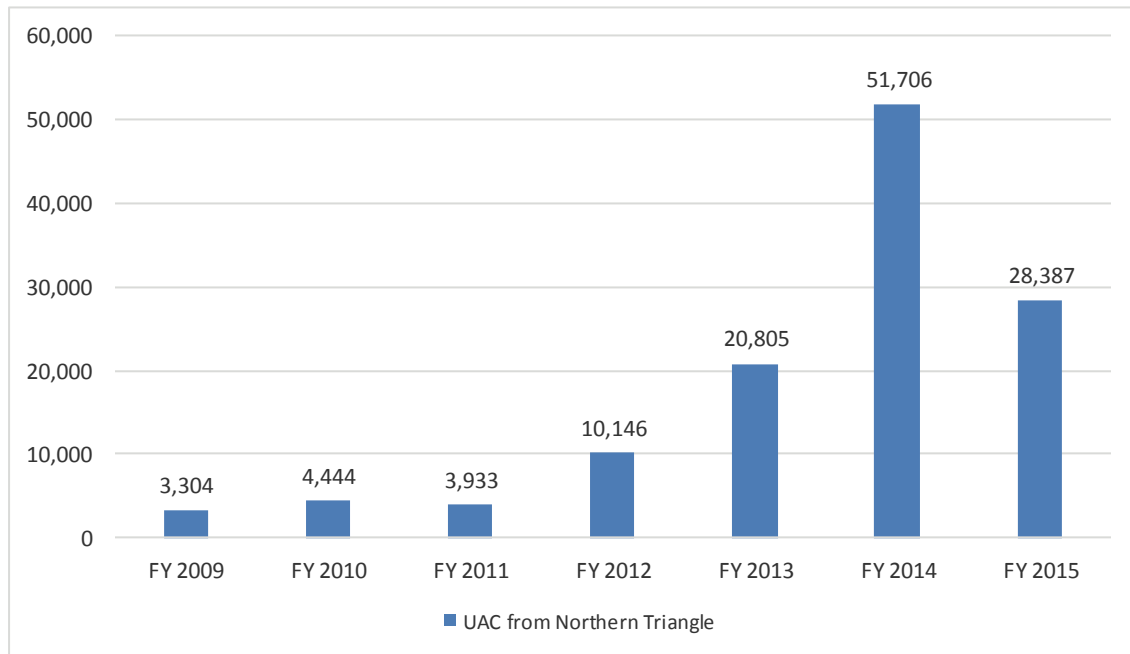
In the three-month period between October 1 and December 31, 2015, the first three months of FY 2016, CBP apprehended 14,263 unaccompanied children from the three Northern Triangle countries along the US-Mexico border. A total of 17,370 unaccompanied children (from all countries of origin) were apprehended in the US Southwest Border Sector from October 1 to December 31, 2015, a 117 percent increase over the 7,987 such apprehensions in the same period in 2014.⁵³⁶

Figure 1 shows CBP apprehensions of unaccompanied children from the Northern Triangle for FY 2009 to 2015.

⁵³⁵ See Marc R. Rosenblum, *Unaccompanied Child Migration to the United States: The Tension Between Protection and Prevention* (Washington, D.C.: Transatlantic Council on Migration, Migration Policy Institute, April 2015), p. 4, Fig. 2 (showing monthly apprehensions of unaccompanied child migrants, October 2009-February 2015).

⁵³⁶ See US Customs and Border Protection (CBP), "Southwest Border Unaccompanied Alien Children Statistics FY 2016." See also Julia Preston, "Number of Migrants Illegally Crossing Rio Grande Rises Sharply," *The New York Times*, November 26, 2015, <http://www.nytimes.com/2015/11/27/us/number-of-migrants-illegally-crossing-rio-grande-rises-sharply.html> (accessed January 29, 2016); Julia Preston, "US to Open Shelters for New Surge of Youths Crossing Southwest Border," *The New York Times*, December 7, 2015, <http://www.nytimes.com/2015/12/08/us/us-to-open-shelters-for-new-surge-of-youths-crossing-southwest-border.html> (accessed January 29, 2016).

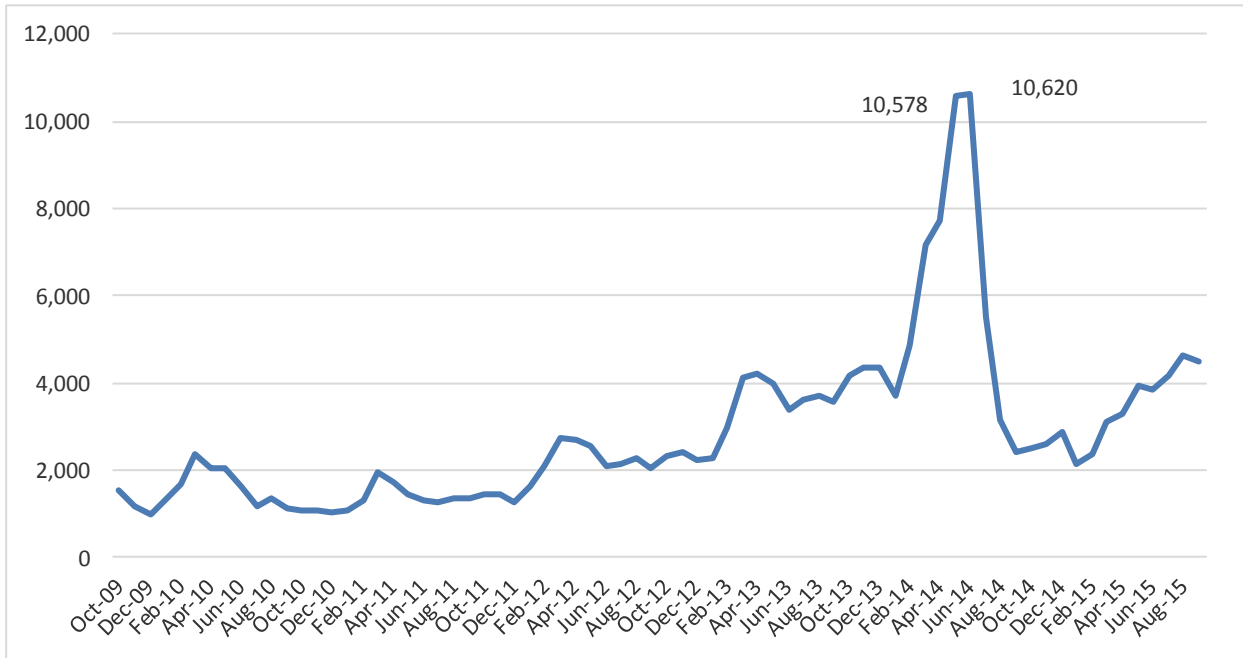
Figure 1: US Southwest Border Apprehensions of Unaccompanied Children from the Northern Triangle



Source: CBP, “Southwest Border Unaccompanied Alien Children.”

Most of the FY 2014 apprehensions took place from February to June 2014. Figure 2 illustrates monthly apprehension figures for unaccompanied children from all countries (CBP does not release monthly apprehension data disaggregated by country of origin), showing such apprehensions peaking with 10,578 in May 2014 and 10,620 in June 2014.

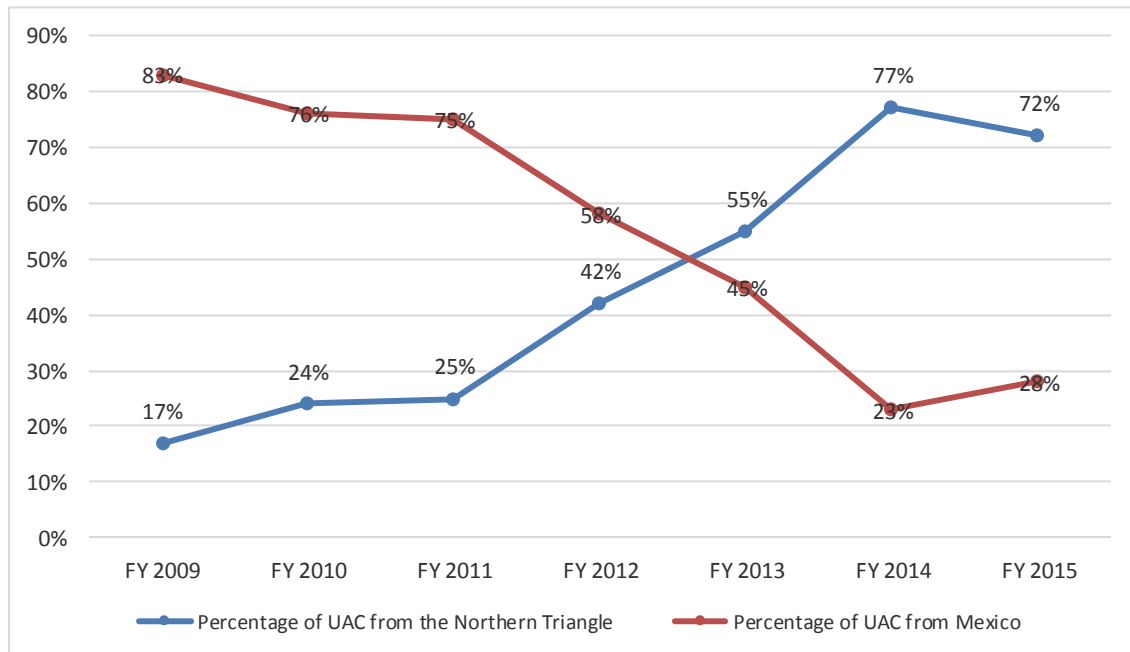
Figure 2: Total Unaccompanied Child Apprehensions in the US Southwest Border Sector by Month, October 2009 to September 2015



Source: CBP, “Total Monthly UACs by Sector.”

In addition to their increase in absolute terms, unaccompanied children from El Salvador, Guatemala, and Honduras also accounted for an increasing proportion of the total of all unaccompanied children apprehended at the US-Mexico border, as Figures 3 and 4 show.

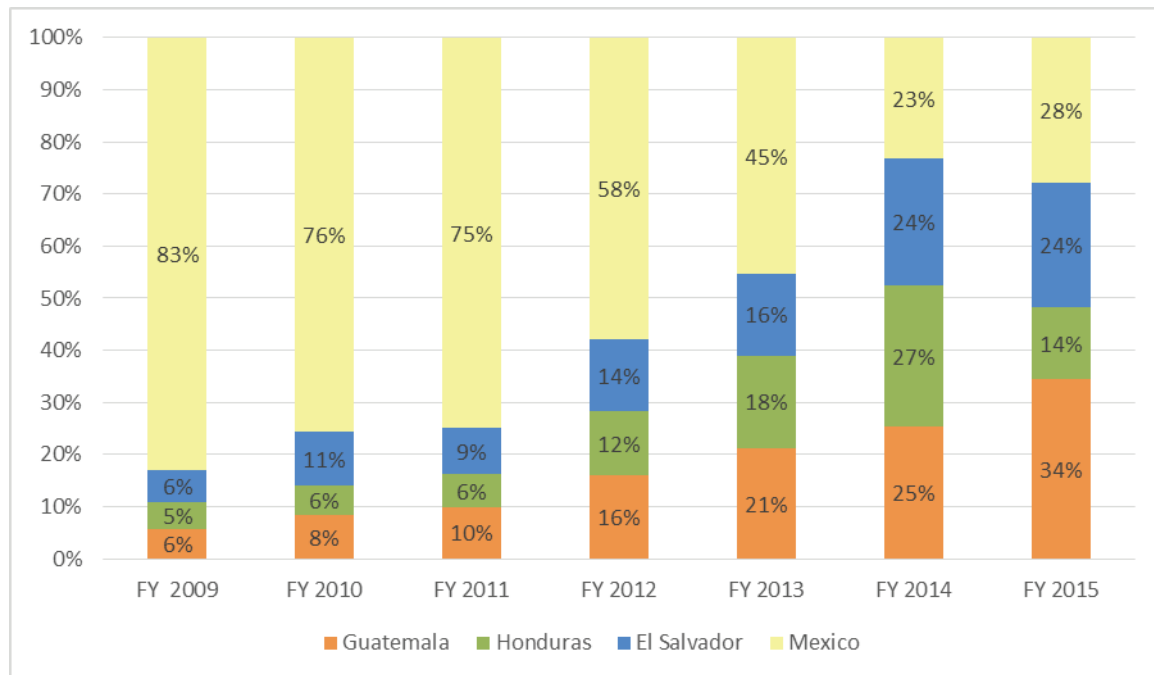
Figure 3: Percentages of Unaccompanied Children from Northern Triangle and Mexico Apprehended in US Southwest Border Sector



In FY 2011, unaccompanied children from these three countries represented one-quarter of all apprehensions at the border. In FY 2014, unaccompanied children from the Northern Triangle were three-quarters of all unaccompanied children apprehended at the border. Apprehensions of unaccompanied children from the three Central American countries decreased in absolute terms in FY 2015 but still represented 72 percent of all unaccompanied children apprehended by CBP on the US-Mexico border during the fiscal year.⁵³⁷

⁵³⁷ See Dennis Stinchcomb and Eric Hershberg, *Unaccompanied Migrant Children from Central America: Context, Causes, and Responses*, CLALS Working Paper Series, No. 7 (Washington, D.C.: Center for Latin American and Latino Studies, American University, November 2014), p. 7.

Figure 4: Percentages of Unaccompanied Children Apprehended in US Southwest Border Sector, by Country of Origin



Source: CBP, “Southwest Border Unaccompanied Alien Children”

The number of unaccompanied girls also increased markedly, particularly between FY 2013 and FY 2014. In the first seven months of FY 2014 alone, the number of unaccompanied girls apprehended at the US-Mexico border was 77 percent higher than in all of FY 2013, the Pew Research Center found. Nine out of 10 unaccompanied girls apprehended between October 1, 2013 and May 31, 2014, were from the Northern Triangle.⁵³⁸ The same is true for Mexico, which reported a 62.4 percent increase in apprehensions of unaccompanied girls in 2015 as compared with 2014.⁵³⁹

In addition, both the United States and Mexico are apprehending more young children. The number of unaccompanied children under age 13 apprehended by US authorities increased by 117 percent in FY 2014 over FY 2013. Sixteen percent of all unaccompanied

⁵³⁸ See Jens Manuel Krogstad, Ana González-Barrera, and Mark Hugo López, “At the Border, a Sharp Rise in Unaccompanied Girls Fleeing Honduras,” Pew Research Center, July 25, 2014, <http://www.pewresearch.org/fact-tank/2014/07/25/at-the-border-a-sharp-rise-in-unaccompanied-girls-fleeing-honduras/> (accessed January 29, 2016).

⁵³⁹ Mexican immigration authorities apprehended 4,961 unaccompanied girls in 2015, compared to 3,055 in 2014. Secretaría de Gobernación, Estadística, *Boletines Estadísticos 2014, 2015*, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos (accessed January 26, 2016).

children apprehended in FY 2014 were under the age of 13, as compared with 9 percent of the total number of unaccompanied children apprehended in FY 2013. In FY 2015, unaccompanied children ages 12 and under represented 13 percent of all unaccompanied children apprehended by CBP, a lower proportion than in FY 2014; even so, the absolute number of unaccompanied children under age 13 was higher in FY 2015 than in the previous fiscal year.⁵⁴⁰ Similarly, Mexican immigration statistics, which record the number of unaccompanied children under age 11, show an increase of 33 percent in such apprehensions between FY 2014 and FY 2015.⁵⁴¹

Families from the three countries, many traveling with children, were also apprehended in significantly larger numbers during FY 2014: 68,684 individuals were apprehended while traveling with another family member during the fiscal year, a 356 percent increase over the 15,056 such persons apprehended in FY 2013.⁵⁴²

Apprehension and Detention of Central American Children in Mexico

Apprehensions and detention of Central American children by Mexican authorities increased from 2013 to 2014 and again in 2015.⁵⁴³ This increase may be a result of

⁵⁴⁰ Jens Manuel Krogstad, Ana González-Barrera, and Mark Hugo López, “Children 12 and Under Are Fastest Growing Group of Unaccompanied Minors at US Border,” July 22, 2014, <http://www.pewresearch.org/fact-tank/2014/07/22/children-12-and-under-are-fastest-growing-group-of-unaccompanied-minors-at-u-s-border/> (accessed January 29, 2016).

⁵⁴¹ SEGOB, *Boletín estadístico 2013*, Table 3.1.3 (Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, 2013), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2013 (accessed January 7, 2016); *Boletín estadístico 2014*, Table 3.1.3 (Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, 2014), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2014 (accessed January 7, 2016); *Boletín estadístico 2015*, Table 3.1.3 (Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, 2015), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos (accessed January 26, 2016).

⁵⁴² US Department of Homeland Security, US Customs and Border Protection, “CBP Border Security Report: Fiscal Year 2014,” December 19, 2014, p. 1, http://www.cbp.gov/sites/default/files/documents/FINAL%20Draft%20CBP%20FY14%20Report_20141218.pdf (accessed January 29, 2016).

⁵⁴³ This section analyzes SEGOB data using the following sources: *Boletín estadístico 2011*, Table 3.1.3 (Eventos de extranjeros alojados en estaciones migratorias, según grupos de edad, condición de viaje y sexo, 2011), http://www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2011 (accessed January 7, 2016); *Boletín estadístico 2012*, Table 3.1.3 (Eventos de extranjeros alojados en estaciones migratorias, según grupos de edad, condición de viaje y sexo, 2012), http://www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2012 (accessed January 7, 2016); *Boletín estadístico 2013*, Table 3.1.3 (Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, 2013), http://www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2013 (accessed January 7, 2016);

increased pressure by the United States to “stem the flow of illegal Central American migration.”⁵⁴⁴ The increase in apprehensions also suggests that in the last two years, many more Central American children have traveled to Mexico than did so prior to 2014, and that increased enforcement has not reduced these arrivals.

The National Institute of Migration (INM) “housed” (that is, detained) a total of 4,160 children in immigration detention centers in 2011.⁵⁴⁵ The number of children in immigration detention rose to 6,107 in 2012, an increase of 46.8 percent over the previous year.⁵⁴⁶ Beginning in 2013, the INM recorded “presentations” (detention orders following apprehension) rather than the number of children “housed.”⁵⁴⁷ The INM made 9,630 apprehensions of children in 2013.⁵⁴⁸ It made 23,096 apprehensions of children in 2014, an increase of 140 percent over 2013.⁵⁴⁹ (These data are for apprehension “events” rather than individual children: a single child may have been apprehended more than once during the year.)

In each of these years, between 24 and 28 percent of children apprehended and detained by the INM were girls.

Until 2014, the INM publicly available figures for detention and apprehension of children reported the number of unaccompanied children under age 12 only, meaning that it is not possible to get a complete picture of the total number of unaccompanied children apprehended or detained in earlier years. (However, the data for returns of children are

Boletín estadístico 2014, Tables 3.1.3 (Eventos de extranjeros presentados ante la autoridad migratoria, según grupos de edad, condición de viaje y sexo, 2014) and 3.1.5 (Eventos de menores presentados ante la autoridad migratoria, según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2014), http://www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2014 (accessed January 7, 2016); *Boletín estadístico 2015*, Table 3.1.5 (Eventos de menores presentados ante la autoridad migratoria, según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2015), http://www.gobernacion.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos (accessed January 26, 2016).

⁵⁴⁴ Testimony of Lev J. Kubiak, assistant director of international operations, US Immigration and Customs Enforcement, before the House Subcommittee on Border and Maritime Security, June 8, 2015, pp. 7-8.

⁵⁴⁵ SEGOB, *Boletín estadístico 2011*, Table 3.1.3.

⁵⁴⁶ SEGOB, *Boletín estadístico 2011*, Table 3.1.3; *Boletín estadístico 2012*, Table 3.1.3.

⁵⁴⁷ The practical significance of this change is unclear, because all of those who are “presented” are then “housed” in immigration detention centers for several days or more. See, for example, Insyde, *Diagnóstico del Instituto Nacional de Migración*, p. 277.

⁵⁴⁸ SEGOB, *Boletín estadístico 2013*, Table 3.1.3.

⁵⁴⁹ SEGOB, *Boletín estadístico 2014*, Table 3.1.3.

disaggregated by country, age group, and status as accompanied or unaccompanied, as discussed later in this appendix.)

The INM detained 205 unaccompanied children under age 12 in 2011 and 206 unaccompanied children under 12 in 2012.⁵⁵⁰ In 2013, when the INM began to record apprehensions instead of detention, it apprehended 299 unaccompanied children under the age of 12.⁵⁵¹ In 2014, the INM apprehended 1,853 unaccompanied children under age 12, a 520 percent increase over 2013.⁵⁵² In 2015, the INM apprehended 2,419 unaccompanied children under age 12, 30.5 percent more than in 2014.⁵⁵³

The INM apprehended a total of 10,943 unaccompanied children in 2014, including 9,090 who were between the ages of 12 and 17. Unaccompanied children accounted for 47 percent of all children apprehended during the year.⁵⁵⁴

Beginning in 2014, the publicly available data for apprehensions are disaggregated by country of origin and, within that category, by age and unaccompanied or accompanied status. Over 97 percent of unaccompanied children as well as of all children apprehended in 2014 were from El Salvador, Guatemala, and Honduras.⁵⁵⁵ Figure 5 shows monthly apprehension figures for accompanied and unaccompanied children from these three countries in 2014 and 2015.

⁵⁵⁰ SEGOB, *Boletín estadístico 2011*, Table 3.1.3; *Boletín estadístico 2012*, Table 3.1.3.

⁵⁵¹ SEGOB, *Boletín estadístico 2013*, Table 3.1.3.

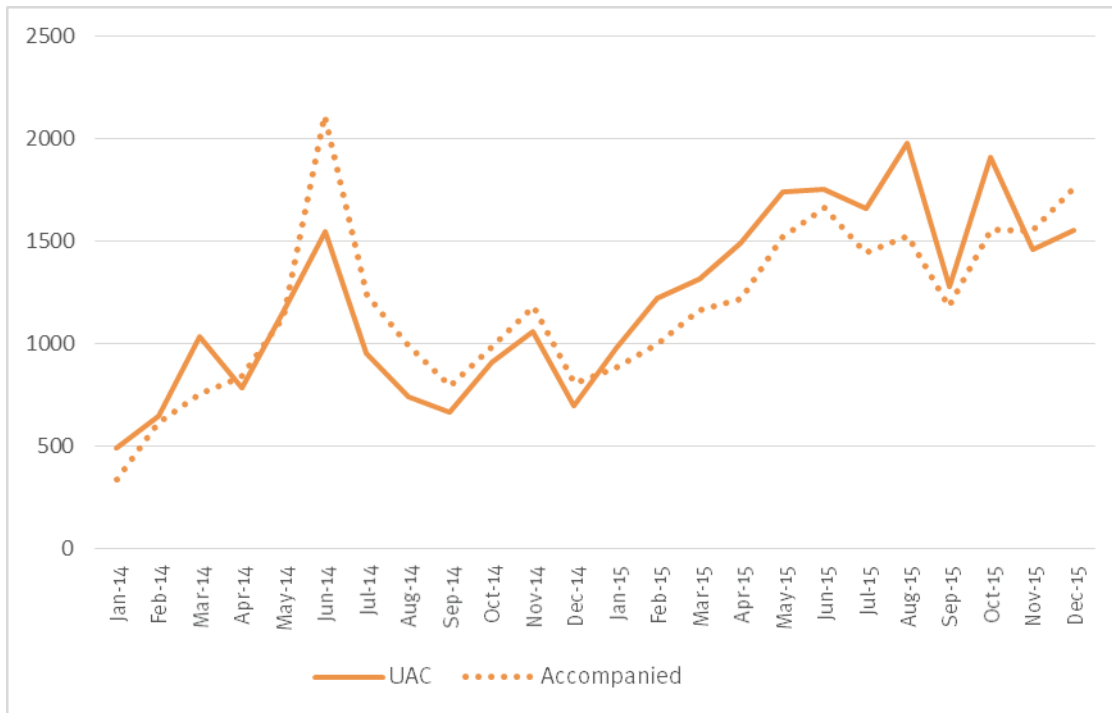
⁵⁵² SEGOB, *Boletín estadístico 2014*, Table 3.1.3.

⁵⁵³ SEGOB, *Boletín estadístico 2015*, Table 3.1.3.

⁵⁵⁴ SEGOB, *Boletín estadístico 2014*, Table 3.1.5.

⁵⁵⁵ SEGOB, *Boletín estadístico 2014*, Table 3.1.5.

Figure 5: INM Apprehension of Children from Northern Triangle, January 2014– December 2015



Source: SEGOB, *Boletín estadístico 2014*, Table 3.1.5; *Boletín estadístico 2015*, Table 3.1.5

From January to the end of December 2015, the INM apprehended a total of 35,704 children, meaning that apprehensions of children in 2015 were 54.6 percent higher than in 2014.

These apprehensions included 18,650 unaccompanied children, a 70.4 percent increase over 2014. Nearly nine out of 10 unaccompanied children were between the ages of 12 and 17. Over half (52 percent) of all children apprehended in 2015 were unaccompanied.

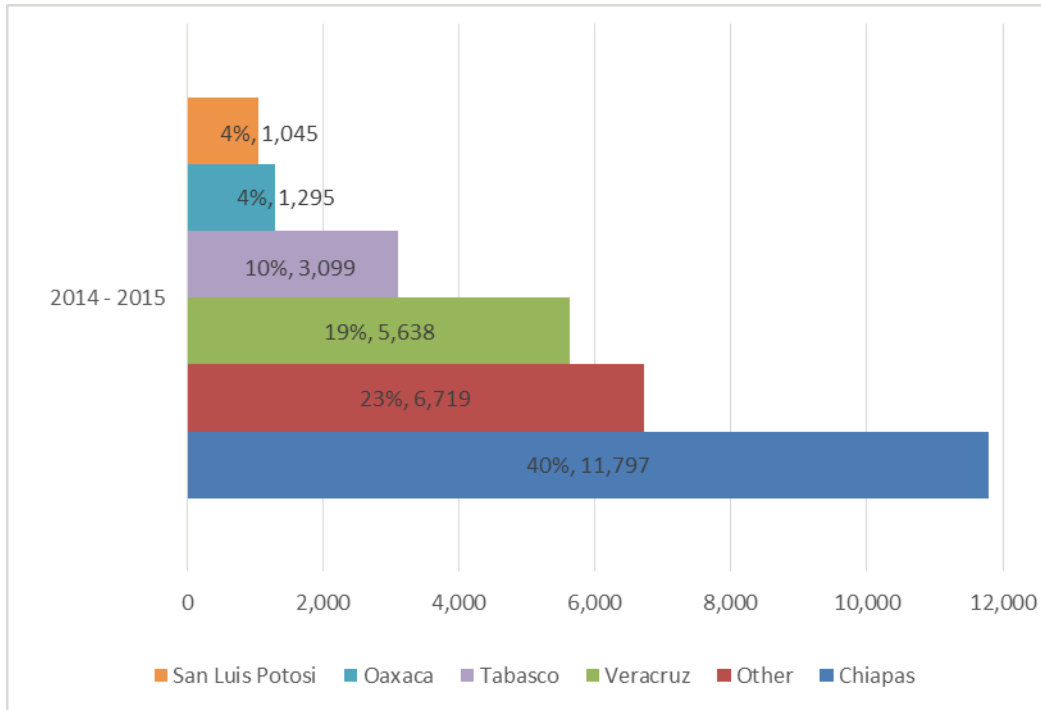
Children from the three countries of Central America’s Northern Triangle accounted for 98 percent of all children and 99 percent of unaccompanied children apprehended during the year.⁵⁵⁶

Most children, whether unaccompanied or with family members, are apprehended (and detained) in the state of Chiapas, as Figure 6 shows. Over 4,000 unaccompanied children were apprehended in Chiapas in 2014 and nearly 7,500 unaccompanied children were apprehended in that state in 2015. All but a handful were from Central America’s Northern

⁵⁵⁶ SEGOB, *Boletín estadístico 2015*, Table 3.1.5.

Triangle, meaning that four of every ten unaccompanied Central American children were apprehended in that state, meaning that nearly four of every ten unaccompanied Central American children were apprehended in that state.⁵⁵⁷ Even though Chiapas accounts for a disproportionate number of apprehensions of children (and adults), it does not receive additional COMAR or INM child protection staffing, as discussed earlier in this report.

Figure 6: Apprehension of Unaccompanied Children, by State, for 2014 and 2015



Source: SEGOB, *Boletín estadístico 2014*, Table 3.1.4; *Boletín estadístico 2015*, Table 3.1.4

Mexican authorities apprehended children in higher numbers in 2015, again with some 40 percent of detentions taking place in Chiapas. From January to December 2015, that state accounted for 7,495 apprehensions of unaccompanied children out of a total of 18,650 for the country as a whole. Counting accompanied as well as unaccompanied children, the INM apprehended 13,815 children in Chiapas out of a national total of 35,704 in 2015.⁵⁵⁸

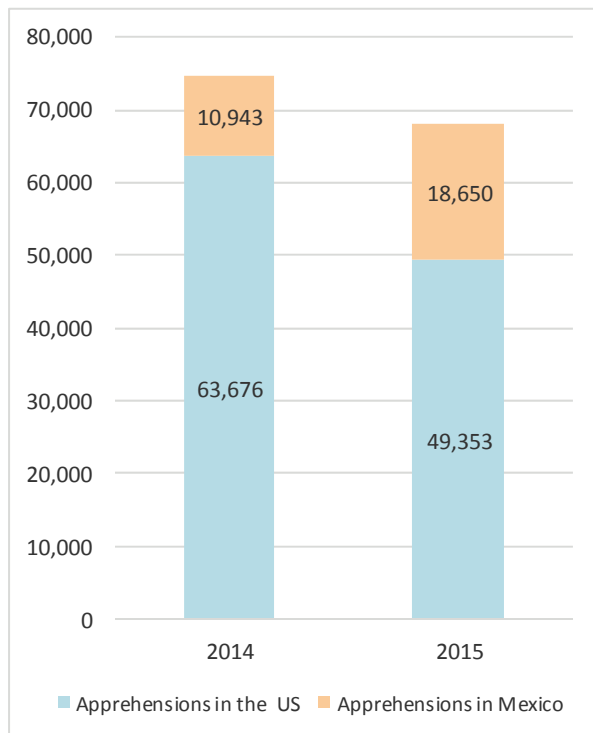
If US policy objectives were to “interdict the flow” by shifting enforcement responsibilities to Mexican immigration authorities, as Secretary Johnson’s and President Obama’s

⁵⁵⁷ SEGOB, *Boletín estadístico 2014*, Table 3.1.4.

⁵⁵⁸ SEGOB, *Boletín estadístico 2015*, Table 3.1.4.

remarks suggest,⁵⁵⁹ they were successful in the short term. US authorities apprehended 22 percent fewer unaccompanied children in 2015 than in 2014. Mexican authorities, in turn, apprehended 70 percent more unaccompanied children in the same time period, as Figure 7 illustrates.

Figure 7: US and Mexican Apprehensions of Unaccompanied Children



Source: For US data: CBP, “Southwest Border Unaccompanied Alien Children”; CBP, “Total Monthly UACs by Sector, FY10-FY15.” For Mexican data: SEGOB, *Boletín estadístico 2014*, Table 3.1.5; *Boletín estadístico 2015*, Table 3.1.5.

Return of Children to Their Countries of Origin

Deportations of children (“assisted returns,” in the parlance of Mexico’s Immigration Law) have also increased in recent years, particularly in 2014 and 2015.⁵⁶⁰

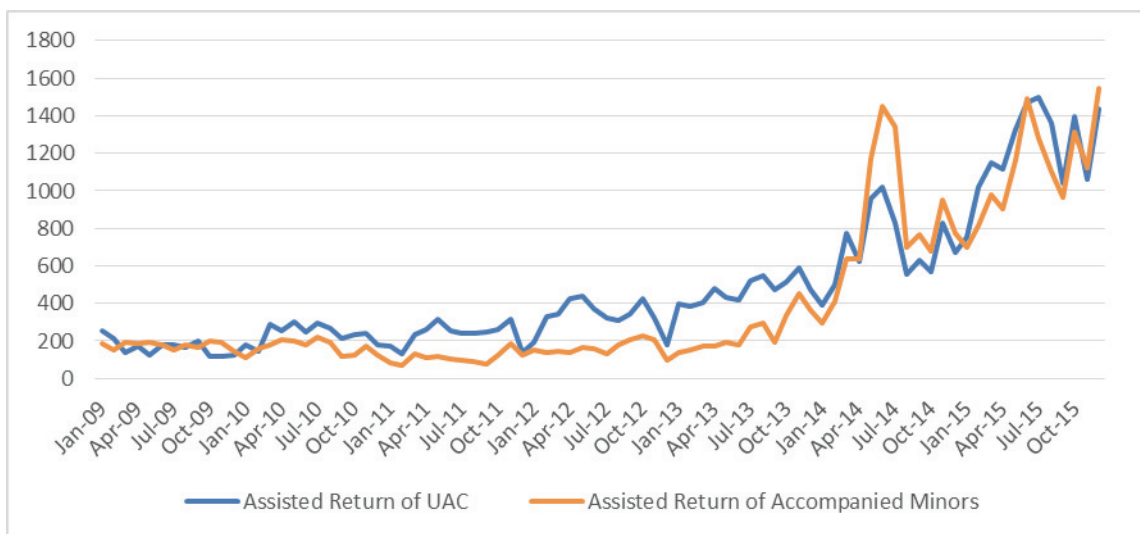
⁵⁵⁹ Statement by Secretary Jeh Johnson About the Situation Along the Southwest Border, September 8, 2014. See also Remarks by President Obama and President Peña Nieto After Bilateral Meeting, January 6, 2015.

⁵⁶⁰ Data analyzed in this section are taken from SEGOB, *Boletín estadístico 2009*, Table 3.2.7 (Eventos de menores devueltos, según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2009), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Ext_alojados_y_devueltos_2009 (accessed January 7, 2016); SEGOB, *Boletín estadístico 2010*, Table 3.2.7 (Eventos de menores devueltos según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2010), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2010 (accessed January 7, 2016); SEGOB, *Boletín estadístico 2011*, Table 3.2.8 (Eventos de menores devueltos según continente, país de nacionalidad,

Mexico returned between 4,000 and 5,000 children per year in each of 2009, 2010, and 2011. Returns of children jumped to 5,956 in 2012 and have increased each year since. Mexico returned 8,577 children in 2013; 18,169 in 2014; and 28,017 in 2015. Each year, between 98 and 99 percent of these children were from Central America's Northern Triangle.

The data show sharp increases in returns in May and June 2014 as well as from January to June 2015, as illustrated by Figure 8.

Figure 8: Returns of Unaccompanied and Accompanied Children by Month, 2009-2015



Source: SEGOB, *Boletín estadístico 2009*, Table 3.2.7; *Boletín estadístico 2010*, Table 3.2.7; *Boletín estadístico 2011*, Table 3.2.8; *Boletín estadístico 2012*, Table 3.2.8; *Boletín estadístico 2013*, Table 3.2.8; *Boletín estadístico 2014*, Table 3.2.8; *Boletín estadístico 2015*, Table 3.2.8

grupos de edad, condición de viaje y sexo, 2011), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2011 (accessed January 7, 2016); SEGOB, *Boletín estadístico 2012*, Table 3.2.8, (Eventos de retorno asistido de menores según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2012), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2012; SEGOB, *Boletín estadístico 2013*, Table 3.2.8 (Eventos de retorno asistido de menores según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2013), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2013 (accessed January 7, 2016); SEGOB, *Boletín estadístico 2014*, Table 3.2.8, (Eventos de retorno asistido de menores según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2015), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_alojados_y_devueltos_2014 (accessed January 7, 2016); SEGOB, *Boletín estadístico 2015*, Table 3.2.8, (Eventos de retorno asistido de menores según continente, país de nacionalidad, grupos de edad, condición de viaje y sexo, 2015), http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Extranjeros_presentados_y_devueltos (accessed January 26, 2016).

Unaccompanied children are returned in significant numbers, accounting for about two-thirds of all child returns in each of 2010, 2011, 2012, and 2013 and approximately half of all returns of children in other years.⁵⁶¹

Children's Claims for International Protection in Mexico

COMAR receives relatively few applications for refugee recognition, particularly given the number of Central Americans who travel to and through Mexico each year. It receives even fewer from children. Even those who do apply often do not see their claims to completion: many applications from Central American adults and children are “abandoned” or withdrawn, meaning that the applicant did not pursue the application. In all, some two dozen or fewer children received international protection each year in 2013 and 2014, and 52 children received international protection in the first 11 months of 2015.

COMAR received 62 applications from unaccompanied children in 2013. Of that total, it considered 30 abandoned or withdrawn, and 14 received unfavorable determinations. COMAR recognized refugee status in 18 cases. The acceptance rate for applications by unaccompanied children was 56 percent, taking into account only those applications that were decided on the merits. The 18 recognized child refugees also represented 29 percent of all applications, including those that were abandoned or withdrawn, that COMAR received from children during the year.⁵⁶²

In 2014, COMAR received 78 applications from unaccompanied children. Of these cases, 32 were considered abandoned or withdrawn by the applicant and 20 received unfavorable determinations. COMAR recognized refugee status in 22 cases and granted complementary protection in three. Its acceptance rate for the year was 54 percent. Of all applications made by unaccompanied children during the year, 32 percent received international protection.⁵⁶³

Of the 131 applications COMAR received from unaccompanied children in the first 11 months of 2015, it considered 46 abandoned or withdrawn by the applicant. It recognized

⁵⁶¹ As a proportion of all child returns, unaccompanied children accounted for 48 percent in 2009, 59 percent in 2010, 68 percent in 2011, 67 percent in 2012, 66 percent in 2013, 46 percent in 2014, and 52 percent in 2015.

⁵⁶² COMAR, *Estadísticas 2013*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (accessed January 12, 2016).

⁵⁶³ COMAR, *Estadísticas 2014*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (accessed January 12, 2015).

refugee status in 39 cases and granted complementary protection in 13, an acceptance rate of 61 percent. The 52 successful applicants were 40 percent of all unaccompanied children who made applications in the first 11 months of 2015.⁵⁶⁴

All but a handful of applications from unaccompanied children were from nationals of El Salvador, Honduras, and Guatemala. Unaccompanied children from these three countries represented 87 percent of applications by children in 2013, 96 percent in 2014, and 98 percent in the first 11 months of 2015.⁵⁶⁵

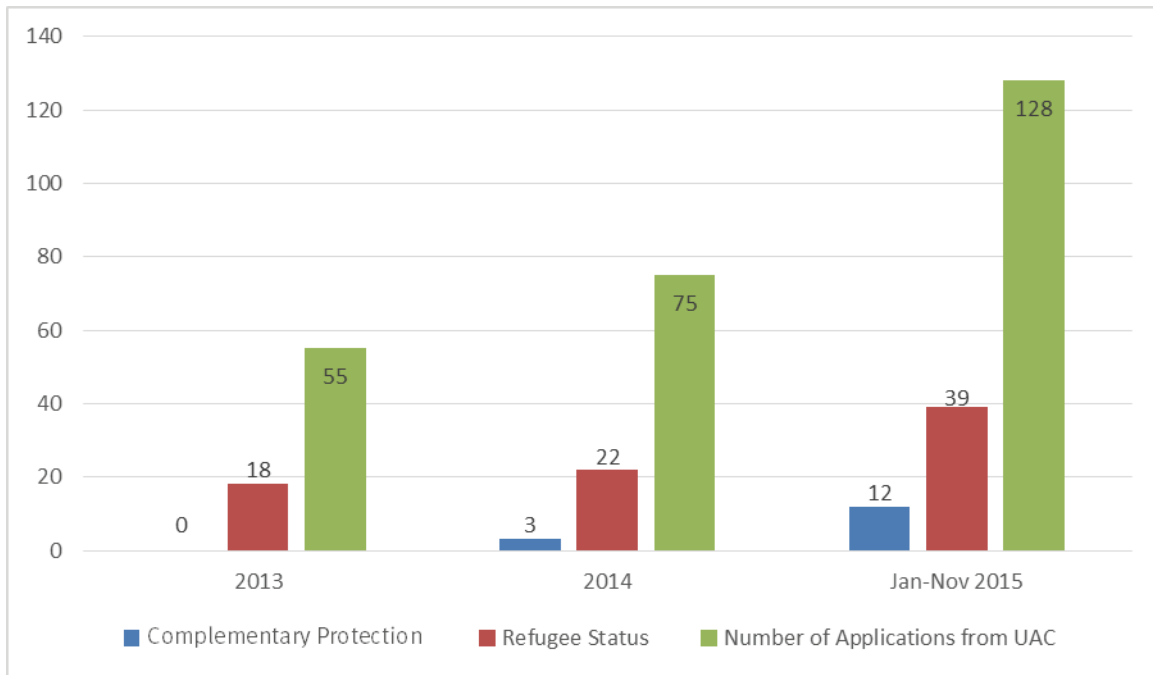
Thirty-five percent or more of unaccompanied children who applied for international protection later withdrew or abandoned their claims each year.⁵⁶⁶ As discussed in this report, the reasons unaccompanied children withdraw or abandon applications for international protection include the belief that they will be unsuccessful (sometimes based on the comments of INM agents), a lack of information about the process, and the prospect of further detention.

⁵⁶⁴ COMAR, *Estadísticas 2015*, http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR (accessed February 24, 2016).

⁵⁶⁵ COMAR, *Estadísticas COMAR, 2013-2015*.

⁵⁶⁶ Abandoned or withdrawn applications were 48 percent of all applications submitted by unaccompanied children in 2013, 43 percent in 2014, and 35 percent in the first 11 months of 2015. COMAR, *Estadísticas COMAR, 2013-2015*.

Figure 9: International Protection Afforded to Unaccompanied Children from the Northern Triangle



Source: COMAR, *Estadísticas COMAR*, 2013-2015.

The numbers of applications received by COMAR are a fraction of the total number of Central Americans who arrive in Mexico each year. Counting adults as well as children, the INM made over 118,000 apprehensions of Guatemalans, Hondurans, and Salvadorans in 2014;⁵⁶⁷ the number of applications for international protection received by COMAR was 2 percent of that amount.⁵⁶⁸

The 25 unaccompanied children who were actually granted international protection in 2014 represent 0.2 percent of the 10,711 apprehensions that year of unaccompanied children from Central America’s Northern Triangle.⁵⁶⁹ For the period from January to November 2015, when 52 unaccompanied children received international protection, Mexican immigration authorities apprehended 16,869 unaccompanied children from the Northern Triangle, meaning that of those apprehended children, only 0.3 percent received international protection in the first 11 months of 2015.

⁵⁶⁷ SEGOB, *Boletín estadístico 2014*, Table 3.1.1.

⁵⁶⁸ COMAR received 2,137 applications for international protection in 2014. COMAR, *Estadísticas 2014*.

⁵⁶⁹ See SEGOB, *Boletín estadístico 2014*, Table 3.1.5.

Acknowledgments

This report was written by Michael Garcia Bochenek, senior counsel on children’s rights at Human Rights Watch, based on research he undertook with Bill Frelick, refugee program director, and Clara Long, US program researcher, in Mexico and Honduras between April and December 2015. Celso Pérez, the Peter and Patricia Gruber Fellow in Global Justice, conducted preparatory field research. Imogen Pursch assisted with data analysis and provided other invaluable research assistance. Joseph Dickens-Gavito and Elyse Leonard provided additional legal and other research assistance.

Zama Coursen-Neff, executive director of the Children’s Rights Division; Daniel Wilkinson, managing director of the Americas Division; Aisling Reidy, senior legal adviser; and Joseph Saunders, deputy program director, edited the report. Dan Baum, senior editor, Americas Division; Bill Frelick; Amanda Klasing, senior researcher, Women’s Rights Division; Clara Long; Margaret Knox, senior editor, Americas Division; and Brian Root, quantitative analyst, also reviewed and commented on the report.

Julia Galiano Rios filmed interviews in Veracruz and Oaxaca. John Emerson designed the maps. Helen Griffiths, children’s rights associate; Olivia Hunter, publications associate; Fitzroy Hepkins, administrative manager, and José Martínez, senior coordinator, produced the report. Carlota Fluxa translated the report from English into Spanish. Claudia Nunez reviewed the Spanish translation.

Human Rights Watch is indebted to the many nongovernmental organizations and individuals who generously assisted us in the course of our research, among them Albergue Belén, Tapachula, Chiapas; Casa Alianza, México, DF, San Pedro Sula, and Tegucigalpa; Casa Tochán, México, DF; Rodolfo Córdova, FUNDAR, México, DF; Foro Nacional para Migraciones en Honduras, Tegucigalpa; Maria Giovanna Guarnieri, Sendero de Amor, San Pedro Sula; Erika Guevara Rosas, Americas regional director, Amnesty International, México, DF; Sister Leticia Gutiérrez Valderrama, director general, Scalabrianas Mission for Migrants and Refugees (Scalabrianas: Misión para Migrantes y Refugiados), México, DF; Hermanos en el Camino, Ixtepec, Oaxaca; IMUMI, México, DF; International Detention Coalition, México, DF; Carolina Jiménez, deputy director of research for the Americas, Amnesty International, México, DF; José Knippen, FUNDAR,

México, DF; Ian Kysel; Salva Lacruz, advocacy coordinator, and Diego Lorente, director general, Centro de Derechos Humanos Fray Matías de Córdoba, Tapachula, Chiapas; José Luis Loera, general coordinator, Casa Refugiados; México, DF; Alejandra Macías, national coordinator of legal services and community outreach, Asylum Access Mexico, México, DF; Jorge Marengo; Diana Martínez, coordinator of support and direct services, Sin Fronteras, México, DF; Gabriela Morales Gracia; Las Patronas, Amatlán de los Reyes, Veracruz; Brenda Pérez Vázquez, IDP project coordinator, Mexican Commission of the Defense and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de Derechos Humanos); Ian Quiroz, CIPRODEH, Tegucigalpa; Sarnata Reynolds, senior adviser on human rights, Refugees International, Washington, D.C.; Jorge Ríos Treviño, lawyer, Sin Fronteras, México, DF; La 72, Tenosique, Tabasco; and UNHCR.

We would also like to thank the federal, state, and municipal officials who agreed to be interviewed for this report and who provided information and in some cases access to their facilities, including the Mexican Refugee Commission (Comisión Mexicana de Ayuda a Refugiados, COMAR); the General Directorate of Regularization of the National Institute for Migration (Instituto Nacional de Migración, INM); the National Human Rights Commission (Comisión Nacional de Derechos Humanos); the Undersecretariat of Population, Migration, and Religious Affairs in the Ministry of the Interior (Subsecretaría de Población, Migración y Asuntos Religiosos, Secretaría de Gobernación); and the Ministry of Foreign Affairs.

We particularly appreciate the openness of the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, DIF) and the state and municipal child protection agencies in Chiapas (DIF Chiapas, DIF Palenque, DIF Tapachula), Sonora (DIF Sonora and DIF Nogales), Tamaulipas (DIF Tamaulipas, DIF Reynosa, DIF Nuevo Laredo), and Veracruz (DIF Veracruz), as well as the staff of the Edén Reception Center (Centro de Recepción de Personas Migrantes El Edén, now known as the Centro de Atención para Niñez y Familias Migrantes Belén) in San Pedro Sula, Honduras and the Childhood, Adolescence, and Family Directorate (Dirección de Niñez, Adolescencia y Familia, DINAF) in Tegucigalpa, Honduras.

Finally, we would like to thank the many children and adult refugees, asylum seekers, and migrants we interviewed.

CLOSED DOORS

Mexico's Failure to Protect Central American Refugee and Migrant Children

Tens of thousands of children flee Central America's Northern Triangle—El Salvador, Guatemala, and Honduras—each year, on their own or with family members, because they have been pressured to join local gangs, threatened with sexual violence and exploitation, held for ransom, subjected to extortion, or suffer domestic violence.

Mexican law provides for refugee protection for children and adults who face persecution or other threats to their lives and safety in their home countries. Even so, less than 1 percent of the children who are apprehended by Mexican immigration authorities are recognized as refugees.

Closed Doors examines the reasons for this gulf between the need for protection and Mexico's low refugee recognition rates, detailing the formidable obstacles children face in even applying for recognition. Immigration agents frequently fail to inform them of their rights and do not adequately screen them for possible refugee claims. They do not receive state-appointed lawyers or other government assistance in preparing applications for refugee recognition. More dauntingly, most are held in prison-like conditions, leading many children to accept deportation to avoid protracted time in detention.

The report concludes with specific steps Mexico should take to address these shortcomings. Mexican authorities should ensure that children have effective access to refugee recognition procedures and end immigration detention of children; and they should provide appropriate care and protection for unaccompanied migrant children by identifying the housing arrangements that are most consistent with their best interests.



A 12-year-old Salvadoran boy rests as he waits to be deported, at the National Immigration Institute, in Comitán, Chiapas, Mexico, on August 19, 2010.

© 2010 José Cabezas/AFP/Getty Images