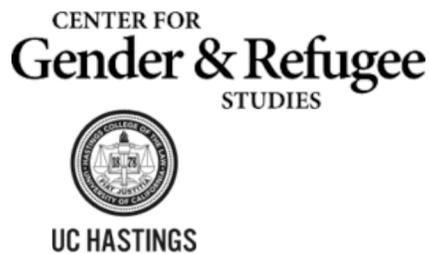


Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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Introduction

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Over the past decade, the issue of children and adolescents¹ in the context of international migration has gradually gained attention and visibility in several countries and regions of the world. Many varied government institutions, international agencies, and civil society organizations have noted the enormous importance and complexity of child migration, placing particular emphasis on the need to analyze and explain why children cross international borders, and to seek solutions to the human rights problems posed by this migration.

This study grows out of an understanding and conviction that this complex issue must be addressed using the international principles governing the human rights of children and adolescents, supplemented by the norms of international humanitarian law and international refugee law. Such an approach requires a comprehensive, regional focus; that is, it must propose a coordinated response by the States that addresses all the issues underlying this phenomenon and that is based on the rights of the child, including the human right to development and the human right to asylum.

A number of state and international entities have undertaken migration initiatives. Especially noteworthy in the governmental realm are the decisions and/or declarations adopted by the Organization of American States (OAS),² the Regional Conference on Migration,³ and Common Market of the South (*Mercado Común del Sur* or MERCOSUR);⁴ several States have also addressed migrant children's rights.⁵ Among international human rights bodies, the recent advisory opinion of the Inter-American Court of Human Rights (I/A Court HR) constitutes an important milestone.⁶ The Inter-American Commission on Human Rights (IACHR),⁷ the Office

¹ In this book, we refer to children and adolescents as the groups and categories included in the concept of "child" defined in the International Convention on the Rights of the Child, that is, all persons under 18 years of age.

² Declaration on Central American Unaccompanied Child Migrants, Organization of American States. Dec. S-008/14. (2014, July 23). See also International Conference on Migration, Childhood and Family. (2014, July 16-17). *Speech of the Secretary General of the Organization of American States*.

³ Regional Conference on Migration. (2014, June 26-27). *Managua Extraordinary Declaration*.

⁴ MERCOSUR. (2014, 29 de julio). Comunicado sobre derechos de niños, niñas y adolescentes migrantes. Retrieved from <http://www.ippdh.mercosur.int/comunicado-mercursosobre-derechos-de-ninos-ninas-y-adolescentes-migrantes/>. (Requesting an Advisory Opinion from the Inter-American Court of Human Rights on the rights of migrant children.)

⁵ See, e.g., Deutsche Presse-Agentur (DPA). (2014, 28 de junio). Presidentes de SICA piden a EU respetar derechos niños migrantes. *Vanguardia*. Retrieved from <http://www.vanguardia.com.mx/presidentesdesicapideaeurespetarderechosninosmigrantes-2100771.html>.

⁶ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶¶ 127-128 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

of the United Nations Special Rapporteur on the Human Rights of Migrants,⁸ the United Nations Committee on the Rights of the Child,⁹ and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, among others, have also issued statements on child migration.¹⁰

Several specialized international agencies, such as the United Nations International Children's Emergency Fund (UNICEF),¹¹ the United Nations High Commissioner for Refugees (UNHCR),¹² the International Organization for Migration (IOM),¹³ and the Office of the High

⁷ See, e.g., Inter-American Commission on Human Rights, Organization of American States (IACHR). (2014, October 2). Press Release: IACHR Wraps Up Visit to the United States of America. Retrieved http://www.oas.org/en/iachr/media_center/PReleases/2014/110.asp; IACHR. (2013, December 30). Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. Retrieved from <http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf>; IACHR. (2013, December 30). Report on Immigration in the United States: Detention and Due Process. Retrieved from <http://cidh.org/countryrep/USImmigration/TOC.htm>.

⁸ See Rep. of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 11th Sess., 2009, May 14, ¶¶ 26-33, U.N. Doc. A/HRC/11/7 (2009), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/132/23/PDF/G0913223.pdf?OpenElement>; Rep. of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 17th Sess., 2011, March 21, ¶¶ 26-33, U.N. Doc. A/HRC/17/33 (2011), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/83/PDF/G1112183.pdf?OpenElement>; Rep. of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 20th Sess., 2012, April 2, ¶¶ 38-41, 72.h, U.N. Doc. A/HRC/20/24 (2012), retrieved from http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf; Rep. of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 26th Sess., 2014, April 3, ¶¶ 55-56, 95, U.N. Doc. A/HRC/26/35 (2014), retrieved from <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>.

⁹ U.N. Comm. on the Rights of the Child, *Human Rights of All Children in the Context of International Migration Background Paper*, 2012, Sept. 28 (2012, Sept. 28), retrieved from <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/2012DGDBackgroundPaper.pdf>. See also Comm. on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, 39th Sess., 2005, May 17 – June 3, U.N. Doc. CRC/GC/2005/6 (2005, Sept. 1), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>.

¹⁰ OHCHR. (2014, July 3). Statement by Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) on Ending Immigration Detention of Children, Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14825&LangID=E>.

¹¹ See, e.g., UNICEF Guatemala. (2009, agosto). *Camino al norte*, Reseña sobre la niñez migrante en Guatemala. Retrieved from http://www.unicef.org/guatemala/spanish/recursos_20207.htm; UNICEF Mexico. (2011, noviembre). *La travesía*, Migración e infancia. Retrieved from http://www.unicef.org/mexico/spanish/Unicef_Migracion_web%282%29.pdf; UNICEF Oficina Regional para América Latina y el Caribe & Universidad Nacional de Lanús (UNLA). (2009, diciembre). *Estudios sobre los estándares jurídicos básicos aplicables a niños y niñas migrantes en situación migratoria irregular en América Latina y el Caribe*. Retrieved from http://www.unicef.org/lac/UNICEF_MIGRACION_NINOS.pdf.

¹² UNHCR. (2014). *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*. Retrieved from http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report_ver2.pdf.

¹³ Organización Internacional para las Migraciones (OIM) Oficina Regional, UNICEF, oficina para Costa Rica, & la Organización Internacional del Trabajo (OIT) oficina para Centroamérica, Haití, Panamá y República Dominicana. (2013, enero). *Niños, niñas y adolescentes migrantes América Central y México*. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

Commissioner for Human Rights (OHCHR)¹⁴ have written reports on the topic. In addition, numerous reports issued by civil society in recent years have made reference to the human rights challenges faced by children under the current scenario of international mobility, including several specifically devoted to the situation in Central and North America.¹⁵

Migration directly and indirectly involves tens of millions of persons under the age of 18, in particular unaccompanied migrant children and adolescents; children and adolescents who migrate with their family members; children and adolescents born in the countries of destination whose parents are migrants; and children and adolescents in the countries of origin whose parents have migrated; or children and adolescents who return to their countries of origin, either voluntarily or forcibly. The phenomenon of childhood migration is marked by at least ten characteristics:

- It is a complex and multidimensional phenomenon, determined by a wide variety of social, political, cultural, economic, and family-related factors, among others, that are intrinsically interrelated and find expression in all facets of migration, especially in its causes and effects.
- The number of children and adolescents who migrate, whether alone or accompanied, has been climbing steadily over the past decade, both internationally and in certain regions in particular.
- Even though the majority of children who migrate are adolescents, year after year there are growing numbers of migrant children under 12 years of age, both unaccompanied and with their families.

¹⁴ OHCHR. *Study on the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration*, U.N. Doc. A/HRC/15/29 (2010, July 5), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/151/41/PDF/G1015141.pdf?OpenElement>.

¹⁵ See Center for Gender and Refugee Studies & Kids in Need of Defense. (2014). *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* (hereinafter “Treacherous Journey”). Retrieved from http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf; Ceselia, A., Morlachetti, A., & Luna, M. por Red Latinoamericana de Acogimiento Familiar (RELAF), Save the Children, & UNICEF. (2014, septiembre). *Manual sobre estándares internacionales de derechos humanos aplicables a los niños, niñas y adolescentes migrantes*. Retrieved from http://www.unicef.org/lac/Manual_estandares_DDHH_NNA_migrantes.pdf; Ceriani Cernadas, P. (coord.). (2013). *Niñez detenida: los derechos de los niños, niñas y adolescentes migrantes en la frontera México-Guatemala*. Mexico City: Distribuciones Fontamara; Universidad Centroamericana José Simeón Cañas (UCA). (2012). *Atrapados en la tela de araña: Migración irregular de niñas y niños salvadoreños hacia los Estados Unidos*; Casa Alianza Honduras. (2012, junio). *Análisis de la situación de Derechos de la Infancia Migrante No Acompañada en el marco de los procedimientos de deportación y retorno a Honduras*. Retrieved from <http://www.casa-alianza.org.hn/images/documentos/Informes.Especiales/Inf.2012/2.%20informe%20infancia%20migrante%202012.pdf>; Women’s Refugee Commission. (2012). *Forced From Home: The Lost Boys and Girls of Central America* (hereinafter “Forced From Home”). Retrieved from <http://womensrefugeecommission.org/forced-from-home-press-kit>; Cavendish, B., and Cortazar, M. (2011). *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*. Retrieved from <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>; Catholic Relief Services. (2010, January). *Child Migration: The Detention and Repatriation of Unaccompanied Central American Children from Mexico*. Retrieved from <http://www.crsprogramquality.org/storage/pubs/peacebuilding/LACRO%20Migration-final.pdf>.

- Children and adolescents affected by migration include those who migrate alone or with their parents, as well as the children of migrants.
- The circumstances and living conditions for the majority of children and adolescents affected by their own migration or that of their parents, as well as by the policies that regulate their mobility, are marked by high levels of vulnerability.
- Such vulnerability is principally determined by the wide range of challenges to, and violations of, children's basic human rights, which find expression in the factors that drive them to migrate, as well as throughout the migration cycle (departure, transit, destination, return).
- In addition to these characteristics, migrating children and adolescents face specific factors and challenges based on their gender, ethnic origin, or age, among other factors.
- The migration of children and adolescents principally takes the form of irregular migration processes (departure, transit, destination) that contribute to increased levels of vulnerability.
- The States' responses to irregular migration status reinforces children's vulnerability by restricting their access to fair procedures for relief—a right to which every child is entitled; or by erroneously denying substantive rights and guarantees that must be ensured for every qualified child and adolescent, including the human right to asylum.
- The policies and practices that affect children and adolescents who migrate or whose parents have migrated either ignore and/or fail to protect the specific needs and rights of children and adolescents.

These characteristics of child migration manifest with particular intensity, both quantitatively and qualitatively, in Central and North America, especially in the countries of Honduras, Guatemala, El Salvador, Mexico, and the United States. This is the region we studied.

The research project *Human Rights, Children, and Migration in Central and North America: Causes, Policies, Practices, and Challenges* was conducted from January 2013 to October 2014. Coordinated by the Center for Gender and Refugee Studies (CGRS) of the University of California, Hastings College of Law (United States) and the Migration and Asylum Program, Center for Justice and Human Rights at the National University of Lanús (Argentina), this initiative also included the following partners: Casa Alianza (Honduras), Universidad Centroamericana “José Simeón Cañas” (El Salvador), Human Mobility Ministry and Asociación Pop No'j (Guatemala), Centro de Derechos Humanos Fray Matías de Córdova and the Programa de Defensa e Incidencia Binacional—including Casas YMCA de Menores Migrantes and Coalición Pro-Defensa del Migrante, A.C. (Mexico), and Kids in Need of Defense and the Women's Refugee Commission (United States). Grants from the John D. and Catherine T. MacArthur Foundation and the Ford Foundation made this project possible.

I. Research

The principal objective of this initiative was to identify the main advances, setbacks, and challenges to the human rights of children and adolescents in the context of migration in Central and North America. The project sought to determine how migration per se, its causes, and the policies and practices implemented by countries in regard to migration directly or indirectly affect the human rights and guarantees of the various categories of children and adolescents who migrate alone or accompanied, as well as how these factors affect the sons and daughters of migrants. We set out to examine these policies and processes, along with the challenges they entail, from a regional perspective.

When we discuss the categories of children and adolescents affected by migration, we are referring to: (1) children and adolescents who migrate with their parents or other formally responsible adults; (2) children and adolescents who migrate unaccompanied; (3) children and adolescents who remain in their countries of origin, but whose parents have migrated to another country in the region; (4) children and adolescents born in countries of destination, who are the sons or daughters of migrants; and (5) migrant children and adolescents who return, voluntarily or forcibly, to their country of origin.

Members of the project team collected and analyzed data and prepared a study that seeks to reflect how this migration concretely takes shape in each of the countries, as well as the interrelationships of migration effects between one country and another. We wanted to learn how the circumstances and policies in place in each country affect the situation in the other countries, and vice versa. This research also looks at how countries in the region have responded to childhood migration through bilateral and regional accords.

The chapters on El Salvador, Guatemala, and Honduras (chapters 2-4) examine issues such as: the varied factors that lead children and adolescents and/or their parents to migrate to Mexico or the United States; conditions for children and adolescents in each of these countries; the situation of children and adolescents whose parents have migrated; challenges of social reintegration faced by children and adolescents who return to their countries; and the treatment of migrant children and adolescents from other countries in transit through or residing in their territories. For each of these issues, we conducted interviews with children and adolescents and, in several cases, with other key social and political players, in order to evaluate the regulatory and legal framework; the public policies and practices implemented in each case; the institutional structures developed to respond to migration; and, in particular, the concrete reality faced by various categories of children and adolescents.

The two chapters regarding Mexico (6 and 7) are preceded by a general introduction on childhood and migration in Mexico, addressing laws and regulations (in particular, laws on childhood and adolescence, migration, and refugees and their protection); the institutions entrusted with responding to migration; the causes behind the migration of Mexican children and adolescents; the concrete policies and programs implemented in recent years; and selected statistics on the situation of children in the country. Then these chapters address the situation in the context of Mexico's two borders (southern and northern).

The analysis of Chiapas clearly reflects both the diversity of situations affecting various categories of children and adolescents and the magnitude of the challenges to their rights. Focusing particularly on the region of Soconusco (and within it, the city of Tapachula), chapter 6 analyzes problems and challenges for safeguarding the rights of migrant children and adolescents and the sons and daughters of migrants who live in this sub region; children and adolescents from Chiapas who migrate to the United States or return from there; and migrant children and adolescents (alone or with their families) who are detained at the Siglo XXI Migration Station after being intercepted in some part of Mexican territory who are then, in the vast majority of cases, repatriated to their countries of origin.

Chapter 7 on northern Mexico also addresses the various categories of children and adolescents affected by migration, particularly children who travel through the states of northern Mexico with the objective of crossing into the United States, those who are returned by U.S. authorities upon being detained in the border zone, as well as those referred to as *niños de circuito*. This term refers to children recruited and exploited by organized crime and other criminal actors to guide people or drugs across the border; they are called “circuit” children because of their repeated border crossings. This chapter pays particular attention to the violence that affects migrating children through this area, and thus to the extreme vulnerability marking the circumstances in which these children and adolescents find themselves. The chapter also looks at programs and practices for reintegration put into place by Mexican institutions.

The four chapters on the migration situation in the United States (9-12) provide a comprehensive analysis of the multiple problems and challenges affecting the rights of migrant children and adolescents and the sons and daughters of migrants in the United States. We particularly examine how immigration enforcement affects migrants’ rights, especially border control, detention practices, and deportations of children and/or their parents, including enforcement policies that separate families. In addition, we analyze U.S. repatriation policies and U.S. reintegration programs. We focus on the procedures designed for resolving cases of unaccompanied children and adolescents, the legal remedies available for migrants, asylum applicants, and victims of human trafficking, and the obstacles for accessing resources to help immigrants navigate these procedures.

This book devotes a specific chapter (13) to analyzing initiatives adopted by the countries in the region with respect to migrant children, adolescents, and families caught up in bilateral and regional migration processes. Our research objective was, first, to evaluate the extent to which the rights of children and adolescents have been taken into account in such initiatives, both in cases of accords referring exclusively to childhood migration and in general migration agreements. Second, this chapter succinctly examines other agreements signed by these countries—for example economic and trade agreements—that directly or indirectly affect migratory movements in the region, including those of children and adolescents and their parents.

Finally, this book includes a chapter written by the Washington office of UNHCR (1). That chapter, which synthesizes the UNHCR report *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* published in early 2014, and based on interviews conducted along the southern border of the United States,

analyzes the causes that lead Central American and Mexican children and adolescents to leave their countries of origin unaccompanied.

II. A human-rights, humanitarian, human development, and refugee crisis: a quadruple crisis that requires a comprehensive regional response

In mid-2014, the government of the United States used the term “crisis” to describe the increase in the number of unaccompanied children and adolescents who were arriving in the United States. Although initially the term appeared to allude to the conditions the children and adolescents had experienced and their needs for protection, it quickly came to refer to concerns about the possible effects that the increase in migrant children would have on the U.S. immigration system. Some decision-makers, for example, commented on the lack of shelters or centers for handling those children, overcrowding in the Border Patrol stations, and the need for funds to respond to this situation. The discussion then focused, as this book discusses, on how to detain and return these children and adolescents as swiftly as possible.

In contrast, this book uses the concept of “crisis” in its genuine meaning, not only literally, but also with respect to the reality faced by children in the region. In effect, we are witnessing a profound crisis that affects all the countries of the region, and with particular intensity El Salvador, Guatemala, Honduras, and Mexico. It is a crisis that began a few decades ago, but has expanded dramatically in recent years. Above all else, this crisis is marked by the systematic violation of the human rights of children—throughout the region, at the point of origin, throughout transit, and in the countries of destination.

In effect, the analysis provided throughout this study, in each chapter and in the interaction among the chapters, tells the story of a highly complex and critical human rights situation affecting children and adolescents in the context of migration in Central and North America. It also confronts a situation that could be classified as a humanitarian crisis, given the various forms of violence that affect the lives and physical integrity of these children and adolescents. At the same time, the States’ enforcement-focused responses to the need for protection of thousands of children have created a crisis in basic aspects of international refugee law.

Finally, considering the current situation of all categories of children and adolescents affected by migration in the region, it is fair to state that we are in the face of a true human-development emergency for hundreds of thousands of children, not only in terms of the reasons these children, adolescents, and families leave their countries and the conditions in which children and adolescents whose parents have migrated are living, but also in terms of the challenges they face in transit, in the country where they reside and when and if they return to their place of origin.

As other reports have indicated in regards to some of the issues we examine or the areas in the region that we have studied, the situation as a whole paints a picture characterized by a diminution of practically all internationally recognized rights for all persons under the age of 18. These rights, we emphasize, must be respected, protected, and guaranteed in all cases, regardless of nationality, ethnic origin, migratory status (of the children and/or their parents), sex, or any

other factor precluded under the principle of nondiscrimination, which is considered *jus cogens*, which is to say, a peremptory or overriding norm of international law.¹⁶

The rights of children and adolescents to life, physical integrity, housing, education, health, a family life, an adequate standard of living, access to the justice system, and to be heard, among many others, face various situations of risk, threat, or direct violation in the context of migration in the region. This is due to the situations in their countries of origin and destination that lead them to migrate, as well as the treatment accorded migrant children and adolescents and asylum seekers—and/or their parents—in the countries of transit and destination, and also upon return to their countries of origin.

At stake is one of the guiding rights/principles of the International Convention on the Rights of the Child: the right to life, survival, and development, set forth in Article 6, although interdependent and interrelated with all the other provisions of the Convention. This right means, first, the right to physical, mental, emotional, spiritual, moral, and social development. Second, it includes access to social rights fundamental for ensuring certain minimum conditions, such as education, health, housing, food, the right not to be exploited, and the prohibition on child labor, among other factors. Yet it also includes the right not to be arbitrarily detained and not to be returned to a country where one's life and physical integrity are at risk.

The development of children and adolescents is intimately connected to their family ties (and the rights/duties of each family member, in particular parents, guardians, or other legal representatives), following Articles 9, 10, 16, 18, and 27 of the Convention. For this reason, the right to development of children and adolescents in the context of migration is affected by adverse impacts on the right to family life. Arbitrary or disproportionate intrusions on the right to family unity (due to irregular migration status), as well as the lack of mechanisms to protect family life in countries of origin and destination, all have negative repercussions on the lives of children and adolescents, particularly on their right to development, in which parents can and must play a fundamental role, with the support of the State, as established in the Convention on the Rights of the Child.

In order to satisfy and, above all, protect all the elements that contribute to the right to development, it is necessary to guarantee due process (and access to the justice system) in any procedure that could directly or indirectly affect those rights, in keeping with the age and maturity of each child. In particular, this includes *the right to be heard*, a pillar of the Convention on the Rights of the Child, based on the principle of progressive autonomy of Article 5. Immigration and asylum procedures, as well as border control practices, severely limit to the participation and right to be heard of children and adolescents' participation right to be heard. Nor are the children involved or taken into account in the design, implementation, and evaluation

¹⁶ The Inter-American Court of Human Rights, in its Advisory Opinion on Rights of Undocumented Migrants, reaffirmed this inalienable and universal nature of the principle of nondiscrimination. See *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 (2003, September 17). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf. It confirmed this position in its recent opinion on migrant children and adolescents. See *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶¶ 127-128 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

of policies and programs that affect the rights of children and adolescents in the context of migration, in both countries of origin and destination.

Finally, the way in which these rights—which are essential for guaranteeing the lives, survival, and integral development of all children and adolescents—are interpreted, regulated, applied, and ensured must also guarantee, in form and in substance, the other core principles of the Convention: the best interests of the child and nondiscrimination. According to the Committee on the Rights of the Child, the principle of the best interests of the child has three intertwined characteristics: it is a right, it is a principle, and it is a procedural rule.¹⁷

Nonetheless, we will see that this principle is not taken into account in the context of migration in Central and North America, nor is it seen as a right or as providing guidance for procedures that may affect the rights of children and adolescents. Factors such as rejection at the border, repatriation, detention, deportation of parents, the formal and practical obstacles to family reunification, the lack of mechanisms for protecting life and physical integrity in the countries of origin and transit, as well as the denial of basic rights in the country of origin, reveal that both by action and by omission the States' policies and practices are not determined by the best interests of the child.

Along these lines, the principle of non-discrimination, crucial not only for the protection of children, but for all international human rights law, is severely impaired in the context of migration. Migration processes omit consolidated standards that dictate not detaining children and adolescents, the right to be heard, and the protection of family life based on the nationality or migratory status of the child or his or her parents. Similarly, direct and indirect discrimination contribute to the leading causes of migration, as along with undue restrictions on the social rights of migrant children and children of migrants.

Many interrelated structural factors make up the causes of the migration of children and adolescents and/or their parents. These factors represent a bleak view of human rights and integral human development. Migration, in turn, arises from the diversity and magnitude of challenges to their rights that children and adolescents and their families face along the entire migratory route, as well as in the country in which they temporarily or permanently reside, and even when they return or are returned to their countries of origin. This profoundly complex reality requires an extensive battery of responses—in the form of public policies, legal and regulatory frameworks, and practices—that derive from a comprehensive human rights approach, including the supplementary components of the human right to development, humanitarian law, and international refugee law. In addition, the following elements must always be considered:

- The underlying causes of migration, forms of migration, protection of children and adolescents in transit, and access to their rights in the countries of destination and countries of origin, among many other factors.

¹⁷ U.N. Comm. on the Rights of the Child (CRC), *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, U.N. Doc. CRC /C/GC/14 (2013, May 29). Retrieved from <http://www.refworld.org/docid/51a84b5e4.html>.

- Short-, medium-, and long-term perspectives, and, accordingly, concrete objectives and measures in the short-, medium- and long-term.
- Accounting for local, national, bilateral, and, in particular, regional levels of action in an interconnected fashion.
- Reliable information to ensure a comprehensive human development plan focused on the rights of children and adolescents.

Next, we briefly describe and examine the principal findings of our research, structured around: (1) causes of migration; (2) rights of children and adolescents in transit; (3) rights of children and adolescents in their countries of destination; (4) the right to consular protection; and (5) policies of return and reintegration of children and adolescents in the countries of origin.

III. The causes of migration: a structural, multidimensional, and regional problem

Analyzing the reasons children and adolescents migrate, whether alone or accompanied, as well as the reasons adults leave their children behind in the country of origin, reveals, first, the complexity of the phenomenon, the depth of the problems underlying migration in the region, and thus the need to address them in an adequate, timely, and effective manner. The situation of children in the three countries of the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras), as well as in Mexico, is marked by considerable shortcomings in the policies intended to provide for their protection.

El Salvador, Guatemala, and Honduras profoundly and systematically fail to carry out essential duties required of them as States parties to the Convention on the Rights of the Child; major shortcomings in democracy and the rule of law frame permit these failures to occur. Shortcomings include the lack of laws and regulations, or the failure to enforce them; institutional weaknesses and inadequacies; lack of resources or other budget priorities; inadequate implementation of public policies; arbitrary practices contrary to a rights-based approach; discrimination; widespread corruption; and high levels of impunity.

These failures underscore a most worrisome denial of the basic rights of the child revealed by the statistical data regarding poverty, illiteracy, school drop-out rates, lack of opportunity, and unemployment among adolescents and youths. These phenomena are accompanied by varied and growing forms of violence (social, institutional, organized crime, gender violence, and domestic violence); impunity for these acts of violence; obstacles for access to justice; widespread corruption; collusion between public agencies and persons involved in organized crime; policies of institutionalization of children and adolescents in vulnerable situations; dysfunctional child welfare systems; separation from parents; housing and sanitation deficits; gender inequality and inequality based on ethnic origin (indigenous populations); exploitation of children and child labor; and human trafficking, among other indicators.

While El Salvador, Guatemala, and Honduras are ranked 115th, 125th, and 129th, respectively, on the global Human Development Index,¹⁸ the indicators associated with the principal causes of migration (poverty, violence, and social exclusion) reveal how children and adolescents are hit especially hard, both quantitatively and qualitatively.

Guatemala, one of the most unequal countries in the world, had a population estimated by UNICEF, as of 2013, of approximately 15.4 million, almost half of whom were children and adolescents, with more than 17% under 5 years of age. According to the National Survey on Living Conditions 2011 (ENCOVI 2011), 53.7% of the population lives in conditions of poverty, while 13.3% lives in conditions of extreme poverty. The latest statistics for 2012 reveal that 19% of children 7 to 14 years of age work in the labor market, with the highest rate of child labor in rural areas.¹⁹ According to the United Nations Development Program (UNDP), while 49.8% of children under the age of 5 suffer from chronic malnutrition, the average educational level of children and adolescents is a mere 4 years.²⁰ As occurs with most social indicators, the statistics on malnutrition among children in the case of the indigenous population are significantly higher, reaching 65.9%.²¹

In El Salvador, the majority of the population is young, with 63.7% under the age of 30.²² In 2011, institutional access to pre-school education among children under 3 years of age was less than 2%; access to kindergarten education was 54.2%, and just slightly more than one-third of the population had access to a high school education (UNICEF, 2013a, based on data from the Ministry of Education—MINED, School Census, and the Multi-Purpose Household Survey—EHPM, 2011). For its part, while net enrollment in basic education is 93.7% of children, it reaches only 35.4% for high school.²³ Currently, the percentage of underweight children and adolescents is 5.5%, and the percentage of those with chronic malnutrition is 19%. Among children and adolescents whose mothers lack an education, the percentage of those underweight is 15.7% and of those with chronic malnutrition is 36.6%.²⁴

¹⁸ United Nations Development Programme (UNDP). (2014). Human Development Index. Retrieved from <http://hdr.undp.org/en/data>.

¹⁹ Instituto Centroamericano de Estudios Fiscales (ICEFI), Suecia, & UNICEF. (2012, diciembre). Análisis del Presupuesto General del Estado de Guatemala aprobado para 2013, Enfocado en la niñez y adolescencia y en seguridad alimentaria y nutricional. *Serie de documentos de análisis ¡CONTAMOS! 12*. Retrieved from http://www.unicef.org.gt/1_recursos_unicefgua/publicaciones/2012/Contamos12%20Presupuesto2013.pdf.

²⁰ Programa de las Naciones Unidas para el Desarrollo en El Salvador (PNUD). *El Salvador en Breve*. Retrieved from http://www.sv.undp.org/content/el_salvador/es/home/countryinfo/.

²¹ Instituto Centroamericano de Estudios Fiscales (ICEFI) & UNICEF. (2011, septiembre). Protegiendo la nueva cosecha, Un análisis del costo de erradicar el hambre en Guatemala, 2012-2021. *Serie de documentos de análisis ¡CONTAMOS! 4*. Retrieved from http://www.unicef.org.gt/1_recursos_unicefgua/publicaciones/contamos_4.pdf.

²² PNUD. *El Salvador en Breve*. Retrieved from http://www.sv.undp.org/content/el_salvador/es/home/countryinfo/.

²³ UNDP. (2013). Human Development Report 2013, El Salvador. Retrieved from <http://hdr.undp.org/sites/default/files/Country-Profiles/SLV.pdf>. See also PNUD. (2013). Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta, p. 4. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

²⁴ Informe sobre Desarrollo Humano El Salvador 2013, Imaginar un nuevo país. Hacerlo posible, Diagnóstico y propuesta, p. 130. Retrieved from http://www.sv.undp.org/content/dam/el_salvador/docs/povred/UNDP_SV_IDHES-2013.pdf.

Honduras is one of the lowest-income countries in Latin America and the Caribbean, with a poverty rate, according to the National Statistics Institute (INE), of 59.9% of households in 2006, which remained practically unchanged, at 60.0%, in 2011. Poverty is accentuated in rural areas, which experience the most severe limitations in the coverage and quality of social services. The rural population, which represents approximately 53% of the country's total population, has a level of poverty of 65.4% as of 2010.²⁵ Acute malnutrition affects more than half of the children ages 1 to 5 years, and average schooling for the population of Honduras is a mere 4.3 years in rural regions and 7 years in urban areas.²⁶

In Mexico, a study conducted by UNICEF and the National Council for the Evaluation of Social Development Policy (CONEVAL) indicates that 53.8% of the population ages 0 to 17 years of age lives in poverty, that is, 21.2 million children and adolescents, with 12.1% living in conditions of extreme poverty.²⁷ This situation, as in Guatemala, is more extreme for the indigenous population, where 78.5% of children and adolescents from 0 to 17 years of age live in poverty, with 33.4% percent living in extreme poverty.

These figures represent merely a sample; this book explains in greater detail the dire situation of children and adolescents in these four countries. Unquestionably, we are dealing with a situation in which key factors basic to the human development of millions of children and adolescents are not being guaranteed. Added to this scenario, ever since the periods of armed conflict in Central America, and, in the case of Mexico, with particular intensity in the past decade, there has been dramatic growth of various forms of violence that directly harm the lives and development of hundreds of thousands of children and adolescents in their communities of origin.

The right to development does not consist merely of its material components (in other words, economic and social rights), but of the totality of material, spiritual, emotional, and psychological factors, as established in the Convention on the Rights of the Child, that ensure such development will take place free from all forms of violence. The data we have collected from various sources—interviews with children and adolescents and other key players, governmental reports from international agencies, universities and social organizations—provide evidence of a context in which the development of children and adolescents is permeated on a daily and generalized basis by multiple forms of violence. The data highlight the impact on children and adolescents of violence and abuses in the home environment; gender-based violence, particularly against girls and adolescent young females; violence based on ethnic origin and sexual orientation; violence related to gangs and, increasingly, a number of organized crime rings; as well as institutional violence by security forces.

While in South America there has been a significant decrease in the homicide rate (from 26.1 per 100,000 population in 2000 to 21.1 per 100,000 population in 2010), Central America, in contrast, has seen a clear increase, with a homicide rate that has almost doubled in the same

²⁵ PNUD. *Reducción de la Pobreza*. Retrieved from <http://www.hn.undp.org/content/honduras/es/home/library/poverty/>.

²⁶ UNICEF Honduras. *Contexto de país*. Retrieved from http://www.UNICEF.org/honduras/14241_16946.htm.

²⁷ Consejo Nacional de Evaluación de la Política de Desarrollo Social (CONEVAL) & UNICEF. (2013, abril). *Pobreza y derechos sociales de niñas, niños y adolescentes en México, 2010-2012*. Retrieved from http://www.unicef.org/mexico/spanish/UN_BriefPobreza_web.pdf.

decade, from 26.6 per 100,000 to 43.3 per 100,000. Similarly, worldwide, 42% of homicides committed in the world in 2010 involved a firearm. In the Western Hemisphere, this figure was much higher, with an average of 75%. In Guatemala and Honduras, the proportion of homicides committed with firearms (as a proportion of total homicides) was even greater: 84% and 83% respectively.²⁸

This violence particularly affects children and adolescents. Several studies underscore the growing presence of these threats in schools, noting that gang activities are undermining the effectiveness of schools as an environment for developing the capacities of children and adolescents. According to the UNDP, evidence indicates that territorial control exercised by gangs in the vicinity of school zones is a major contributor to school drop-out rates, and that public schools are no longer perceived as a space of protection, but as one of risk.²⁹

In the past decade, the prevalence of violence has become increasingly alarming, as has its impact both on migration (violence as a cause of migration) and on the migrant population—who are direct victims of various forms of violence, which particularly affects children and adolescents. The statistics indicate that in Mexico during last six-year presidential term, more than 60,000 persons were murdered and some 150,000 persons were displaced as a result of drug-related violence perpetrated by cartels and gangs in collusion with public entities and/or officials.³⁰

Domestic violence, femicides/feminicides (murders of women, and murders specifically targeting women based on their gender) as well as other forms of gender-based and sexual violence, in addition to impunity for these crimes (lack of access to the justice system, but also failures to protect victims), specifically affect children and adolescents in the Central American countries and Mexico, especially girls and adolescent females. The United Nations Special Rapporteur on Violence against Women, in her report on her visit to Honduras, noted the extent of this type of crime and called attention to the 263% increase in the violent deaths of women from 2005 to 2013.³¹ After her visit to El Salvador, she also indicated that children and adolescents, especially girls, are particularly exposed to situations of domestic violence.³² In Mexico, which ranks 16th worldwide for homicides against women, the rates have climbed steadily since 2007.³³

²⁸ Economic Commission for Latin America and the Caribbean (ECLAC). (2013, December). Social Panorama of Latin America 2013. Retrieved from <http://www.cepal.org/en/publications/social-panorama-latin-america-2013>.

²⁹ UNDP. (2013). Human Development Report 2013, El Salvador, p. 14. Retrieved from <http://hdr.undp.org/sites/default/files/Country-Profiles/SLV.pdf>.

³⁰ Amnesty International. (2013, May). Annual Report: Mexico 2013. Retrieved from <http://www.amnestyusa.org/research/reports/annual-report-mexico-2013?page=show>.

³¹ OHCHR. (2014, July 7). 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. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E%20URL>.

³² Rep. of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum, Human Rights Council, 17th Sess., 2011, February 14, U.N. Doc. A/HRC/17/26/Add.2 (2011), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/112/37/PDF/G1111237.pdf?OpenElement>.

³³ Católicas por el Derecho Decidir & Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C. (2012, July 17). Femicide and Impunity in Mexico: A context of structural and generalized violence. Retrieved from http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CDDandCMDPDH_forthesession_Mexico_CEDAW52.pdf.

A range of factors explain the current levels of violence in Central America. One of those factors involves the history of U.S. foreign policy in the region. U.S. intervention in the region dates back to 1954, when the U.S. government—specifically the Central Intelligence Agency (CIA)—orchestrated the overthrow of legally elected Guatemalan president Jacobo Arbenz. President Arbenz was a leader whose plans for agrarian reform were opposed by the United Fruit Company, the U.S. company that owned most of Guatemala’s arable land and infrastructure. The overthrow of the Arbenz government destroyed Guatemala’s democracy, and laid the foundation for a bloody civil war that claimed at least 200,000 lives, particularly those of indigenous Guatemalans. The 1954 coup signaled the beginning of region-wide political instability that would last for decades.³⁴

During the 1980s, the U.S. government, under the leadership of President Ronald Reagan who viewed Central American civil wars as “theaters in the Cold War,” actively supported repressive regimes in El Salvador and Guatemala, while undermining the socialist Sandinista government of Nicaragua through support of the Contras.³⁵ While civil wars raged on in El Salvador and Guatemala, the U.S. also funded counterinsurgency efforts in Honduras, which served as a staging ground for the Contras.³⁶

In addition to U.S. foreign policy in the region, U.S. immigration law and policy also contributed to the spread of gang violence in the region:

Lacking legal status and seeing no way forward in the United States, many undocumented youths found solace and support in gangs. The most infamous, Mara Salvatrucha [MS-13], was founded by Salvadorans in the Pico-Union neighborhood of Los Angeles in the mid-1980s. When undocumented gang members were apprehended and deported, gang violence was then exported to El Salvador. Transnational gang networks took hold.³⁷

During the 1990s, the U.S. sent a wave of gang members back to Central America. After serving their criminal sentences in the U.S., deported gang members returned to their home countries, becoming a dominant force in an environment where gang culture thrived.³⁸

Both the information gathered in the course of this research project and the conclusions of numerous analyses and studies by a wide range of social players and academics indicate, first,

(Presenting the report before the Committee on the Elimination of all forms of Discrimination Against Women, CEDAW.)

³⁴ Grim, R. (2014, July 18). Here’s How The U.S. Sparked A Refugee Crisis On The Border, In 8 Simple Steps. Huffington Post. Retrieved from http://www.huffingtonpost.com/2014/07/18/refugee-crisis-border_n_5596125.html. See also Schlesinger, S. (2011, June 3). Ghosts of Guatemala’s Past. *The New York Times*. Retrieved from http://www.nytimes.com/2011/06/04/opinion/04schlesinger.html?_r=0.

³⁵ See Gzesh, S. (2006, April 1). Central Americans and Asylum Policy in the Reagan Era. Migration Policy Institute. Retrieved from <http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era>.

³⁶ Grim, Here’s How The U.S. Sparked A Refugee Crisis On The Border, In 8 Simple Steps.

³⁷ Massey, D., Princeton University. Children of Central American Turmoil and the U.S. Reform Impasse. *Scholars Strategy Network*. Retrieved from <http://www.scholarsstrategynetwork.org/page/children-central-american-turmoil-and-us-reform-impasse>.

³⁸ Grim, Here's How The U.S. Sparked A Refugee Crisis On The Border, In 8 Simple Steps.

that it is violence and lack of protection for their basic living conditions that lead children and adolescents to migrate, alone or with their parents. Second, these factors, in the overwhelming majority of cases, are inseparable from one another, which is fundamental to consider when designing adequate, comprehensive, and effective responses, locally, nationally, and regionally. Even though in each case the decision to migrate responds more to one factor (for example, violence) than another (for example, social exclusion), all these factors are present in practically every case, because the causes of migration in the region are structural and deeply interconnected.

Policies in destination countries both cause an increase in migration and affect the form it takes—leading children to migrate through irregular channels. One such factor is the presence of child labor in areas with fewer protections in the labor market. While on a global scale, migration is associated with child labor in countries of destination,³⁹ in the United States this phenomenon is present in the sectors with the greatest irregular migration, such as among domestic workers and in agriculture.⁴⁰ It is also important to note, as we describe in this book, that certain bilateral or regional initiatives (such as NAFTA) have also led to an increase in migration of adults, families, and children and adolescents arriving alone, especially adolescents and youths.

Family reunification also motivates the choice of destination country (particularly in the United States), but also affects the vulnerability of children and adolescents in the community of origin; it is a major driving force behind the migration of thousands of Mexican and Central American children and adolescents. In fact, as the interviews conducted with children and adolescents in the five countries and even the statistics of several public institutions (for example, the Office of Refugee Resettlement (ORR) in the United States and the Office of the Department of Social Welfare in Guatemala)—notwithstanding gaps and deficiencies in the official data—demonstrate, a significant percentage of children and adolescents who leave their countries do so based on a combination of causes associated with the denial of basic social rights, situations of violence and abuse, and the need to rejoin their parents—or one parent—in the United States after a separation of a few or many years (the absence of parents, in turn, may contribute to children and adolescents being exposed to different forms of violence).

The lack of programs for obtaining regular immigration status in the United States, and the difficulties migrant workers face in gaining formal recognition for their work, their presence, and their many contributions to U.S. society, have made it impossible for thousands of children and adolescents to migrate regularly to reunite with their parents. Indeed, for those who already have a work permit, the delays, restrictions, and hindrances in family reunification procedures⁴¹ impair the right to family reunification to such an extent that many children decide to migrate by irregular means.

³⁹ See van de Glind, H. for International Programme on the Elimination of Child Labour, International Labour Organization. (2010, September). Migration and child labour - Exploring child migrant vulnerabilities and those of children left behind.

⁴⁰ See generally Human Rights Watch (HRW). (2010, May 5). Fields of Peril, Child Labor in US Agriculture. Retrieved from http://www.hrw.org/sites/default/files/reports/crd0510webwcover_1.pdf. See also HRW. (2014, May 14). Tobacco's Hidden Children, Hazardous Child Labor in United States Tobacco Farming. Retrieved from http://www.hrw.org/sites/default/files/reports/us0514_UploadNew.pdf.

⁴¹ Hwang, M. C. and Salazar Parreñas, R. (2010). Not Every Family: Selective Reunification in Contemporary US Immigration Laws. *International Labor and Working-Class History*, 78(01), pp. 100-109.

We conclude, in the light of our research in the region, that violence, extreme poverty, and family reunification are the central factors that cause children and adolescents to leave their countries of origin. In particular, crime, gang threats, and other forms of violence are among the strongest determinants (amounting to more than 60%), even though in some areas extreme poverty also plays a fundamental role.⁴² The UNHCR report details the ever greater impact of several forms of violence as drivers of the migration of unaccompanied children and adolescents in the region, while also noting that this migration unfolds in a complex scenario with several interrelated causes. While violence, persecution, poverty, family reunification, and the search for employment can be, singly, the principal motivator of migration by children and adolescents, most children and adolescents surely migrate because of a combination of these factors.⁴³

These factors have not only contributed to the increase in the migration of children and adolescents (alone or with family), but also to a high number of irregular migration flows. Migration becomes a survival strategy in the search for the right to development, life, and family unity in the face of the violation of fundamental rights, but the channels for regular migration have become ever more limited. The factors that have forced this increase in irregular migration have placed children and adolescents in ever riskier circumstances, with a proliferation and consolidation of human smuggling and human trafficking rings whose aims include labor and sexual exploitation.

Likewise, because of the irregular migration status of their parents and the formal and/or practical obstacles for their parents to obtain residency, thousands of children and adolescents can be united with their families only by assuming growing risks to their lives and to their physical and psychological integrity along the migration route, and by enduring incarceration, detention, or arbitrary expulsion. For children and adolescents who migrate irregularly, the best interests of the child, among other factors, are not taken into consideration. Situations of new, accentuated, growing forms of violence against children and adolescents in transit have further contributed to the complexity of the situation for many children who migrate between the countries of the region. Accordingly, in this context of denial of basic rights, threats, and abuses of the rights of children and adolescents to life, development, and survival, destination countries should prioritize protection and the exercise of children's rights over policies that cause growing violence in transit. In addition, destination countries must recognize that punitive migration enforcement mechanisms contribute—by act or omission—to creating the causes of migration.

With respect to why people migrate, it is important to mention another phenomenon in the countries of origin: the high number of children and adolescents whose parents have migrated to other countries. Some chapters of this book describe the vulnerability of many of these children and adolescents, which finds expression in psychological problems and other adverse impacts

⁴² See generally Kennedy, E. (2014, July). No Childhood Here: Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

⁴³ See generally Bhabha, J. (2014). *Child Migration & Human Rights in a Global Age*. Princeton: Princeton University Press.

resulting from the separation of families as well as from abuses suffered at the hands of the adults who take charge of them in their parents' absence.

The absence or weakness of policies to adequately and specifically protect children and adolescents in the countries of origin exacerbate these problems. In a context in which rights are denied, physical integrity is threatened, and the State fails to protect its citizens, family reunification takes on special importance, even if migration might entail new risks in the course of transit, given that families can reunite only through an irregular and ever more dangerous migration. The lack of proper consideration for the human rights of children and adolescents in the countries of transit and destination aggravates this situation and contributes to it being repeated day after day, with ever more adverse effects on children, intensifying the incidence of violence along the migratory route in all its phases: at the point of origin, in passage, and at the destination.

IV. The human rights of migrant children and adolescents in countries of transit

The growing number of children and adolescents who migrate among the countries of Central and North America has steadily turned the region into a transit zone for children and adolescents who are forced to leave their countries of origin. While Mexico is the country of transit *par excellence* (in addition to being a country of origin and, as we shall see, of destination) in view of the number of both Central American and Mexican children and adolescents who cross Mexico headed for the United States, many children also cross through Honduras, El Salvador, and/or Guatemala in the course of their journeys.

This migration is characterized by its irregular nature, because there are multiple obstacles to regular migration. It is also characterized by lack of information and awareness; the prevalence of smuggling and human trafficking networks; and pull factors in the destination countries, among other factors. The vulnerability in which thousands of children live in their countries has contributed to a worsening of this phenomenon in recent years. The various risks children face along the route at the hands of several players (migration agents, security forces, and third parties such as organized criminals) have also aggravated their vulnerability. Other dangers include sexual violence—which particularly affects girls; human trafficking; kidnapping, robbery, and other crimes; the risk of being arbitrarily detained and deported; and the risk of facing hunger, serious health problems, and serious train accidents, including amputations of their limbs, as is documented in the chapter on migrant children and adolescents from Honduras, and many other reports, articles, and documentaries on transit through Mexico.

Chapters 6 and 7 regarding the situation in Mexico, particularly the one addressing its border with Guatemala, offer insights into Mexico's key migration enforcement function for south-to-north migration. As other reports have indicated, Mexico's principal response to the phenomenon of child migration—both unaccompanied children and adolescents and those who migrate with their families—has been characterized by detention and almost automatic return, with little attention to comprehensively protecting children and adolescents through a focus on their rights. For the overwhelming majority of the thousands of children who transit through the country or who live in Mexico without a residence permit (see the table below), detention at migration stations and subsequent repatriation to the country of origin are the norm. Decisions regarding

detention and repatriation, in turn, are made using procedures that fail to consider the most basic guarantees of due process.⁴⁴

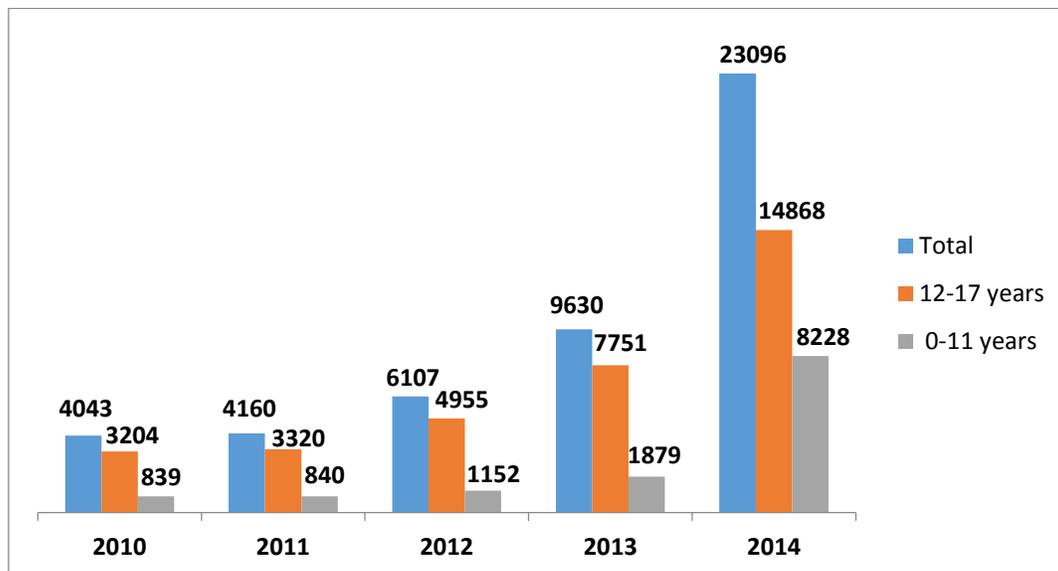
Year	Children and Adolescents Detained	Children and Adolescents Deported	Percentage of Children and Adolescents Detained who are Deported
2014	23,096	18,169	78.66%
2013	9,893	8,350	84.40%
2012	6,107	5,966	97.70%
2011	4,160	4,129	99.30%

Children and Adolescents Detained and Deported from Mexico to El Salvador, Guatemala, and Honduras

Source: The authors, based on official statistics of the National Institute of Migration, Mexico

These statistics not only reveal the predominance of detention and repatriation as the central mechanism of Mexico's public policy in response to child migration, whether accompanied or unaccompanied, but they also attest to three other major factors. First, the statistics show that enforcement is highly ineffective as a solution to the irregular migration of children and adolescents in the region. Second, they demonstrate the notable increase in detentions of children year after year and, most markedly, so far in 2014. In response to the greater visibility of child migration into the United States, Mexico's reaction, lamentably, has been to reinforce practices that, rather than contributing to solutions, have contributed to the scenario of vulnerability, violence, and lack of protection of rights that we have documented. Third, the following chart illustrates the ever younger ages at which children and adolescents set out on the migration trail. Whereas in 2010 839 children under the age 12 were apprehended by the National Institute of Migration, in 2014 8,228 children under 12 were apprehended by the same agency.

⁴⁴ Ceriani Cernadas, P. (coord.). (2013). *Niñez detenida: los derechos de los niños, niñas y adolescentes migrantes en la frontera México-Guatemala*. Mexico City: Distribuciones Fontamara.



Despite the migration reform enacted in Mexico in May 2011, explained in the chapter devoted to the Mexico-Guatemala border, children and adolescents continue to be detained without respecting the mandate to send them to a DIF (*Sistema Nacional para el Desarrollo Integral de la Familia* or Agency for Integral Development of the Family) shelter. Following detention, they are arbitrarily repatriated; no procedure for determination of the best interests of the child (Best Interests Determination) required under Article 74 of the law has yet to be implemented. Certain normative and operating initiatives have been designed for drafting such a procedure, but as of November 2014, the political will and institutional consensus needed for their approval have been absent.

Children and adolescents who are asylum seekers also face this widespread practice of detention, as well as a procedure that does not provide them with legal counsel, psychological care, or other services to assist in ensuring their human right to a fair asylum hearing. Therefore, as occurs with children and adolescents who are victims of human trafficking or other crimes in transit, detention and the lack of adequate protection programs leads to a high number of repatriations, which could, in turn, have a series of grave consequences, either due to the risks they face in their country of origin, or precisely because repatriation induces them to head north once again in search of appropriate protection.

This situation negatively affects all migrants and asylum seekers who transit through Mexican territory—especially weakening their rights, including the rights to life and physical integrity; with respect to children and adolescents, the priority placed on security and migration enforcement has even more profound and severe repercussions, insofar as it increases the risks of transit itself. The annual increase in the number of children and adolescents crossing Mexico, as well as repeated attempts at migration on the part of thousands of children and adolescents subsequent to their repatriation, not only illustrates the limited effectiveness of a response that fails to account for the structural factors leading to migration, but also results in children, adolescents, and families increasingly turning to smuggling rings in order to bypass migration controls. Furthermore, transit becomes more and more dangerous due to the climatic conditions,

the precarious nature of the transportation and, above all, the control of certain regions by organized crime.

Even though Mexico is the principal country of transit, in many cases children and adolescents also cross the territories of Guatemala, Honduras, and El Salvador. In these countries, children also face detention, deportation, arbitrary procedures, and no guarantee of their rights. Child migration is an invisible issue in these countries, and they lack quantitative and qualitative information about child migrants, especially from a human rights perspective. The chapters regarding the Central American countries attest to a significant and worrisome invisibility of the situation of child migrants, which contributes to the lack of specific laws, regulations, and programs to protect children and adolescents who cross through their territories.

Among the few measures that the States of the region have taken, particularly in recent years (with special intensity since mid-2014), are programs geared towards alerting children, adolescents, and families of the risks in transit. Although this might contribute in some measure to preventing some young people from migrating, these initiatives are far from what is needed to adequately and comprehensively address the factors that cause children and adolescents to leave their communities. The widespread problems we have described (multiple forms of violence, social exclusion, poverty, discrimination on several accounts) comprise a scenario in which the dangers of the migration route have become a significant obstacle to overcome in order to survive.

Numerous interviews with children and adolescents and their parents, conducted for this and other initiatives, attest to this dilemma, that is, the assumption of risks in transit—undertaken as irregular migration due to the above factors—given an even more imminent, palpable, known danger occurring in the daily lives of many children in their homes, neighborhoods, communities, schools, and elsewhere.⁴⁵ Thus, in addition to the concrete obligations of each country (especially Mexico) with regard to the rights of children and adolescents, the situation in transit underscores the pressing need for a regional, structural, and comprehensive approach, and thus the need to understand that increasing migration enforcement and sanctions against irregular status is not an adequate solution to this complex, multidimensional phenomenon.

V. Violations of the rights of children and adolescents in countries of destination

The United States is unquestionably the principal country of destination for unaccompanied migrant children and adolescents, those who migrate with their families, and parents who migrate alone. Mexico also receives adult, child, and adolescent migrants, principally from Guatemala, as described in chapter 6 regarding Mexico's southern border. Honduras, El Salvador, and Guatemala are also receiving countries of migrant populations. Therefore, even though we focus in particular on the United States, and to a lesser extent on Mexico, certain conclusions are valid for all these countries as destination points for migrants, and the complete report examines the challenges posed in each of the countries in greater detail.

⁴⁵ See *Forced From Home*, p. 7.

A. *United States*

The statistics available in the United States on children and adolescents in the context of migration attest to the impact of the issue on the lives—and rights—of millions of families and/or migrant children and adolescents in various categories. The data shows the growth in the number of children who have migrated to the United States unaccompanied.

Country	2009	2010	2011	2012	2013	2014*
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057
Honduras	968	1,017	974	2,997	6,747	18,244
Mexico	16,114	13,724	11,768	13,974	17,240	15,634

* *Through September 2014.*

Unaccompanied Children and Adolescents, by Fiscal Year and Nationality (2009-2014)

Source: Department of Homeland Security (DHS)

<http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

Our research has identified various human rights challenges for children and adolescents in the context of migration in the United States, in particular: (1) practices of deporting unaccompanied children and adolescents, as well as families or parents of children born in the country; (2) detention of children and adolescents and/or families; (3) procedural guarantees governing each case, both in the processes that impose penalties and in those that decide whether to grant regular status; and (4) family reunification procedures. We provide a brief description of each of these challenges, breaking the analysis down, when applicable, according to the category of children and adolescents involved.

1. *Returns, repatriations, deportations*

The principal concerns—evaluated in detail in the chapters regarding the United States—can be categorized as those related to unaccompanied children and adolescents of Mexican nationality; those related to migrant children and adolescents—mainly from Central America—who are deported if they fail to win their cases through one of the mechanisms provided for by law; and those regarding children and adolescents of U.S. nationality whose parents are deported.

In addition to repatriation from the border or from the interior, the United States has contributed to the formation and strengthening of the security forces in Mexico in order to deter migration before migrants are able to cross the border. This kind of response has no impact on the causes that lead children and adolescents to migrate, which explains its ineffectiveness. To the contrary, such responses may exacerbate the dangerous conditions to which these children and adolescents are exposed, especially during transit, as well as exposing them to situations in which the principle of *non-refoulement* is violated to their detriment.

Most egregious is the practice through which unaccompanied children and adolescents of Mexican nationality are returned to Mexico without adequate screening, a practice that has a complex recent history. Prior to 2008, the great majority of unaccompanied Mexican children apprehended while seeking entry to the United States were repatriated to Mexico directly from the border, without any safety net to prevent the return of children in need of international protection.⁴⁶ In 2008, Congress passed the Trafficking Victims Protection Reauthorization Act (TVPRA). Among other provisions, the TVPRA created a screening system intended to stop the immediate repatriation of unaccompanied Mexican children at risk of trafficking or persecution and of those not old enough to make an independent decision to return to Mexico.

Yet despite TVPRA's safety net for unaccompanied Mexican children, the vast majority of them continue to be subject to immediate repatriation, based on a presumption that they are not in need of international protection. In fiscal year 2013, Customs and Border Protection (CBP) apprehended 17,240 unaccompanied Mexican children, but they screened and placed in federal custody only 740.⁴⁷

These numbers make clear what advocates have long argued: CBP agents lack the experience, training, and institutional mandate to carry out a procedure and make decisions based on protecting children and adolescents. For this reason, the distinction in the legislation for Mexican children and adolescents—which allows repatriation at the border—makes it impossible to identify those children who, based on the TVPRA, should not be repatriated directly from the border, and in respect of whom it is not possible to reach an independent decision to reject their applications for entry. This no doubt affects the right to an adequate evaluation, and, therefore, to a determination of the best interests of the child.⁴⁸

The inadequate implementation by the United States of TVPRA's provisions regarding Mexican children raises serious concerns, given its impact on the rights of these children and adolescents, including their rights to life and physical integrity, protection from exploitation and trafficking in persons, and so on. Unaccompanied Mexican children repatriated from the border are denied an opportunity to speak to an immigration judge or access to due process of law to determine whether they qualify for immigration relief or have international protection needs. Moreover, they are not entitled to an attorney when being screened by CBP agents, even though their answers to the questions CBP asks determine whether they will be screened into the United

⁴⁶ See Thompson, A. (2008, September 1). *A Child Alone and Without Papers*, A report on the return and repatriation of unaccompanied undocumented children by the United States, p. 25. Retrieved from http://www.aecf.org/m/resourcedoc/CPPP-A_Child_Alone_and_Without_Papers-2008.pdf.

⁴⁷ The Office of Refugee Resettlement's statistics show that out of the 24, 668 unaccompanied children in its custody in fiscal year 2013 only 3% (740) were Mexican. Office of Refugee Resettlement, *Unaccompanied Children's Services*. General Statistics about UAC. Retrieved from https://www.acf.hhs.gov/sites/default/files/orr/uac_statistics.pdf.

⁴⁸ See *Forced From Home*, pp. 22-23. See also UNHCR. (2014, June). *Findings and Recommendations Relating to the 2012 – 2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border*, p. 5. Retrieved from http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf. (Finding that Customs and Border Protection agents continue to presume “the absence of protection needs” for unaccompanied Mexican children, rather than going through the process of “ruling out” protection needs, as the law requires.)

States, transferred to the custody of the Office of Refugee Resettlement (ORR) and placed in legal proceedings where they can seek immigration relief, or returned immediately to Mexico.

Mexican and Central American unaccompanied migrant children placed in ORR custody also confront potential removal to their countries of origin. Whether held in federal custody or released to family, unaccompanied children must defend themselves against charges that they entered the United States without authorization and are “removable” (deportable). Once placed in removal proceedings, children may be granted immigration relief, granted temporary reprieve from removal, ordered removed, or granted voluntary departure to return to their countries without a future immigration penalty.

The United States does not take issues of family unification into consideration when deciding a child’s disposition, and even children reunified with family, sometimes after years apart, face potential separation depending on the outcome of their immigration cases. An immigration judge can order a child removed and the Department of Homeland Security (DHS) can execute that removal order regardless of whether the order will result in separation from parents (a second separation, with the traumatic effect it may have). DHS has the authority to suspend removal, and in some cases agrees not to remove a child whose parents live in the United States.

However, this decision is entirely up to DHS discretion. There is no *right* or *guarantee* to remain with family, and having family in the U.S. does not, on its own, provide a path to regular status. Parents can petition for their children only if they have the type of immigration status that permits them to do so.⁴⁹ These serious limitations are tied to an underlying problem: the lack of a procedure for determining the best interests of the child, which should be determined in every case of unaccompanied children and adolescents who reach U.S. territory, just as best interests determinations should be used in every immigration proceeding that could affect the rights of migrant children and adolescents and children of migrants.

Finally, for children and adolescents of U.S. nationality whose parents are migrants, the principal problem lies in the separation of families consequent to the decisions to deport their parents, without consideration for the rights—such as the right to family unity—of their children born in the country who are U.S. citizens. The problem goes beyond the decision to deport a parent, failing to adequately consider the rights of children and adolescents that may be at stake. In fact, those children and adolescents do not even participate in the procedure, thus violating a core principle, according to which children have a right to be heard. As explained in detail in chapter 11 regarding the separation of families, when immigration judges and DHS officers make decisions about whether to detain or deport parents, they do not consider the best interests of the child. Numerous reports and articles have highlighted the devastating impact of immigration enforcement on U.S. citizen children whose parents have been detained and/or deported. When parents are deported, children may suffer mental health problems, face financial instability, and perform poorly in school.⁵⁰

⁴⁹ See Treacherous Journey, pp. 54, 56.

⁵⁰ See Dreby, J. (2012, January). How Today’s Immigration Enforcement Policies Impact Children, Families, and Communities: A View from the Ground, pp. 9-14. Retrieved from <http://cdn.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>.

Existing statistics attest to the extent, and thus the impact, of these practices. Each year, about 152,000 U.S. citizen children lose a parent to deportation.⁵¹ Furthermore, an estimated 4.5 million U.S. citizen children live with an undocumented parent, placing them at risk of losing that parent(s) to removal.⁵² In 2013 alone, DHS deported 368,644 individuals⁵³; according to DHS, 72,410 of them were parents of U.S. citizen children.⁵⁴ Thousands of children who lose a parent to deportation have landed in the U.S. foster care system, despite having parents or other family members willing and able to care for them.

2. *Detentions and alternative measures*

When CBP apprehends children, it places them in short-term detention for processing and screening. CBP detention conditions for children fall below what federal law requires and are at odds with the international standards that prohibit the deprivation of liberty of children for adolescents for immigration-related reasons. This impairment of the right to liberty is aggravated on occasion due to arbitrary practices and conditions in detention, such as depriving detainees of food, water, and necessary medical care.⁵⁵ In addition, some CBP officers verbally, physically, or sexually abuse children, in clear violation of the law and the children's fundamental rights.⁵⁶

CBP transfers those unaccompanied children from Central America and, in a few cases, unaccompanied Mexican children not repatriated from the border and all other unaccompanied migrant children to the custody of ORR, under the Department of Health and Human Services, the federal child welfare agency. ORR does not detain children for punitive reasons; rather, the agency views its role as providing care for unaccompanied children until they can be released to family or other appropriate sponsors. Long-term care is available for children who have no family or other potential sponsor in the United States, but ORR releases about 90% of children in its custody to family in the United States following short-term custody.⁵⁷

ORR has significantly improved treatment and conditions for unaccompanied children, for example by increasing the use of foster care and other services. However, ORR continues to

⁵¹ Cervantes, W., & Gonzales, R. (2013, October 17). The Cost of Inaction, Why Children Can't Wait for Immigration Reform, p. 2. Retrieved from <http://firstfocus.org/resources/report/cost-inaction/>.

⁵² Passel, J., & Cohn, D. (2011, February 1). Unauthorized Immigrant Population: National and State Trends, 2010. Retrieved from <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>.

⁵³ See Immigration and Customs Enforcement. (2013, December 19). ICE announces FY 2013 removal numbers. Retrieved from <http://www.ice.gov/news/releases/ice-announces-fy-2013-removal-numbers>.

⁵⁴ See Foley, E. (2014, June 25). Deportation Separated Thousands of U.S.-Born Children from Parents in 2013. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/06/25/parents-deportation_n_5531552.html?utm_hp_ref=tw.

⁵⁵ See Forced From Home, p. 21; Office of the Inspector General, Department of Homeland Security. (2010, September). CBP's Handling of Unaccompanied Alien Children (hereinafter "OIG Report"), pp. 21-24. Retrieved from http://www.oig.dhs.gov/assets/Mgmt/OIG_10-117_Sep10.pdf.

⁵⁶ See ACLU Border Litigation Project, Americans for Immigrant Justice, Esperanza Immigrant Rights Project, Florence Immigrant and Refugee Rights Project, & National Immigrant Justice Center. (2014, June 11). Complaint Regarding the Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection. Retrieved from <http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>.

⁵⁷ See Treacherous Journey, p. 76.

place some facilities in remote locations far from legal and other services, and it favors the use of large facilities that tend to be institutional in nature. In addition, as we analyzed in depth in the book, ORR lacks an independent monitoring system to hold facilities accountable for their conditions and their treatment of children in their custody. Even when children are released to their families, they are in removal proceedings and remain at risk of deportation, hence their need for appropriate services.

CBP also apprehends Central American children who arrive with adult family members and places many of these family units in detention centers. In 2009, the United States had practically stopped detaining families in response to sustained advocacy by civil society organizations that highlighted the unique needs of families and the horrendous conditions in they were being detained. The Inter-American Commission on Human Rights also brought pressure to bear to change this practice. However, when the number of family units apprehended in 2014 rose to 60,000, from 11,000 families detained in 2013, DHS reverted to its practice of detaining families in large detention centers, imprisoning up to 2,500 individuals at a time. In centers characterized by lack of medical and psychological services, food that makes children and their families sick, verbal abuse by detention center staff, and inhumane rules such as not allowing babies to crawl.

The United States not only detains families, it also expedites their removal. Children and their families are ordered removed directly from detention, sometimes without even seeing an immigration judge. In addition, the United States generally does not separately screen children traveling with their families for international protection needs, a practice that risks returning children to persecution, torture, or other grave harm, in violation of their right to *non-refoulement*.

Alternatives to the detention of children and families exist. Clearly, as described in greater detail in this book, these alternatives have not only been insufficient to stop the detention of thousands of children and adolescents and families by CBP. In addition, since mid-2014, the U.S. has used regressive measures that impair the right to liberty of migrant children and adolescents, as well as migrant families and families seeking asylum.

3. Due process guarantees and immigration remedies for children and adolescents

Migrant children do not have meaningful procedural rights or substantive legal protections in the U.S. immigration system.⁵⁸ Most importantly, there is no binding best interests standard for migrant children in the United States, thus the authorities are not required to make decisions on the basis of that principle. In addition, even though the United States has not ratified (though it signed) the Convention on the Rights of the Child, both the federal government and the states have accepted the need to determine the best interests of the child in decisions affecting children, particularly through the courts.⁵⁹

Even though ORR appoints child advocates in a growing number of unaccompanied children's

⁵⁸ See Treacherous Journey, pp. 72-79.

⁵⁹ Child Welfare Information Gateway (U.S. Department of Health & Human Services & Administration for Children & Families). (2012, November). Determining the Best Interests of the Child. Retrieved from https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

cases, migrant children (unaccompanied and accompanied) have no right to an attorney and no right to a child advocate to speak for their interests and needs. Those procedural protections and rights that *do* exist for migrant children in the immigration system are wholly insufficient.

For example, all child migrants should be permitted to seek asylum in a non-adversarial setting outside of court, but currently only unaccompanied children may do so. Migrants should be entitled to procedures appropriate to their status and needs as children. Non-binding “guidance” – guidelines for judges regarding accommodating unaccompanied children in removal proceedings and for immigration officers about the importance of interviewing children sensitively – are not enforced or enforceable. What children need are binding standards to protect their rights at every stage of proceedings (see chapter 10 on Immigration Remedies and Procedural Rights of Migrant Children and Adolescents.)

Existing immigration relief options are insufficient for migrant children. Some migrant children can qualify for immigration relief. In particular, children may qualify for Special Immigrant Juvenile Status (SIJS), asylum, a T-visa for victims of trafficking, or a U-visa for victims of certain crimes who assist law enforcement in the investigation or prosecution of the crime.

However, winning asylum has been a significant challenge for both children and adults from Central America. Beginning with the refugee crisis in the 1980’s the United States has resisted recognizing Central Americans as refugees. Between 1981 and 1990, an estimated one million Salvadorans and Guatemalans made the dangerous journey across Mexico into the U.S. to seek safety from the violence and repression of civil war and unrest.⁶⁰ But the Reagan administration refused to acknowledge the violence taking place in Central America. The U.S. State Department actively intervened in Central Americans’ asylum cases, denying well-documented massacres in El Salvador and downplaying the genocide of indigenous peoples in Guatemala.⁶¹ The

⁶⁰ Gzesh, Central Americans and Asylum Policy in the Reagan Era.

⁶¹ Lastra, P. (2014, August 11). Who Counts as a Refugee in US Immigration Policy—and Who Doesn’t. *The Nation*. Retrieved from <http://www.thenation.com/article/180929/who-counts-refugee-us-immigration-policy-and-who-doesnt>.

government's characterization of these refugees as "economic migrants"⁶² influenced immigration judges to deny them asylum.⁶³

Border patrol agents also treated Central American refugees as economic migrants. Immigration officials herded them into crowded detention centers and—rather than allowing them the opportunity for legal advice or to be informed of the possibility of applying for refugee status—pressured them to agree to "voluntary return" to their country of origin.⁶⁴ Ultimately, it took a national class action lawsuit, *American Baptist Churches v. Thornburgh*,⁶⁵ to force the Immigration and Naturalization Service to change its approach to Central American asylum applicants, reopening denied political asylum claims and allowing late applications by individuals who had been afraid to apply. Language in the 1991 settlement stated that foreign policy and border enforcement considerations are not proper factors in determining statutory eligibility for asylum.⁶⁶ Although the settlement gave some a second chance at asylum, the majority of Salvadorans and Guatemalans remained without legal status because U.S. policies regarding them "bounced between aggressive enforcement and humanitarian accommodation, [therefore leaving them] without any kind of permanent reconciliation."⁶⁷ With respect to the current wave of Central American migrants, despite its role in the spread of gang violence in the region, the U.S. continues to resist recognizing Central Americans as refugees, especially asylum seekers whose claims are based on fear of gang violence.

However, only one form of immigration relief—SIJS—requires that the court consider the best interests of the child. Other forms of relief, especially asylum, are interpreted or applied in a restrictive manner that denies protection to children who should qualify. Moreover, the U.S. government interprets the definition of refugee in a way that is inconsistent with the international

⁶² Poverty in and of itself does not qualify an individual for refugee status, as the definition of a refugee requires a fear of persecution on account of specific grounds—race, religion, nationality, political opinion, or membership in a particular social group. The United States has used the term "economic migrant" to distinguish between bona fide refugees who are deserving of refugee protection, and individuals seeking to immigrate to improve their quality of life, who under current law are not deserving of protection if they enter the country through irregular channels. This distinction is misleading, however, because of the multiple and frequently intermingled reasons for migration—including violence, poverty, social exclusion, and others—discussed in this introduction and throughout this book. In the case of a child, social exclusion—especially with regard to deprivation of education, health care, food, and other aspects of a child's rights to physical integrity and to development—may support a claim for refugee protection, and must be considered in upholding the right to *non-refoulement*. See General Comment Number 6 to the Convention on the Rights of the Child: Upholding the Rights of Unaccompanied and Separated Children Outside Their Country of Origin, Thirty Ninth Session, Committee on the Rights of the Child at section IV, f (2005). Labeling the Central Americans who fled the ruthless violence of the civil wars and repression of the 1980s and early 1990s and those who escape violence suffered in the home or meted out by gangs today as economic migrants patently misconstrues the conditions in the region and has been used to justify the use of punitive immigration enforcement measures in response to irregular migration.

⁶³ In 1984, for example, less than three percent of Salvadorans and Guatemalans seeking asylum received grants. "In the same year, the approval rate for Iranians was 60 percent, 40 percent for Afghans fleeing the Soviet invasion, and 32 percent for Poles." Gzesh, Central Americans and Asylum Policy in the Reagan Era.

⁶⁴ Gzesh, Central Americans and Asylum Policy in the Reagan Era.

⁶⁵ *American Baptist Churches et al., v. Richard Thornburgh, et al.*, 760 F. Supp. 796 (N.D.Cal., 1991).

⁶⁶ Blum, C., (1991). The Settlement of *American Baptist Churches v. Thornburgh*: Landmark Victory for Central American Asylum-Seekers. *International Journal of Refugee Law*, Vol. 3, No. 2. See also Gzesh, Central Americans and Asylum Policy in the Reagan Era.

⁶⁷ Meade, E. (2014, July 25). Lessons from the Last Central American Refugee Crisis. *Times of San Diego*. Retrieved from <http://timesofsandiego.com/opinion/2014/07/25/lessons-last-central-american-refugee-crisis/>.

definition. Also, some children may not qualify for protection even under a correct application of the law, but they may still be in danger of great harm if returned to their countries, and that should be taken into consideration.⁶⁸ These children are at risk of removal to the same dangerous or harmful circumstances they fled, once again aggravating their vulnerability.

4. *The right to family life*

There are major limits to family reunification through the existing family immigration system. First, limited options exist for Central American parents to obtain a visa for themselves and their families based on employment because of a bias in U.S. immigration law against low-skilled workers (domestic workers, service industry workers, farm laborers, and others) and in favor of high-skill or technical industries.

Second, there are restrictions in the immigration system itself with respect to who can confer status to whom and the limit on the number of permanent resident applications the United States will grant per country. U.S. citizens over the age of 21 can petition for their parents and siblings, but U.S. citizen *minor* children cannot. U.S. citizen and lawful permanent resident parents can apply for their children, but some applicants must wait for years because of a per-country limit on the number of permanent residence applications granted each year. This limitation indicates that the right to family life does not enjoy the same protection in the case of foreign persons, even if those who make the application are permanent residents or have acquired citizenship. This is not only a discriminatory practice, but also a factor that contributes to increasing the irregular and dangerous migration of children and adolescents seeking to reunite with their parents.

At the same time, it is important to note that the United States has not authorized a broad scale immigration regularization program since 1986. The legalization program put into place under the 1986 Immigration Reform and Control Act did not provide an avenue for legalization of immediate family members of individuals who qualified for the program, if the family members did not themselves meet the requirements. This led to mixed immigration status among family members, which has become a significant problem. When the United States established a process for immediate family members who did not qualify under the 1986 Act to regularize their status, huge backlogs ensued. Both of these problems persist today.⁶⁹

On this last issue, the right of children and adolescents not to be separated from their parents encounters severe limitations in the U.S. if any family member has irregular immigration status. The punitive response to an administrative infraction is accorded priority over a child's right to family life. This criterion still applies even when the child or adolescent has U.S. nationality because, unlike all other countries in the Americas, that situation is not considered sufficient for extending a residence permit on the basis of family unity. While the recent decision by the U.S. administration can be expected to temporarily quell many families' fears of deportation, it has three serious limitations: it is temporary and does not offer a path to citizenship; it does not include reentry of those already deported, thus separating families; and it considers family unity

⁶⁸ See Treacherous Journey, pp. 56-59.

⁶⁹ See Cooper, B., & O'Neil, K. (2005, August). Lessons from the Immigration Reform and Control Act of 1986, Policy Brief. Retrieved from <http://migrationpolicy.org/research/lessons-immigration-reform-and-control-act-1986>.

not as a right, but as a mere discretionary concession. And even this limited reform may subsequently be blocked by Congress or suspended by the next administration.

B. Mexico and Central America

We have described the practices of detaining and repatriating children and adolescents systematically and automatically carried out by Mexico. Here we focus on other issues that impair the rights of children and adolescents, looking at Mexico and Central America as destinations of migrant children, adolescents, and families.

As the chapters on Mexico indicate, in particular chapter 6 on Chiapas, a significant number of migrant children and adolescents as well as children of migrants reside in Mexico, many of them without a residence permit. The 2010 National Census reveals an almost 100% increase in the number of foreigners living in Mexico. According to the most recent census, almost 80% of the Central American population in Mexico is living in the city of Tapachula, Soconusco Region, in Chiapas.

Among the problems that affect their rights are those identified in the section on Mexico as a transit country, since the children and adolescents living in the country irregularly are likewise subjected to mechanisms of detention and repatriation. Because Mexico does not apply a formal best interests determination either for children and adolescents in transit or for those residing in the country, it is not possible for authorities to determine fairly whether repatriation is the most suitable measure. In any event, the fact that children and adolescents are taken to a migration station following enforcement activities at a workplace or on a highway reflects a series of gaps in existing policies and programs for the protection of migrants' rights in Mexico, and specifically of the rights of children and adolescents.

Child labor under these conditions represents a particular problem, as numerous child migrants are working under entirely inadequate conditions (see chapter 6 on Mexico's southern border). Taking into account the age of the child, this often consists of child labor prohibited by national and international legislation. In all these cases, children perform tasks that are precarious to their safety, their employment is informal, and their rights are not protected. In recent years, the problem of human trafficking has also intensified in the region, for both labor and sexual exploitation.

To summarize, the following are among the principal challenges, problems, and advances for migrating children residing in Central America and Mexico:

- Obstacles in the way of regularization of migration status that affect migrant children and adolescents with their families, the sons and daughters of migrants, and, with special intensity, unaccompanied children and adolescents, who are highly vulnerable.
- Restrictions on access to health services: Since 2010, the “Cartilla de Salud del Migrante” (“Migrant Health Card”) has sought to cover the health needs of migrants in the state of Chiapas. However, practical obstacles—in particular, for persons with irregular migration status, the impossibility of enrolling with the Mexican Social Security Institute (IMSS) or

the Seguro Popular insurance program—create limitations on this right, which particularly affect migrant children and adolescents or the sons and daughters of migrants.

- Cases of labor exploitation, working conditions that are completely inappropriate for adolescents, or situations of abuse and mistreatment, and the like.
- Numerous migrant children and adolescents live on the streets, working as street vendors or engaged in other dangerous activities that make them extremely vulnerable.
- Notwithstanding the social assistance provided by certain agencies (such as DIF Tapachula, through its day shelter), programs focused on the comprehensive protection of children leave migrant children out or completely disregard their needs, especially the needs of those whose migration status is irregular, making these children and adolescents virtually invisible.
- Migrant girls and adolescents endure sexual exploitation, particularly in the areas along the border with Guatemala.
- Several improvements have been made to eliminate obstacles to registering births of children of migrants who lack a residence permit, affecting their rights to an identity, a name, and a nationality. The federal and state legal framework has been brought into line with international obligations, although some problems persist in practice.
- Little qualitative or quantitative information exists or has been collected on migrant children and adolescents, their needs, living conditions, etc., making it difficult to develop policies aimed at protecting their rights.

Finally, the massive invisibility of migrant children and adolescents as well as of sons and daughters of migrants living in the Central American countries we analyzed—for example, children and adolescents of Honduran or Nicaraguan origin in rural areas of El Salvador—reveals that very little information is available. Accordingly, there is an absence of sound, comprehensive public policies to protect the rights of these populations.

At the same time, our analysis of the legal provisions and practices in the three countries indicates a failure to refrain from incarcerating migrant children and adolescents based on their migration status, or to determine the best interests of the child in cases of unaccompanied children and adolescents, to identify risks and vulnerabilities for each child, and to prevent and sanction situations where migrant children and adolescents become victims of human trafficking.

VI. Weaknesses and limitations of consular protection policies

The research conducted in the three Central American countries, in Mexico, and in the United States brings to light a series of major deficits with respect to the central function that the countries of origin of migrant children and adolescents and/or of their parents can and must perform. Even accounting for the differences between each of these countries, each lacks an

adequate public policy that includes a legal framework, budget, goals, and duly trained human resources for fairly handling migrant children and adolescents. Consequently, practices that are hardly adequate for effectively protecting the rights of children and adolescents in transit and at their destinations (generally in Mexico and the United States) remain in place.

For Guatemala, a significant consular network does exist in Mexico (10 consulates) and in the United States (11 consulates), yet these consulates provide only traditional consular services and not consultations or programs for protecting the rights of migrants or protocols for communicating with the authorities of the country of destination regarding a violation of rights. Of even greater concern is that the consular representatives of Guatemala provide only consular accompaniment, with no attorneys providing legal information to their compatriots abroad—for example, regarding their rights or legal aid services available in the destination country—or who assist in challenging practices that might affect the rights of children and adolescents, such as detention at a migration station in Mexico.

For a long time, Salvadoran consular offices were limited almost exclusively to providing “traditional” consular services such as identification documents (passports, the *Documento Único de Identidad* or Standardized Identification Document and others), processing vital statistics registration (registration of changes in family composition of Salvadorans abroad), and serving in the capacity of a notary to authenticate personal documents before the authorities of the migrant’s country of origin and country of destination. Following the massacre of 72 migrants in Tamaulipas in 2010, a change in consular services was introduced under which a commitment was made to protect the rights of migrants. In this new consular service model, the protection and defense of migrants’ rights constitutes the core of their work. Nonetheless, there are still many challenges when it comes to applying this rights-based approach in practice in the actions of the consulates, including issues such as a need for improved training and awareness-raising among consular personnel, a mechanism for collecting information from a rights-based perspective, and an adequate budget.

The consular assistance for children and adolescents provided by Honduran authorities is plagued by serious problems. In addition to the same deficiencies as the other countries in a lack of human rights training and failures to develop and implement policies for protecting migrants in transit and at their destination, Honduran consular services are hindered by a series of more general limitations. These include inadequate budgets, infrastructure, and staff size, among other factors, that significantly limit the consulates from taking actions to protect the human rights of migrant children and adolescents.

The case of Mexico’s consular assistance is more complex and varied. Mexico has an extensive consular network in the United States that has expanded over time, and it undertakes specific actions and programs to protect and promote the rights of Mexican nationals. In mid-2014, the Mexican Ministry of Foreign Affairs, in cooperation with UNICEF, launched an initiative based on a protocol for providing consular protection to unaccompanied children and adolescents in the United States. It remains to be seen, as in the other countries, whether those protocols are ratified in a legal and public policy framework that ensures their effective implementation and a clear rights-based perspective.

The widespread practices of detention and repatriation of children, adolescents, and families in Mexico, as well as the arbitrary returns of Mexican children and adolescents from the United States border (subsequent to detention in DHS establishments), coupled with the separation of hundreds of thousands of families due to deportations, among other situations, have not resulted in a reformulation of consular assistance practices and strategies. These practices demonstrate the limitations that still exist in understanding the rights of children and adolescents that are at stake in the context of migration.

Also of concern are the bilateral accords for repatriation of children and adolescents that have been adopted by countries of the region, as explained in chapter 13. Their gaps with respect to rights and guarantees contribute to placing the consulate in an administrative role that is often limited to managing a repatriation that has already been decided. The consultants do not sufficiently consider the rights of the children and adolescents at stake in each case, and do not report—based on information produced by social work agencies and child and adolescent protective agencies in the countries of origin—on the possible risks of repatriation, so as to advocate for an alternative solution more in keeping with the best interests of the child, mindful of the circumstances in each case.

Other key factors in Mexican consular protection include: (1) the role of the consulate as articulator and facilitator of support networks and political organization of the communities, helping its nationals participate and organize to defend their own rights; (2) the production of consular information as the basis for consular actions and strategies (including periodic evaluation and reformulation), supplementing the information that should be produced by other agencies in the country of origin (those entrusted with the protection of children and the judiciary, among others); and (3) coordination with the competent agencies in the country of origin, in particular those entrusted with the protection of children, since consular actions in a repatriation procedure, or a formal best interests determination, should such a procedure exist, should be based on information produced by the government agencies mandated to protect the rights of children and adolescents.

Ultimately, protecting and defending the rights of migrants constitutes the core of consular work. To that end, the design and production of procedural instruments (protocols, manuals, database systems, and directives) are crucial for making the work more efficient. By now migration policies of the States of origin should regulate this consular role by legislation under which consulates would provide adequate protections, coupled with other elements of a public policy to ensure the rights of migrant children and adolescents through consular representation. That, of course, also encompasses the primary responsibility for the rights of children and adolescents corresponding to the State in whose territory the child is living.

To conclude, one should recall the recent decision of the Inter-American Court of Human Rights, which stated:

. . . owing to the special vulnerability of children who are away from their country of origin and, especially, of those who are unaccompanied or separated, access to communication with consular authorities and to consular assistance becomes a right that has particular relevance and that must be guaranteed and implemented

on a priority basis by all States, especially because of its possible implications on the process of gathering information and documentation in the country of origin, as well as to ensure that voluntary repatriation is only ordered if it is recommended as the result of proceedings held with due guarantees to determine the best interests of the child, and once it has been verified that this can be carried out in safe conditions, so that the child will receive care and attention on her or his return.⁷⁰

VII. Gaps and deficiencies in the policies of return and adequate reintegration

The chapters on the Central American countries, as well as the one on Mexico's northern border, note several serious problems, and elaborate on the practices of repatriating, returning, and deporting migrant children and adolescents from Mexico and the United States. We document serious shortcomings—from a human rights perspective, but also in terms of effectiveness—in the programs for receiving and reintegrating unaccompanied migrant children and adolescents once they return (generally against their will) to their communities of origin.

The principal problems we identified are:

- The countries of origin do not have adequate return and reintegration policies, especially from a rights-based perspective.
- There are no policies aimed at aligning the actions for the arrival and reinsertion of returnees with the public policies that ought to resolve the structural causes that led children and adolescents, families, and/or parents to migrate in the first place.
- There are no adequate mechanisms to prevent situations of violence that could endanger the lives and physical integrity of children and adolescents who are returned, to protect children and adolescents who have been victims of violence and other related crimes, or to keep them from migrating or crossing the border again, which usually occurs under more vulnerable and higher-risk circumstances than the previous time.
- Several of the initiatives developed have been limited to handling the arrival of children and adolescents and, to a degree, their return to family members, but in almost all cases, without policies, programs, or subsequent actions that accompany a real process of social reintegration as an immediate and lasting solution.
- There is a significant lack of coordination among the public entities—ranging from consulates in other countries, to social protection and other agencies in the country of origin—that should be in charge of a comprehensive reintegration policy in cases involving the return of children and adolescents, based on the best interests of the child.

⁷⁰ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶¶ 127-128 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

- No policies exist for the periodic production of reliable information to make it possible to design and/or reformulate adequate reintegration programs in the context of a broader policy that addresses the causes of migration of children and adolescents.
- The countries lack sufficient specific programs for follow-up on children and adolescents who have already migrated and who have been returned, in order to support them socially and psychologically.
- Some interesting initiatives with respect to the reintegration of returned children and adolescents have been developed by civil society organizations, as described in chapter 12 written by KIND, but these initiatives are not adequately supported or broad enough to address the needs of all children repatriated to a particular country, and they have not been replicated throughout the region.
- Even though the delivery of children and adolescents to their family members is an important part of reintegration programs, the countries have not designed responses to the thousands of cases in which the parents of those children and adolescents live in the United States with irregular status, a factor that in many cases leads children and adolescents to once again migrate after being handed over to other relatives.
- Programs for return and reintegration require a more solid normative basis, ensuring a rights-based approach, an adequate budget, agencies placed in charge and their respective coordination, and public human rights bodies entrusted with monitoring their implementation, among other aspects.

In Mexico, El Salvador, and Guatemala, certain levels of coordination and support are provided when deported migrant children and adolescents return, but a comprehensive strategy has yet to be developed, and effective measures assuring their lasting resettlement and reintegration in their countries of origin are clearly lacking. The countries need to develop a policy regarding migrants who have or will be deported from the countries of destination, in order to strengthen the possibility that such reintegration into society will produce lasting solutions, in particular for children and adolescents. Such a policy would necessarily consider migrant children and adolescents as an especially vulnerable group with special rights.

The reintegration of children and adolescents into their countries of origin must not merely entail their transfer, receipt and, sometimes, delivery to family members. From a comprehensive rights-based perspective, reintegration is the return to a life where one effectively exercises one's rights, with sufficient opportunity for development, without discrimination, and without violence. Because no policies with this scope and focus have been put into place in countries such as Mexico and the United States, the lack of formal procedures for a best interests determination is particularly serious. This absence is coupled with severely limited consular activity. Furthermore, in the countries of origin, there are policy shortcomings in matters of reintegration as well as underlying deficiencies in addressing the causes of migration. The combination of these factors forms the setting for the principal adverse impacts on the rights of children and adolescents in the context of migration for both those left behind when their parents migrate and those who migrate alone or with their families.

VIII. Bilateral and regional initiatives: limited approaches without a rights perspective

At the outset of this introduction, we said that the phenomenon of children in the context of migration in Central and North America is, at its core, a regional matter. Accordingly, any effort to identify responses that are adequate, effective, and legitimate must necessarily take a regional approach. In other words, such efforts need to ensure the individual, collective, and interconnected involvement of the five countries most affected. For this reason, chapter 13 focuses on evaluating what the States have done internationally, especially on a bilateral and regional basis. And the assessment is equally worrisome at the national level.

The bilateral and regional accords that to date have been adopted in the region in the area of migration (including accords in conjunction with the Regional Conference on Migration) have omitted commitments and issues that are essential for a sound and integrated approach to children and migration. First, these accords do not include concrete obligations for the countries of transit and destination with respect to the rights and guarantees of children and adolescents in migration procedures. The accords do not include a prohibition on detention, or fundamental guarantees of due process, or the duty to establish a formal procedure for a best interests determination. These accords have also failed to include a commitment by the countries of origin to design and implement adequate reintegration policies in coordination with the other countries. Moreover, the agreements signed, in addition to their limitations in terms of recognizing rights, have no follow-up or enforcement mechanisms.

Most of these agreements define initiatives that have prioritized aspects of the management and logistics of repatriation, rather than providing for substantive protection of rights, which would entail a search for substantive solutions. Even so, it is important to note that some of the chapters of this book, such as chapter 2 on Honduras and chapter 7 on Mexico's northern border, attest to the fact that in many situations even those logistical aspects are not implemented, such as those involving the time of day of repatriation and other formalities observed in repatriations of children and adolescents. This further exacerbates the level of vulnerability of children to violations of their rights.

A number of different types of agreements affect the migration of adults as well as children and adolescents. For this reason, chapter 13 also analyzes regional economic and security agreements and initiatives that have direct and indirect consequences on the situation. The report examines how some economic integration initiatives have only exacerbated the causes of migration in the region, as they have expanded the gaps and disparities within and among the countries.

The security initiatives that have been promoted [in the region] have had two major effects. First, they have reinforced enforcement measures to expand security, which is also associated with growing inequality and the exclusion of broad social sectors in the countries of origin. And second, they have led to growing militarization of the borders and the reinforcement of migration controls, with consequences such as a dramatic increase in the risks in transit, arbitrary detention, rejection at the border, and repatriation, as well as the inadvertent strengthening of organized crime networks.

This book clearly and in detail shows that we find ourselves facing four serious shortcomings that deny the basic rights of children and adolescents in the context of migration, with particular intensity for unaccompanied children and adolescents: (1) lack of attention to the structural causes of migration; (2) prioritizing migration enforcement over the rights of children and adolescents and, in many cases, over refugee law; (3) an absence of adequate reintegration programs, which once again starts the cycle of migration over again, and accentuating the impetus to migrate when, for example, children and adolescents face reprisals or an increase in the risks they assume in transit; and (4) the lack of comprehensive responses at the regional level informed by rights, human development, humanitarian law, and international refugee law.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>.