

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

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Chapter 1 Children on the Run: Unaccompanied Children Leaving El Salvador, Guatemala, Honduras, and Mexico and International Protection

United Nations High Commissioner for Refugees

I. Introduction

This chapter provides an overview of recent findings and recommendations of the United Nations High Commissioner for Refugees (UNHCR) regarding unaccompanied migrant children in the United States arriving from Central America and Mexico.¹ As described below, UNHCR plays a key role in the protection of such children, particularly those fleeing persecution and violence. This chapter provides an overview of the circumstances of unaccompanied children arriving to the United States, and describes UNHCR’s findings—based on interviews of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico—with respect to the protection needs of such children. Although a multiplicity of reasons underpin children’s reasons for leaving, UNHCR’s study unequivocally demonstrates that a significant proportion of displaced children, including over half of those interviewed, have potential international protection needs that must be addressed in a targeted, child-sensitive manner. However, many gaps in protection persist in the current mechanisms in place for such children. To address these gaps, this chapter concludes with several key recommendations for national and regional authorities.

II. UNHCR and unaccompanied and separated children

UNHCR is the sole international, intergovernmental United Nations organization entrusted by the UN General Assembly with responsibility for providing international protection to refugees and others of concern and, together with governments, for seeking permanent solutions to their problems.²

UNHCR provides international protection and direct assistance to refugees throughout the world in some 125 countries. UNHCR has over sixty years of experience supervising the international

¹ This chapter is an adaptation of United Nations High Commissioner for Refugees (UNHCR). (2014). *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (hereinafter “Children on the Run”). Retrieved from http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report_ver2.pdf. Children on the Run and other information about unaccompanied children can be found at www.unhcr.org/children. The names of the children whose comments are included in this chapter have been changed to protect confidentiality; ages and countries of origin are accurate.

² The duties and responsibilities of UNHCR are found in the Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428(V), U.N. Doc. A/RES/428(V) (1950, December 14), retrieved from <http://www.refworld.org/docid/3ae6b3628.html>; the Convention relating to the Status of Refugees, 1951, July 28, 189 U.N.T.S. 137 (hereinafter “1951 Convention”), retrieved from <http://www.refworld.org/docid/3be01b964.html>; Protocol relating to the Status of Refugees, 1967, January 31, 606 U.N.T.S. 267 (hereinafter “1967 Protocol”), retrieved from <http://www.refworld.org/docid/3ae6b3ae4.html>. The singular purpose of the 1967 Protocol was to universalize the refugee definition by removing any temporal or geographic references to World War II contained in the original 1951 Convention definition; the 1967 Protocol incorporates by reference all the substantive provisions of the 1951 Convention.

treaty-based system of refugee protection and has twice received the Nobel Peace Prize for its work on behalf of refugees. UNHCR works closely with governments and others to best ensure the 1951 *Convention relating to the Status of Refugees* and its 1967 *Protocol relating to the Status of Refugees* are honored and that national and regional migration policies are sensitive to the potential protection needs of all individuals. Central to international refugee protection—and UNHCR’s mandate—are providing refugees the protection of asylum, ensuring their human rights are respected, and safeguarding the fundamental principle of *non-refoulement*—the prohibition against returning any refugee to a place where she or he would face danger.³ UNHCR would not be able to carry out its essential duties without the support, cooperation, and participation of States around the globe.

The protection of children is a core priority of UNHCR at the global, regional, and national levels.⁴ UNHCR has long recognized the right of children to seek asylum in their own stead and their inherent vulnerability—especially those children who are unaccompanied by or have been separated from their families.⁵ UNHCR has also long recognized certain child-specific forms of persecution that may give rise to a claim for refugee protection. Of foremost concern to UNHCR is that all unaccompanied and separated children be consistently and appropriately screened for international protection needs and, once identified, have full access to seek and receive international protection that takes into account their age and experiences in a child-sensitive manner.⁶ A fundamental goal is to ensure that all “girls and boys are safeguarded from all forms

³ 1951 Convention, Article 33.

⁴ See UNHCR. (2012, June 26). A Framework for the Protection of Children (hereinafter “Child Protection Framework”). Retrieved from <http://www.refworld.org/docid/4fe875682.html>. (Affirming “the centrality of children’s protection to UNHCR’s work.”) The Child Protection Framework also highlights the fundamental principle to “do no harm” in working with children, which calls for consideration of “the child’s family, culture and social situation and conduct[ing] actions, procedures and programmes in a manner that does not put the child at risk of harm” (Child Protection Framework, p. 16). See also UNHCR. (1997, February). Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (hereinafter “Guidelines on Unaccompanied Children”). Retrieved from <http://www.refworld.org/docid/3ae6b3360.html>; UNHCR. (2008, May). Guidelines on Determining the Best Interests of the Child (hereinafter “Best Interest Guidelines”), p. 17. Retrieved from <http://www.refworld.org/docid/48480c342.html>. (Stating that “[i]t is the responsibility of States to promote the establishment and implementation of child protection systems, in accordance with their international obligations” and that “[a] comprehensive child protection system comprises laws, policies, procedures and practices designed to prevent and respond effectively to child abuse, neglect, exploitation and violence.”); UNHCR. (2009, December 22). Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (hereinafter “Child Asylum Guidelines”). Retrieved from <http://www.refworld.org/docid/4b2f4f6d2.html>.

⁵ UNHCR defines an unaccompanied child as any child under the age of 18 who has been “separated from both parents and other relatives and [is] not being cared for by an adult who, by law or custom, is responsible for doing so,” while a separated child is one who is “separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives” (Best Interests Guidelines, p. 8). For purposes of this chapter, the term “unaccompanied children” is used to refer to both unaccompanied and separated children unless stated otherwise. El Salvador, Guatemala, Honduras, Mexico, and the United States, likewise consider anyone under the age of 18 years old to be a child, although in some cases, children between the ages of 12-17 are referred to as adolescents, a designation that has no bearing on the substance of the issues discussed here.

⁶ The Guidelines on Unaccompanied Children provide comprehensive guidance on procedures for receiving, identifying, and protecting unaccompanied and separated children arriving to a country in search of safe haven and underscore that “[b]ecause of their vulnerability, unaccompanied children seeking asylum should not be refused access to the territory” (Guidelines on Unaccompanied Children, p. 1). Children should always have access to asylum procedures, regardless of their age. Children seeking asylum, particularly if they are unaccompanied, are

of violence, abuse, neglect, and exploitation.”⁷ All actions taken concerning refugee children should be guided by the principle that “the human rights of the child, in particular his or her bests interest, are to be given primary consideration.”⁸

“States are primarily responsible for the protection of all children and should promote the establishment and implementation of child protection systems, in accordance with their international obligations, ensuring access to all children under their jurisdiction.”⁹ In addition, the *Convention on the Rights of the Child*, the fundamental international framework for the rights and protection of children, gives particular attention to the special protection needs of children deprived of their family environment and of children who are refugees or are seeking asylum, and states that all the provisions of the Convention apply without discrimination to all children under the jurisdiction of a State.¹⁰

Many unaccompanied children leave their countries of origin in the context of “mixed migration” movements, which include both individuals in need of international protection and migrants without international protection needs. The number of refugees and asylum-seekers is a relatively small portion of the global movement of people, and in view of their vulnerability, “steps must be taken to establish entry systems that are able to identify new arrivals with international protection needs and which provide appropriate and differentiated solutions for them.”¹¹

entitled to special care and protection. *See generally* Child Asylum Guidelines (discussing a “child-sensitive” approach to interviewing and assessing the international protection needs of children).

⁷ Child Protection Framework, p. 19.

⁸ UNHCR. (1994). *Refugee Children: Guidelines on Protection and Care*, p. 19. Retrieved from <http://www.refworld.org/docid/3ae6b3470.html>.

⁹ Child Protection Framework, p. 15.

¹⁰ *Convention on the Rights of the Child* (hereinafter “CRC”), 1989, November 20, 1577 U.N.T.S. 3, retrieved from <http://www.refworld.org/docid/3ae6b38f0.html>. The CRC embodies four central principles: the best interests of the child shall be a primary consideration in all actions affecting children (Art. 3); there shall be no discrimination on the grounds of race; colour; sex; language; religion; political or other opinions; national, ethnic or social origin; property; or disability, birth or other status (Art. 2); State parties recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child (Art. 6); and children shall be ensured the right to express their views freely in all matters affecting them, with their views being given due weight in accordance with the child’s age and level of maturity (Art.12). The CRC includes among the fundamental rights of children the need for protection from abuse, exploitation, and neglect, and the importance of the physical and intellectual development of the child, and underscores the special needs of unaccompanied children who may be in need of international protection. El Salvador, Guatemala, Honduras, and Mexico are all signatories to the CRC.

¹¹ UNHCR. (2011, February). *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, p. 10 (hereinafter “The 10-Point Plan”), Retrieved from <http://www.refworld.org/docid/4d9430ea2.html>. This edition contains the original 2007 10-Point Plan of Action and identifies and discusses best practices across the globe relating to each of the 10 points in the plan. The 10-Point Plan is “a tool developed by UNHCR to assist governments and other stakeholders to incorporate refugee protection considerations into migration policies” (10-Point Plan, p. 8). Significantly, the 10-Point Plan contains an entire section on “child protection systems” as well as one on identifying women and girls at risk and another on protecting victims of trafficking (*Id.*, pp. 152-168). The report focused on the reasons children gave for leaving and any harm they feared or experienced in their countries of origin; the report was not able to accommodate questions specific to the elements of trafficking in sex or labor or the identification of possible trafficking victims. Moreover, the report was comprised of children who all had their journeys to the U.S. interrupted by their apprehension, which means there may have been children destined to be caught up in trafficking but were not yet aware of it. These factors support the need for further research on trafficking-related issues concerning displaced children from these four countries.

In accordance with these priorities, and as a central component of its work relating to children, the UNHCR Regional Office for the United States and the Caribbean in Washington, D.C. (UNHCR Washington) conducted an in-depth investigation into the potential international protection needs of unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico arriving to and within the United States.

III. Unaccompanied children arriving to the United States

Since 2008, UNHCR has registered an ever-growing number of asylum-seekers—both children and adults—from El Salvador, Honduras, and Guatemala lodging claims throughout the Americas region.¹² The combined number of asylum claims brought by individuals from these three countries in Mexico, Panama, Nicaragua, Costa Rica, and Belize reflect a 435% increase from 2008 to 2012. The United States recorded the largest number in the region, having received eighty-five percent of all the asylum applications brought by individuals from these three countries in 2012. The number of adults claiming fear of return to their countries of origin to government officials upon arriving at a port of entry or being apprehended by immigration authorities at or near the southern U.S. border increased sharply from 5,369 in fiscal year (FY) 2009 to 36,174 in FY 2013¹³ with individuals from El Salvador, Honduras, Guatemala, and Mexico comprising seventy percent of this increase.¹⁴

Beginning in October 2011, the United States Government recorded a particularly dramatic rise—commonly referred to as “the surge”—in the number of unaccompanied children arriving to the United States from El Salvador, Guatemala, and Honduras.¹⁵ The total number of unaccompanied children from these three countries combined who were apprehended by U.S. Customs and Border Protection (CBP) authorities jumped from 4,059 in FY 2011 to 10,443 in FY 2012 and then more than doubled again to 21,537 in FY 2013.¹⁶

¹² See generally UNHCR. Statistical Online Population Database. Retrieved from http://popstats.unhcr.org/?_ga=1.143814012.896502820.1389886259. In 2008, the total number of asylum applications for individuals from El Salvador, Guatemala and Honduras in the countries of Belize, Costa Rica, Mexico, Nicaragua and Panama, was 155. This number increased to 486 applications in 2010 and increased again to 830 applications in 2012.

¹² See generally UNHCR. Statistical Online Population Database. Retrieved from http://popstats.unhcr.org/PSQ_RSD.aspx.

¹³ The U.S. fiscal year (FY) runs from 1 October–30 September in any given year; thus FY2012 began 1 October 2011 and ended 30 September 2012.

¹⁴ Within U.S. Customs and Border Patrol (CBP), the U.S. Border Patrol (USBP) is the agency responsible for screening and processing individuals who have entered or attempted to enter the U.S. unlawfully by evading a lawful port of entry and the Office of Field Operations (OFO) is responsible for screening and processing individuals seeking to enter the U.S. at a lawful port of entry. These numbers are a compilation from multiple sources, including USBP and OFO unofficial statistics shared with UNHCR for the purposes of the UNHCR study.

¹⁵ For more information on U.S. immigration enforcement practices and screening obligations with respect to these children, see chapter 9 on unaccompanied children at the U.S.-Mexico border. For a discussion on governing law and bilateral agreements regarding the safe return of such children, see chapter 12 on repatriation and reintegration. Both chapters identify significant problem areas with respect to the proper treatment, screening, and protection of such children by government officials.

¹⁶ USBP country-specific statistics for FY 2011 and 2012 (Unaccompanied Children (Age 0-17) Apprehensions: Fiscal Year 2008 through Fiscal Year 2012) were previously available on CBP’s website and were recently cited to in several recent reports about unaccompanied children. See, e.g., Women’s Refugee Commission. (2012). *Forced From Home: The Lost Boys and Girls of Central America* (hereinafter “Forced From Home”). Retrieved from

Over an even longer period of time, a tremendous number of children from Mexico have been arriving to the U.S. and although as of FY 2013 the gap is narrowing, the number of children from Mexico continues to far outpace the number of children from any one of the three Central American countries. For example, in FY 2011, the number of Mexican children apprehended was 13,000, rising to 15,709 in FY 2012 and reaching 18,754 in FY 2013.¹⁷ Unlike the unaccompanied children arriving to the U.S. from other countries, including El Salvador, Guatemala, and Honduras, most of these children were promptly returned to Mexico after no more than a day or two in the custody of the U.S. authorities.¹⁸

Number of Apprehensions of Arriving Unaccompanied Children¹⁹						
Country	FY 2011		FY 2012		FY 2013	
	USBP*	OFO**	USBP	OFO	USBP	OFO
El Salvador	1,394	58	3,314	123	5,990	230
Guatemala	1,565	43	3,835	80	8,068	194
Honduras	974	25	2,997	94	6,747	308

<http://womensrefugeecommission.org/forced-from-home-press-kit>; Center for Gender and Refugee Studies & Kids in Need of Defense. (2014). A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System. Retrieved from http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf. The annual totals of USBP Juvenile and Adult Apprehensions for FY 2012 and FY 2013 are now available through the following resources: United States Border Patrol (USBP). (2012). USBP Sector Profile – Fiscal Year 2012 (Oct. 1st through Sept. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202012%20Sector%20Profile.pdf>; USBP. (2013). USBP Sector Profile – Fiscal Year 2013 (Oct. 1st through Sep. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>.

¹⁷ USBP country-specific statistics for FY 2011 and 2012 (Unaccompanied Children (Age 0-17) Apprehensions: Fiscal Year 2008 through Fiscal Year 2012) were previously available on CBP’s website and were recently cited to in several recent reports about unaccompanied children. The annual totals of USBP Juvenile and Adult Apprehensions for FY 2012 and FY 2013, are now available through the following resources: USBP. (2012). USBP Sector Profile – Fiscal Year 2012 (Oct. 1st through Sept. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202012%20Sector%20Profile.pdf>; USBP. (2013). USBP Sector Profile – Fiscal Year 2013 (Oct. 1st through Sep. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>.

¹⁸ For more information on the differential treatment of Mexican unaccompanied children by U.S. border officials, see chapter 9, on unaccompanied children at the U.S.-Mexico border.

¹⁹ This chart represents statistics compiled from multiple USBP sources; the annual totals for FY 2012 and 2013 are available through the following resources: USBP. (2012). USBP Sector Profile – Fiscal Year 2012 (Oct. 1st through Sept. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202012%20Sector%20Profile.pdf>; USBP. (2013). USBP Sector Profile – Fiscal Year 2013 (Oct. 1st through Sep. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>. The remainder of the USBP and OFO figures cited are based on unofficial statistics shared with UNHCR for purposes of its study.

Mexico ²⁰	11,768	1,232	13,974	1,735	17,240	1,514
All Others	355	361	361	540	788	811
TOTAL	16,056	1,719	24,481	2,572	38,833	3057
*U.S. Border Patrol (USBP), **Office of Field Operations (OFO)						

Additionally, in FY 2014, U.S. Border Patrol apprehended 68,631 unaccompanied children.²¹ These included 16,404 children from El Salvador, 17,057 children from Guatemala, 18,244 children from Honduras, and 15,634 children from Mexico apprehended at the southern border.²² In view of the sharp and on-going rise in asylum claims from these four countries, UNHCR has been examining the evolving nature of harms that children and adults are experiencing in parts of Central America and Mexico to more fully understand and demonstrate the extent to which these harms—including the escalating violence due to armed criminal actors, and the increasing inability of the governments of these countries to stem this growing tide, redress harms committed, and protect others from these harms—give rise to international protection concerns.

One study in particular, *Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America*, demonstrates the pervasive, pernicious, and often-uncontrollable violence and disruption in the region perpetrated by organized armed criminal actors, including gangs.²³ Victims of these criminal actors are likely to experience a high level of harm, deprivation of life and liberty, and the State cannot provide the required individual protection, particularly in the most affected areas. The violence in these countries influences every aspect of the societies, and the human rights violations that stem from this violence are accompanied by a lack of State protection.

The *Forced Displacement and Protection Needs Study* makes a number of findings particularly relevant to the concerns of the children discussed here. For example, the study explains that Organized Crime (OC) “forms an organized and internally coordinated structure, which includes drug trafficking networks, gangs and criminal groups that operate from the local to the transnational level.” These criminal entities were found to have functional systems to exert control

²⁰ CBP reports the number of apprehensions made, not the number of children apprehended. Because CBP returns to Mexico most Mexican unaccompanied and separated children directly at the border, unlike the procedures for unaccompanied children from non-contiguous countries, a certain percentage, number unknown, of CBP’s apprehensions reflects the multiple attempts one Mexican child might make in a year to enter the U.S. It is therefore unknown the exact number of individual Mexican children who have been apprehended in any given year.

²¹ USBP. (2015). USBP Sector Profile – Fiscal Year 2014 (Oct. 1st through Sept. 30th). Retrieved from <http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf>.

²² USBP. (2015). United States Border Patrol Southwest Border Sectors. Retrieved from http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf.

²³ International Centre for the Human Rights of Migrants (CIDEHUM) at the request of UNHCR. (2012, May). *Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America* (hereinafter “Forced Displacement and Protection Needs”). Retrieved from <http://www.rcusa.org/uploads/pdfs/Violence%20in%20CA%20Final20%20July2012.pdf>. See also, e.g., UNHCR. (2010, March 31). Guidance Note on Refugee Claims Relating to Victims of Organized Gangs. Retrieved from <http://www.refworld.org/docid/4bb21fa02.html>; UNHCR. (2011, July). Living in a World of Violence: An Introduction to the Gang Phenomenon. Retrieved from <http://www.refworld.org/docid/4e3260a32.html>.

in strategic territories and their activities generate forced displacement, which “has been seen with greater intensity in the last three years.” The increased presence and negative effects of organized crime “can be seen through extortion, killings, forced recruitment, strategic control of territory, generalized fear among the population, the rise in violence levels (historically high in these countries), and collusion within and weakening of the States’ structure,” which is “reflected in the rise in the levels of violence (homicides, criminality) precisely in the zones of impact and the zones of risk of OC activities.”²⁴

The study observes a “lack of infrastructure and empowerment of local Migration and Police authorities . . . to control and protect victims and those vulnerable to being caught up in OC,” finding that “[n]ational protection mechanisms are undeveloped and insufficient.”²⁵ It acknowledges that this lack of effective protection exists “not for lack of political will on the part of the States, but because of the greater presence of organized crime and the violence generated by its activities.”²⁶ There is also evidence that State actors in these countries have been co-opted and corrupted by highly organized non-State criminal actors in many areas, creating “zones of impunity.” These countries do not lack the general political will to address the rampant violence and State corruption, but their protection mechanisms are weak at best and often ineffective.²⁷

Strikingly the *Forced Displacement and Protection Needs Study* concludes that it “must be understood that OC’s activity and scope is [sic] transnational . . . [and] should not [be treated] as if it were only a question of domestic crime limited by a national sovereignty focus; this lack of visibility of the phenomenon could work to strengthen organized crime and its greater spread throughout the region.”²⁸ The *Forced Displacement and Protection Needs Study* identifies unaccompanied children as one of the populations most vulnerable to organized criminal elements

²⁴ Forced Displacement and Protection Needs, pp. 5-6. The study further states that “[w]hile the number of [refugees and asylum seekers mainly from Guatemala, El Salvador and Honduras] has risen in recent years, it represents only a portion of the population that has been displaced and may be in need of international protection. This [situation] could intensify because of problems of security and violence produced by the activities of OC” (Forced Displacement and Protection Needs, p. 5). See also WRITENET (Commissioned by UNHCR). (2008). Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations (hereinafter “Patterns of Human Rights Violations”). Retrieved from <http://www.refworld.org/docid/48ad1eb72.html>. (Discussing the increasing gang-related violence in the region and the “evidence that some gangs are part of transnational networks, using modern forms of communication to participate in organized criminal activities such as trafficking in drugs and humans.”)

²⁵ Forced Displacement and Protection Needs, p. 8.

²⁶ Forced Displacement and Protection Needs, p. 6.

²⁷ Forced Displacement and Protection Needs, p. 7.

²⁸ Forced Displacement and Protection Needs, p. 10. There are differing views as to the extent to which “gangs” operate transnationally. While some have found that they do (e.g., Forced Displacement and Protection and Patterns of Human Rights Violations), others have found that for the most part, the gangs are not transnational (e.g., United Nations Office on Drugs and Crime (UNODC). (2012, September). Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment (hereinafter “Transnational Organized Crime”) pp. 13, 28. Retrieved from http://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf), and still others have found that there is a need to determine the degree to which gangs operate transnationally (e.g., Congressional Research Service (CRS). (2014). Gangs in Central America, p. 20. Retrieved from <http://www.fas.org/sgp/crs/row/RL34112.pdf>).

asserting that the international protection needs at stake “are related to protecting their lives and personal integrity.”²⁹

The chapters on Honduras, El Salvador, Guatemala, and Mexico in this book confirm these findings, and further illuminate the reasons for the increased migration of children from those countries.³⁰ While the circumstances vary country-by-country, instability, violence, and unavailability of State protection are key drivers of the migration of children.

Thus, notwithstanding differences in the situations in each of the countries these children are coming from, the baseline common denominator is that high numbers of unaccompanied children from all four of these countries are arriving at the southern border of the United States. UNHCR Washington sought to ascertain the connection between the findings of recent studies on the increasing violence and insecurity in the region and potential international protection needs of these children based on the children’s own experiences and reasons for leaving, and to that end conducted in-depth individual interviews with 404 unaccompanied children.

²⁹ Forced Displacement and Protection Needs, p. 8. The study underscores the concern that “[t]he international protection needs of victims as refugees are not being assessed through the prism of applicable international instruments, obscuring more and more the forced displacement caused by OC and the situation of people needing international protection,” and offers several key examples of this failure stating: “In some claims for recognition of refugee status, the authorities of the receiving States do not consider OC as an agent of persecution but as an agent of common crime . . . [i]n other cases . . . , it is seen as national or local common crime, failing to recognize or obscuring its character as Transnational Organized Crime. . . . In general, in some States there are difficulties in establishing the causal link between the well-founded fear of being persecuted by OC activity and one of the grounds of the refugee definition enshrined in the 1951 Convention (i.e. race, religion, nationality, membership of a particular social group or political opinion) . . . The same happens with regard to the understanding of whether national protection exists or not and why this is not available or is not effective” (*Id.*). The study also recognizes positive developments in Mexico and Costa Rica that provide complementary forms of protection but cautions that these “should not be used as a substitute or to the detriment of the recognition of the international protection needs of those who qualify validly as refugees, including in cases of victims of organized crime” (*Id.*). The study further states that “[P]eople who leave the country because they lack protection from organized crime, once deported or expelled become even more vulnerable to OC activity, and can therefore again suffer the same violent situations that caused them to leave the country in the first place” (*Id.*, p. 7). In Transnational Organized Crime, the UNODC also makes some relevant points, among them that “territorial groups [(gangs)] appear to be involved in migrant smuggling, human trafficking, and the firearms trade” that to effectively address the violence from organized armed criminal actors, “Governments need to develop the capacity to assert control over their entire territories and consolidate democracy through justice” (Transnational Organized Crime, p. 5). A recent Congressional Research study identified several key areas that warrant further exploration, some of which highlight the concerns presented here, and include investigating the extent to which gangs in Central America are becoming more organized and sophisticated; the extent and types of ties they have with other criminal organizations based in Central America and Mexico, and the extent to which their concerns are primarily local, or transnational (Gangs in Central America, p. 20).

³⁰ See chapters 2-7 for an in-depth analysis of root causes of migration in Honduras, El Salvador, Guatemala, and Northern and Southern Mexico.

IV. The approach to interviewing the children

UNHCR conducted in-depth, individual interviews with 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico.³¹ All the children interviewed were part of the surge that began in October 2011.³²

A. Characteristics of the children interviewed

- Ages 12-17
- Entered U.S. during or after October 2011
- Held at some point in U.S. federal custody
- Sex distribution of Central American children mirrors children in ORR custody
- Those in U.S. Government shelters had been there more than five days
- Randomly selected within these parameters
- Voluntary Participation with Express Written Consent

Number of Children Interviewed from Each Country of Origin

Country	Boys	Girls	Total
El Salvador	67	37	104
Guatemala	79	21	100
Honduras	69	29	98
<u>México</u>	<u>98</u>	<u>4</u>	<u>102</u>
Totals	313	91	404

In light of the special vulnerability of children, in particular children for whom there is no parent or lawful guardian present to protect their interests, the design and implementation of the UNHCR study incorporated a child-sensitive approach and were guided by the fundamental principles of the best interests of the child; “do no harm” to any child in the course of conducting any research; nondiscrimination; confidentiality; and voluntary and informed participation.

³¹ The original plan was to interview 100 children from each of the four countries but for a variety of reasons, including achieving the intended breakdown by gender and type of federal custody placement of the child, this was not possible; nevertheless, the final numbers are very close to this goal. The distribution of Central American boys and girls mirrored that of the children from these countries in the distribution of the children in the custody of the Office of Refugee Resettlement (ORR) in the first half of FY 2013. The majority of the Mexican children interviewed were in the custody of CBP rather than the custody of ORR. Because the Mexican children available to be interviewed depended on CBP’s daily apprehensions, UNHCR was not able to control the sex distribution of the Mexican children interviewed for its study and as a result only four (four percent) of the 102 Mexican children were girls. Unofficial CBP statistics show that eleven percent of Mexican unaccompanied children apprehended in FY 2013 were girls. The age range reflects the ages of most of the children who have been arriving to the U.S. since the surge began. Two of the children were 18 years old age at the time of interviewing but were 17 at the time of arrival in the United States. UNHCR also conducted a review of the literature from 2004 to 2013 discussing the reasons why unaccompanied children were migrating from El Salvador, Guatemala, Honduras, and Mexico, which is available at www.unhcrwashington.org/children.

³² A few of the children interviewed had entered the U.S. before the onset of the surge but had been apprehended in the interior and referred to ORR after October 2011. Children in this situation constitute a percentage of the “surge” numbers and were kept in the interview sample.

The interview process included two components. The first component was an introductory overview in small groups, which underscored the voluntary nature of the children's participation, including the option to stop the interview at any time; the confidentiality and anonymity of their identity and answers; the lack of any connection of the interviewers to any government official; the fact that their responses would have no bearing whatsoever on their ability to remain in the U.S. or to seek or be eligible for any form of protection from return to their countries of origin; and the purpose of the interview. This introduction was followed by an individual interview with each child who agreed and signed a written consent to participate in the study.³³

The questions were designed and presented to each child in a manner that would best address the difficulties that frequently arise when interviewing children. Children were first asked basic and less potentially traumatic questions such as their country of origin, date of birth and other biographical information. After this initial questioning, the children were asked five different open-ended questions related to the potentially sensitive topic of their reasons for leaving their countries of origin and any harm or threats they might have received.³⁴ This approach provided greater opportunity to build rapport and increase trust and confidence in the interviewer and the interview process and ensured that each child had more than one opportunity to reflect on, share the factors and articulate the reasons that influenced the decision to leave. This interview format also better accommodated the varying ways children often have of telling their stories and recounting events—especially when these events might be painful or difficult to recall or to disclose out loud, in particular to a stranger from a different culture in the context of being at the mercy of a foreign government authority.

B. Questions asked to each child

The questions asked to each child related to the types of harms they faced and their reasons for leaving were as follows:

- Why did you want to leave your country? What was the most important reason?
- Were there any other reasons? What were they?
- Has anyone made you suffer at some point in your country or in your home?
- Has anyone hurt you at some point in your country or in your home?
- Have you been in danger at some point in your country or in your home?

The heart of the interview was to learn from the children in their own words the reasons behind their decision to leave their countries of origin. The ultimate goal of this study was to ascertain whether the recent surge in unaccompanied and separated children from El Salvador, Guatemala, and Honduras to the United States reflects an increase in children from these countries with

³³ The individual interview began by reviewing the points made in the orientation and the child was given the opportunity to decline or to sign the consent form at that time. A two-person UNHCR team met with each child, one of whom conducted the interview while the other took notes. The interview was conducted based on a questionnaire of seventy-three open- and closed-ended questions to ensure that both qualitative and quantitative data would be provided. The interviews typically lasted sixty to ninety minutes.

³⁴ Although three of the five were posed as “yes or no” questions, if a child opted to simply answer yes to one of those, the interviewer followed with open-ended questions to provide the opportunity for the child to elaborate. Very few children gave a simple yes or no, and of those who did, every child offered further details when asked open-ended follow-up questions.

international protection needs. And although there has not been a similar surge in arrival of children from Mexico, given that their numbers have been consistently high over several years, the goal was the same—to ascertain whether they too are increasingly in need of international protection. The purpose of the interview was to determine whether the children’s responses indicated a potential need for international protection and not to make a firm determination as to whether any given child did, in fact, merit international protection.

The children were asked two questions about their reasons for leaving followed by three questions as to whether they had ever experienced harm, been made to suffer, or been in danger in their home countries. The narrative responses to each of these five of questions were organized thematically under a series of broad categories and narrower sub-categories to facilitate the identification of trends or patterns in the responses. Among the broader categories of reasons are those related to family reunification and better opportunity; violence in society, including by armed criminal actors; abuse in the home; and deprivation and social exclusion. The children’s responses to all five of these questions were considered in the analysis of the nature and extent of their potential international protection needs.

V. What the children’s responses revealed

The responses of the 404 children were analyzed with a view to answer two questions:

*Why are these children leaving their countries of origin?
Are any of these children in need of international protection?*

The central finding of this analysis is that a significant number of these 404 children—58 percent—expressed types of harm or situations that raised actual or potential international protection needs.³⁵

Children with Potential International Protection Needs	
El Salvador	72%
Guatemala	38%
Honduras	57%
Mexico	64%
TOTAL	58%

³⁵ The study was specifically designed to be representative and statistically significant for drawing conclusions and inferences and, as such, this finding that fifty-eight percent of the children raised potential international protection means that in general, fifty-eight percent of all the unaccompanied and separated children in this same age range, from these four countries, arriving to the U.S. would likewise raise potential international protection needs. This assertion is based on a ninety-five percent confidence level and a maximum margin of error of plus or minus five percent in relation to the size of the random sample in the study. More precisely, given that this study reflects the standard margin of error of plus or minus five percent, between fifty-three and sixty-three percent of children in this same 12-17 years old age range from these four countries arriving to the U.S. would also have a potential international protection needs. The calculations associated with the maximum margin of error were conducted by German J. Pliego Hernandez, Associate Professor, Department of Computer & Information Sciences, Professor of Statistics, St. Thomas University.

The two predominant types of international protection related harm that emerged from the children’s narratives are violence by armed criminal actors and violence in the home. Forty-eight percent of the displaced children interviewed shared experiences of how they had been personally affected by the ever-increasing violence by organized armed criminal actors, including drug cartels and gangs or, in at least some cases, by State actors, throughout the region. One particular form of crime-related violence arose only among the children from Mexico—recruitment into and exploitation by the criminal human smuggling industry, that is, luring Mexican children into the criminal enterprise of guiding others in crossing unlawfully from Mexico into the United States, which affected thirty-eight percent (thirty-nine) of the children from Mexico. These Mexican children are included in the forty-eight percent who feared or experienced harm based on criminal violence.

Twenty-one percent of the children (eighty-five) confided that they had survived abuse or violence in their homes by their caretakers. Eleven percent of the children reported having suffered or being in fear of *both* violence in society and abuse in the home. A small number of children, four percent (eleven girls and six boys), indicated either that they could not obtain protection from the State, that such protection would not be available to them, or that they were afraid to seek such protection from the State for fear that it would be futile and may even lead to more harm.

The paramount conclusion UNHCR reached from the analysis of the children’s responses is that all unaccompanied children from these four countries must be carefully screened for international protection needs consistent with the fundamental obligation of States to ensure that such children are not rejected at the border or returned to situations of harm or danger. This conclusion is also supported by the harms documented in the country-specific chapters of this book.³⁶

VI. The special needs of children

Children are inherently vulnerable due to their age, their physical, mental, and emotional development and maturity, and other factors. These attributes of childhood affect the manner in which children understand and process their experiences as well as their understanding of questions about these experiences and the ways in which they respond to such questions.³⁷ Children also often recount events and relate their stories in indirect, circumscribed ways and often have difficulty articulating their fears. In view of these and other factors, to best ensure the necessary information is obtained and to safeguard a child’s well-being and safety requires a child-sensitive approach to interviewing and assessing information they provide.³⁸ A child-sensitive approach requires building trust between the child and the interviewer, and includes moving gradually from basic information-gathering questions such as biographical data to the more involved and potentially sensitive questions about reasons for leaving the country of origin and

³⁶ For example, in the chapters on El Salvador, Guatemala, Honduras, and Southern and Northern Mexico, authors conclude that child migration is driven in large part by violence and the threat of violence, as well as the lack of effective State protection from harm. See chapters 2-7.

³⁷ “In the examination of the factual elements of the claim [for international protection] of an unaccompanied child, particular regard should be given to circumstances such as the child’s state of development . . . as well as his/her special vulnerability” (Guidelines on Unaccompanied Children, pp. 2-3). “Alongside age, factors such as rights specific to children, a child’s stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability, also need to be considered” (Child Asylum Guidelines, ¶ 4).

³⁸ Child Asylum Guidelines, ¶¶ 71-72.

fears of return. Open-ended questions asked at different times in different ways to provide the child more than one opportunity to reflect on, share, and articulate responses to more complex and fundamental questions will better ensure fuller information from the child. This is important especially when the answers to such questions might be painful, traumatic, or otherwise difficult to recall or to disclose out loud, in particular when the interviewer is a government authority with the power to detain, return, and otherwise control the child's circumstances and destiny.

There are a number of ways a child's perspective may affect the way she answers questions and provide information. Children not only relate their situations differently from adults but, equally importantly, they perceive, understand, and process their experiences differently.

Children are more susceptible to harm and often experience it differently than adults.³⁹ Precisely because of their age, lack of maturity, and vulnerability, the very fact of being a child renders them susceptible to harm that only applies to or disproportionately affects children.⁴⁰ Children are often subject to harm by non-State actors such as, for example, militarized groups; members of organized criminal gangs or cartels; close family members, including parents; and other caregivers.

Children are more sensitive to acts that target family and community members and are more likely to be emotionally affected by hostile situations in general. A child who has witnessed these kinds of acts may be traumatized even if the child was not the direct target of them. Memories of traumatic events may linger in a child's mind and may result in ongoing, long-term psychological harm.

Especially when questioned under stressful circumstances, such as by officials of a foreign country about situations or experiences that may be difficult or traumatic to discuss, children may provide answers that are simple, "safe," and more easily repeated, and sometimes children provide information based on what they have heard from others. They may wish to avoid talking about difficult subjects, or they may not directly connect hardships or other experiences or fears with the questions they are being asked. They may provide superficial or even artificial answers about experiences or events that were harmful or traumatizing. Children may feel ambivalent about their decision to leave their homes or despondent about being apprehended by immigration officials, both of which may impact how they relate their situations, experiences, fears, and concerns. And of course, in some cases, children may be too young or immature to be able to understand what information is important or to interpret and convey what they have witnessed or experienced in a manner that is easily understandable to an adult.

As emphasized throughout this chapter and the remainder of this book, the fundamental "best interests of the child" principle requires assessing protection needs from the child's perspective. This encompasses an examination of the impact of the harm—already experienced or potential—on the child's rights or interests, and means that any assessment of potential protection needs must be conducted in a child-sensitive manner in view of age and maturity, as well as other factors relating to a child's development and ability to identify and articulate what are often complex and intertwined aspects of their young lives. These same factors relating to a child's stage of

³⁹ Child Asylum Guidelines, ¶ 15. ("Actions or threats that might not reach the threshold of persecution in the case of an adult may amount to persecution in the case of a child.")

⁴⁰ Child Asylum Guidelines, ¶ 16.

development and vulnerability may also be directly related to how a child experiences, fears, and articulates harm. A full consideration of the unique perspectives of children is essential not only in the interview process but equally so in the context of assessing their experiences and fears to best ensure that no child is denied international protection in error.⁴¹

VII. The meaning of international protection

Three essential dimensions must be taken into account to fully understand the ways in which these children's narratives give rise to international protection concerns: the meaning and purpose of international protection and in particular refugee protection; the fears expressed by the children in the context of the current situation in each of the four countries of origin and within the region; and the unique ways that unaccompanied and separated children fear and experience harm.

Every State bears the responsibility to protect its own citizens and others within its borders. When Governments are unwilling or unable to provide protection, individuals who suffer or are at risk of suffering violations of their human rights may be forced to leave their homes—often even their families—to seek safety in another country where international and regional obligations require States to ensure the protection of these individuals.

The principal means for providing international protection to individuals unable to receive protection in their countries of origin is the 1951 *Convention relating to the Status of Refugees* and its 1967 *Protocol*. To receive protection under these instruments, an individual must satisfy the refugee definition and, as articulated under Article 1F of the 1951 *Convention*, there must not be any reason to exclude an individual from such protection.⁴² Once an individual is found to be a refugee and does not fall under any of the exclusion grounds, protection under the 1951 *Convention* and 1967 *Protocol* must be granted.

The term “international protection” was originally crafted and associated with refugee protection. With the progressive development of international law, the term now refers to a broader range of protection for those who may not meet the refugee definition but nevertheless do not enjoy the protection of their countries of origin and are in need of international protection. As discussed below, other international instruments also call for providing international protection for certain individuals who have crossed a border from their own State into another.

⁴¹ Child Protection Framework, pp. 23. (“Girls and boys have access to age and gender-sensitive protection procedures. . . . Procedures and decisions relating to children are informed by their age, maturity, gender, language, social and ethnic background and take into account the individual experience of the child.”) See also Child Asylum Guidelines, ¶¶ 1-2.

⁴² The “exclusion clauses” render an individual who meets the refugee definition ineligible for protection when “there are serious reasons for considering that” such individual has: “committed a crime against peace, a war crime or a crime against humanity”; “committed a serious non-political crime outside the country of refuge”; or “been guilty of acts contrary to the purposes and principles of the United Nations.” These exclusion grounds are meant to be interpreted restrictively, that is narrowly rather than broadly, and are meant to be exhaustive. See UNHCR. (2013, September 4). Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, ¶¶ 2, 3. Retrieved from <http://www.refworld.org/docid/3f5857684.html>.

A. The refugee definition

The refugee definition contained in 1951 *Convention* and its 1967 *Protocol*, provides that a refugee is any individual who has a well-founded fear of being persecuted based on race, religion, nationality, membership of a particular social group or political opinion; is outside the country of origin; and the country of origin is unwilling or unable to provide protection to that individual.⁴³ As discussed in greater detail in later chapters of this book,⁴⁴ each of the five countries discussed in this chapter have adopted a refugee definition consistent with the 1951 *Convention* and its 1967 *Protocol*. The core of these two instruments is the obligation to provide protection to refugees, to ensure their human rights are respected, and to safeguard the principle of *non-refoulement*, which is the obligation not to return a refugee to any country where she or he would face danger.⁴⁵ Each of the key terms of the refugee definition has been subject to interpretation, and UNHCR provides the key international sources for such interpretation through the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*.⁴⁶

B. Children with potential international protection needs

Central to the potential international protection needs of the unaccompanied children from Central America and Mexico, is understanding that the harm feared or experienced by these displaced children may rise to the level of persecution; that the harm may have been or may be directed at these children due to one of the five protected grounds—race, religion, nationality, membership in a particular social group, and political opinion; and that the State is responsible for the harm if it is the actual perpetrator or it is either unwilling or unable to provide protection from it.⁴⁷

⁴³ Article 1.A(2) of the 1951 Convention, as amended by Article I(2) of the 1967 Protocol, states in relevant part that a “refugee” shall mean any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality or last habitual residence [referring to individuals who are stateless] and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country.” The singular purpose of the 1967 Protocol was to universalize the refugee definition by removing from it all temporal and geographical references to World War II contained in the original 1951 Convention definition.

⁴⁴ See chapters 2-7 and 10, on Honduras, El Salvador, Guatemala, Southern Mexico, Northern Mexico, and immigration relief and procedures in the United States.

⁴⁵ This principle is found in Article 33 of the 1951 Convention; Article I(1) of the 1967 Protocol incorporates by reference this and all other substantive provisions of the Convention. Other fundamental human rights as articulated in these and other international and regional instruments must also be respected, among them the rights to livelihood, education, and religious expression.

⁴⁶ UNHCR. (2011, December). *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (hereinafter “Handbook”), ¶ 65. Retrieved from <http://www.refworld.org/docid/4f33c8d92.html>. The Handbook was the first comprehensive guidance on interpreting the refugee definition and related aspects of the 1951 Convention and 1967 Protocol and has subsequently been complemented by UNHCR Guidelines on International Protection. To date, ten Guidelines on International Protection have been issued; the first eight are contained in the 2011 edition of the Handbook and Guidelines. All ten Guidelines are available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=home&skip=0&cid=49aea93ae2&comid=4a27bad46&keywords=RSDguidelines>.

UNHCR issues a range of other documents that are relevant to the interpretation of the refugee definition and other aspects of refugee protection. The Handbook and Guidelines as well as other UNHCR resources can be found on the UNHCR website, www.unhcr.org, and on RefWorld, the UNHCR research website, www.refworld.org.

⁴⁷ For purposes of meeting the refugee definition, it may be that a child—or any other asylum-seeker—is targeted by a non-State actor because of a protected ground, or it may be that, regardless of the reasons the non-State actor has,

Because of their age, lack of maturity and vulnerability, the very fact of being a child may itself be a key factor in the harm they have experienced or fear and makes them susceptible to specific forms of harm that only apply to or disproportionately affect children such as physical and mental violence, abuse, neglect, and exploitation. Harm that might not be considered persecution to an adult may very well be sufficient to reach the threshold of persecution to a child and includes the cumulative effect of isolated incidents of lesser forms of harm.⁴⁸ Children are often subject to harm by non-State actors such as, for example, militarized groups; members of armed criminal gangs or cartels; close family members, including parents; and other caregivers. Where the harm is feared or experienced at the hands of a non-State actor, consideration must be given as to whether the State is unable or unwilling to provide protection. In addition, where the harm is based on forced recruitment of any child below the age of 18 years by a non-State armed actor, this would be considered persecution.⁴⁹ Children may also have protection-related fear of return arising from the treatment they are subjected to⁵⁰ or conduct they are required to engage in by such actors.⁵¹

In view of their vulnerability and unique circumstances, all unaccompanied children should be identified by the State authorities who first encounter a child and referred as appropriate to an agency with specially trained officers who can conduct a more detailed interview under more secure and less threatening or traumatic circumstances to assess whether a child may have international protection needs.⁵² It is only at the point of a full assessment of a claim for international protection that all the elements of the refugee definition would need to be examined, such as whether the harm feared or experienced rises to the level of persecution, the connection of the harm to a protected ground under the refugee definition, or, in the case of a non-State actor, whether the State is unable or unwilling to accord protection to a child from such harms.

the State is unwilling or unable to provide protection from such non-State actor because of one of the five protected grounds.

⁴⁸ Child Asylum Guidelines, ¶¶ 15, 16, 18.

⁴⁹ Child Asylum Guidelines, ¶¶ 19, 21. This principle applies equally in the context of forced recruitment by a State, which was not an issue of key concern among the children interviewed in this study and so is not discussed here. *See* UNHCR. (2013, December 3). Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees. Retrieved from <http://www.refworld.org/docid/529ee33b4.html>.

⁵⁰ For example, girls are sometimes raped or otherwise forced into sexual relations with members of these groups, a situation raised by a small number of girls in the UNHCR study.

⁵¹ “[I]t is important to take into account the circumstances under which the applicant joined the gang. An individual who has been forcibly recruited into a gang would primarily be considered a victim of gang practices rather than a person associated with crime. This applies in particular to young people who may have less capacity or means to resist gang pressures. Children who lack the requisite maturity and mental capacity would normally not be considered to have voluntarily joined a gang. However, even if gang association occurred on a voluntary basis, former gang members, including those who have engaged in, or have been convicted of, criminal activity, may constitute a particular social group under certain circumstances provided they have denounced their affiliation with the gang and credibly deserted from it.” UNHCR. (2010, March 31). Guidance Note on Refugee Claims Relating to Victims of Organized Gangs (hereinafter “Guidance Note on Organized Gangs”), ¶ 44. Retrieved from <http://www.refworld.org/docid/4bb21fa02.html>.

⁵² The fact that a child arrives to a country unaccompanied by a parent or lawful guardian should be sufficient to refer that child. To the extent a State requires some initial screening, only the most elemental threshold standard—one that requires a finding that the child does not present any potential international protection needs—should be required before referring a child for a fuller assessment of any potential international protection needs.

C. Complementary forms of international protection

There may be individuals who are found not to meet the refugee definition contained in the 1951 *Convention* or 1967 *Protocol* but are nevertheless in need of international protection due to their lack of safety or security and inability to receive State protection in their countries of origin.⁵³ In general, these are persons fleeing armed conflict, serious internal disorder, massive human rights violations, generalized violence, or other forms of serious harm with no link to a refugee protection ground as contained in the international refugee definition. Such individuals should be given complementary protection that confers a formal, legal status with defined rights and obligations for the period of time necessary to safeguard their safety and security. These obligations flow from a range of human rights instruments and domestic laws, and are discussed in more detail in Chapters 6, 7, and 10 on Mexico and the United States.⁵⁴

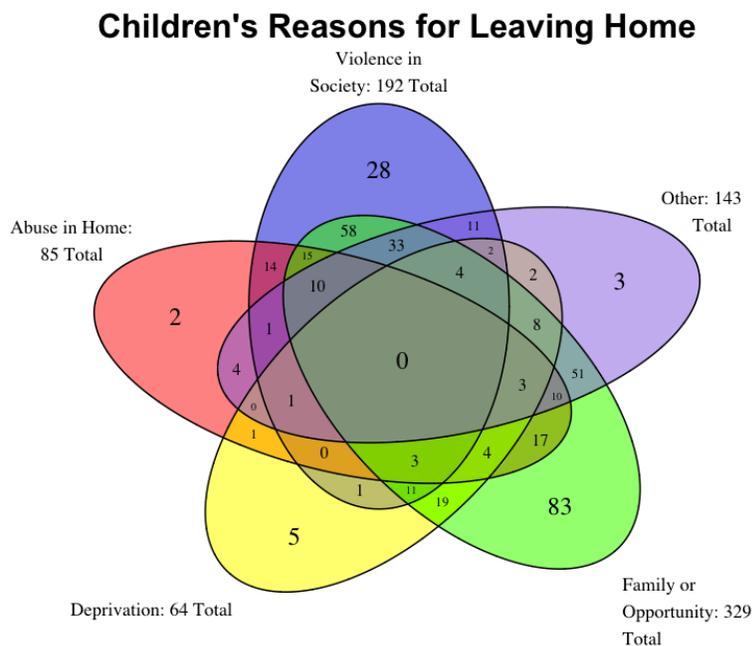
VIII. What the children from these countries said

The responses of the 404 children UNHCR interviewed reveal an unsettling number of children who had suffered one or more types of harm that could give rise to international protection needs. These children came from diverse countries, cities, towns, and villages. Some had close family members living in the United States while others left behind the only family they ever knew. Many feared violence at the hands of gang members, cartel affiliates or their own family members. Others feared a life of deprivation and desperation due to lack of basic necessities, education, jobs, and hope. Their responses to the questions about why they left and whether they had experienced any suffering, harm, or danger are as complex as the children themselves. Yet they all shared two things: alone and uncertain, they were forced to make a decision no child should ever have to face,

⁵³ Some of these individuals may fall within the broader refugee definitions contained in the Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969, September 10, 1001 U.N.T.S. 45, retrieved from <http://www.refworld.org/docid/3ae6b36018.html>, which expands the refugee definition to include “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” or the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, *Cartagena Declaration*, 1984, November 22, retrieved from <http://www.refworld.org/docid/3ae6b36ec.html>, which expands the refugee definition to include, “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” Others may not be in a location where either of these definitions apply or simply may not meet any of the applicable refugee definitions.

⁵⁴ For a discussion of available immigration relief as well as impediments to access in Mexico, see chapters 6 and 7 on Southern and Northern Mexico. For a discussion of available forms of relief in the United States and barriers faced by children in obtaining them, see chapter 10 on immigration remedies and procedures in the United States. See also *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949, December 2, 96 U.N.T.S. 271, retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, December 10, 1465 U.N.T.S. 85, retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>; *Convention on the Rights of the Child (CRC)*; *International Labour Organization (ILO), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (hereinafter “Child Labour Convention”), 1999, June 17, 2133 U.N.T.S. 161, retrieved from <http://www.refworld.org/docid/3ddb6e0c4.html>; *Organization of American States (OAS), Inter-American Convention on International Traffic in Minors*, 1994, March 18, O.A.S. T.S. No. 79, retrieved from <http://www.refworld.org/docid/3de4ba054.html>.

and they all chose to escape. In all, fifty-eight percent of the children expressed in their reasons for leaving or in harm that they had suffered, been threatened with, or feared that UNHCR identified as raising potential—if not actual—international protection concerns.⁵⁵



Family unity and lack of meaningful opportunity were recurrent themes in the children’s narratives. Twenty-seven percent (110) of the children raised family reunification as a reason for leaving and only fourteen percent (fifty-seven) of the children raised it as their only reason. Eighty-one percent (329) of the children said they had planned to join a family member in the U.S. or left to pursue better opportunities such as attending school or finding work as part of their reasons for deciding to travel to the United States; yet fifty-one percent (169) of these children also raised at least one international protection-related concern. Of the ninety percent (362) of children who gave either family reunification, better opportunities, deprivation, or other non-protection related reasons for leaving their countries, over half, fifty-three percent (192) of these children also gave international protection-related reasons. Thirty-six percent (146) of the children said one or both of their parents lived in the U.S., yet only twenty-one percent (eighty-six) of the children gave joining a family member as one of their reasons for leaving their home countries.⁵⁶

⁵⁵ This result stands in stark contrast to the finding of a 2006 UNHCR study that found of the seventy-five children interviewed in all from El Salvador, Guatemala, and Honduras at the southern border of Mexico, only thirteen percent (eleven children) described harms that warranted further review for international protection needs. UNHCR. (2008, October). The International Protection of Unaccompanied or Separated Children Along the Southern Border of Mexico (2006-2008) (hereinafter “Children Along the Southern Border”), p. 3 n.2. Retrieved from www.unhcr.org/4cbeb6a96.html. That study found the large majority of those children, eighty-seven percent (sixty-four), left their homes to reunite with family members or for better opportunities including access to education and work. A 2007 study assessed the situation of those children interviewed in 2006 who had been returned from Mexico to their countries of origin and made recommendations to each country for improving their reception and repatriation procedures. The results of both studies are published in Children Along the Southern Border.

⁵⁶ Interestingly, the children from Mexico were the least likely to have one or both parents in the U.S., comprising only ten of the total 146 of these children.

Some of the children who first said they came to the U.S. to reunite with family or for better opportunities later spoke of fear of harm, in particular of criminal violence by gangs or other actors. Other children spoke first about the danger they had faced or feared and only when questioned further mentioned reasons unrelated to protection needs. In many cases, the children left a parent, grandparent, or other close family member in their home to make the journey north. Fifty-three percent (215) of the children gave economic opportunity as one reason for leaving their home countries yet only six percent (twenty-six) of the children gave this as their only reason. Twenty-five percent stated they were seeking a better future and nineteen percent gave attending school as a reason. The poverty and lack of opportunity in El Salvador, Guatemala and Honduras are compounded by the long-term effects of years of civil war and repression and the long-standing climate of violence engendered by this strife; in Mexico, the ever-escalating violence was related to drug cartels and other criminal actors. In all four countries, the lack of consistent effective ability to stem the widespread and escalating violence, to prosecute and appropriately punish the perpetrators, and most importantly from the international protection perspective, to provide meaningful and adequate protection and redress to members of the societies affected by this violence.

Harm Experienced or Feared by the Children			
Total Number of Children Interviewed by Country of Origin	Violence in Society	Abuse in the Home	Exploitation by Human Smuggling Industry
El Salvador—104	69 — 66%	21 — 20%	0
Guatemala—100	20 — 20%	23 — 23%	0
Honduras—98	43 — 44%	24 — 24%	0
Mexico—102	60 — 59%	17 — 17%	39 — 38%
TOTAL—404	192 — 48%	85 — 21%	39 — 10%

Sarah, Mexico, Age 16

I don't understand why there are so many criminals who want to be more powerful than the authorities in our countries. We have to work hard and reduce the violence and the criminal organizations. Many people can't complete their education because of the social instability. Our countries are allowing themselves to be controlled by the gangs and by people who only think about themselves and not the well-being of their own country. I want the president of this country to help us because all we want is a better future.

A. *El Salvador*

Of the 104 children from El Salvador UNHCR interviewed, seventy-two percent were forcibly displaced because of severe harm that requires a closer review for international protection needs, representing the largest group among the four countries. While eighty percent of children from El Salvador shared their hopes for reuniting with a relative, finding better opportunities to work or study, or helping their families as a reason for going to the U.S., sixty-six percent reported having left because of some form of violence in society at the hands of organized armed criminal actors

or others in the community, or due to lack of State protection from these types of harm. Twenty percent disclosed abuse in the home. Fifteen percent reported being the victims of more than one of these categories of harms. Twenty-eight percent of the children did not mention fear or experience of any serious harm.

The predominant narrative of harm suffered by the children of El Salvador was that of violence and threats of violence by armed criminal actors. The children described their everyday challenges of evading extortion, witnessing murders, and navigating threats to themselves, and their family, friends, and neighbors. Children who had not yet been victims of violence spoke of their own fears as well as their families' fear with the same inevitability. The girls shared their fears of sexual violence. Most children described their flight with urgency, without having planned the details in their attempt to survive, and finding little hope for resolution or protection from the adults in their lives, including caretakers, teachers, and government authorities.

These findings are consistent with the discussion in Chapter 4 on El Salvador, which documents rampant violence in El Salvador and demonstrates that youth and gender are factors that increase Salvadorans' vulnerability to such violence. The chapter also demonstrates the failure of State protection, as El Salvador has been unable to prevent the escalation of gang violence despite progressive laws on gender-based violence and children's rights—consistent with the reports of children interviewed by UNHCR.⁵⁷

B. Guatemala

Thirty-eight percent of the 100 Guatemalan children raised international protection concerns. Overall, the three dominant themes that emerged were deprivation, discussed by twenty-nine percent of the children; abuse in the home, discussed by twenty-three percent; and violence in society, discussed by twenty percent. Five percent of the children reported that they had been victims of both violence in society and abuse in the home. Sixty-two percent of the Guatemalan children did not raise any serious harm as a reason for leaving. Eighty-four percent of the children shared hopes for family reunification, better opportunities for work or study, or helping their families as a reason for coming to the U.S.

Almost half of the Guatemalan children, forty-eight percent—forty-one boys and seven girls—were from indigenous populations.⁵⁸ The protection-related concerns discussed by these children were similar to those discussed by the Ladino Guatemalan children overall, with some notable differences. The indigenous children comprised fifty-five percent of all the Guatemalan children who discussed deprivation and social exclusion; thirty percent of those who discussed abuse in the home, and twenty-five percent of those who discussed violence in society.

These findings are consistent with those developed in greater detail in Chapter 3 on Guatemala, which documents the vulnerability of indigenous Guatemalan migrant children and in particular

⁵⁷ For a more detailed discussion on the types of harm faced by children in El Salvador, including gang violence, child abuse, and sexual violence reported later in this chapter, see chapter 4.

⁵⁸ Altogether, fifty-seven indigenous children were interviewed. In addition to the forty-eight from Guatemala, there were six from Mexico and three from Honduras. These children were not selected based on their indigenous backgrounds but rather simply came up as part of the random selection process.

of indigenous girls. The later chapter also demonstrates that Guatemala, which suffers one of the highest impunity rates in the world, fails to protect children from violence and discrimination, which often underpins their decisions to migrate.⁵⁹

C. Honduras

Of the ninety-eight children from Honduras, fifty-seven percent raised potential international protection concerns. Forty-four percent experienced or were threatened with some form of violence in society. Twenty-four percent raised issues of abuse in the home. Eleven percent reported that they had been subjected to more than one of these serious harms. Twenty-one of the percent discussed situations of deprivation. Chapter 2 on Honduras similarly documents that Honduran children experience high rates of violence and threats of violence from these two sources: violence perpetrated by gangs and violence experienced in the home.⁶⁰

Less than half of children, or forty-three percent, did not mention serious harm as a reason for leaving. Twenty-one percent of the children discussed situations of deprivation. Similar to the children from Guatemala, eighty percent of the Honduran children shared their hopes for family reunification, better opportunities to work or study, or to help their families as a reason for leaving but few gave any of these as the only reason.

D. Mexico

As is true of all the children, Mexican children gave a broad range of factors driving their departures. Out of the 102 Mexican children interviewed, a total of sixty-four percent raised potential international protection needs. Thirty-two percent of the children spoke of violence in society, seventeen percent spoke of abuse in the home and twelve percent spoke of both. Seven percent discussed situations of deprivation. Eighty percent of the Mexican children spoke of the desire to reunite with family, to help their families, to study, or to pursue other opportunities.

The children from Mexico presented a particular protection-related concern not raised by children from any of the other countries—being used as “guides” for human smuggling operations to bring people across the border from Mexico into the U.S. A striking thirty-eight percent of these children had been recruited into the human smuggling industry.⁶¹ Over and above the international protection implications for the Mexican children who were caught up in the human smuggling

⁵⁹ For a more detailed discussion on the types of harm faced by children in Guatemala, including gang violence, child abuse, and sexual violence, see chapter 3.

⁶⁰ For a more detailed discussion on the types of harm faced by children in Honduras, including gang violence, child abuse, and sexual violence, see chapter 2.

⁶¹ Because the vast majority of unaccompanied children from Mexico arriving to the U.S. are returned directly to Mexico and are not referred into the U.S. immigration system, almost all of Mexican children in the study—eighty-four of the 102—were in the custody of the U.S. Border Patrol waiting to be returned to Mexico. To best ensure a sufficient number of Mexican children were included in the study, these interviews were held in the Rio Grande Valley in South Texas where UNHCR was informed there was a regularly high volume of Mexican children. This area also has one of the highest rates of crossings from Mexico into the U.S. and an accompanying high volume of guides for human smuggling operations. An unanticipated consequence of this was that a large number of the Mexican children interviewed for this study were ensnared in the human smuggling industry, representing the single largest protection-related category for the children from Mexico.

industry, twenty-one of them identified one or more of the other protection-related concerns, in addition to the twenty-six other Mexican children who raised international protection needs and who were not involved in human smuggling, for a total of forty-six percent of the Mexican children raising international protection-related concerns apart from those related to the human smuggling industry.

Chapters 6 and 7 on Mexico also explore in detail the victimization of children by drug cartels and gangs, and the failure of the State to protect children from such harms. In addition, the chapters document how abuse in the home has forced many children to flee north—consistent with the reports of many children interviewed by UNHCR.⁶²

E. Violence in society

A full forty-eight percent of the children raised potential international protection concerns based on violence in the society. These 192 children shared that they feared, had been threatened with, or had already experienced, harm related to violence in society. The harms the children disclosed stemmed from organized armed criminal actors, including gangs⁶³ and cartels as well as those involved in the human smuggling industry, and in a few cases from State actors. There are important distinctions between the various organized, armed criminal actors in these countries, such as, for example, between the drug cartels and the gangs, yet at the same time, they often work collaboratively, and their activities may overlap. Significantly, these criminal actors—including gangs—often wield political power, influence and control in each of the four countries and the States are not able to provide meaningful protection from these actors.⁶⁴ The reports of these children are consistent, by and large, with the high levels of violence, and in particular gang-related violence, documented in the country-specific chapters of this book.⁶⁵

Over a quarter of the children, thirty-one percent, discussed violence or threats of violence by gangs or cartels. Of these, the vast majority, 108 children, spoke specifically about gangs: sixty-four children from El Salvador, thirty-three from Honduras, ten from Guatemala, and one from Mexico.⁶⁶ The children spoke of a range of gang-related criminal violence including forced

⁶² For a more detailed discussion on the types of harm faced by children in Mexico, including gang violence, child abuse, sexual violence, and targeting by human smuggling rings, see chapters 6 and 7 on Southern and Northern Mexico.

⁶³ The term “gang” has been criticized by some as giving a false impression as to the extent of power and control these criminal entities have and more apt terminology has been explored; no clear consensus has yet been reached as to how best to refer to them. *See, e.g.*, Brookings Institution, (2014), *Central Americans Displaced by Criminal Violence: A Roundtable Discussion: Summary Report*, p. 2. Retrieved from <http://reliefweb.int/sites/reliefweb.int/files/resources/Central%20American%20Displaced%20by%20Criminal%20Violence.pdf>.

⁶⁴ *See, e.g.*, Guidance Note on Organized Gangs, ¶ 47, which states: “It is important to consider, especially in the context of Central America, that powerful gangs . . . may directly control society and de facto exercise power in the areas where they operate. The activities of gangs and certain State agents may be so closely intertwined that gangs exercise direct or indirect influence over a segment of the State or individual government officials.”

⁶⁵ See chapters 2-7 on Honduras, El Salvador, Guatemala, and Southern and Northern Mexico.

⁶⁶ This number reflects the fact that unlike the three Central American countries, in Mexico drug cartels constitute the predominant form of criminal violence. *See* Migration Policy Institute (MPI). (2012). *Transnational Crime in Mexico and Central America: Its Evolution and Role in International Migration*. Retrieved from <http://www.migrationpolicy.org/research/RMSG-CentAm-transnational-crime>.

recruitment; physical violence, including rape and severe beatings; extortion; and threats of these harms. These children also reported either a lack of confidence in or actual lack of State protection.

The fact that it is typically non-State actors who commit the harms stemming from crime-related violence does not undermine the potential international protection needs. Protection-based harms may “emanate from sections of the population that do not respect the standards established by the laws of the country concerned” and “[w]here serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities or if the authorities refuse, or prove unable, to offer effective protection.”⁶⁷

The majority of the 108 children who discussed gang-related violence—seventy-five children, sixty-nine percent—talked about at least one specific incident, such as having been beaten, robbed, or threatened by gangs. More than half of the children who discussed gang violence issues—sixty-four children, fifty-nine percent—talked about the rampant threat of harm by armed criminal groups in their communities including inter-gang conflict and the extent of the control gangs exercise in different neighborhoods, such as determining who may enter and exit these neighborhoods—even among residents and relatives of residents in the community. Some children described the potentially life-threatening dangers of being misidentified as a member of one gang while in rival territory of another gang. Children shared the dangers they faced through their efforts to avoid gang recruitment, harassment by gangs while commuting to school, and the extortion exacted by gangs on children and their families.⁶⁸

Twenty-nine girls and ninety-four boys raised gang-related violence concerns, and their responses reveal a gender difference in the frequency of certain types of harm. For example, twenty-nine of the thirty-one children who discussed violent forced conscription into gangs were boys and seven of the eight children who reported rape, other sexual violence, or threats of such violence were girls.

⁶⁷ Handbook, ¶ 65.

⁶⁸ Although gang-related issues were more prevalent in the responses of children from urban areas, at fifty-six percent, the remaining forty-four percent also indicate a significant number of children from rural communities raising gang-related violence.

Select Examples of Gang-Related Harm By Gender		
Type of Gang-Related Harm	Number and Percentage of Girls Out of 29 Total	Number and Percentage of Boys Out of 94 Total
Violent Forced Conscription	2 7 %	29 37%
Rape, Other Sexual Violence or Threats of Same	7 24%	1 1%
Extortion	7 24%	11 14%
School-related Danger	8 28%	12 15%
Gang Violence in the Community	16 55%	48 61%
Specific Fearful Incident	20 69%	55 70%

Of the twenty-one children who raised concerns about cartels, fifteen of them were from Mexico, four from Guatemala, one from Honduras, and none from El Salvador. A total of ten children, all from Mexico, mentioned harm at the hands of State actors. Sixteen children from Honduras expressed concern about generalized violence, as did eleven children from Mexico, eight from Guatemala, and six from El Salvador. Thirteen children from El Salvador raised concerns about insufficient State protection, followed by three from Honduras, one from Guatemala, and none from Mexico.⁶⁹

Alfonso, El Salvador, Age 17

Where I studied and lived was under control of the other gang, the MS-13. The M-18 gang thought I belonged to MS-13. They killed the two police officers who protected our school and killed two kids I went to school with. They waited for me outside the school. The gang told me if I returned to school I wouldn't make it home alive. After that, I couldn't even leave my neighborhood. The gang prohibited me. The gang threatened someone I knew this way and he didn't take the threats seriously. They killed him. He was wearing his school uniform. If I hadn't had these problems, I wouldn't have come here.

The displaced children from El Salvador had the highest number of organized criminal related violence, at sixty-six percent, followed by forty-four percent of the Honduran children, thirty-two percent of the Mexican children and twenty percent of the Guatemalan children. Thirty-eight percent of the Mexican children were caught up in the human smuggling trade. Of these thirty-nine children, twelve of them also reported harm from other criminal elements. When these thirty-nine children involved in smuggling are added to the thirty-three Mexican children who said they were affected by other crime-related entities, the total number of Mexican children affected by criminal elements rises considerably to fifty-nine percent (sixty children).⁷⁰ As later chapters in the book will demonstrate, these reports are consistent with high rates of organized criminal violence, coupled with a failure of state protection, in all four countries: Guatemala, Honduras, El Salvador, and Mexico.

⁶⁹ See also Chapters 2-7 on Honduras, El Salvador, Guatemala, and Southern and Northern Mexico.

⁷⁰ This total reflects a subtraction of twelve to avoid double counting the twelve children who fell into both categories. Not all the children who gave human smuggling as a reason expressed a fear or experience of overt violence, but the exploitation and harm to which these children are subjected clearly constitute violations of their fundamental rights.

1. El Salvador

Sixty-six percent of the Salvadoran children raised the threat of serious harm at the hands of armed criminal actors, the highest number of any country. Sixty-five of the sixty-nine Salvadoran children who discussed violence in society specifically identified gang-related violence as the source of the harm experienced or threatened. The boys spoke largely of fear of gang recruitment and retaliation for refusing to join or cooperate.

Mario, El Salvador, Age 17

I left because I had problems with the gangs. They hung out by a field I had to pass to get to school. They said if I didn't join them they would kill me. I told them I didn't want to. Their life is only death and jail. The more I refused to join, the more they threatened me and told me they would kill me if I didn't. They beat me up five times for refusing to help them. The pain from the beatings was so bad I couldn't even stand up. I have many friends who were killed or disappeared because they refused to join the gang. They killed a friend of mine in March and his body wasn't found until May. I went to the police twice. They told me that they would do something but when I saw they weren't doing anything to help, I knew I had to leave.

Salvadoran girls expressed fears of rape, other forms of sexual violence, and even death if they refused to be the girlfriend of a gang member.

Dinorah, El Salvador, Age 14

The biggest problem in my country is the gangs. They go into the schools and take girls out and kill them. Sometimes girls are involved in gangs and other gangs kill them. Sometimes girls are dating boys who are in the gangs and members from other gangs kill them. Sometimes gangs kill a girl because they hate her family. I used to see reports on TV every day about girls being buried in their uniforms with their backpacks and notebooks. I had to go very far to get to school and I had to walk by myself. There was nowhere I could go where it would have been safe for me.

The children from El Salvador who had not yet been victims of the violence spoke of their own fears and that of their families with the same inevitability as those who had been targeted.

Henrique, El Salvador, 16

There are lots of gangs in my country. They force you to do bad things to other people, or they force you to get involved with them or to use drugs. I didn't want to do that, and so my whole family agreed that I should come here.

Thirteen Salvadoran children spoke about concerns related to insufficient State response to reports of threats or harm or an inability to protect from these harms. These concerns include children who unsuccessfully approached the authorities to report a crime and seek protection, as well as those children who explained why it was not realistic for them to even attempt to ask the police or other authorities for protective action.

2. Guatemala

Twenty percent of the Guatemalan children suffered or had been threatened with serious harm by some form of violence in society, including from gangs or other organized armed criminal actors, other violence in the community, or failure of the State to protect them against these forms of societal violence. Twelve of the children reported harm or fear of harm by gangs or cartels, another eight discussed generalized violence, and one reported insufficient protection from the State. Some of the children spoke about the impact of the violence on their daily lives.

Mauricio, Guatemala, Age 16

It was hard for me to study because of the gangs. It didn't happen to me, but sometimes they assaulted people. They did it to my friends. They were always on the road leading into the school, watching to see who they could attack.

3. Honduras

When asked why they left their country, thirty-four percent of the Honduran children said they fled because they had experienced or feared violence at the hands of organized criminal actors. Sixteen percent spoke about generalized violence, and three percent expressed concerns about the failure or inability of the State to protect them from these kinds of harms. Some of these children detailed escalating events in their lives that left them with no choice but to flee.

Jorge, Honduras, Age 16

The area I lived in is known as the worst for gangs in all of Honduras. They want to kill you. They almost killed my older brother. They shot him three times. They assaulted my other brother. They shot me as well. Another time some gang members attacked me with some friends and shot at us. A bullet hit me in the arm. It's dangerous for girls, too. They will make girls be with them by force. Last year the gang members told everyone in my neighborhood that they were in control and everyone had to get out. My entire family left the area because we knew it was dangerous.

The girls also spoke about the effects of gang violence, raising in particular forced sexual relationships and other forms of sexual violence.

Silvia, Honduras, Age 17

I was raped in Honduras on my way home from work. The gang members threatened me with guns and I am so scared to see guns or knives anywhere. They did it to me four times. I felt so bad about myself, I wanted to kill myself.

Other children spoke with a sense of inevitability of becoming targeted.

Alfredo, Honduras, Age 16

You feel afraid when you live in a place where there is nothing but violence. It's very dangerous there. The gangs are everywhere. You become accustomed to

hearing gunshots. You wonder if something will happen to you if you go out to the store, whether someone will shoot you or tell you that you have to join the gangs.

Angela, Honduras, Age 12

In the village where I lived there were a ton of gang members. All they did was bad things, kidnapping people. My mother and grandmother were afraid that something would happen to me. That's why my mother sent me here. They rape girls and get them pregnant. The gang got five girls pregnant, and there were other girls who disappeared and their families never heard from them again.

4. Mexico

Twelve percent of the Mexican children who had not been recruited into the human smuggling industry identified risks from cartels or dangers they experienced as reasons for coming to the U.S. Three of the four Mexican girls interviewed spoke of cartel violence. Ten of the children spoke of fears due to generalized violence, and two spoke of harm at the hands of State actors.

Juan, Mexico, Age 13

I like playing [soccer] outside, but I can't really play anymore. My friends from my neighborhood all moved because their brothers were killed. The cartel killed them and the entire family left. So now I don't have anyone to play soccer with.

F. Recruitment and exploitation in the human smuggling industry

Mexican children are frequently recruited by criminal rings and other adults to work as human smuggling guides, because, in view of their age and vulnerability, it is widely understood that if they are caught, they are typically returned to Mexico without delay.⁷¹ Recruitment into the criminal human smuggling industry affected thirty-eight percent of the Mexican children, who said they had come into the U.S. as part of their “duties” as smugglers.⁷² All of these children stated they were doing this on behalf of an adult. In addition to the crime-related protection needs of these children, concerns about exploitative labor also arose in this context. The *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* includes in the definition of “worst forms of child labour” “the use, procuring or offering

⁷¹ Many of the children who disclosed involvement in human smuggling confided that one reason they were recruited is because adults know that children will more than likely be sent back to Mexico directly and will not be prosecuted under U.S. criminal law. Certainly, prosecuting children for crimes committed at the behest and under the orders of adults would be an inappropriate and ineffective response; at the same time, this reflects one key dimension of the level of deliberate exploitation by adults of these children.

⁷² Factors that may have contributed to this high percentage are that, due to the limited number of Mexican children referred to ORR custody within the U.S., eighty-two percent (eighty-four) of the Mexican children interviewed were being held in the custody of the U.S. Border Patrol in the South Texas Rio Grande Valley waiting to be returned to Mexico. This area has one of the highest crossing rates from Mexico into the U.S. including a high number of Mexican children, and an accompanying high volume of guides for human smuggling operations. An unanticipated consequence was that a large number of the Mexican children interviewed were caught up in the human smuggling industry, representing the single largest protection-related category for the Mexican children.

of a child for illicit activities . . . [and] work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁷³

Children are lured in with the promise of money, the likes of which cannot be earned through the few legitimate work opportunities that might be available to these children. The children are then made to engage in unlawful and dangerous activities. Once ensnared, it is generally very difficult for the children to be released from their smuggling “duties” and they remain caught in a web of criminal activity and threats to their safety and well-being.

The children interviewed did not suggest they were literally forced to engage in human smuggling; however, their ages, the rampant poverty, lack of opportunity, and often-unchecked crime-related violence in at least parts of Mexico, are strong indicators that these children are unlikely to be able to make informed and voluntary decisions to participate in human smuggling.

Ten percent of these children spoke of being harmed or threatened with harm by the Mexican military because of their actual or presumed work in the smuggling industry. Eight of these ten children had actually been recruited into the smuggling industry and of these, three were beaten or tortured by the military soldiers, two were shot at by them, and three feared such abuse. Both of the two children who were not working in the human smuggling industry stated Mexican soldiers accused them of working for a cartel and beat them because of this.

The Mexican children who discussed involvement in the human smuggling industry were placed in situations of danger to their safety and well-being, in direct conflict with their moral and social development. These children were repeatedly exposed to and made to engage in the dangerous and often violent world of unlawful border crossings. In combination with the poverty, lack of opportunity, and lack of State protection, these children are caught in a vicious cycle. The exploitation of these and other children represents serious human rights violations and is a strong indication that these children may be in need of international protection.

G. Abuse in the home

“All violence against children, including physical, psychological, and sexual violence, while in the care of parents or [other caregivers] is prohibited [under international law].”⁷⁴ Such harm is recognized as a potential basis for providing international protection because of the child’s vulnerability, dependency and, in many cases, a lack of ability to access effective recourse or protection by the State.⁷⁵ Twenty-one percent of the children disclosed that they had experienced some form of abuse in the home, including physical abuse, emotional abuse, sexual abuse, sibling violence, intimate partner violence, and abandonment. Although less than half of the children who

⁷³ Child Labour Convention, Article 3, ¶¶ (c) and (d). All five countries discussed here have ratified this Convention.

⁷⁴ Child Asylum Guidelines, ¶ 32. *See also, e.g.*, UNHCR. (2002, May 7). Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees. Retrieved from <http://www.refworld.org/docid/3d36f1c64.html>. (Discussing, among other issues, the context and circumstances under which domestic violence may serve as the basis for refugee protection.)

⁷⁵ Questions such as the severity of the abuse, whether the State is willing or able to provide protection to the child from it, and whether the actual or feared harm is connected to one of the five grounds in the refugee definition are all factors that would appropriately be considered in the context of an assessment of a full protection claim.

reported some form of abuse were female, these thirty-six girls represent forty percent of all the females interviewed, whereas the forty-nine boys who reported some form of abuse in the home, represent only sixteen percent of all the boys interviewed.

The children identified a range of abusers including parents, siblings, grandparents, other care-givers, and domestic partners. Twenty-two children spoke of care-givers getting ill, dying or being otherwise unable to care for them as a reason for leaving; ten of these children were among those who reported abuse in the home.

Across all nationalities except Guatemalans, children raised abuse in the home much more frequently as a form of suffering or harm than as an explicit reason for leaving. There are many possible explanations for this, among them that children may have viewed their decision to leave as separate from their maltreatment, even if the maltreatment had caused them to seek a safer life elsewhere; they may have felt ashamed or afraid to talk about the abuse and thus only disclosed it after several probing questions or after developing more rapport with the interviewer; or it may not have seemed out of the ordinary, if it was all the child had known. Whether or not the child herself identifies abuse in the home as a motivation for leaving, however, children should be carefully screened for protection-related needs resulting from this form of abuse.

Children Reporting Abuse in the Home by Country and Sex				
Nationality	Number of Girls	Percentage of Girls to Total Number by Country	Number of Boys	Percentage of Boys to Total Number by Country
El Salvador 21 out of 104	14	67%	7	33%
Guatemala 23 out of 100	9	39%	14	61%
Honduras 24 out of 98	11	46%	13	54%
Mexico 17 out of 102	2	12%	15	88%
TOTALS	36	40%	49	16%

Lydia, Honduras, Age 16

When I was four years, my stepfather abused me. I told my mother and she left him. After that he threatened to kill her.

Ana, Honduras, Age 13

When I was six years old, my stepfather raped me.

Oscar, Honduras, Age 12

My grandmother mistreated me. She forced my siblings and me to work. She was mean to me and finally told me to leave the house, but where was I supposed to go? The only place I could come was here. I wanted to be with my mother. I miss her a lot.

The issue of abuse, especially when it occurs in the home, highlights some of the key reasons that both the process of eliciting information from children and the analysis of the information they provide require a clear understanding of a child's ability to talk about sensitive or potentially traumatic experiences. Children may feel ashamed to discuss experiences of abuse or may have difficulty articulating or recounting an experience. A child may feel that discussing abuse in the home will bring shame on his or her family. Children may not consider it relevant, important, or safe to mention. Some children may not even recognize their experiences as abusive because it is all they have known. For example, one 17-year-old from Honduras gave a variety of reasons for leaving including numerous attempts by a gang to recruit him, lack of work, and wanting to help his mother. When later asked whether anyone had ever made him suffer, he replied simply that his father beat him regularly.

Twenty-four percent of the Honduran children disclosed abuse in the home, along with twenty-three percent of the Guatemalan children, twenty percent of the Salvadoran children, and seventeen percent of the Mexican children. Salvadoran girls reported the highest rate of abuse in the home, at fourteen girls, constituting sixty-seven of all the Salvadoran children who mentioned this form of abuse. The eleven girls from Honduras made up forty-six percent of the total number of Honduran children facing abuse in the home out of a total of twenty-four children. Of the twenty-three Guatemalan children who reported abuse in the home, thirty-nine percent (nine), were girls. Seventeen Mexican children reported abuse in the home—fifteen boys and two girls.⁷⁶

1. El Salvador

Twenty percent of the Salvadoran children said they made the journey north at least in part because of abuse they suffered at home. These children were primarily girls who spoke of abuse by family members or by their boyfriends. One 15-year-old spoke of being raped by her boyfriend, only to have him threaten to take her child from her when she got pregnant as a result.

Tito, El Salvador, Age 15

My stepfather tried to rape me a few times. This started in October 2011. I told my mother, but she didn't believe me. She beat me as well. I reported my stepfather to the police, and there was a court case. He didn't end up in prison. I had to leave my house and go live with my neighbor and then with my brothers.

One 17-year-old Salvadoran boy spoke of having been abandoned by his father and beaten often by his mother. Adding to this the intimidation and threats of forced recruitment programs by armed criminal actors in his neighborhood, he felt he had no other choice than to set out on his own for safety.

⁷⁶ Only four of the 102 Mexican children were girls and all four had been referred to ORR custody. Two of these girls reported abuse in the home. The incidence of family abuse of girls in Mexico may be higher than the numbers reflect but the limited pool of girls interviewed did not provide enough evidence to make any substantiated inferences.

2. Guatemala

Twenty-one percent of the Guatemalan children raised abuse in the home by a family member or other caregiver. One young girl confided that her stepmother beat her several times a week and forced her to quit her studies so she could begin working.

Corina, Guatemala, Age 16

I had problems with my grandmother. She always beat me from the time I was little. That's why I went to live with my boyfriend—and because I was lonely and sad. But after we had been living together for about a month, my boyfriend also beat me. He beat me almost every day. I stayed with him for four months. I left because he tried to kill me by strangling me. I left that same day.

Francisco, Guatemala, Age 16

My father was deported from the United States for domestic violence. When he came back he was violent and angry, and he wanted to take his anger out on me. He would insult me and say mean things. He never hurt me physically, but he hurt me psychologically.

3. Honduras

Twenty-four percent of the Honduran children talked about abuse at the hands of family members or other caregivers. One 16-year-old girl spoke of abuse by her stepfather when she was young. He threatened to kill her when her mother decided to leave him. For years afterward, the girl continued to feel afraid and spoke of this when she described her reasons for leaving Honduras. Another girl fled when she was 17, after her abusive father was released from prison.

Hector, Honduras, Age 17

My father beat me my whole life. He abused me and my sister. He was an alcoholic. He raped my sister and got her pregnant. He was in jail for five years, even though it was supposed to be nine years. He got out of jail in March 2012. I didn't want to be around him because I was afraid he would beat me and mistreat me again, so I decided to leave.

Angelo, Honduras, Age 17

My father would get mad at me and beat me all the time. Sometimes he would beat me with a belt every day for days. My mother couldn't really defend me because he would beat her, too.

4. Mexico

Seventeen percent of the Mexican children—two girls and fifteen boys—spoke of abuse in the home. Nine of these children were also among those who had been exploited by the human smuggling industry.

Carlitos, Mexico, Age 14

My stepmother hit me and yelled at me every day. When my dad was there, she treated me well, more or less, but when he wasn't there, she didn't. My dad also beat me.

H. Sexual violence

Sexual abuse revealed by children during their interviews was recorded under three categories: violence by armed criminal actors; violence in the community; and abuse in the home. A relatively small number of children disclosed that they had suffered some form of sexual violence, including rape. Twenty children in all, nineteen of whom were girls, mentioned this issue.⁷⁷ Four of these children reported two different types of sexual violence: two were abused by both a gang member and by a family member, and the other two suffered sexual violence by someone in the community and by a family member. More Honduran and Salvadoran children, nine and seven, respectively, revealed sexual violence than Guatemalan and Mexican children, three and one, respectively. Although only a few children discussed issues relating to sexual violence, it is difficult, if not impossible to draw clear conclusions about the extent of sexual abuse these children as a whole may have suffered. This is because, as is well documented, among all forms of violence, sexual violence is generally the most difficult to disclose—by children and adults—due to its highly sensitive nature and the stigma and shame felt by many of its victims.⁷⁸ As the later chapters of this book will document, sexual abuse and other forms of gender-based violence pose serious problems in all four countries.⁷⁹ Thus, the relatively small numbers reported by the children interviewed by UNHCR do not demonstrate the absence of gender-based violence in these countries, but rather may reflect barriers to disclosure.

I. Deprivation and social exclusion

Clearly, not all children leaving situations of deprivation of basic survival necessities warrant international protection and, for purposes of its study, UNHCR did not include these factors in

⁷⁷ The one boy who revealed an experience of sexual abuse stated he had been touched inappropriately by a gang member. A troubling note is that staff members at two different ORR facilities stated they are seeing an increase in male residents reporting incidents of sexual abuse, occurring particularly during their journey to the U.S.

⁷⁸ See, e.g., National Society for the Prevention of Cruelty to Children (NSPCC). (2010). Research Briefing: Children and Young People Disclosing Sexual Abuse: An Introduction to the Research (hereinafter “Disclosing Sexual Abuse”), pp. 6, 9. Retrieved from http://www.nspcc.org.uk/inform/research/briefings/children_disclosing_sexual_abuse_wda75965.html. Also available at <http://www.childmatters.org.nz/file/Diploma-Readings/Block-2/Sexual-Abuse/3.4-children-and-young-people-disclosing-sexual-abuse-updated.pdf>. Disclosing Sexual Abuse found that 46% to 69% of adults who were sexually abused as children never disclosed this abuse during childhood, and those children who did choose to disclose were less likely to tell a professional (less than 10% of children who disclosed in the studies cited) than to tell a friend or their mother (*Id.*, pp. 6, 9). The study states that “[g]ender differences have also been identified as impacting on the disclosure of sexual abuse. Although there are similarities between boys and girls in how they feel about it (e.g. fear, shame, guilt) . . . boys fear being stigmatised [sic] as a homosexual and/or victim, whereas girls are more likely to fear that they will not be believed” (*Id.*, p. 9). Other studies have described adolescent boys as “least likely to report their sexual victimization.” Paine, M., & Hansen, D. (2002). Factors Influencing Children to Self-Disclose Sexual Abuse, *Clinical Psychology Review*, 22(2), p. 274. Retrieved from <http://digitalcommons.unl.edu/psychfacpub/59/>. It is important to note that neither of these two studies cite to research conducted by any of the countries under discussion in this chapter.

⁷⁹ See chapters 2-7 on Honduras, El Salvador, Guatemala, and Southern and Northern Mexico.

assessing the children's potential international protection needs. This section, however, discusses the circumstances that may give rise to international protection needs in the context of deprivation and social exclusion. In addition, deprivation and social exclusion are well-documented contributors to violence in society, particularly in some Latin American countries.

Children's very survival and development depend on their ability to access adequate food, shelter, health care, and education. Human rights also protect the enjoyment of basic economic, social, and cultural rights, which include the ability to meaningfully engage in social, cultural, and religious activities. Violation of any of these rights may cause the need for international protection where not realizing minimum core standards, such as, for example, denial of a child's right to an adequate standard of living, including access to food, water, or housing, could lead to an intolerable situation threatening that child's development and survival.⁸⁰

A significant number of the children, fifty-three percent, discussed issues related to poverty and lacking basic survival necessities, needing to provide support to family members, or lacking meaningful opportunity for work or education as one reason—but only fifty-five of these children reported it as their *only* reason—for leaving.

“Children's socio-economic needs are often more compelling than those of adults, particularly due to their dependency on adults and unique developmental needs. Deprivation of economic, social and cultural rights, thus, may be as relevant to the assessment of a child's [international protection needs] as that of civil and political rights. It is important to . . . assess the overall impact of the harm on the child. The violation of one right often may expose the child to other abuses; for example, a denial of the right to education or an adequate standard of living may lead to a heightened risk of other forms of harm, including violence and abuse.”⁸¹ An accumulation of less serious violations may also give rise to international protection needs, as can discriminatory acts when they may lead to seriously prejudicial consequences for the child. As with other types of harm to a child, it is essential to assess the consequences of such acts for the child concerned—now and in the future.⁸²

IX. Conclusion

The responses of the 404 children from El Salvador, Guatemala, Honduras, and Mexico interviewed for this study lead to several significant conclusions. First, the reasons these children have for leaving their countries of origin are complex and interrelated, and can be understood only when examined from a child-sensitive perspective and taken as a whole and in context. Related to this multiplicity of reasons, there is no single dominant place of origin within or among the different countries from where these children are coming. Second, across the broad array of their responses, these children also clearly share commonalities within and among all four countries. Third, the many compelling narratives gathered in this study—only some of which are relayed in this report—demonstrate unequivocally that many of these displaced children face grave danger and hardship in their countries of origin. Fourth, there are significant gaps in the existing protection

⁸⁰ See Child Asylum Guidelines, ¶ 35. (Noting that “[a] violation of an economic, social or cultural right may amount to persecution where minimum core elements of that right are not realized.”)

⁸¹ Child Asylum Guidelines, ¶ 14.

⁸² Handbook, ¶¶ 53, 55; Child Asylum Guidelines, ¶ 36.

mechanisms currently in place for these displaced children. The extent of these gaps is not fully known because much of what happens to these children is not recorded or reported anywhere. As such, it is reasonable to infer that the gaps may be even wider than what the available data indicates. By all accounts, children arriving to the U.S. from these four countries continue to rise in numbers and in the numbers among them with potential international protection needs. Through the children's own words, the critical need for enhanced mechanisms to ensure these displaced children are provided access to international protection is abundantly clear. The experiences they have recounted are consistent, by and large, with the trends and problem areas identified in later country-specific chapters of this book. The critical question is how the five States, civil society, and UNHCR can work together to best ensure these children are carefully screened and provided the protection they so desperately need and deserve.

X. Recommendations

Based on the findings and conclusions of its study, UNHCR made recommendations regarding the potential or actual international protection needs of unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico to the five countries involved—El Salvador, Guatemala, Honduras, Mexico and the United States.⁸³

Recognize Newly Emerging Forms of Forced Displacement in Central America and Mexico and the Correlative Emergence of International Protection Concerns

1. **Recognize** specifically that the violence and insecurity within El Salvador, Guatemala, Honduras, and Mexico as well as across borders have led to the forced displacement of children and others in the region; their implications as foreign policy and political issues; and their connection with international protection needs.
2. **Recognize** the international protection needs—actual and potential—at stake and the need to ensure these displaced children are provided safety upon arrival, screening for any international protection needs, access to the asylum adjudication process and the provision of international protection for those found to be refugees or otherwise unable to safely return to their countries of origin.
3. **Bring** the international protection needs of these displaced children to the forefront and ensure their inclusion to the fullest extent possible in all national and regional efforts concerning mixed migration, refugees and asylum-seekers.
4. **Incorporate** formally the international protection needs of these children into official discussions concerning them in the region and into the final guidelines to be published by the Regional Conference on Migration.

⁸³ In *Children on the Run*, in addition to providing its recommendations to the governments of El Salvador, Guatemala, Honduras, Mexico, and the United States, UNHCR acknowledged a number of the requests and concerns raised by government representatives, civil society and other stakeholder participants from these five countries made at the Roundtable on the Displacement of Unaccompanied and Separated Children convened by UNHCR in San Juan, Puerto Rico on January 22-23, 2014. Although, they were beyond the scope of the findings and conclusions of the UNHCR study, given the important issues addressed, they are reproduced in the study and can be found at <http://www.unhcrwashington.org/children>.

Strengthen and Harmonize Regional and National Frameworks for Ensuring International Protection

5. **Establish and promote** more consistent and child-sensitive approaches to displaced children in the region through the development of regional protocols that address their international protection needs, and that incorporate the principle and practice of determining the best interest of the child at all decision points affecting their well-being, beginning with their first encounter of authorities in the country they have entered or are seeking to enter.
6. **Ensure** the principle of the best interests of the child is a central component of all responses, approaches, guidelines, and tools concerning the protection needs of children including the assessment of a claim for refugee status, asylum or any other form of international protection.
7. **Enhance capacity**, through increased staff and training and other mechanisms, to ensure the systematic identification of children with potential international protection needs, in particular children in high risk situations; appropriate referrals for their care and assessment of their international protection needs; and access to guardians and legal representation.
8. **Harmonize** national legislation, policies, and practices with the resulting regional framework and tools.
9. **Develop and disseminate** common tools to support the government function of screening for international protection needs with special attention to methods and practices that promote a child sensitive environment.
10. **Develop and implement** mandatory training for all authorities engaged in activities relating to the protection and other assistance of children with potential or actual international protection needs on the basic norms and principles of international human rights and refugee law including the fundamental principles of: non-discriminatory treatment; best interests of the child; *non-refoulement*; family unity; due process of law; and non-detention or other restriction of liberty.
11. **Strengthen** collaboration, exchange of information, and sharing of best practices relating to the identification, referral, and assessment of children with potential international protection needs among governments and UNHCR and between governments and civil society.

Address Root Causes

12. **Undertake** measures both regionally and nationally to address the root causes of flight of these displaced children in an effort to reduce—if not eliminate—the factors that lead to their forced displacement.

13. **Engage** the Commission on Security for Central America to address the issues of children displaced due to violence and insecurity in further support of State efforts concerning these issues.

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>.