



RECEPTION OF CHILDREN ON THE MOVE IN MEXICO

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1. Application of international law in domestic law of the host/transit country

1.1. Status of international treaties in domestic law

In accordance with Constitutional Article 133, in general, treaties are hierarchically situated below the Constitution, but above Federal and local laws and regulations. However, since 2011, Constitutional Article 1 provides that every person in Mexico is entitled to the human rights enlisted in the Constitution and those derived from treaties that Mexico is Party to. By virtue of jurisprudence, the Mexican Supreme Court has determined that human rights are hierarchically superior to any norm of the Mexican legal system, despite its origin and the legal instrument where they are contained.

Article 1 also provides for the application of the so-called *pro homine* principle that states that every norm shall be interpreted pursuing the highest standards of protection to people. Hence, whether a norm is contained in an international treaty or under domestic legislation, the one that protects a person the most shall prevail over the other in the event of conflict between the two.

1.2. Ratified international treaties

International Treaties

Mexico is part of the most important treaties regarding the protection of the children. Specifically, Mexico has ratified:

- i. International Covenant on Civil and Political Rights.
- ii. The Convention on the Rights of the Child.
- iii. The American Convention on Human Rights.
- iv. The Convention concerning the Statute of Refugees.
- v. The protection of the rights of the migrant workers and their families.
- vi. ILO Conventions on child labor.
- vii. Convention on the Statute of Stateless Persons.

Reservations were made on the Convention on the Statute of Stateless Persons (*Convención sobre el Estatuto de los Apátridas*) to articles 17, 31 and 32 which declares that the Government of Mexico does not consider itself obliged to guarantee stateless persons greater facilities for their naturalization than those accorded to aliens in general, for which reason it lodges an express reservation to the contents of article 32 of the Convention.

Domestic Legal Framework

Mexico's obligations under the international treaties described above regarding migrant children is reflected in the following legal framework:

- i. Political Constitution of the United Mexican States (*Constitución Política de los*

Estados Unidos Mexicanos).

ii. Statutes

- General Law on the Rights for Boys, Girls and Teenagers (*Ley General de los Derechos de Niñas, Niños y Adolescentes*; “Children's Law”);
- Migration Law (*Ley de Migración*);
- Victims' General Law (*Ley General de Víctimas*);
- General Law for the Prevention, Prosecution and Elimination of Human Trafficking and for the Protection and Assistance of Victims of Such Crimes (*Ley General para prevenir, sancionar y erradicar los delitos en materia de trata de personas y para la protección y asistencia a las víctimas de estos delitos*; “Trafficking Victims Law”);
- Law on Refugees, Ancillary Protection and Political Asylum (*Ley sobre Refugiados, Protección Complementaria y Asilo Político*; “Refugee Law”);
- General Law on Education (*Ley General de Educación*);
- Federal Civil Code (*Código Civil Federal*).

iii. Regulations

- Regulations of the General Law on the Rights for Boys, Girls and Teenagers (*Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes*; “Children's Law Regulations”);
- Regulations of the Law on Refugees, Ancillary Protection and Political Asylum (*Reglamento de la Ley sobre Refugiados, Protección Complementaria y Asilo Político*; “Regulations of the Refugee Law”).

iv. Guidelines

- 2014-2018 Special Migration Program (*Programa Especial de Migración 2014-2018*);
- Agreement Containing the National Migration Institute's Guidelines regarding Migrant Protection published in the Federal Official Gazette on November 29, 2012 (*Acuerdo por el que se emiten los Lineamientos en materia de Protección a Migrantes del Instituto Nacional de Migración publicados en el Diario Oficial de la Federación*; “OPI's Guidelines”);
- Protocol for the initial evaluation to identify any needs to provide international protection of separated or unaccompanied girls, boys or teenagers (*Protocolo de evaluación inicial para la identificación de indicios de necesidades de protección internacional en niñas, niños y adolescentes no acompañados o separados*; “Protocol 1”) issued by the Ministry of the Interior (*Secretaría de Gobernación*)

and the National Commission for Refugee Assistance (*Coordinación General de la Comisión Mexicana de Ayuda a Refugiados* “COMAR”);

- Protocol for the attention of unaccompanied migrant boys, girls and teenagers that are sheltered (*Protocolo de atención a NNA migrantes no acompañados o separados que se encuentran albergados*; “Protocol 2”) issued by the Comprehensive Family Development Systems (*Sistemas de Desarrollo Integral de la Familia* “DIF”);
- Protocol for the consular assistance of unaccompanied migrant girls, boys and teenagers (*Protocolo para la atención consular de niñas, niños y adolescentes migrantes no acompañados*; “Protocol 3”) issued by the Ministry of Foreign Relations (*Secretaría de Relaciones Exteriores*);
- Tool Kit of the Protocol for the consular assistance of unaccompanied migrant girls, boys and teenagers (*Caja de Herramientas del Protocolo para la atención consular de niñas, niños y adolescentes migrantes no acompañados*; the “Tool Kit of Protocol 3”);
- Action protocol to ensure the respect of the rights and protection of girls, boys and teenagers during administrative migratory proceedings (*El Protocolo de actuación para asegurar el respeto a los principios y la protección de los derechos de niñas, niños y adolescentes en procedimientos administrativos migratorios*; “Protocol 4”).

1.3. Interpretation of the principle of ‘best interest of the child’ in Mexican domestic law

The Mexican Supreme Court, in the thesis ‘Best interest of the child and dimensions in which the application of this principle is schemed’ (*interés superior del menor dimensiones en que se proyecta la aplicación de este principio*) has interpreted the best interest of the child in the following manner: (i) as a substantial right which must be pondered against the specific interests at hand for a specific situation; (ii) as an interpretation principle by means of which the relevant statutes must be interpreted in a way that the child is placed in the most favorable situation; and (iii) a procedural rule by means of which the wishes, interests and feelings of the child must be assessed when adopting a decision involving such child.²

1.4. Definition of separated and unaccompanied children

The terms “separated child” and “unaccompanied child” are mentioned in the Mexican Regulatory framework, however this framework does not define or distinguish either term.

² Tesis 1a. CCCLXXIX/2015 (10a.), Tenth Epoch, First Chamber, Federal Judicial Gazette Book 25, Volume I, December 2015.

2. Reception of children in the host/transit country

2.1. Initial evaluation

According to articles 71 and 73 of the Migration Law, the Childhood Protectors Officers (employees of the National Migration Institute entrusted with social work endeavors, hereinafter the “OPIs”) are in charge of the assistance of migrant children during their transit through Mexico. The Children's Law and the other statutes and regulations do not address whether or not migrant children's cases should be individually examined.

Children have the right to a free attorney provided by the State. Moreover, according to the Children's Law, children may have a tutor or an OPI assigned to him/her to act on his/her behalf. However, in practice, this is a difficult measure to apply.³

Interviewers must abide by the provisions set forth in the relevant protocols described in Section 1.2 above which also require taking into consideration the best interest of the child as described in Section 1.3 above. Generally speaking, interviewers lack the specialized skills to collect the accounts of migrant children, as observed by the National Human Rights Commission⁴ (*Comisión Nacional de los Derechos Humanos* “CNDH”).⁵

According to Protocol 1, interviewers must find the appropriate settings for the interview, taking into account the illumination temperature. Moreover, interviewers shall be careful not to have any third person intervention. Likewise, interviewers shall let interviewees choose where to sit, so that they will feel comfortable.

Article 92 of the Children's Law and Protocol 1 provide that children have the right to an interpreter or translator in addition to the right of having the interview and any interaction carried out in an understandable language.

The relevant migrant statutes and regulations do not specify whether or not children benefit from priority or accelerated process.

Youths (18-25-year-old individuals) do not benefit from the measures established for children, as the protection principles established in the Children's Law are aimed only at children and teenagers from 0 to 18 years old.

2.2. Establishment of identity /Age assessment

Pursuant to Protocol 3, an age assessment is required as part of the initial steps when interacting with a child in order to determine what is the specific approach that must be taken. Accordingly, the relevant authorities must make an age assessment to determine an age-appropriate approach which they must adopt when interviewing or assisting migrant children. More specifically, Protocol 3 requires that the

³ Report on the issue of unaccompanied migrant boys, girls and teenagers and their need of International Protection, dated October 2016 issued by the National Human Rights Commission (“CNDH Report”) numeral 170.

⁴ The National Ombudsman which serves as a consultative body.

⁵ CNDH Report, numeral 170.

age assessment is carried out so that children under the age of ten are attended with the use of specific materials that aid in the interaction with the given child in accordance with the Tool Kit of Protocol 3.

While the relevant provisions dealing with age assessment do not expressly establish the need to appoint a guardian prior to undertaking an age assessment, article 83 of the Children's Law sets forth that authorities must ensure that children are accompanied by a guardian and have the required legal representatives for any type of proceeding or governmental action in which the children are involved.

Age assessment is part of a comprehensive multi-disciplinary holistic assessment. Protocol 3 provides that age assessment shall be completed as part of a series of assessments that the relevant authorities must carry out, including assessing the existence of other circumstances that require special attention or treatment with respect to a child (e.g. any disability, forming part of a specific ethnic group, among others).

The Tool Kit of Protocol 3 sets forth specific guidelines through which an age assessment must be carried out in both an age-sensitive and gender-sensitive manner. This Tool Kit determines the approach that authorities must take, depending on the age and gender of the child. For example, the need for specialized toys, care for personal space, interaction with the child, etc. For this, the authorities should take into consideration gender perspective principles and formulate questions according to the intellectual development stage of the child, among other factors.

It is important to note that the relevant age assessment provisions in Mexico do not describe the specific requirements that specialized personnel must have to carry out an age assessment. Protocol 3 and its Tool Kit only set forth the general guidelines that must be followed by any authority carrying out an age assessment (e.g. the authorities providing consular assistance). Likewise, article 112 of the Migration Law only provides that specialized personnel of the National Migration Institute shall carry out the corresponding assessments and that such assessments may be carried out before the presence of a member of the National Human Rights Commission.

Another relevant factor to be aware of is that Protocol 3 and its Tool Kit only provide guidance as to the approach to take with the child when undertaking an age assessment, but do not expressly require obtaining such consent. As there are no express provisions requiring obtaining the child's consent, there are no specific consequences for a specific application process.

In the event the age assessment by the authorities produce uncertain results, according to Protocol 3 and its Tool Kit the authorities must make their best effort to assess the age/identity of the children and, where applicable, grant them the benefit of the doubt in the benefit of the child.

Article 10 of the Children's Law provides that migrant children have the right to obtain an identification document issued by the relevant authorities. More specifically, Protocol 3 provides that once all the corresponding assessments have been carried out to determine the age of the child, and any special circumstances which place the child in a vulnerable condition (e.g. disabilities, victims of any crime, among others) the authorities must provide such document to the child.

2.3.Migrant children victims of trafficking

Pursuant to articles 62, 65 and 68 of the Trafficking Victims Law, the relevant federal, local and municipal authorities in charge of attending victims of trafficking, including children, are in charge of implementing specific safeguards to protect such victims. These safeguards include providing medical,

psychological, and legal assistance, in addition to witness protection programs whenever applicable.

Moreover, pursuant to article 104 thereof, the relevant authorities must implement specialized supervision mechanisms at certain “high risk” areas (e.g. entertainment centers, internet service centers, hotels, cafés, transit stations or any other location where there is a risk that an individual may fall victim of human trafficking) to ensure that migrant children do not fall victims to trafficking.

Please note that the only safeguards that exist are the ones established in the Trafficking Victims Law, and that there is no publicly available information regarding specific safeguards to protect migrant children victims of trafficking.

The relevant government authorities have the obligation to provide information to migrant children (including any potential risk and the ensuing remedies thereof) in accordance with article 92 of the Children’s Law.

Pursuant to article 21 of the Children’s Law, parental responsibility of migrant children is verified in accordance with the relevant civil statutes including the Federal Civil Code. Moreover, said article provides a legal presumption that sets forth a parental responsibility to adults accompanying a migrant child that refuse to submit to a DNA test. The available information does not specify the existence of a safeguard against trafficking of children under this legal presumption. As to the specific verification, the Federal Civil Code does not set forth specific tests to determine parental responsibility but includes certain legal presumptions as to determine the paternity of a specific child (e.g. a child born within a marriage or a recently separated couple will be deemed to be their child).

DNA tests are allowed under Mexican Law. However, such tests may only be carried out in the context of a paternity test carried out before the relevant family courts.

Pursuant to article 49 of the Children’s Law, children victims of a specific crime (such as trafficking) shall be provided with the specialized programs set forth under the Victims’ General Law. Moreover, such article provides that the relevant attention protocols must consider the specifics of such victims, including their age, mental and intellectual development, among others. More specifically, the Victims’ General Law includes specific attention protocols that address the situations to which the victims were subject to and affords them with special education, health, protection, psychological attention programs.

2.4. Application for international protection

Mexico is part of the American Convention on Human Rights. As such, any person may present a claim against the State or request precautionary measures before the Inter-American Commission on Human Rights (hereinafter the ICHR). Therefore, any breach or potential breach to human rights, including the ones committed against migrant children in Mexican territory can be submitted before the ICHR.

All individuals have the right to apply for asylum in Mexico regardless of their country of origin, but the law itself does not envision child-specific forms of persecution.

The Refugee Law contemplates the 1951 Refugee Convention definition of the term “refugee”, as well as the definition contained in the Cartagena Declaration, and adds ‘gender’ as a basis for refugee claim.

The Refugee Law contemplates a certain “vulnerability status” applicable to children and adults with physical or mental disabilities, and subject to political persecution, among others. There is a possibility to provide ancillary protection to refugees that qualify for this “vulnerability status”. In such regard,

ancillary protection consisting of special medical or psychological care may be afforded to refugees. However, the fact that ancillary protection is afforded does not place such individuals in a different refugee or protection status.

The inability of the state of origin to protect an asylum seeker is taken into consideration when assessing the specific asylum claim. In such regard, article 13 of the Refugee Law provides the possibility of seeking asylum when an individual may be subject to persecution in their country of origin, but does not distinguish direct persecution from the state from persecution derived from the incapacity or willingness of the state to protect said individuals.

Article 13 of the Refugee Law contemplates a violation of an individual's human rights as a possibility for requesting asylum, without differentiating between economic, social, cultural, civil or political rights.

2.5.Migrant children's access to justice

Under articles 92, 86 and 122 of the Children's Law, migrant children are provided with free legal assistance by means of the specialized Protection Agencies (*Procuradurías de Protección*).

“Are migrant children, independently of their status (asylum seekers, illegal migrants) provided with a legal counsel and a guardian as soon as the authorities detect them?”

Yes, authorities have the obligation to inform the Protection Agencies of any migrant children subject to any legal process in order for the Protection Agencies to provide legal counsel as provided under article 122 of the Children's Law. However, the CNDH has observed that in practice, migrant children are not provided with the corresponding legal counsel.⁶

In accordance to article 122, paragraph II of the Children's Law, Protection Agencies provide lawyers with specialized knowledge on trafficking, and more generally on working with migrant children. However, the CNDH has observed that, generally speaking, the relevant authorities interacting with children (including appointed lawyers) lack adequate training and knowledge.⁷

Migrant children and their guardians are informed of the corresponding legal remedies accessible to them in the event of an authoritative decision that will affect them. Generally speaking, the legal remedies that migrant children and/or their guardians have access to entail their right to be heard and to be informed of the legal process installed against them. More specifically, children and/or their guardians may appeal decisions imposed by the authorities when such decisions affect them. Moreover, children and/or their guardians may file for a constitutional protection writ of “Amparo” against the actions of any authorities, when such actions or decisions affect their Human Rights. Legal counsel may assist and/or file the corresponding remedies when required by the migrant children and/or their guardians.

Pursuant to articles 48 and 49 of the Children's Law, the relevant federal, local and municipal authorities must adopt the measures required to provide specialized victim with services pursuant to the Victims' General Law. Moreover, such articles provide that the relevant attention protocols must consider the specifics of such victims, including their age, mental and intellectual development, among others (see

⁶ CNDH Report, numeral 171.

⁷ CNDH Report, numeral 429.

supra 2.3).

Article 92 of Children's Law provides that migrant children must be informed and notified (by duly trained personnel) if said child is subject to a certain legal process (either criminal or administrative) in order for said child to be able to exercise the corresponding legal remedies. Moreover, migrant children must be notified of the existence of said legal process in a way through which they can understand the situation and the possible outcomes of such process.

Likewise, pursuant article 92 of the Children's Law, migrant children have the right to have child-friendly interpreters and legal counsel, which are provided for free, present for any legal and administrative process they are subject to. Likewise, children under the age of 10 are displayed information using child-friendly materials, to inform them of such process in a comprehensible and age-appropriate manner. Furthermore, the authorities have the obligation to provide a free interpreter for the migrant children to be able to exercise their right to be heard. However, the CNDH has observed that the foregoing measures are not implemented in practice on a continuous basis and the corresponding personnel are not adequately trained.⁸

3. Child protection system

3.1. Guardianship system

Asylum-seeking or refugee children who are unaccompanied are placed in Centers of Social Assistance (CAS) or DIF Shelters, as provided under the Fourth Title of the Children's Law. Only migrant children are placed in CAS, whereas both migrant children and Mexican children can be placed in DIF.

The Federal Civil Code provides that a child is appointed a guardian/tutor in the event that there is no one to exercise the parental responsibilities (e.g. the parents' loss of their parental responsibilities or death).

These institutions are in charge of the guardianship functions:

- The National Migration System,
- The Protection Agency' office in charge of the protection of children and teenagers,
- Local Protection Agencies' offices in favor of the protection of children and teenagers,
- Regional Protection Agencies in favor of the protection of children and teenagers, and
- Municipal Protection Agencies in favor of the protection of children and teenagers.

Under the Migration Law, all asylum-seekers (adults or children) have access to a legal remedy called the 'administrative migratory procedure'. This procedure imposes the obligation of the authority to safeguard the rights of migrants and others aspects such as the accommodation of migrants in migratory stations, procedures of deportation, and assisted return.

Additionally, migrant children have the legal capacity to submit a claim before the Human Rights

⁸ CNDH Report, numeral 207.

National Commission, or to submit a complaint before the Inter American Commission on Human Rights, whether they have a legal representative (parent, tutor/guardian) or not.

3.2.Appointment of guardians for migrant children

Readily available public information on this subject does not provide much insight into the specific recruitment, placement and supervision procedures of guardians and tutors, other than the Federal Civil Code, which indicates that a guardian or tutor may be appointed by the relevant administrative authorities (the National Migration Institute). When an OPI is appointed as the guardian of a migrant child, its appointment is made by the National Migration Institute.

As stipulated in 2.3., a person accompanying a minor is automatically considered the child's legal representative, unless they are willing to undergo tests to prove otherwise. This legal presumption applies to situations with an already existing administrative or judicial proceeding only. Thus, adults accompanying a minor are considered their guardians only in cases where they are involved in a specific proceeding.

3.3.Other categories of persons/organs that may carry out guardianship functions

OPIs undertake guardianship functions in relation to migrant children. Yet, as stated in 3.1., the guardianship process focuses on cases in which parental responsibilities are revoked. In such regard, the relevant statutes are silent as to whether said process could be extended to cases involving migrant children (e.g. migrant children whose parents still retain their parental responsibilities even though they are in another country).

3.4.Responsibilities and duties of guardians for migrant children

OPI's duties are established in the OPI's Guidelines. In addition to having the same responsibilities as tutors, an OPI also undertake migration duties, considering their nature as migrant agents.

The responsibilities contained in the OPIs guidelines replicate the provisions set forth under article 104 of the UN guidelines.

The main responsibilities of the OPIs are:

- To safeguard the physical and mental integrity of the minor,
- To provide immediate access to basic healthcare, food, clothing and accommodation,
- To facilitate the children's contact with family members through free phone calls,
- To keep children informed about their immigration status using language that is respectful, and
- To help the children throughout the process of assisted return to their country of origin or residence.

There is no public information available as to the possibility of an OPI/tutor to select another lawyer under free legal aid. The only possibility to appoint another attorney would be if the tutor or legal guardian decides to retain the services of a private attorney.

3.5.Profile of guardians

OPIs are civil servants ascribed to the National Migration Institute. There is no public information available as to their specific selection process.

OPIs are physically located in the local delegations of the National Migration Institute throughout the country. OPIs welcome the migrant children that arrive at the delegations of the National Migration Institute and assist them.

As OPIs are employees of the National Migration Institute, the Institute is responsible to provide services to migrant children. The issue of a potential conflict of interest is not addressed in the law, and no public information guaranteeing the moral independence of the guardians is available.

In order to train OPIs, the National Migration System has made collaboration agreements with the International Migration Organization, Mexican Commission for the Help of Refugees, UNICEF, UNHCR, the CNDH and the National Commission for the prevention of Discrimination. OPIs receive special training in different subjects, such as: human rights, international protection, violence, gender equity and human trafficking. However, the CNDH has observed that the training selection for OPI's does not give any specifications regarding the person to be trained; such selection only mentions that the person 'must have an area of knowledge of humanities' ⁹.

The OPI's Guidelines set forth that OPIs are trained in subjects such as human rights, international protection, violence, gender equity and human trafficking. However, the information of the specifics on the trainings of such matters is not publicly available.

The specialized Protection Agencies have the powers to implement emergency measures (including those regarding the timely appointment of guardians). However, there is no publicly available information as to the time for the appointment of a guardian.

3.6.Child brides

In Mexico, civil matters such as marriage requirements are regulated locally. As such, marriage requirements vary from State to State. For reference, according to the Federal Civil Code, the minimum age for marriage is 18 years old. However, underage marriage is allowed, provided that parents or grandparents consent to it, and that men be at least sixteen years old and women at least fourteen years old.

For a marriage to be recognized by Mexican law, the minor must have the written consent of his or her parents or tutors, however there is no official public information as to how adult spouses of children are treated. If a marriage between a child and an adult is recognized, the minor would automatically be considered emancipated according to article 641 of the Federal Civil Code.

Yet, in theory, if the marriage of a traveling child bride with her adult spouse is not recognized by the Mexican state, there is a risk that the husband will be granted parental responsibility over that child and thus become her legal guardian until she reaches 18. Neither the law or publicly available information provide elements to confirm or deny this possibility.

⁹CNDH Report, numeral 421.

4. Family reunification

4.1. Family tracing

COMAR is in charge of family tracing, with the assistance of the National Migration Institute and the corresponding authorities of the migrant's country of origin. In practice, COMAR¹⁰ allows the reunification of a child with his or her adult relatives, provided, according to article 58 of the Refugee Law, that the child is financially dependent on the migrant/refugee relative, in a country where the relevant protection agency undertakes a process known as Right Restitution, and orders the reunification. The process starts when the interested party submits a written or oral request before COMAR to start the process mentioned above, and it is recommended that said submission includes documents pertaining to the family ties and the financial dependency with regards to the relatives. In accordance with article 80 of the Regulation of the Refugee Law, once the submission has been filed, COMAR must produce a ruling within the following 44 business days.

4.2. Reunification with other relatives

Family reunification is a right for all refugees, as provided under Article 58 of the Refugee Law and Article 80 of the Regulations of the Refugee Law. The Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*) may authorize the reunification of family members who are a refugee's children, spouse or relatives up to the fourth degree (i.e. nephews), and the spouse's relatives up to the second degree (i.e. the spouse's grandparents or grandchildren), provided that said relatives are financially dependent on the migrant or refugee. Furthermore, Article 305 of the Federal Civil Code states that economic obligations may reach relatives up to the fourth degree (i.e. nephews) in the absence of relatives of a closer degree (i.e. grandparents). In such regard, a nephew may be considered financially dependent on a migrant in the absence of closer relatives. According to Articles 58 of the Refugee Law and 80 of the Regulations of Refugee Law, while the Ministry of Foreign Affairs determines the conditions for reunification, the child would remain at the corresponding CAS.

The process of family reunification is directed exclusively at cases involving refugees. It could be possible, however, for a child to be reunited with a family member up to the fourth degree when the child's guardians become incapacitated/deceased/deprived of their parental responsibilities, in the event that no closer relatives exist as previously described. The latter would only be possible by means of a court order for guardianship.

4.3. Grounds for refusal

Lack of financial resources constitutes as grounds for refusing family reunification, although public information does not disclose the way in which financial dependence is evaluated. Reunification may also be denied when said reunification goes against the best interest of the child. When reunification is denied, the child shall not be reunited with his or her relatives, however the denial does not entail deportation.

¹⁰ COMAR or the Mexican Commission for help to Refugees (*Comisión Mexicana de Ayuda a Refugiados*) is the institution that is in charge to help the people who arrive in Mexico to obtain their condition of refugees under Mexican legislation.

5. Placement of migrant children

5.1. Temporary shelter/first reception centers

Articles 37 and 62 of the Regulations of the Refugee Law set forth that while an asylum claim is pending, the children are provided with a temporary shelter in accordance with the specific conditions and needs of the children.

Generally speaking, shelters lack adequate standards of living for migrant children. In such regard, the CNDH has reported that shelters lack the required facilities and/or specialized staff to attend to migrant children.¹¹

Articles 95 and 108 of the Children's Law provide that shelters must abide by the separation principle and the right to family unity. In such regard, separated or unaccompanied migrant children must have shelters separate from those of adults. Accompanied children may be placed with their families except when separation is the most convenient option considering the best interest of the children. The local DIFs set forth specific child-safeguarding policies regarding temporary shelters for migrant children; however, such policies are not duly respected in practice¹². Moreover, the CNDH has expressed knowledge of cases where children have been placed in shelters with adults, as evidenced in a series of complaints submitted before the CNDH.¹³

While the relevant authorities are required to provide easy accessibility to children subject to a vulnerable condition such as a disability, as provided under Article 10 of the Children's Law, the CNDH has observed that several attention modules such as those of the local DIFs and the National Migration Institute lack adequate facilities to attend such children.¹⁴

While Article 109 of the Children's Law and Article 111 of the Children's Law Regulations require temporary shelters to be open centers, the UNHCR has observed that only a few open door centers exist with the proper temporary reception options.¹⁵

Independent NGO's are allowed to monitor said facilities and prepare reports on their findings. However, official monitoring is carried out by the CNDH and Local Human Rights Commissions, which implement certain monitoring mechanisms in addition to the monitoring carried out by the Comprehensive National Protection System set forth under Chapter III of the Children's Law. However, the CNDH has observed that effective monitoring is difficult to carry out as a result of the legal and regulatory obstacles set forth under Mexican Law.¹⁶

¹¹ CNDH Report, numeral 284.

¹² CNDH Report, numeral 256.

¹³ CNDH Report, numeral 428.

¹⁴ CNDH Report, numeral 352.

¹⁵ United Nations High Commissioner for Refugees Report "Beyond Detention" Mexico Progress Report Mid 2016 <http://www.unhcr.org/57b583c57.pdf>.

¹⁶ CNDH Report, numeral 153.

5.2.Placement of migrant children

While the Children's Law and the Children's Law Regulations contemplate the existence of shelters for children, there is no public information available as to the actual measures taken to prevent homelessness or the corresponding execution of these measures.

To some extent, the best interest of the child is used as a guiding principle when carrying out the placement of a migrant child. In such regard, the best interest of the child also entails taking into consideration the child's view. However, the actual placement of a child is usually subject to the capacity of the corresponding shelters, and sometimes limited to transferring them to a migration center.¹⁷

According to the Children's Law and the Children's Law Regulations, the types of placement offered to children are:

- Migrant asylums,
- Foster families, and
- Adoption.

The Children's Law and the Children's Law Regulations provide that the placement depends on the specific circumstances and needs of the child, in addition to the best interest of the child principle. However, there is no specific information as to the criteria to follow in carrying out such placement.

COMAR and the protection agencies try to ensure that siblings are placed together, however, the siblings may be placed separately under special circumstances (i.e. in cases of family abuse, to serve the better interest of the child) as provided in Article 24 of the Children's Law.

An informal care system in which the relevant authorities are not involved in some capacity in the arrangement and/or placing of children does not exist under Mexican Law.

5.3.Detention/retention

Detention is forbidden in law as provided under Article 111 of the Children's Law Regulations, but occurs in practice. While children are not placed in centers that are "formally" considered detention centers, the living conditions tend to be similar to those of a detention center. There is no public information as to the maximum amount of time that a child can expect to spend in these centers.

Detention, in practice, is used for all irregular migrants intercepted by immigration authorities, regardless of the prohibition against detaining children enshrined in the law¹⁸.

Accompanied children are placed in the "family module" with their parents. Unaccompanied children must be placed in centers separated from adults as described in 5.1 above.

Accompanied children are sent to immigration centers known as "Migratory Stations". While the Mexican authorities consider such centers to be "housing" centers, the living conditions are as precarious as those of a detention center. Unaccompanied children may be sent by the relevant

¹⁷ United Nations High Commissioner for Refugees Report "Beyond Detention" Mexico Progress Report Mid 2016; and CNDH Report, numeral 264; CNDH Report, numeral 151.

¹⁸ CNDH Report, numeral 264.

authorities to DIF immigration modules, DIF shelters, or sometimes NGO-run shelters. The quality standards as well as the level of training of the staff varies for each center. Generally speaking, the conditions of the centers/shelters are inadequate.¹⁹

According to Protocol 3, The State will provide – upon request – information concerning the whereabouts of the absent member(s) of the family, to the: (i) father, (ii) mother, (iii) child or teenager (if applicable), or (iv) any other relative.

While the protection agencies must provide legal counsel to migrant children during any legal proceeding, in accordance with Article 122 of the Children’s Law, the CNDH has observed that, in practice, migrant children are not provided with the corresponding legal counsel.²⁰

As a result, although migrant children may legally challenge the deprivation of their liberty by means of the constitutional protection writ of “Amparo” described in 2.5.4 above, in practice, migrant children are not provided with legal counsel or, if provided, said counsel is not duly trained and lacks the expertise required to interact with children. The lack of adequate legal counsel ultimately hinders the migrant children’s possibilities of challenging such actions.²¹

6. Access to fundamental rights

6.1. Education

Article 32 of the General Law on Education indicates that children (regardless of their status) must have access to education; this disposition is in accordance with the principle of equality in education established in the General Law on Education grants an equal footing for all children.

The General Law on Education however, is silent on whether such education implies primary and secondary education or primary only.

While migrant children (regardless of their status) indeed have the same educational opportunities as local children, as described in 6.1.1 above, there is no publicly available information as to the opportunities and facilities available for them to pursue higher education in the long run.

Article 10 of the Children’s Law requires Mexican authorities to adopt all the necessary measures in order to protect children that are considered to be in a “vulnerable condition”, such as migrant children, or children with special needs. Moreover, said article also provides that the relevant authorities must implement the necessary measures to attend to the needs of any of the children. Also, according to Article 39 of Children’s Law, children cannot be subject to any kind of discrimination (including discrimination for any disability). Nevertheless, the CNDH has observed that the need to provide the necessary measures to attend to children with special needs are not always guaranteed.²²

¹⁹ CNDH Report, numeral 255.

²⁰ CNDH Report, numeral 171.

²¹ CNDH Report, numerals 171 and 429.

²² CNDH Report, numeral 362.

In practice, first reception centers lack the necessary facilities to provide access to education since such centers generally lack overall adequate conditions as previously described.

6.2. Health care

Articles 6, 7, and 8 of the Refugee Law provide that migrant children, whatever their status (refugee, migrant, asylum seeker, children in irregular situation etc.), who apply for a refugee or asylum request have the right to obtain the required assistance - including medical assistance - in accordance with Articles 68 and 69 of the Regulations of the Refugee Law. Moreover, Articles 6, 7 and 8, in addition to Articles 28 and 29 of the Refugee Law also set forth the possibility that irregular migrants receive such assistance when required.

The Refugee Law provides that the relevant government authorities must provide the required assistance irrespective of the status of the individual as provided under article 20 thereof.

The information that is publicly available does not describe the specifics as to how this is implemented in practice.

7. Expulsion

7.1. Exclusion clauses

Exclusion clauses in Article 27 of the Refugee Law are in accordance with the Article 1F of the 1951 convention, however the Refugee Law is silent on whether or not the foregoing is applicable to children.

7.2. Internal relocation/expulsion to country of origin

In principle, the decision to relocate a child must be carried out considering the best interest of said child. Article 96 of the Children's Law prohibits relocating or transferring any child when the foregoing endangers and/or affects the safety or freedom of the child or when such child is subject to persecution of any kind or any violation to their human rights. However, there is no certainty as to whether or not this is followed in practice.

7.3. Resettlement to a third country

According to the document prepared by the Human Rights National Commission in November of 2016 named "Migrant: Guide about your human rights" (*Migrante: Guía de tus derechos humanos*)²³, one of the solutions that the Mexican government would have in order to respect the best interest principle is to resettle the child in the country of residency of their relatives, as provided under Articles 91 and 93 of the Children's Law.

²³ The guide can be consulted at the following link:

http://appweb.cndh.org.mx/biblioteca/archivos/pdfs/cartilla_guia_migrantes_DH.pdf

There is no public information available pertaining to whether or not Mexico accepts refugees/asylum seekers under resettlement schemes.

8. Data Collection

8.1.Data regarding migrant children on the move collected by the public authorities

Pursuant to Article 99 of the Children's Law, DIF systems must implement and consider the databases in dealing with unaccompanied girls, boys and teenagers. Among others, such databases shall include: (i) the causes of their migration through Mexico; (ii) traveling conditions; (iii) known family ties; (iv) origin and transit risk factors; (v) the available information of their legal representatives or guardians; (vi) information regarding their stay.

Such information shall be provided to the Federal Agency for the Protection of Girls, Boys and Teenagers (*Procuraduría Federal de Protección de Niñas, Niños y Adolescentes*) in addition to the National Migration Institute.

The migratory policy unity of the Ministry of Interior publishes a yearly data base that indicates the migratory flow on Mexican territory.²⁴

8.2.Data protection

The Children's Law provides that children have the right to have their personal information secured in accordance with Articles 76-81 thereof. More specifically, the Children's Law provides that the relevant authorities must implement special measures in order to not disclose the personal information that they obtain as a result of any interaction they carry out with any child.

9. International relations²⁵

9.1.Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries.

Mexico has implemented the Special Migration Program (2014-2018).

This Program was published in the Federal Official Gazette on April 30, 2014. The main purpose of this program is to promote the human rights of migrants on Mexican territory. This program also adapts the migratory legal framework, with the purpose of its effective implementation. This program is addressed to all type of migrants, including children.

The last year, Mexico has implemented is the "Triangular Cooperation" program entered between Mexico and Germany. The main purpose of this program is to prevent the migration of unaccompanied

²⁴ Said database may be viewed at http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Estadistica.

²⁵ These questions are based on recommendations issued in the *Communication from the European Parliament and the Council – Action Plan on Unaccompanied Minors (2010-2014)*.

children coming from the North Triangle of Central America (Guatemala, Honduras and El Salvador). With this program, the German and the Mexican States look to benefit more than 6,080 children of the Central American countries.

In 2016, the Ministry of Social Development, Ministry of Foreign Affairs, Save the Children and GIZ (German Agency of Cooperation) signed the agreement “Prevention of the migration of unaccompanied children coming from the North Triangle of Central America”. The main objective of this agreement is to improve the opportunities of economic and personal development in rural communities in Guatemala, Honduras and El Salvador. It is expected to finance rural communities of the North Triangle of Central America for the next three years.

However, there is not much public information available regarding the above-mentioned programs.

While there is no specific bilateral agreement addressing family tracing, or return and reintegration of unaccompanied minors, Mexico has signed the following bilateral agreements regarding migrant protection²⁶:

- Memorandum of Agreement signed by Mexico and the Guatemalan Republic that extends the bilateral legal framework with regard to Protection and Migration.
- Memorandum of Agreement signed by Mexico and the United States that extends the consular legal bilateral framework with regard to Protection and Migration.
- Agreement signed by Mexico and the United States with respect to migratory documents granted to non-immigrants.
- Agreement signed by the United States and Mexico in relation to the immigration documents granted to non-immigrants.

9.2.Cooperation with civil society

There are various NGOs, as well as religious and humanitarian movements that cooperate with governmental institutions that help with the process of receiving migrant children.

9.3.Visa policies

In Mexico, a “Humanitarian Visa” is granted to anyone who has been victim of a natural disaster, or whose life is in danger, or who has been a victim of persecution because of any type of discrimination. The procedure to obtain this humanitarian visa must be carried out before the National Migration Institute. When abroad, the Mexican Consulate offices may be contacted to request the humanitarian visa. This can also be done directly through the National Migration Institute’s website.

²⁶ Since the date on which such agreements were signed is fairly old, such documents are not digitally uploaded to data bases. We only have access to the list but not the content of the agreements which can be consulted {in the following link : http://archivos.diputados.gob.mx/Centros_Estudio/Cesop/Comisiones/9_poblacion.htm

According to the information provided by the National Migration Institute website, the necessary requirements for the obtainment of the humanitarian visa are:

- Submission of the identification documents (valid passport, birth certificate or any identification document, and
- Responsive letter signed by the visa holder in which ability to pay the expenses of the trip is assured.

10. Additional Remarks

For questions regarding this report, please contact Kids Empowerment and Creel, García-Cuéllar, Aiza y Enríquez in Mexico City.

11. **Bibliography**

A. **Law**

- Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*).
- Law of the General Rights for Boys, Girls and Teenagers (*Ley General de los Derechos de Niñas, Niños y Adolescentes*).
- Migration Law (*Ley de Migración*).
- Victims' General Law (*Ley General de Víctimas*).
- General Law for the Prevention, Prosecution and Elimination of Human Trafficking and for the Protection and Assistance of Victims of Such Crimes (*Ley General para prevenir, sancionar y erradicar los delitos en materia de trata de personas y para la protección y asistencia a las víctimas de estos delitos*).
- Law on Refugees, Ancillary Protection and Political Asylum (*Ley sobre Refugiados, Protección Complementaria y Asilo Político*).
- General Law on Education (*Ley General de Educación*).
- Federal Civil Code (*Código Civil Federal*).

B. **Secondary Legislation**

- Regulations of the General Rights Law for Boys, Girls and Teenagers (*Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes*).
- Regulations of the Law on Refugees, Ancillary Protection and Political Asylum (*Reglamento de la Ley sobre Refugiados, Protección Complementaria y Asilo Político*).
- Agreement Containing the National Migration Institute's Guidelines regarding Migrant Protection published in the Federal Official Gazette on November 29, 2012 (*Acuerdo por el que se emiten los Lineamientos en materia de Protección a Migrantes del Instituto Nacional de Migración publicados en el Diario Oficial de la Federación*).

C. **Case Law**

- Mexican Supreme Court Non-binding Ruling (*Tesis Aislada*) "Best interest of the child. Dimensions in which application of this principle is schemed" Tesis 1a. CCCLXXIX/2015 (10a.), Tenth Epoch, First Chamber, Federal Judicial Gazette Book 25, Volume I, December 2015.

D. **Soft Law**

- 2014-2018 Special Migration Program (*Programa Especial de Migración 2014-2018*); issued by the Ministry of Interior (*Secretaría de Gobernación*)
http://www.dof.gob.mx/nota_detalle.php?codigo=5343074&fecha=30/04/2014.
- Protocol for the initial evaluation to identify any needs to provide international protection of separated or unaccompanied girls, boys or teenagers (*Protocolo de evaluación inicial para la identificación de indicios de necesidades de protección internacional en niñas, niños y adolescentes no acompañados o separados*) issued by the Ministry of the Interior (*Secretaría de Gobernación*) and the National Commission for Refugee Assistance (*Coordinación General de la Comisión Mexicana de Ayuda a Refugiados*)
https://www.unicef.org/mexico/spanish/Protocolo_Proteccion_Especial_COMAR.pdf.
- Protocol for the attention of unaccompanied migrant boys, girls and teenagers that are sheltered (*Protocolo de atención a NNA migrantes no acompañados o separados que se encuentran albergados*) issued by the Comprehensive Family Development Systems (*Sistemas de Desarrollo Integral de la Familia*)
http://migracion.iniciativa2025alc.org/download/09MX19_Protocolo_Albergues.pdf.
- Protocol for the consular assistance of unaccompanied migrant girls, boys and teenagers (*Protocolo para la atención consular de niñas, niños y adolescentes migrantes no acompañados*) issued by the Ministry of Foreign Relations (*Secretaría de Relaciones Exteriores*)
https://www.gob.mx/cms/uploads/attachment/file/109334/Protocolo_ESP_.pdf.
- Tool Kit of the Protocol for the consular assistance of unaccompanied migrant girls, boys and teenagers (*Caja de Herramientas del Protocolo para la atención consular de niñas, niños y adolescentes migrantes no acompañados*)
https://www.gob.mx/cms/uploads/attachment/file/109333/Caja_de_Herramientas.pdf.
- Action protocol to ensure the respect of the rights and protection of girls, boys and teenagers during administrative migratory proceedings (*El Protocolo de actuación para asegurar el respeto a los principios y la protección de los derechos de niñas, niños y adolescentes en procedimientos administrativos migratorios*)
http://www.dof.gob.mx/nota_detalle.php?codigo=5447404&fecha=10/08/2016.
- Convention on the Statute of Stateless Persons, of 1954 (*Convención sobre el Estatuto de los Apátridas*)
<http://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/D30.pdf>.

E. Reports

- UNICEF Report “Applicable regulatory framework regarding the interest of the children and adolescent escorted or separated or that they are hosted” (*Marco jurídico del Protocolo de Atención para Niñas, Niños y Adolescentes Migrantes no Acompañados o Separados que se Encuentren Albergados*);
https://www.unicef.org/mexico/spanish/Protocolo_Proteccion_Especial_COMAR.pdf.

- National Human Rights Commission Report on the issue of unaccompanied migrant boys, girls and teenagers and their need of International Protection, dated October 2016; http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/Informe_NNACMNA.pdf.
- National Human Rights Commission Report “Migrant: Guide about your human rights” (*Migrante: Guía de tus derechos humanos*): http://appweb.cndh.org.mx/biblioteca/archivos/pdfs/cartilla_guia_migrantes_DH.pdf.
- United Nations High Commissioner for Refugees Report “Beyond Detention” Mexico Progress Report Mid 2016 <http://www.unhcr.org/57b583c57.pdf>.
- Ministry of Interior (*Secretaría de Gobernación*) Report on the migratory flow in Mexican territory http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Estadistica.