

Because protecting the rights of unaccompanied migrant children requires that governments provide children with specialized proceedings tailored to their age as well as appointed representation to effectively advocate on their behalf, the *Amicus Curiae* presented by Kids in Need of Defense (KIND) before the Supreme Court of Justice of the Nation in Mexico is focused on two arguments: (1) the need to provide minimum conditions to guarantee the protection of children in their asylum procedures and eligibility interviews and, 2) the need to guarantee that children receive effective legal advice and representation in their asylum and/or immigration procedures and that their opinion is taken into account in these procedures. The amicus includes analysis of Mexican law, international law, and best practices from the United States relevant to the case.

Content of the Amicus Curiae

Children have the right to specialized interview procedures conducted by appropriately trained personnel, in accordance with the best interests of the child.

1. In Mexico, the General Children's Rights Law creates systems of child protection under the DIF system and Child Protection Authorities (*Procuradurías de Protección a Derechos de Niñas, Niños y Adolescentes*, PPDNNA), independent of other provisions and measures that distinct authorities must observe to respect and guarantee the principle of the best interests and the rights of children and adolescents.
2. The situation of special vulnerability of unaccompanied migrant, asylum seeker, and refugee children and adolescents requires the PPDNNA to determine their best interests and coordinate with Mexican authorities to ensure measures are carried out for the restitution and protection of their rights. (articles 122 y 123 related to articles 115 y 116).
3. Additionally, the PPDNNA must guarantee access to asylum and due process and ensure that the voices of children and adolescents are adequately taken into account in the refugee process before the Mexican Commission on Refugees Aid (COMAR, in Spanish) and the migration process before The National Institute of Immigration (INM, in Spanish). This should happen through the figures of *suplencia* and *coadyuvancia*. The former refers to a form of provisional guardianship of the child and the later to the legal assistance and representation of the child within administrative and judicial procedures.

4. Observing the principle of the best interests of unaccompanied children and adolescents in asylum procedures before COMAR could entail, among other elements: ensuring that professional personnel specialized in child protection carry out asylum interviews with children and that the COMAR and the PPDNNA coordinate to carry out interviews and follow up to avoid to avoid re-traumatization of the child through multiple interviews and guarantee that the information gathered through the interview is considered in the asylum process.

International standards indicate that...

1. In the *Child Refugee Status Determination (RSD)*, the 1951 Convention “must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children.”¹ Children’s individual characteristics must also be considered, including “child’s stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability.”²
2. The prompt appointment of an independent, qualified guardian to guarantee an unaccompanied child’s best interests in their proceedings, including asylum and immigration proceedings, is a crucial minimum standard.³ The guardian must be an independent party to the proceedings, with specialized skills and training, who is familiar with the child’s background and competent to look after the child’s well-being and represent her/his best interest.⁴
3. Personnel working in child refugee status determination must also have a full understanding of and experience in conducting credibility assessments for children. An examiner must understand a wide variety of factors that may affect a child’s credibility, including the child’s identity, development, thinking processes, emotions, and appreciation of risk and consequences.
4. Safeguarding procedures in refugee status determinations are essential in child protection systems⁵ and, even when a child may be denied refugee status, a plan must be put in place for next steps in line with the child’s best interests.⁶

¹ CRC. *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, §74.

² UNHCR. *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*, 22 December 2009, § 4

³ *Id.* §69.

⁴ CRC. *General comment No. 6 (2005)*, *supra*, §69.

⁵ Article 3, Convention on the Rights of the Child

⁶ UNHCR. *Guidelines on International Protection No. 8*, *supra*, § 77.

5. Assessment of a child’s claim must include “a case-by-case examination of the unique combination of factors presented by each child.”⁷ Children must be guaranteed specialized procedures for processing of their claims and individual protective measures to guarantee their best interests throughout the duration of their proceedings.

International practices: United States

1. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) provides that unaccompanied children’s asylum claims may be adjudicated by a trained Asylum Officer through an asylum interview in a non-adversarial setting, rather than referred to an immigration judge in the “inherently adversarial” courtroom setting of formal removal proceedings.⁸
2. The United States provides alternative forms of relief for children, including Special Immigrant Juvenile Status, which authorizes protection for children in certain circumstances when a determination is made that it is not in the child’s best interest to return to their home country.⁹

1. Children have a right to effective and appropriate representation in asylum and other proceedings affecting the child’s best interests

1. In Mexico, children and adolescents have the right to effective and timely legal assistance in their administrative and judicial procedures. Further, there is an obligation to adopt positive measures and actions to guarantee adequate and timely access to legal orientation, assistance, and representation.
2. Under law, the PPDNNA should provide legal assistance and representation to children in any type of judicial or administrative procedure regarding the determination of their rights and/or obligations through the figure of representation *en coadyuvancia*.
3. By virtue of the principles of progressive autonomy and participation, children have the right to have their desires and opinions taken into account, according to their age and maturity level, in

⁷CRC. *General comment No. 6 (2005), supra*, §72.

⁸ Update on legal relief Options For Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Practice Advisory By: Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson 1 February 19, 2009.

⁹ Immigration & Nationality Act § 101(a)(27)(J); 8 CFR § 204.11.

order to name a person of their choosing who can provide legal advice and assistance in their asylum processes.¹⁰

International instruments...

1. The Committee on the Rights of the Child stated that in order to effectively secure the rights provided by the Convention, unaccompanied children must be provided with “prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.”¹¹ As such, the obligations under the CRC are clear: because immigration proceedings have such high stakes, implicating the life and liberty of refugee and migrant children, legal representation is required to guarantee their rights and adequate due process.
2. Governments are required to “take appropriate measures to ensure that a child who is seeking refugee status ... shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance.”¹²
3. UNHCR guidelines specify that children’s appointed representatives must be qualified professionals who have received child-specific training, and both child and representative should understand and be aware that the representative’s primary responsibility is to support the child and interests throughout the of the proceedings.¹³
4. In an advisory opinion, the Inter-American Court made explicit the need to provide counsel to children involved in immigration proceedings: “States have the obligation to ensure to any child involved in immigration proceedings the right of legal counsel by the offer of free State legal representation services.”¹⁴

International Practice...

1. Legal representation plays a critical role in the outcomes of children’s protection cases in the United States. Children with attorneys are five times more likely to be successful in their claim for U.S. protection than those without.¹⁵

¹⁰ IACHR. Advisory Opinion 21/14. *Rights and guarantees of children in the context of migration and/or in need of international protection*, 19 August 2014, §25.

¹¹ CRC. *General comment No. 6 (2005)*, *supra*.

¹² Article 22, Convention on the Rights of the Child.

¹³ UNHCR. *Guidelines on International Protection No. 8*, *supra*, § 65.

¹⁴ IACHR. Advisory Opinion 21/14, *supra*.

¹⁵ Syracuse University Transactional Resource Access Clearinghouse (TRAC), Report “Representation for Unaccompanied Children in Immigration Court,” November 2014.

2. U.S. law recognizes that children require assistance in navigating complex legal proceedings and due process requires that they be provided with counsel when a their fundamental rights are at stake.¹⁶ The TVPRA explicitly recognizes the importance of access to counsel for unaccompanied children and directs the relevant departments to ensure, to the greatest extent practicable, that all unaccompanied children have counsel in legal proceedings.¹⁷
3. According to the Commission on Immigration of the American Bar Association (ABA) in the United States—"Every Child shall have access to an Attorney throughout his Immigration Adjudication and any other administrative or court proceedings related to his immigration status."¹⁸

Final Petition. To urge the Court to affirm that immigrant children have a right to receive specialized asylum procedures and effective legal representation that conform with Mexican law and international standards and ensure that these rights are respected.

¹⁶ See, e.g., *In re Gault*, 387 U.S. 1, (1967)

¹⁷ William Wilberforce Trafficking Victims Protection Act of 2008, 8 U.S.C.A. § 1232(c)(6)(A).

¹⁸ American Bar Association Commission on Immigration, Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, 11-12. (2018).