



# Unaccompanied and separated children in Mexico

Alternative Report for the Combined Sixth and Seventh Periodic Reports of Mexico (October 2023) to the UN Committee on the Rights of the Child

Submitted by **Kids in Need of Defense (KIND)**

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**Kids in Need of Defense (KIND) is the preeminent international nongovernmental organization devoted to the protection of unaccompanied and separated children. In 2008, KIND was founded by the Microsoft Corporation and Co-Founder and Patron Angelina Jolie to address the gap in legal services for unaccompanied children. Today, KIND has offices and staff across the United States, Mexico, Central America and Europe. Our team, and KIND's extensive network of private sector pro bono and nongovernmental partners, provide unaccompanied children with child-centered, trauma-informed holistic care that includes legal representation and psychosocial support. We are a trusted source of accurate and timely information as well as innovative solutions that protect the rights and well-being of unaccompanied children on the move. We partner with governments, international organizations, civil society, and the private sector to implement child-friendly solutions as well as to deliver targeted advocacy, training, technical assistance, and capacity strengthening to promote stronger child protection around the world.**

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## I. Introduction

Kids in Need of Defense (KIND) welcomes the opportunity to provide information relevant to the sixth and seventh periodic review of Mexico with respect to the implementation of the UN Convention on the Rights of the Child during its 97th session.

This submission focuses on the State party's laws and practices concerning the protection of unaccompanied or separated children outside their country of origin and is made in light of relevant authoritative guidance from the Committee on the Rights of the Child (CRC).<sup>1</sup>

## II. Migrant children in Mexico

**Each year, tens of thousands of migrant children arrive in Mexico** in search of better opportunities, family reunification and protection from threats to their lives and well-being. According to Mexico's National Migration Institute (*Instituto Nacional de Migración*, or INM) there were 84,927 migrant children encountered by immigration authorities in the first six months of 2024.<sup>2</sup> Of these, a significant number are unaccompanied or separated from their family members. According to U.S. Customs and Border Protection (CBP) over 137,000 unaccompanied children were encountered at the U.S.-Mexico border in FY2023 and over 90,000 have already been encountered by U.S. authorities in FY2024.<sup>3</sup>

**Unaccompanied and separated children are particularly at risk**, struggling to find adequate shelter, food, and health care. Due to their age, developmental stage and the trauma they endure during their journeys, children migrating alone face increased risks of exploitation, human trafficking, gender-based violence and targeting from criminal cartels, gangs, and others.

Most unaccompanied children first **travel through Mexico's southern border region** where they are vulnerable to many dangers and largely without protection. KIND and our partners have observed that along Mexico's southern border unaccompanied children often face a lack of appropriate shelter; expedited return to dangerous conditions; barriers to accessing asylum; and limited or no access to quality legal assistance.<sup>4</sup>

Many unaccompanied children end up **stranded in Mexico**, either detained in a shelter waiting for a decision in their protection process, or stuck in limbo, unsure of where or how to seek safety.<sup>5</sup>

As **border policies of the United States and Mexico** have become more security-focused in recent years, conditions have deteriorated for children, including risks of kidnapping, physical and psychological violence, and extortion.<sup>6</sup> Those who are turned away by U.S. authorities may try to migrate again along more dangerous routes, end up in perilous circumstances in a third country, or be returned to their countries of origin to face anew the precarious situations they fled.

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<sup>1</sup> In particular, CRC General Comment No. 6 (2005): [Treatment of unaccompanied and separated children outside their country of origin](#), CRC/GC/2005/6, 1 September 2005; CRC General comment No. 14 (2013): [The right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), CRC /C/GC/14, 29 May 2013; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child: [General principles regarding the human rights of children in the context of international migration](#), CMW/C/GC/3-CRC/C/GC/22, 16 November 2017; and Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child: [State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), CMW/C/GC/4-CRC/C/GC/23, 16 November 2017.

<sup>2</sup> INM, Eventos de niñas, niños o adolescentes en situación migratoria irregular, según continente, país de nacionalidad, grupos de edad, condición de viaje y entidad federativa, enero-junio de 2024.

<sup>3</sup> CBP, [Southwest Land Border Encounters](#).

<sup>4</sup> KIND, El Centro de Derechos Humanos Fray Matías de Córdova A.C. (CDH Fray Matías), and La 72, Shelter for Migrants (La 72), [Blocked from Protection: Unaccompanied Migrant Children on Mexico's Southern Border](#), September 21, 2022.

<sup>5</sup> According to the International Organization for Migration (IOM) over half of all migrants spend several months to a year in Mexico before moving onward or returning to their country of origin. IOM, Displacement Tracking Matrix (DTM), *Síntesis México*, Primer Semestre 2024.

<sup>6</sup> WOLA, [Kidnapping of Migrants and Asylum Seekers at the Texas-Tamaulipas Border Reaches Intolerable Levels](#), 24 April 2024.

### III. General measures of implementation

The Mexican General Act on the Rights of Children and Adolescents (LGDNNA), recognizes that children have individual rights and provides that the best interests of children are the priority in all decision that impact them.<sup>7</sup> In the context of migration, this requires child protection agencies to issue best interest determinations in all cases involving migrant children. Like all best interests decisions, these must be based in the child's well-being, pursue the comprehensive protection of their rights, and consider of all the available options to assure that children are protected.

In the combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention,<sup>8</sup> the government of Mexico noted:

*13. In the area of migration, based on the General Act on the Rights of Children and Adolescents, the Migration Act and the Refugees, Complementary Protection and Political Asylum Act were amended in November 2020 to provide that child and adolescent migrants and asylum-seekers may not be detained in migrant holding centres, and that immediate action must be taken by offices for the protection of children and adolescents as soon as their entry into Mexico is detected.*

Among other things, these legal reforms in 2020 clarified that INM officials must immediately identify and refer migrant children to Mexican child protection actors; established that the federal and state level Offices for Child Protection (PPNNA) and Departments of Family Services (DIF) were responsible for protecting and upholding the rights of migrant children; prohibited the detention of migrant children and designated DIF Social Assistance Centers (CAS) as the appropriate facilities to temporarily house migrant children; and established that migrant children and their families should receive temporary humanitarian status to protect them while the PPNNAs determine a plan to restore the child's rights.<sup>9</sup>

Yet despite the intention of these landmark legal reforms to establish a robust human rights protection system for migrant children, several gaps in implementation remain.<sup>10</sup> A key issue is the underfunding of national child protection actors, particularly as compared with the INM. Some consequences of this underfunding are a lack of BIDs being carried out by the PPNNA and the subsequent return of migrant children to their countries of origin without adequately assessing their protection needs.<sup>11</sup>

Child protection authorities are also reliant upon INM for financial resources, transportation, supplies and other support, which can cause them to elevate immigration enforcement aims above their mandated child-protection function.

#### RECOMMENDATIONS

In light of the above, KIND recommends:

- In line with General Comment No. 6 (para. 85) and Joint General Comment No. 3/22 (para. 33), ensure that children's safety and well-being are always a primary consideration of all policies impacting children and never considered as secondary to general immigration priorities such as migration control.
- Strengthen the capacity of the National System for the Comprehensive Protection of Children and Adolescents (SIPPINA) to effectively coordinate in the implementation of actions and policies to protect the rights of migrant children.

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<sup>7</sup> Available at, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA.pdf>.

<sup>8</sup> CRC/C/MEX/6-7

<sup>9</sup> KIND, et al, [Implementation of the Mexican Legal Reforms that Prohibit Detention of Accompanied and Unaccompanied Migrant Children](#), March 2021.

<sup>10</sup> Andrea Tanco, Maria Jesus Mora, Daniela Hall, and Demetrios G. Papademetriou, [Strengthening Mexico's Protection Landscape for Migrant Children: Challenges and Opportunities Ahead](#), Georgetown University Collaborative on Global Children's Issues, 19 April 2022.

<sup>11</sup> KIND, et al, supra note 9, page 5.

- Ensure sufficient funding to SIPINNA, PNNA, and DIF at national, state and municipal levels, so that they can effectively and independently perform their child protection functions.

## IV. General principles

Best interests and children's participation should be central tenets of any policymaking, procedures, and decisions affecting unaccompanied and separated children. The Convention requires that the best interests of the child be a primary consideration in all actions concerning children while children's views and participation are also critical to informing decisions at an individual level and to the creation of policies that reflect and meaningfully address the needs and realities of children.

In practice, however, many children in Mexico fail to receive an individualized determination that incorporates children's views and opinions. This is especially the case in return to countries of origin, where migrant children, and particularly unaccompanied children, continue to be returned from Mexico's southern border area. Such return decisions are often made by the INM on the basis of a child's nationality or status as a foreigner rather than an assessment of their best interests, and such decisions fail to take into account the views, opinions, and voices of children or their families.

### RECOMMENDATIONS

In light of the above, KIND recommends:

- Strengthen the resources, personnel and technical capacity of local child protection authorities to carry out best interest determinations and to follow up on the implementation of the protection measures identified by these determinations.
- Ensure the views, opinions and voices of unaccompanied and separated children are central parts of the decision-making that impacts them, including individual procedures for determining their best interests but also policy development and procedures with respect to migratory processes, asylum or access to judicial protection.

## V. Special protection measures

### Access to identity documents and durable legal status

Regarding access to identity and durable legal status, the government of Mexico noted<sup>12</sup>:

*83. In 2018, the temporary unique population registry code for foreigners began to be issued to uphold the right to identity and thus the exercise of all rights of child and adolescent migrants, asylum-seekers, refugees and beneficiaries of complementary protection who are in possession of an entry document issued by the migration authorities.*

The LGDNNA establishes that migrant children and their families should receive temporary humanitarian immigration status to protect them while the PPNNAs determine a plan to restore the child's rights. However, in practice Mexican authorities do not always issue humanitarian documents to children, which can result in their being rendered undocumented. For example, KIND has documented cases of INM providing a piece of paper as authorization of entry but not the humanitarian card as required by law that provides proper protection, allows parents to work, and facilitates children's access to education.

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<sup>12</sup> Combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention, CRC/C/MEX/6-7.

## RECOMMENDATIONS

In light of the above, KIND recommends:

- Effectively issue immigration documents to children and families on humanitarian grounds as well as a Unique Population Registry Code that allows children and their adult relatives to effectively access their rights during their stay in Mexico.

### Access to information and legal assistance

Regarding access to information and legal assistance, the government of Mexico noted<sup>13</sup>:

*217. As a result of the aforementioned amendments to immigration laws, the role of the state offices for the protection of children and adolescents was brought into line with the General Act on the Rights of Children and Adolescents with respect to the special protection of migrant children and adolescents, for which an assessment of each child is prepared and a plan for the restoration of rights is established, applying the principle of the best interests of the child, in which measures are implemented to ensure the protection of all rights and information is provided on the options to regularize the migration status, taking children's opinions into account in the decisions that are made. In addition to the legal representation of children and adolescents provided by the offices for the protection of children and adolescents, the Federal Public Defender Service provides free advice and representation.*

The LGDNNA establishes that children have the right to the “contributory representation” (*representación coadyuvante*) of the PPNNA, obliging the PPNNA to accompany children and adolescents in all administrative and judicial procedures that they face in order to advocate for children’s best interests. This right applies to all administrative or judicial processes, including those relating to migration and asylum procedures. However, there is a lack of clarity of their role as “contributory representatives” of migrant children, nor effective oversight of their performance in acting in the best interests of the child.

In this context, it is important to note the different and complementary roles of contributory representatives such as the PPNNA and independent legal counsel, often from civil society legal organizations or pro-bono law firms, who are able to explain to children their rights and responsibilities and advocate on the basis of children’s own express wishes, including during BID procedures. In practice, authorities such as COMAR and INM frequently block the ability of civil society and pro-bono legal aid providers, particularly in cases of unaccompanied children. For example, there is generally a lack of access to independent counsel for children held in CAS facilities, which has led to some children abandoning their asylum claims due to a lack of information regarding their procedure as well as the restrictions on their freedom of movement during the adjudication process.

## RECOMMENDATIONS

In light of the above, KIND recommends:

- Ensure the provision of high-quality legal services to unaccompanied children regarding their rights and in their asylum or migration procedures, including by facilitating access to free legal aid from civil society or pro-bono attorneys in all relevant processes.
- Clarify the scope of *representación coadyuvante*, as well as the right to independent legal assistance and advice in all judicial and administrative processes.

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<sup>13</sup> Combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention, CRC/C/MEX/6-7.

## Family reunification

Regarding the right to family life and family unity, the government of Mexico noted<sup>14</sup>:

*139. In the case of migrant children and adolescents, if the family or extended family is in Mexico, reunification is paramount while the administrative migration procedure is being conducted, as long as it is in the best interest of the child. In addition, if family reunification in a third country is being considered, a thorough assessment of the family situation is necessary.*

*140. The procedures that the National Institute of Migration carries out to guarantee the right to live as a family include granting visas, changes in the status of stay and regularization of the immigration status of the family unit. For its part, the Commission on Assistance for Refugees has authorized the parents of children and adolescents who are in Mexico to enter the country with derivative refugee status.*

Migrant children entering Mexico can become separated from their families in several ways. Sometimes INM separates children from their caregivers, arguing that family ties have not been proven or based on suspicions that children are not traveling together with their family. During immigration enforcement activities, some family members may be apprehended by INM while others are not, resulting in family separation. Finally, children and parents can become separated due to kidnaping by armed groups or criminal trafficking networks. In all cases, children have a right to family life and to be reunited with their parents or caregivers.

In the case of family reunifications facilitated by the Commission on Assistance for Refugees (COMAR), the Refugees, Complementary Protection and Political Asylum Act requires the sponsoring family member in Mexico to be financially responsible for any intending family members seeking to join them via derivative refugee status. This requirement makes it virtually impossible for unaccompanied and separated children to sponsor parents or primary caregivers located outside the country, as children are unable to meet the financial solvency requirements.

Another frequent challenge occurs when children arrive in Mexico to join family members that already have refugee status in the country, COMAR does not grant the child derivative refugee status, but instead requires them to submit their own asylum application or return to their country of origin to await the determination of a family reunification procedure.

## RECOMMENDATIONS

In light of the above, KIND recommends:

- Reform the Refugees, Complementary Protection and Political Asylum Act to ensure that: 1) the financial criteria of the family reunification procedure for refugees does not exclude children from requesting reunification in Mexico with a family member who is abroad; 2) children in Mexico who are relatives of a refugee may be granted derivative refugee status.

## Immigration detention

Regarding immigration detention of children, the government of Mexico noted<sup>15</sup>:

*218. Both the General Act on the Rights of Children and Adolescents and its regulations and the Migration Act mandate the non-detention of migrant children and adolescents, for which the National System for the Comprehensive Development of the Family and the Federal Office for the Protection of Children and Adolescents conduct a continuous mapping of available public and private shelters so that children and adolescents, regardless of whether or not they are travelling in the company of an*

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<sup>14</sup> Combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention, CRC/C/MEX/6-7.

<sup>15</sup> Combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention, CRC/C/MEX/6-7.

*adult, are never housed in migrant holding centres and are immediately referred to National System for the Comprehensive Development of the Family social welfare centres or civil society organization shelters. Mexico has 203 social welfare centres in 29 states that care for unaccompanied migrant children and adolescents.*

Mexican law requires that the children and their families be placed in Social Assistance Centers (*Centros de Asistencia Social*, or CAS) under the authority of the DIF or in civil society shelters, while ensuring the non-separation of families. Despite the legal prohibition against detaining migrant children in Mexico, thousands, including unaccompanied and separated children, continue to be detained each year by INM in detention centers or in “channeling centers” (*centros de canalización*).<sup>16</sup>

Additionally, conditions in DIF shelters have been noted by several observers to be detention-like, with CAS personnel having sole authority to determine how much time and under what conditions children can leave the shelters and generally failing to provide recreational activities outdoors.<sup>17</sup>

## RECOMMENDATIONS

In light of the above, KIND recommends:

- Refrain from detaining children, whether unaccompanied or with their families, at immigration stations or other places authorized for such purposes, instead ensuring that children are accommodated in non-custodial, community-based settings.
- Implement first reception spaces where unaccompanied children are accommodated in a non-custodial setting before being placed in appropriate care models according their care and development needs, avoiding their institutionalization or other detention-like conditions.
- Strengthen the capacity of DIF to provide quality care and housing to migrant children and collaborate with civil society organizations in the implementation of non-custodial strategies, care models and provision of services (recreational, social and legal).
- Increase the transparency and accountability of immigration practices to ensure that no child is detained in immigration centers or any other immigration facilities, including immigration offices or channeling centers.

## Return and reintegration

Regarding return of migrant children, the government of Mexico noted<sup>18</sup>:

*219. The Commission on Assistance for Refugees has strengthened procedures to detect foreign migrant children and adolescents in need of international protection, ensuring that they have immediate access to the refugee status application procedure. It also requests the immigration authority to safeguard the principle of non-refoulement.*

However, in many cases, Mexican authorities continue to return migrant children back to life-threatening circumstances in the countries from which they fled. In 2022, Mexican immigration authorities returned 9,192 children to their countries of origin, 71 per cent of whom were unaccompanied and 85 per cent of whom held

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<sup>16</sup> Between January 2021 and May 2022, 98,671 children were detained by INM and only 19,067 cases were processed by the Offices for Child Protection. WOLA, [Migrant Children and Adolescents Are at Risk as Mexico and the United States Fail to Provide Protections](#), 13 April 2023.

<sup>17</sup> Andrea Tanco, Maria Jesus Mora, Daniela Hall, and Demetrios G. Papademetriou, [Strengthening Mexico's Protection Landscape for Migrant Children: Challenges and Opportunities Ahead](#), Georgetown University Collaborative on Global Children's Issues, 19 April 2022.

<sup>18</sup> Combined sixth and seventh periodic reports submitted by Mexico under article 44 of the Convention, CRC/C/MEX/6-7.



Honduran or Guatemalan nationalities.<sup>19</sup> Such returns frequently take place without a best interests determination or assessment of protection needs with limited or no access to quality legal assistance.<sup>20</sup>

## RECOMMENDATIONS

In light of the above, KIND recommends:

- Refrain from returning migrant children to their country of origin on the basis of their nationality or migration status. In line with obligations under the Convention, children should only be returned when it has been deemed to be a sustainable solution in the best interests of the child and where adequate support and reintegration measures are in place to receive the child.
- Ensure that no child is returned to their country of origin without the Offices for Child Protection first carrying out a best interests determination and plan for the restitution of rights provided for by law.

## KIND'S WORK IN MEXICO

In Mexico, KIND assists migrant children who are unaccompanied, separated, or at-risk of separation with a focus on Mexico's northern and southern border regions. KIND teams in Tijuana, Ciudad Juárez, Mexico City, and Tapachula regularly observe and document the conditions that migrant children face in Mexico; provide training to civil society (CSO) and government actors on migration and child protection frameworks and best practices; and collaborate with government, international, and other actors in the development and implementation of laws, policies and practices to strengthen the protection of migrant children in Mexico.

To learn more, visit: <https://supportkind.org/what-we-do/international/kind-mexico/>

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<sup>19</sup> UNICEF, *The Changing Face of Child Migration in Latin America and the Caribbean*, September 2023.

<sup>20</sup> KIND, El Centro de Derechos Humanos Fray Matías de Córdova A.C. (CDH Fray Matías), and La 72, Shelter for Migrants (La 72), *Blocked from Protection: Unaccompanied Migrant Children on Mexico's Southern Border*, September 21, 2022.