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The Invisible Wall: Obstacles to Protection for Unaccompanied Migrant Children along Mexico's Southern Border

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Introduction

Children from Guatemala, El Salvador, and Honduras are arriving at Mexico's southern border fleeing high levels of violence, including gang violence and forced recruitment, sexual and gender-based violence, and child abuse. They cannot access justice or protection in their countries due to weak rule of law and widespread corruption and impunity. While some children plan to continue their journeys to other countries to seek protection, many others decide to seek protection in Mexico. Regardless of their choice, children who arrive in southern Mexico need appropriate shelter and medical and mental health services. Rather than provide the protection and services migrant and refugee children need, Mexico holds these children in detention and in most cases rapidly deports them to their country of origin.

Children face multiple barriers to accessing protection and support in southern Mexico, including extended detention in closed-door facilities, lack of child-friendly information on their right to seek asylum, and lack of access to legal representation. The vast majority of children are rapidly deported without a substantive evaluation of their best interests or the dangers they could face upon return to their country of origin. For children who seek asylum in Mexico, Mexico's refugee agency, COMAR, has limited capacity to process their asylum applications, leading to extended periods of uncertainty as children await decisions on their cases.

Tapachula, a city near Mexico's southern border and a key point in the migration route for Central Americans traveling to Mexico or the United States, is unsafe for children seeking protection due to precarious living conditions, a lack of support services, discrimination by the local population and government institutions, and in some cases the presence of the persecutors they fled in their countries of origin.

In addition, as Mexico further intensifies and militarizes immigration enforcement at its southern border in response to U.S. pressure, massive detention and rapid deportation of migrants, including unaccompanied children, are dramatically increasing.

Background

Kids in Need of Defense (KIND) visited Tapachula, Mexico in February and May of 2019, to learn about the experiences of unaccompanied migrant and refugee children along Mexico’s southern border.¹ We met with representatives from civil society and international organizations, as well as Mexico’s child protection and refugee agencies. KIND conducted meetings and observations together with Human Rights Center Fray Matías de Córdoba (HRC Fray Matías), an organization that defends the rights of migrants and refugees in Tapachula and Mexico’s southern border region. The findings and recommendations in this document are based on our trips as well as the longstanding work of HRC Fray Matías in Tapachula, including ongoing monitoring of the Mexican child protection agency (DIF) shelters and provision of legal and psychological support to thousands of migrants in Tapachula.

KIND and HRC Fray Matías identified several areas of concern regarding unaccompanied children’s access to international protection, best interests determinations and legal representation, and shelter and basic services. This document sets out our concerns and provides recommendations for the governments of Mexico and the United States to ensure the rights and protection of unaccompanied migrant and refugee children in southern Mexico.

Children fleeing violence and the right to asylum or other protection in Mexico

Many of the children who arrive in southern Mexico urgently need international protection due to the high levels of violence in Central America and lack of adequate government protection in their home countries. Children and youth from Honduras, El Salvador, and Guatemala face widespread violence and forced recruitment by gangs, sexual and gender-based violence, and child abuse. They cannot access justice or protection in their countries due to weak rule of law and widespread corruption and impunity.² In many cases, they face violence and discrimination by the same police and other government institutions that are charged with protecting their communities.

¹ KIND’s second visit to Tapachula in May 2019 was part of the Observation Mission of the Humanitarian Crisis of Migrants and Refugees in the Southeast of Mexico [Observation Mission]. More information on the mission and its findings can be found here: <http://cdhfraymatias.org/web/la-frontera-sur-es-una-tortura-silenciosa-mision-de-observacion/>

² KIND and HRC Fray Matías, *Childhood Cut Short: Sexual and Gender-based Violence Against Central American Migrant and Refugee Children*, 2016, <https://supportkind.org/resources/childhood-cut-short/>
UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, 2014, <https://www.unhcr.org/about-us/background/56fc266f4/children-on-the-run-full-report.html>.

Under Mexican and international law, children have the right to apply for refugee status and complementary protection in Mexico.³ Both give children access to permanent residency in Mexico and allow them to work in Mexico if they are over 15, in accordance with Mexican labor and child protection law. However, only a small proportion of children apply for asylum or other forms of protection in Mexico. Between January and September of 2018, over 7,700 unaccompanied migrant children were detained in Mexico. Of these children, only 268 applied for asylum in Mexico, and to date 56 have received asylum or complementary protection.⁴

Observations and Concerns

1. Detention and lack of adequate information deter many children from seeking asylum and other forms of protection in Mexico

Many children who arrive in Mexico needing protection do not seek asylum and other forms of protection because they fear extended detention. Despite a 2015 regulation to Mexico's migration law stating that children should not be detained in National Migration Institute (INM) facilities, many migrant and refugee children continue to be detained in these facilities.⁵ Siglo XXI, the INM migrant detention facility in Tapachula, is a prison-like complex where migrants are held without access to adequate food, sanitary conditions, and health care services, and with grave deficiencies in access to due process.⁶ The facility has the capacity to hold 900 people but has recently held as many as 2,700 migrants at a time, worsening the already poor

³ According to UNHCR, the term complementary protection refers to "mechanisms used by states to regularize the stay of individuals who, despite not falling with the scope of the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nevertheless cannot be returned to their country of origin for various reasons." UNHCR, Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection"), 2005, <https://www.unhcr.org/protect/PROTECTION/435df0aa2.pdf>;

Mexico's Law on Refugees, Complementary Protection, and Political Asylum, 2014, http://www.comar.gob.mx/work/models/COMAR/pdf/LSRPCYAP_DOE_30102014.pdf; Mexico's Migration Law, 2011, http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_120718.pdf.

⁴ INM Statistical Bulletin, 2018, http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos; COMAR Statistical Bulletin, January-September, 2018, http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/BoletinesCOMAR/2018/COMAR_2018.pdf

⁵ Observation Mission meeting with INM personnel, Tapachula, May 30, 2019

⁶ Testimonies of migrants received by HRC Fray Matías in Tapachula; Citizen's Council of the National Institute of Migration (INM), Migrant Detention in Mexico: Monitoring Mission of INM Migration Stations and Provisional Facilities Final Report, 2017, http://cdhfraymatias.org/web/wp-content/uploads/2017/08/CCINM-Informe_Final-Monitoreo.pdf

conditions.⁷ In some cases, children are transferred from INM facilities to shelters run by the Mexican child protection agency (DIF) in Tapachula. While DIF shelters are an improvement over INM facilities, they are still closed-door facilities where children are not allowed to leave and do not have adequate education and recreational opportunities. Children who apply for asylum in Mexico can be held in these facilities for periods as long as four months or more while their applications are processed by COMAR, and then for months longer after they are recognized as refugees in the case that their applications are approved by COMAR.⁸

Children detained in southern Mexico are not given accurate and child-friendly information about their right to seek asylum. When migration and child protection officials talk to children to inform them of this right, they often emphasize that children will be detained throughout the adjudication process, that the process is long and complex, and that results are uncertain. Children are often told that if they are granted asylum, they will be institutionalized until their 18th birthday.⁹

These messages effectively dissuade many children from seeking international protection. The majority of these children instead accept return, and others apply for asylum but abandon their cases after prolonged detention.

Melanie is a 13-year-old girl from Honduras. She was sexually abused and exploited by her mother, who took photos and videos of her naked and brought men to the house who also sexually abused her. Melanie met a man who promised to help her. He took her to Guatemala, where they got married. Melanie's mother searched for her and threatened to kill her and her husband. With the help of her husband, Melanie fled to Tapachula to seek protection, but her mother followed her there. Melanie reported the abuse by her mother to the public prosecutor in Tapachula and was taken to the DIF municipal shelter. She applied for asylum in Mexico, but the DIF employees at the shelter told her that she would not win her case, and that if she wanted to leave detention and see her sisters again she would have to abandon her asylum application and return to her country. According to Melanie, "They convinced me because they said my case would be denied, that they had talked with my consular official and he said the same thing. So, it didn't make sense that I was here locked up if in the end it would be negative, and at any moment they were going to send me back to my country." Melanie signed papers withdrawing her asylum application and was deported to Honduras.¹⁰

⁷ HRC Fray Matías monitoring of the Siglo XXI migration center, June 2019; Barra, Melissa, "Mexico: Conditions of Detention of Migrants on the Southern Border Worsen," *Las Voces del Mundo*, June 6, 2019, <http://es.rfi.fr/americas/20190620-mexico-empeoran-condiciones-de-detencion-de-migrantes-en-la-frontera-sur>

⁸ HRC Fray Matías work with migrants and asylum seekers in Tapachula

⁹ HRC Fray Matías communication with detained migrant children in Tapachula; KIND and HRC Fray Matías, *Childhood Cut Short: Sexual and Gender-based Violence Against Central American Migrant and Refugee Children*, 2016, p33, <https://supportkind.org/resources/childhood-cut-short/>

¹⁰ Child interviewed by HRC Fray Matías in Tapachula

*Félix is a 17-year-old Honduran boy who fled because gangs in his neighborhood had threatened to kill him. He applied for asylum in Mexico while living with his aunt in Tapachula, but she abandoned him. Without support, Félix gave up his asylum claim. After a few months of living alone in Tapachula, Félix became desperate and presented himself to INM. He was detained in a migration station and then in a DIF shelter. Officials from DIF told Félix that if he decided to continue with his asylum application he would be detained for a long time. Desperate to leave detention, Félix decided to return to Honduras, despite the danger he faced.*¹¹

2. Children are deported rapidly from southern Mexico without a determination of their best interests

The vast majority of children who are detained by INM in southern Mexico are quickly repatriated to their countries of origin without a substantive evaluation of their best interests, despite the fact that Mexican law requires that best interests determinations (BIDs) be conducted for all migrant children.¹² Civil society organizations that monitor the human rights situation of migrants and refugees in Tapachula reported that about 50 unaccompanied children who traveled with the January 2019 caravan were detained by migration officials and deported within 24 hours, too brief a time for a substantive evaluation of their best interests. Additionally, children who were found by international organizations as having international protection needs were deported before the organizations could follow up with the children.¹³

Because many children leave their homes fleeing violence, rapid deportation without a best interests determination means that many are deported to danger, in violation of international and Mexican law.

In Tapachula, the State Child Protection Authority for the Soconusco region of the state of Chiapas is responsible for carrying out best interests determinations for migrant and refugee children and coordinates with other government institutions to ensure that children receive protection as well as access to education, medical, mental health, and other services. In reality, the office is severely understaffed and carries out substantive BIDs for an extremely small percentage of migrant children. Additionally, civil society organizations have expressed concerns that when BIDs are conducted, the office does not follow the protocols that require it to take into account the children's specific needs and wishes.¹⁴

When the Child Protection Authority in Tapachula conducts BIDs, it does not consider the United States as an option for migrant children, even if it is in their best interests, for example

¹¹ Ibid

¹² Mexico's General Children's Rights Law, 2014, Chapter 19, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_200618.pdf

¹³ KIND interview with civil society organization that requested not to be named, Tapachula, February 14, 2019

¹⁴ KIND meetings with civil society and international organizations in Tapachula, February 2019

in cases where children have family in the United States or would be safest in the United States.¹⁵ Children seeking protection in the United States therefore return to danger and often try again to reach the United States, undertaking a long and dangerous journey in which they may be subject to violence in transit or forced into human trafficking operations in Mexico, which often operate in collusion with local security forces.

3. Child asylum seekers are placed in uncertainty and danger due to the limited capacity of Mexico's refugee agency in southern Mexico

Children who seek asylum in Mexico submit an application to COMAR, Mexico's refugee agency. COMAR officials interview the child and make a decision on the child's case. While staff of the Tapachula office of COMAR are working hard to process asylum applications, they are severely understaffed for the volume of applications they receive. COMAR's Tapachula office received over 14,900 asylum applications in the first five months of 2019,¹⁶ but at the time of our research had only nine asylum officers to handle these cases, and only two with the specialization to handle children's cases.¹⁷ The dramatic increase in asylum applications along with the lack of capacity within COMAR causes long delays in the processing of children's asylum applications, with some children waiting up to eight months to receive a decision from COMAR despite the fact that the agency's protocols require a decision to be made within 45 business days.¹⁸ These delays leave children in an extended state of uncertainty and potential danger.

KIND witnessed about 100 people, including families with small children and adolescents alone, spending the night on the street outside the COMAR offices in Tapachula, in hopes that they would be seen by COMAR the next day. They did this out of desperation, knowing they were placing themselves at significant risk of becoming victims of the high levels of crime and violence in Tapachula.¹⁹

4. Unaccompanied children lack substantive legal representation in their asylum cases

The State Child Protection Authority²⁰ is responsible for the legal representation of all migrant and refugee children in Tapachula, which includes representing children in their asylum cases.

¹⁵ KIND communication with DIF personnel, Tapachula, February 14, 2019

¹⁶ Statistics shared by Andrés Ramírez Silva, General Coordinator of COMAR, on Twitter, June 4, 2019

¹⁷ KIND meeting with COMAR personnel, Tapachula, February 14, 2019

¹⁸ HRC Fray Matías work with migrant children and youth in Tapachula

¹⁹ Tapachula con el Mayor Índice de Inseguridad en su Historia, El Orbe, Mexico, June 19, 2018, <https://elorbe.com/portada/2018/07/19/tapachula-con-el-mayor-indice-de-inseguridad-en-su-historia.html>

²⁰ Each state in Mexico has a Child Protection Authority that is responsible for the protection of all children, regardless of immigration status. The Authority is responsible for conducting a best interests assessment for all children with identified protection needs, including all unaccompanied migrant and refugee children. Based on that assessment, the Authority is responsible for developing a plan for the restitution of the child's rights and coordinating implementation by the relevant government agencies, such as the secretaries of health and

However, the Child Protection Authority in Tapachula has extremely limited personnel and does not provide substantive legal representation in the majority of cases of child asylum seekers.²¹ In most cases, the staff of the Authority in Tapachula do not help the child prepare for the interview or represent the child's interests during the interview.²²

While civil society organizations in Tapachula are willing to co-represent children in their asylum cases along with the Child Protection Authority, as has been done successfully in other parts of Mexico, up to this point the Child Protection Authority in Tapachula has refused to allow them to do so.

Staff of the Child Protection Authority in Tapachula have also openly expressed discriminatory attitudes toward migrant and refugee children, for example describing all Honduran youth as "aggressive" and "disrespectful."²³ This raises concerns that officials will be less inclined to believe children's stories of the violence and persecution they have experienced, and that prejudices against specific groups of children will be used to justify their rapid deportation without a substantive assessment of the child's best interests.

Additionally, the COMAR office in Tapachula generally will not accept or consider reports from civil society organizations when evaluating children's asylum cases, for example legal or psychological evaluations by professionals with expertise in these areas.²⁴ These reports provide information on a child's past experiences and current medical and mental health state that can be invaluable for COMAR officers whose limited capacity and heavy workloads require them to make decisions regarding children's asylum cases after spending very limited time with the child.

5. Migrant and refugee children face severe lack of adequate shelter in Tapachula

Children who apply for asylum in Tapachula face a lack of options for safe and adequate shelter. DIF shelters run by the state and municipal governments are closed-door (children are not allowed to leave) and lack adequate education opportunities. The state DIF shelter, which serves migrant boys, refuses in most cases to accept boys who are seeking asylum because they may be in the shelter for a longer period.²⁵

education, and the National Migration Institute (INM). Additionally, the Authority serves as the legal representative of all children without a parent or legal guardian, including unaccompanied migrant and refugee children, in all legal matters including asylum cases.

²¹ The role that the Child Protection Authority assumes in the cases of migrant and refugee children varies widely from state to state. In Chihuahua, for example, staff of the Child Protection Authority take an active role in preparing the child for her or his asylum interview.

²² KIND meeting with DIF personnel, Tapachula, February 14, 2019

²³ Ibid

²⁴ HRC Fray Matías ongoing work with migrant children and youth seeking asylum in Mexico

²⁵ KIND communication with DIF personnel, Tapachula, February 13, 2019

The municipal DIF shelter where migrant and refugee girls are detained lacks appropriate and specialized attention for girls who have experienced sexual violence in their countries of origin or in transit. Girls who are survivors of sexual violence do not receive the medical and psychological attention or the access to justice and protection that are necessary to guarantee their rights. Additionally, state and municipal DIF shelters in Tapachula lack the specialized spaces and services necessary to ensure the safety and well-being of LGBT+ children and youth.²⁶

This lack of adequate care endangers the lives and well-being of girls detained in the municipal shelter. HRC Fray Matías documented a case in which an adolescent mother from Honduras detained in the DIF municipal shelter was separated from her one-and-a-half-year-old baby and not allowed to see her for 40 days. The Mexican government deported the baby alone to Honduras without telling the mother or any other relative.

HRC Fray Matías documented a second case in which a pregnant adolescent girl was not given adequate medical care in the DIF municipal shelter where she was detained, or later in the local public hospital. This negligence provoked a miscarriage following hours of “fetal distress,” putting the adolescent’s life in danger. Additionally, HRC Fray Matías has documented cases in which municipal DIF personnel have exercised psychological abuse against the girls under their care, for example threatening to call immigration and have them deported if they do not behave as required or obey their orders.

Private shelters in Tapachula, such the Casa del Migrante, run by the Catholic Diocese of Tapachula, are working hard under extremely difficult circumstances to provide shelter to migrants, but most do not have adequate facilities for unaccompanied children and may not be able to guarantee their safety.

While there are no open-door shelter options for children in Tapachula, some children who are seeking asylum in Mexico are transferred from Tapachula to open-door civil society shelters in other areas, such as Mexico City and Comitán, a city near the Guatemalan border in the Mexican state of Chiapas. These options are especially important for children who fled violence in their countries and are in danger of being targeted by their persecutors if they remain in Tapachula. However, these shelters have very limited space. For example, the open-door shelter for child asylum seekers in Comitán can accept fewer than ten children at a time.

In the few cases in which civil society and international organizations are able to facilitate the transfer of refugee children to alternative open-door shelters in other parts of Mexico, the decision-making process regarding child placement and accompanying paperwork of COMAR, INM, and the State Child Protection Authority take up to several months. During this time children are not provided with clear information about their situation, are often revictimized with multiple interviews in which they have to recount the circumstances of persecution they

²⁶ Conditions observed during regular visits to DIF Municipal shelter by HRC Fray Matías between 2016 and 2019

are fleeing, and their best interests and wishes are not fully taken into account in the decisions on their cases.²⁷

Due to this lack of shelter options, some children are held in the INM migratory station Siglo XXI, despite the fact that Mexican migration law prohibits children from being detained in INM facilities. HRC Fray Matías verified in their visits to the INM facility Siglo XXI that an unaccompanied teenage girl had been detained for a month in the area for adult women in the facility without receiving communication or assistance from the Child Protection Authority. As mentioned above, prolonged detention in inappropriate facilities leads many children with protection needs to abandon their asylum applications in Mexico and return to situations of danger in their countries or origin.

In response to the recently arrived caravans, INM created a temporary migrant detention center on the grounds of the “Mesoamerican Fair,” an open-air space used for expositions in Tapachula. The space, which does not have adequate shelter or sanitary facilities, has been used to house up to 2,000 migrants at a time, including families and children.²⁸ It was closed in November 2018 when thousands of migrants in Tapachula were given temporary humanitarian visas that allowed them to travel freely in Mexico. It was reopened in May 2019 to house approximately 700 “extracontinental migrants,” mainly from Haiti and western Africa,²⁹ and was closed again in July 2019. Migrants detained in the Mesoamerican Fair, including families with very young children, have reported lack of food, water, and medical care and of abusive treatment by security agents.³⁰

6. Unaccompanied children who are not in government custody often live in highly precarious situations in Tapachula

While many migrant children are detained by INM and placed in INM or DIF facilities, others cross the border into Mexico without being apprehended by INM. Many of these children end up living in Tapachula because of its proximity to the border and the presence of INM and COMAR offices. These children, some of whom are asylum seekers, live in extremely precarious situations in Tapachula. Most receive little or no assistance from the State Child Protection

²⁷ HRC Fray Matías work with migrant children and youth in Tapachula

²⁸ Collective for Observation and Monitoring of Human Rights in Southeast Mexico [Monitoring Collective], Report on Human Rights Monitoring of the Central American Exodus in the Southeast of Mexico, October 2018-February 2019, p44, <http://vocesmesoamericanas.org/noticias/informe-monitoreo-derechos-humanos-del-exodo-centroamericano-en-sureste-mexicano-octubre-2018-febrero-2019/>

²⁹ INM houses 700 migrants in a temporary shelter in Tapachula, Chiapas, El Universal, México, May 18, 2019, <https://www.eluniversal.com.mx/estados/inm-alberga-700-migrantes-en-refugio-temporal-de-tapachula-chiapas>

³⁰ Observation Mission observation of the Mesoamerican Fair, May 2019; Romero, Gaspar, “This is how a Migrant in Tapachula, Chiapas Begged for Milk for her Baby,” June 26, 2019, El Excelsior, Mexico, <https://www.excelsior.com.mx/nacional/asi-suplicaba-por-leche-para-su-bebe-una-migrante-en-tapachula-chiapas/1320690>

Authority, the government entity responsible for guaranteeing their protection.³¹ Many live on the street, paying 15 pesos, less than \$1.00 USD, per night for a place to sleep, or with other youth or unrelated adults.³² This leaves children highly vulnerable to sexual and labor exploitation, human trafficking, and other forms of violence. In most cases, these children do not have access to necessary services such as health care and education.³³

Since April 2019, enforcement operations and raids in the parks, hotels, and other spaces in Tapachula where groups of migrants are present have increased significantly.³⁴ Recently Mexican military forces, including the Army, the Marines, and the recently formed National Guard, have participated in migration enforcement along with INM agents. These operations have resulted in the mass detention of migrants, including unaccompanied children, some of whom had begun their asylum application and were carrying the relevant paperwork from COMAR. This has created a generalized sense of insecurity among the migrant population in Tapachula and has caused many migrants, including children and families, to distance themselves from the center of the city and stay in places that are even more precarious, where they do not have access to basic services and they are highly vulnerable to violence and exploitation.³⁵

Additionally, for migrant children in Tapachula, the proximity to the Guatemala-Mexico border and the heavy presence of gangs and other organized criminal groups in the area means that they continue to be in danger of being located and targeted by persecutors from their countries. Many live under the same conditions of forced displacement that they experienced in their countries of origin.

*César, 18, lived with his family near a municipal garbage dump in Guatemala that was controlled by a gang of young people who robbed people in the area. Three young men approached César to recruit him to join the gang. When he refused, they threatened to kill him or hurt his family. After being threatened a second time, he fled to Mexico. In Tapachula, he applied to COMAR for asylum. He slept in a park because he had nowhere to live. He met a young Mexican man who offered to help him. He lived with the man for a time, but then the man started to sexually harass Cesar, eventually assaulting him. César left the house and returned to sleeping in the park, but the man continued to harass him.*³⁶

³¹ HRC Fray Matías work with migrants in Tapachula, Mexico

³² KIND conversation with DIF personnel, Tapachula, February 15, 2019

³³ HRC Fray Matías work with migrants in Tapachula, Mexico

³⁴ "Migration agents carry out raids in hotels in Tapachula, Mexico," La Opinion, Mexico, May 30, 2019, <https://laopinion.com/2019/05/30/agentes-migratorios-hacen-redadas-en-hoteles-de-tapachula-chiapas/>; "The Central Park shines clean without migrants," Diario del Sur, Chiapas, Mexico, June 13, 2019. <https://www.diariodelsur.com.mx/local/limpio-sin-migrantes-luce-el-parque-central-3691389.html>

³⁵ HRC Fray Matías work with migrants in Tapachula, Mexico

³⁶ Adolescent interviewed by HRC Fray Matías in Tapachula

*Wilson is a 16-year-old boy from Honduras. His family had to move because criminal groups controlled his neighborhood and they did not feel safe. Another criminal group charged them extortion to live in their new neighborhood. Wilson decided to flee and traveled alone to Tapachula. He did not know if he would stay in Mexico or go to the United States. He only wanted to be somewhere safe where he could work and study. He was forced to stay in Tapachula, however, after his documents and money were stolen when he was mugged. He lived on the street for several months, sleeping in the park and other public spaces and begging for money to buy food. Wilson and other migrants had to move frequently because they were kicked out of public spaces by the police or local residents who did not want them there. Wilson often went hungry. After seven months, he met an adult migrant who took him to HRC Fray Matías. There, he received information about his rights and decided to seek asylum in Mexico.*³⁷

7. The Mexican government's response to the 2019 caravans has left unaccompanied migrant children in southern Mexico unprotected

Since October 2018, thousands of Central Americans arrived at Mexico's southern border as part of the so-called "migrant caravans," the majority of whom are families and unaccompanied children fleeing violence in their countries. While the phenomenon of adults, families, and children fleeing Central America and seeking protection in the Mexico and the United States is not new, these large and highly visible caravans are a more recent phenomenon. Traveling in large groups can help protect against violence and human trafficking, as well as the high cost of paying a smuggler. The responses by the Mexican government to the arrival of these caravans have shown a lack of clear and coordinated migration policy and have left migrants and refugees, including unaccompanied children, in a state of profound uncertainty and vulnerability.

In January 2019, the Mexican government responded to the arrival of a second large caravan by granting humanitarian visas to 12,000 migrants in a two-week period that allowed them to move freely and work in Mexico for one year. While a marked improvement over the militarized responses by the Mexican government to the previous year's caravans, this did not guarantee protection for unaccompanied children arriving at the border. Only children over 17 years old were granted visas; children under 17 were not given visas despite the fact that Mexican law allows all unaccompanied children to access humanitarian visas. Those children who did not apply for asylum in Mexico were detained and deported to their countries of origin.³⁸

Civil society organizations in Tapachula expressed concerns that INM held the migrants, including families and children, in a make-shift camp near the bridge between Guatemala and

³⁷ Adolescent interviewed by KIND in Tapachula

³⁸ Monitoring Collective, Update on Monitoring of Migrant Exodus, January 23 and 24, 2019, <http://cdhfraymatias.org/web/wp-content/uploads/2019/01/23-y-24-ene-2019-%C3%89xodo-Migrante.pdf>

Mexico for hours, and in some cases days, in conditions of extreme heat and without adequate shelter, food, and sanitary facilities.³⁹

In March and April 2019, thousands of migrants continued to arrive at Mexico's southern border as a part of caravans, and after the brief and exceptional period in January, the government has not provided migrants with humanitarian visas. The Mexican government has returned to a more repressive model of militarized response to migrants arriving in caravans, carrying out mass detentions without identifying the needs of migrants or guaranteeing their basic human rights, with increasing participation of the Mexican military.

This heavy-handed and repressive response is highlighted by the recent mass detention of approximately 400 migrants, the majority families and children. The group crossed into Mexico from Guatemala on June 5, 2019 and were confronted by a group of approximately 300 security forces, including military police, federal police, marines, and INM agents. They were detained and transported to the Migration Center Siglo XXI in Tapachula, and many were deported the next day without receiving adequate information about their right to seek asylum in Mexico.⁴⁰

The majority of unaccompanied children who traveled with the caravans of 2018 and 2019 were quickly deported to their countries, and many of those who have chosen to stay in Mexico and seek asylum do not have access to adequate shelter and medical and mental health services in Tapachula.⁴¹

8. Migrants and refugees, including children, face increased xenophobia and violence in southern Mexico

Since the arrival of the 2018 and 2019 caravans in southern Mexico, civil society organizations in Tapachula have observed an increase in xenophobia and anti-immigrant sentiment among local residents in Tapachula and surrounding areas. In some cases, anti-immigrant sentiment has been stoked by government authorities, as was the case in Huixtla, a town near Tapachula. In response to the anticipated arrival of a migrant caravan in April 2019, municipal employees, following orders from municipal government officials, passed through the town with a loudspeaker warning businesses to close and residents to prepare for the arrival of a "violent" migrant caravan. This unwelcoming response forced the group of migrants, many families with

³⁹ Monitoring Collective, Report on Human Rights Monitoring of the Central American Exodus in the Southeast of Mexico, October 2018-February 2019, p63, <http://vocesmesoamericanas.org/noticias/informe-monitoreo-derechos-humanos-del-exodo-centroamericano-en-sureste-mexicano-octubre-2018-febrero-2019/>

⁴⁰ Monitoring Collective, Monitoring Update Statement: New Migrant Caravan Falls into Detention under Deceit and Exhaustion. June 6, 2019, <http://vocesmesoamericanas.org/noticias/comunicado-actualizacion-monitoreo-nueva-caravana-migrante-cae-en-detencion-bajo-engano-desgaste-6-junio-2019/>; Alonso, Emir Olivares, "Worrisome 'Iron Fist' Deployment of the National Guard: AI," La Jornada, Mexico, June 10, 2019, <https://www.jornada.com.mx/ultimas/2019/06/10/preocupante-despliegue-de-201cmano-dura201d-de-la-guardia-nacional-ai-5022.html>

⁴¹ HRC Fray Matías work with migrants and refugees in Tapachula

young children, to spend the night on the highway outside of Huixtla with limited food and no access to sanitary facilities.⁴²

This xenophobia makes daily life more difficult for migrant children and families who choose to stay in southern Mexico. For example, despite the fact that Mexican law guarantees access to education for all children, including migrants, civil society organizations in Tapachula report that resistance by schools and teachers to accepting migrant children in their classrooms and discrimination by other students and their families prevents many migrant and refugee children from enrolling in and attending school in Tapachula.⁴³

Recommendations

Mexican Government

1. Increase personnel and training for the State Child Protection Authority.

The Mexican federal government and the government of the State of Chiapas should increase funding for the State Child Protection Authority in Tapachula, including an increase in personnel dedicated to carrying out best interests determinations and follow up to ensure the protection of migrant and refugee children. Personnel within the Authority should receive training in children's rights, best interests determinations, and legal representation of migrant and refugee children. Internal mechanisms of monitoring and accountability should also be developed for the personnel of the Child Protection Authority, with substantive participation from civil society and international organizations, to ensure that children's rights are respected and that relevant protocols are followed.

2. Increase personnel and training for COMAR in Tapachula.

The Mexican government should increase funding for COMAR's Tapachula office for more staff, including protection officers hearing and deciding asylum cases. Protection officers should receive ongoing training in interviewing children and other vulnerable groups, on country conditions in Central America, and on child sensitive and gender sensitive application of the refugee definition and the Cartagena refugee definition. Officials should also receive training on how to accept and consider reports from civil society organizations on child asylum seekers as part of the evaluation of their asylum applications.

3. End the detention of migrant and refugee children in immigration facilities, in accordance with Mexican law.

⁴² "Municipal Councilman of Huixtla Accused of Creating Creating Phobia Against Migrants," La Jornada, Mexico, April 16, 2019, <https://www.jornada.com.mx/ultimas/2019/04/16/acusan-a-edil-de-huixtla-de-crear-fobia-contra-migrantes-2476.html>

⁴³ Meeting with civil society organizations in Tapachula, February 11, 2019

Mexico should comply with requirements under the country's 2014 General Children's Rights Law and the 2015 Regulation of the same law⁴⁴ to end the detention of migrant and refugee children in migration facilities, whether INM facilities or closed-door DIF shelters, and transfer them to open-door DIF facilities or appropriate civil society residential programs, in accordance with the child's best interests. DIF shelters, the majority of which are closed door⁴⁵ and do not provide appropriate educational and recreational opportunities, should be thoroughly reformed physically and procedurally in order to guarantee the rights of children.

4. Invest in increased open-door shelter options for migrant and refugee children in Tapachula and other parts of Mexico.

The Mexican government should increase funding dedicated to the replication and expansion of promising models for sheltering migrant and refugee children, including the open-door residential programs run by civil society organizations such as Covenant House and SOS Children's Villages, and by the state-level DIF in Tabasco, Mexico.

5. Ensure all children receive child-friendly information about their right to seek asylum in Mexico.

Train all government officials who come into contact with children, including INM and DIF officials, to provide child-friendly information to all children about their right to seek asylum, and put in place oversight mechanisms to ensure that this information is communicated appropriately in all cases. Allow international and civil society organizations access to spaces where migrant children are held, including INM and DIF facilities, as well as temporary facilities such as the Mesoamerican Fair, to provide children with information about their rights in Mexico.

6. Allow for co-representation of children in their asylum cases and other legal processes.

The federal government should issue guidance to all state and municipal DIF agencies directing them to allow for the co-representation of children by attorneys from civil society organizations, as well as volunteer private sector attorneys and university law clinics where available, along with the relevant Child Protection Authority. Federal-level DIF should provide training to all local and state Child Protection Authorities on how to work with civil society attorneys and psychologists in cases of co-representation.

7. Provide humanitarian visas to all unaccompanied children seeking protection in or transiting through Mexico, in accordance with Mexican law.

⁴⁴ General Children's Rights Law, 2014, Article 94, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_200618.pdf; Regulation of the General Children's Rights Law, 2015, Article 111, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGDNNA.pdf

⁴⁵ One exception is the Colibrí shelter operated by the state-level DIF in Tabasco that shelters children seeking asylum in Mexico. Colibrí employs an open-door model that promotes the integration of children in the local community. <https://www.acnur.org/noticias/noticia/2016/10/5b0c1b6110/albergue-para-ninas-ninos-y-adolescentes-se-inaugura-en-tabasco.html>

All unaccompanied children should be given access to humanitarian visas while they live in or transit through Mexico as allowed by Mexican law. Children should be made aware that applying for a humanitarian visa does not impact their right to seek asylum in Mexico.

8. Conduct substantive best interests determinations for all migrant and refugee children in government custody as required by Mexican law.

Child protection officials within DIF should conduct best interests determinations that are holistic and take into account the child's wishes. These determinations should consider all options of destination, including the United States. Children should be repatriated to their countries of origin only when it is in accordance with their best interests, taking into account their wishes, and when it is determined that the child's life will not be in danger if the child is returned to her or his country of origin. An external review process should be established to ensure that BIDs for migrant and refugee children comply with Mexican law and international standards, identify cases where a substantive BID was not completed according to established protocols, and coordinate the completion of a re-evaluation and re-determination in those cases.

9. Promote the coordination between Child Protection Authorities and other government entities to ensure access to rights for migrant and refugee children.

These entities, which include the secretaries of education and health at the federal, state, and municipal levels, should have specialized personnel and protocols to guarantee access to respond to the needs of migrant and refugee children, in order to carry out the measures for protection and restitution of rights ordered by Child Protection Authorities.

10. Promote coordination between local government and civil society in Tapachula to guarantee access for migrant and refugee children and families to education, health care, and other basic rights without discrimination, as well as access to justice and protection for migrants who are victims of crime in Mexico.

United States Government

1. United States funding to Mexico should focus on protection of migrants to end violations of migrant's rights, including unlawful deportations of children. The United States should not pressure Mexico to increase immigration enforcement against or deportation of Central Americans.

2. Provide funding for capacity building for COMAR. Funding should support increased personnel in COMAR offices to interview asylum applicants and make decisions, as well as increased support staff. It should also support training for COMAR personnel in how to interview children, survivors of violence and trauma, and other vulnerable groups, as well as on up-to-date country conditions in Central America.

- 3. Provide funding for capacity building for Child Protection Authorities.** Funding should support hiring and training increased personnel dedicated to carrying out best interests determinations for migrant and refugee children and coordinating the application of appropriate protection mechanisms based on those determinations.

- 4. Dedicate sustained funding to address the root causes of forced migration from Central America,** including gang violence, sexual and gender-based violence, and corruption and impunity. Funds should support violence prevention programs, strengthening of the judicial and child protection systems, and creation or strengthening of independent entities to combat corruption and impunity. Funds should be conditioned on each government's demonstrated respect for human rights and efforts to combat corruption and should not be conditioned on any action by Central American governments to prevent or repress migration.

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