

Implementation of the Mexican Legal Reforms that Prohibit Detention of Accompanied and Unaccompanied Migrant Children

March 2021



Implementation of the Mexican Legal Reforms that Prohibit Detention of Accompanied and Unaccompanied Migrant Children

SUMMARY:

Human rights organizations in Mexico have been advocating for alternatives to detention for migrant children for over 10 years. The impact of immigration detention on children and families has been documented throughout the world, yet in Mexico immigration detention has been an ongoing practice despite hundreds of cases of sexual assault, verbal and physical abuse, and death due to medical negligence documented within the more than 58 detention centers in Mexico.¹

In 2014, Mexico passed a new Law on the Rights of Children and Adolescents (*LGDNNA*) that included language prohibiting the detention of unaccompanied migrant children.² In compliance with international law, the Regulations to the *LGDNNA* state that no migrant child, unaccompanied or accompanied, should be detained in immigration detention centers because it is never in the best interest of the child.³ However, the National Migration Institute (INM) of Mexico continued to detain unaccompanied and accompanied children because the Law on Migration (LM) established that migrant children could be detained. As migrant detention in Mexico is the norm, the INM refused to release children until the LM was reformed.

Human rights organizations advocated for reforms to close legal loopholes that allowed migrant children to be detained. Reforms were finally passed by the Mexican Congress on November 11, 2020.⁴ The reforms to the LM and the Law on Refugees, Complementary Protection and Political Asylum (LR) – solidified the prohibition against detaining unaccompanied and accompanied children and went into effect on January 11, 2021. The federal and state level Offices for Child Protection (*Procuradurías de Protección a la Niñez -- PPNNA*), the Systems for the Integral Protection of the Rights of Girls, Boys and Adolescents (*SIPPINA*), and the Department of Family Services (DIF) have six months to implement guidelines to protect migrant children and families who should be transferred to DIF instead of being detained.

Uneven implementation of the reforms has caused confusion within Mexico and also among some U.S. officials and media. This document explains the reforms, the way that they should be implemented, and provides some anecdotal information regarding implementation to date.

1. See: Sin Fronteras (2016). Detention Without Exception. 15 years of monitoring the situation of rights of persons deprived of their liberty in Centers of Detention in Mexico; CNDH (2018). Special Report: The problem of Unaccompanied Central American Children in the context of international migration and transiting for Mexico in need of protection; CC-INM (2017). Report on Persons in Immigration Detention Centers in Mexico: Monitoring Mission; CNDH (2019). Special Report: The situation of Immigration detention Centers in Mexico, towards a new model of alternatives to detention; CC-INM. CTI (2019) Immigration Detention Centers: torture Spaces of acute human rights violations in Mexico; International Detention Coalition (2018). Keeping Children Safe

2. Article 85 of the General Act on Children's Rights: "No children may be arrested, detained or deprived of their liberty for [...] an act that the laws do not designate as a crime"

3. Article 111 of the Regulations on the General Act on Children's Rights.

4. DOF (Diario Oficial de la Federación). [11 noviembre de 2020](#).

1. What is the impact of reforms to the Law on Migration and the Law on Refugees, Complementary Protection and Political Asylum?

- Clarifies the responsibilities of INM officials if they come into contact with migrant children traveling alone or with family members.
- Establishes that the Department of Family Services (DIF) and the Offices for Child Protection (PPNNAs) on a federal and state level are responsible for protecting migrant children and determining their best interests.
- Prohibits the detention of migrant children and designates the Social Assistance Centers (shelter system) of the DIF as the appropriate facilities to temporarily house migrant children.
- Establishes that migrant children and their families should receive temporary humanitarian immigration status to protect them while the PPNNAs determine a plan to reconstitute the child's rights.

2. When were the reforms passed and when will they be fully implemented?

Various articles of the LM and the LR were reformed⁵ on November 11, 2020 and went into effect on January 11, 2021.⁶ The executive branch has an additional six months to publish regulations and guidelines to bring about full implementation.

3. What will happen to migrant children and their families when they come into contact with INM agents at inspection points and during raids?

- The reforms state that INM must immediately contact the PPNNAs and refer the children and their families. They can be placed in DIF shelters.
- The PPNNAs become the legal representatives of the children to determine their best interest.
- The INM should provide all children, adolescents and their families with a temporary humanitarian status immigration document.
- The INM must collaborate with the PPNNAs to implement the child protection plan.
- If the PPNNA determines that it is in the best interest of the child to remain in Mexico, INM will grant resident status.
- If the PPNNA detects that the child is fleeing from persecution or if the child wishes to apply for

5. Articles 3, 6, 20, 11, 29, 52, 68, 71, 73, 74, 79, 99, 95, 98, 107, 109, 112 y 120 of the Law on Migration and Articles 6, 9, 20, 23 and 41 of the LR Complementary Protection and Political Asylum.

6. In Mexico, for a law to be effective, it must be published in the DOF, the official newspaper of the Mexican government.

refugee status in Mexico, the office will notify the Mexican Commission for Refugee Assistance (COMAR) to begin a refugee application/procedure.

- INM agents with training in child protection (*Oficiales de Protección a la Infancia - OPIS*) are authorized to interview migrant children only for the purposes of obtaining a name, nationality, immigration status and to ask if the child is separated from family members or has immediate physical or mental health needs. This information should be shared with the SIPINNAs and the DIF.
- A representative of the National Human Rights Commission (CNDH) may be present during this initial interview.

4. What happens if the INM agent determines that migrant children are traveling with adults who are not their legal guardians?

The LM defines a “separated child” as “any minor (younger than 18 years old) who is accompanied by an adult who routinely takes care of the child but is not the child’s legal guardian.”⁷

- The detention of adults who are customary caretakers should be avoided in compliance with principles of family unity and the best interest of the child.
- INM should refer these cases to the DIF and notify the PPNNA.
- The PPNNA will interview the adult to determine the nature of the relationship.
- If the PPNNA determines that it is in the child’s best interest to remain in the custody of the adult, INM will authorize humanitarian status to both the child and the adult.
- INM will resolve the immigration proceeding according to the determination of the PPNNA.
- If the PPNNA determines that the child and the adult should be authorized to remain in Mexico, INM will authorize residence documents for both the child and the adult.
- If the PPNNA determines that it is in their best interest to be returned to their country of origin, PPNNA will instruct INM to conduct the repatriation (*retorno asistido*).

5. What happens when an accompanied child is detected by INM agents?

7. Article 3 of the Law on Migration in Mexico defines unaccompanied, accompanied, and separated children in the exact same terms than these included in article 1 of the Convention on the Rights of the Child, the General Comment No. 6 of the Committee on the Rights of the Child and the and the Advisory Opinion OC-21/14 from the IAHR:

a) child. Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

b) unaccompanied children. Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

c) separated children. children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

The LM defines an “accompanied child” as “a minor (younger than 18 years old) who is accompanied by a legal guardian” (who has legal custody of the child).⁸ INM should refer the children and family members to the PPNNA for an evaluation of the children’s best interests in compliance with the principles of family unity. The PPNNA will issue a restitution plan for the entire family that may include measures to remain in Mexico or to repatriate the family to the country of origin.

6. What is a Social Assistance Center (CAS) of the DIF and Civil Society Organizations?

The Law on the Rights of Children and Adolescents (LGDNNA) defines “Social Assistance Centers” (*Centros de Asistencia Social - CAS*) as public institutions or private associations that provide residential care for children who are not in the custody of their parents or family members.⁹

The LGDNNA regulates the CAS, establishing the requirements to authorize, register, certify and supervise them, in order to guarantee the rights of children who are separated from or do not have parents or legal guardians.¹⁰

The CAS is under the jurisdiction of municipal, state and federal PPNNAs. CAS include those under the DIF system as well as private institutions (including some migrant shelters).

Municipal, state and federal DIF systems are charged with the following:

- Providing social assistance for migrant children (housing, food, medical care)
- Ensuring access to protection and safeguarding the rights of all children, including migrant children.
- Identifying migrant children with international protection needs, in coordination with other agencies.
- Coordinating with human rights organizations and the CNDH to guarantee the protection of children’s rights.
- Establishing cooperation agreements between government agencies on the municipal, state and federal levels as well as with civil society organizations to guarantee and protect the rights of migrant children.

8. Article 3. XXI of the Law on Migration: “Accompanied migrant children are any migrant person under eighteen years old who is accompanied by an adult parent or adult who has children’s legal custody or guardianship”

9. Article 4.V. of the Law on the Rights of Children and Adolescents

10. Article 107 of the Law on the Rights of Children and Adolescents.

7. What are some of the institutional challenges government agencies face in implementing the reforms?

- Implementation will require federal, state and municipal budget allocations so that the PPNNAs and the CAS can function.¹¹
- PPNNAs as well as DIF personnel on the municipal, state and federal level need technical assistance to conduct best interest determinations of migrant children and families.
- Mexico must create a system of foster care and other models of care for children and adolescents, including migrants.
- The internal regulations, guidelines and protocols of each government agency must clearly state the agency's role and specific actions it will take to provide for the needs of migrant children.

8. How are the reforms being implemented to date?

The Mexican government has been implementing the reforms in an uneven manner depending on the state and the municipality. NGOs have been attempting to monitor implementation, but because of COVID-19 restrictions, many of the organizations have limited on-site monitoring capacity.

Some anecdotal observations:

- State and local governments are publishing their regulations to coordinate with INM, but the process is slow.
- In Tabasco, the PPNNA has increased the number of children assisted and the number of best interest determinations and restitution plans.
- In Tapachula, Chiapas, unaccompanied adolescents are referred to DIF shelters, and PPNNA issues a restitution plan stating that it is in the child's best interest to be deported, and INM repatriates (*retorno asistido*).
- DIF and civil society shelters have reduced space due to COVID-19.
- INM tries to refer to DIF, but DIF does not have space in their shelters, so INM releases the children without beginning a formal migration procedure, or INM issues voluntary departure letters to the family.

11. Since 2014, the LGDNNA charged the Offices for Child Protection (PPNAs) with the coordination of protection measures and restitution of rights for migrant children in Mexico. However, the creation, development and operation of the PPNNAs has been difficult. One of the biggest challenges is the lack of budget for their operation on the municipal, state and federal level. In 2019, UNICEF Mexico published a report on the costs to strengthen the system. The research included an analysis of materials and supplies, general services and the facilities and property required. UNICEF found that the PPNNAs require approximately \$2,487 million Mexican pesos distributed in the 32 states. Today, the PPNNAs are operating with approximately 27% of the required budget, but some states such as Chiapas, are operating with 7% of the required budget. UNICEF (2019), [Offices for Child Protection: Inform about the costs and options for its strengthening](#).

- Civil society shelters receive families (that have been referred by INM) while they wait for the PPNA procedure, but the families know that they can't be detained, so they leave the shelter.
- Civil society organizations have expressed concern about INM agents who have not been properly trained and are detaining parents and releasing adolescent children, resulting in family separation.

9. How do the legal reforms prohibiting the detention of migrant children and families impact Mexico's acceptance of Central American families under Title 42?

Beginning in March 2020, the US has been misusing its Title 42 authority to block and turn away people at its southern border, including asylum seekers and unaccompanied children, through expulsions. Through a *Nota Informativa*, not a bilateral agreement, the Mexican Ministry of Foreign Affairs (SRE) announced that the Mexico government, through INM, would accept up to 100 Hondurans, Guatemalans and/or Salvadorans per day expelled from the U.S. under Tit. 42 (not including unaccompanied Central American children or those that the INM determines to be vulnerable) at its discretion.¹² As March 12, 2021, the decision remains in place.

The reforms prohibiting child detention in Mexico have not affected expulsions under Tit. 42 and there is no connection between the reforms and this problematic practice. While Mexico's participation in this inhumane and unlawful US policy is questionable, INM can still receive up to 100 Hondurans, Guatemalans and/or Salvadorans per day expelled from the U.S. under title 42. Per SRE's *Nota Informativa*, Mexico should at no point receive unaccompanied Central American children or those that the INM determines as vulnerable. In accordance with the *Nota Informativa*, certain families could be expelled and under the new reforms, INM would refer them to the PPNA. Changes in policies are not a result of the legal reform, but rather demonstrate the growing strain placed upon migrant services in northern Mexico by U.S. immigration policy and the worsening pandemic.

For additional information, contact:
 Miriam Gonzalez
 Communication Coordinator
 Institute for Women in Migration (MUMI)
miriamg@imumi.org



12. Secretaría de Relaciones Exteriores (SRE), March 21, 2020. Nota Informativa No. 11, <https://www.gob.mx/sre/documentos/nota-informativa-relaciones-exteriores-no-11>.