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The Plight of Unaccompanied Migrant Children

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This report addresses several areas of concern regarding the plight of unaccompanied migrant children. The causes surrounding mass migration of children are complex and multi-faceted. Although the problem of child migrants occurs in several regions of the world, this paper will focus on the huge surge of unaccompanied children from Mexico and Central America. These children have fled their home countries in record numbers to seek safety and refuge in the United States. This report will focus on the conditions and push-factors forcing children to leave their home countries, the conditions of immigration screening and detention at the U.S. border, and recommendations to provide better investment in the rights of the child.

I. Push Factors from Central America and Mexico

Children are fleeing Central America and Mexico to escape rampant gang violence, criminal impunity, and economic stagnation. More than 67,000 unaccompanied minors arrived in the United States during fiscal year 2014. Over 50,000 came from Central America.¹ The Northern Triangle countries of Guatemala, El Salvador, and Honduras experience a multitude of problems that force children to leave their home countries in search of safety.

A. Gang Violence

In Guatemala, powerful criminal organizations contribute to violence and intimidation, which they use to further political and economic interests. Mexican drug cartels and transnational gangs such as Mara Salvatrucha carry out lethal attacks against rivals and those who defy their control, such as civilians who refuse to pay extortion money or children who resist gang recruitment. The government and police force of

¹ U.S. Customs and Border Protection, *Southwest Border Unaccompanied Children: Unaccompanied Alien Children Encountered by Fiscal Year*, available at <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

Guatemala have not been able to curb the violence and intimidation stemming from gang violence. Gangs operate within a culture of impunity in Guatemala, as 98 percent of crimes do not result in prosecutions. Citizens in Guatemala face forced displacement as their communities are appropriated as gang territories, giving them two options: forced recruitment or leaving the community and/or country.²

Children in El Salvador face much of the same problems as children in Guatemala. Local criminality is accentuated by organized and transnational gang activity. Gangs operating inside El Salvador control daily life in many communities. Gangs operate by extorting money from a large part of the population, threatening killings and lynchings, and forcing children to join their ranks. Children are displaced by gang recruitment and violence internally with many forced to leave the country after persistent threats. Forced displacement often happens under conditions of such urgency that people are forced to cross at unauthorized points or employ smugglers, the use of which exposes these immigrants to additional human rights violations. Authorities in El Salvador also seem unable to control the violence and influence of organized gangs. Salvadorian authorities recognize the culture of impunity and collective fear experienced in the country. State institutions are further weakened by organized crime infiltration and intimidation. Without a functioning criminal justice system many Salvadorians are forced to leave the country in order to escape escalating violence.³

² Human Rights Watch, World Report 2013: Guatemala (2013).

³ Human Rights Watch, World Report 2013: El Salvador (2013).

Honduran child migrants are from some of the most violent regions in the world. In 2012 Honduras's murder rate was 90 per 100,000, the highest in the world.⁴ Much of this violence stems from the influence of organized gangs and cartels. Extortion, homicides and kidnappings, and direct threats to the general population create a culture of fear and impunity. This culture of fear not only affects the civil population but also the governmental, military, and police authorities. Honduran authorities recognized the capacity of organized gangs to infiltrate state institutions and the forces of law and order. Impunity of gang members is observed through low prosecution rates and lack of police intervention. Because gangs have appropriated much of Honduran territory, there is little opportunity for internal displacement of citizens. Children affected by gang violence are almost always forced to leave the country entirely.⁵

Gang violence and crime rates in Central America may grab headlines but there are also increased numbers of unaccompanied minors migrating north from Mexico. In 2013, over 17,000 Mexican children were apprehended by U.S. Border Patrol. Mexico's drug-war-torn states have disturbing levels of crime and violence. UNICEF reports that the murder rate of underage Mexican boys more than doubled between 2007 and 2011.⁶ The UN High Commissioner for Refugees (UNHCR) found that 59 percent of Mexican minors apprehended crossing into the U.S. cited violence as one reason for leaving home.⁷ Many children prefer to try crossing the border instead of being forcefully recruited into gangs and drug trafficking.

⁴ *DHS: Violence, Poverty, is Driving Children to Flee Central American to U.S.*, Pew Research Center (July 1, 2014), available at <http://www.pewresearch.org/fact-tank/2014/07/01/dhs-violence-poverty-is-driving-children-to-flee-central-america-to-u-s/>.

⁵ Human Rights Watch, *World Report 2013: Honduras* (2013).

⁶ UNICEF, *Mexico: Country Programme Document 2014-2018* (February 6, 2014).

⁷ UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*.

B. Impact of Economic Policies

Although gang violence and the culture of criminal impunity in Northern Triangle countries account for a large portion of forced displacement, poor economies are another factor pushing children to the U.S. Overall, Guatemala, El Salvador, and Honduras are among the poorest nations in Latin America with 26 percent, 17 percent, and 30 percent of their people living on less than \$2 a day.⁸

Economic policy driven by the United States has had a significant impact on the economies of Central America. In 2006 the Central American Free Trade Agreement (CAFTA) went into effect in El Salvador, Guatemala, and Honduras.⁹ CAFTA was modeled after the North American Free Trade Agreement (NAFTA)¹⁰ and promised to address the social and economic problems in the region and bring higher employment, stability and peace to Central America.¹¹ Instead, CAFTA has only exacerbated the desperation and instability in Central America.¹² Under this trade agreement with the United States companies were allowed to outsource labor-intensive components of their supply chains to locations with weak labor laws and low wages. These policies have not resulted in higher-wage skilled jobs for Central American workers, as they must suppress wage growth to remain competitive with countries like Bangladesh and China.¹³ Trade agreements like CAFTA have contributed to the economic stagnation and widespread

⁸ *DHS: Violence, Poverty, is Driving Children to Flee Central American to U.S.*, Pew Research Center (July 1, 2014).

⁹ Office of the United States Trade Representative, *CAFTA-DR: Dominican Republic-Central America FTA* (2014), available at <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta>.

¹⁰ NAFTA Secretariat, *North American Free Trade Agreement* (1994), available at <https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement>.

¹¹ *Supra* note 9.

¹² AFL-CIO, *Trade, Violence, and Migration: The Broken Promises to Honduran Workers* (October 2014), available at <http://www.aflcio.org/content/download/147761/3770791/file/Honduras.PDF>.

¹³ *Id* at 7.

poverty in Central America. For example in Honduras, poverty rose approximately 4.5 percent from 2006 to 2013, and the percentage of those working full time and receiving less than minimum wage also went up from 29.6% in 2006 to 43.6% in 2012.¹⁴

International trade agreements not only harm economies but also violate human rights. Low minimum wages, unpaid overtime, and a failure to enforce labor laws has resulted in a model that has benefited multinational corporations and continued to fail workers and their families.¹⁵ The failure to effectively enforce labor laws leads to significant instances of child labor, lack of access to justice, and violations of the right to associate and collectively bargain. Without these basic protections workers are left vulnerable and disenfranchised. International trade agreements like CAFTA create an inability of most workers to cover their families' basic living needs, many workers then see few options beyond migrating to the United States.

C. Impact of U.S. Immigration Policy

As highlighted above, governments in the Northern Triangle countries and Mexico need to do more to curb the influence of organized crime and prosecute criminal offenders. Criminal justice systems need to be rid of corruption and gang infiltration and the culture of impunity must be changed. Although these governments must do more to protect their citizens, U.S. influence on Central American gang culture cannot be ignored.

For more than a decade, American street gangs have been spreading to Central America.¹⁶ U.S. Immigration agencies have rounded up and deported thousands of criminal immigrants both legal and illegal alike. In the last 12 years, U.S. immigration

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 8.

¹⁶ John Carlos Frey, *Who's to Blame for El Salvador's Gang Violence*, PBS Newshour (November 8, 2014), available at <http://www.pbs.org/newshour/bb/central-americans-flee-us-policies-blame-el-salvadors-gang-violence/>.

authorities have logged more than 50,000 deportations of immigrants with criminal records to Central America, including untold numbers of gang members.¹⁷ These deportations create a revolving door of gang members between the U.S. and Central America. Many deported gang members will return to Central America, help their gang achieve wider influence and power, then return to the U.S. until they are apprehended and deported again. This deportation policy aimed originally at breaking up U.S. street gangs has ultimately helped spread gangs across Central America. The U.S. must take responsibility for the effects of this policy and recognize their obligation to assist Central American countries in their efforts against gang violence.

U.S. foreign policy also lends support to corrupt governments and institutions in Central America.¹⁸ As stated above, Central American justice and law enforcement institutions suffer from extreme levels of corruption.¹⁹ The Honduran government itself estimated in the fall of 2013 that 70% of the regular police force is corrupt.²⁰ Despite these widespread reports of rights violations by police and military forces the U.S. continues to give financial aid to Honduras for security purposes, reaching approximately \$27 million in 2012.²¹ Investment in high cost, corrupt, security institutions comes at the expense of investment in the basic needs of Central Americans.

¹⁷ Robert J. Lopez, Rich Connell, Chris Kraul, *Gang Uses Deportation to its Advantage to Flourish in the U.S.*, LA Times (October 30, 2005), available at <http://www.latimes.com/local/la-me-gang30oct30-story.html#page=1>.

¹⁸ AFL-CIO, *Trade, Violence, and Migration: The Broken Promises to Honduran Workers* (October 2014) available at <http://www.aflcio.org/content/download/147761/3770791/file/Honduras.PDF>.

¹⁹ Jose Miguel Cruz, *Police Misconduct and Democracy in Latin America*, AmericasBarometer Insights (2010), available at <http://www.vanderbilt.edu/lapop/insights/I0833en.pdf>.

²⁰ *Id.* at 6.

²¹ *Id.*

II. Screening and Detention Practices at the U.S. Border

When unaccompanied minors are apprehended at the border they are subject to the policies and procedures of the U.S. Department of Homeland Security (DHS). Unaccompanied children can be harmed by these practices in three distinct areas, screening, deportation, and detention.

A. Discriminatory Screening Practices

The procedure of screening unaccompanied minors at the border is outlined in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).²² The TVPRA aims to protect foreign nationals who are victims of trafficking or violence and flee to the U.S. Although the TVPRA seeks to protect unaccompanied children, it also imposes discriminatory screening policies.²³ Under this law, Central American children apprehended at the border are transferred to the Office of Refugee Resettlement (ORR), where they receive shelter and await their immigration hearing.²⁴ In contrast, the law deprives Mexican minors of getting these same rights. Instead, when Border Patrol agents apprehend Mexican children entering the U.S., they screen them on the spot and have 48 hours to get them out of Border Patrol Custody.²⁵ Within that timeframe the TVPRA states that agents must ascertain three things before deporting a Mexican child: (1) they aren't victims of trafficking, (2) they don't have a credible fear of returning home, (3) they are able and willing to voluntarily return to Mexico.²⁶ If the answer to any of those points is unclear, the child must be transferred to ORR and into

²² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 (2008).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

the same process as all other unaccompanied children. Though this system may seem fair on paper it is discriminatory in practice. A UNHCR evaluation of U.S. Customs and Border Protection's screening of unaccompanied Mexican children asserted that there was a bias against recognizing their need for protection and noted that these children are almost always returned to Mexico, with many Border Patrol agents under the impression that Mexican children are automatically deported.²⁷ In 2013, only 4.5 percent of the over 17,000 Mexican children apprehended by Border Patrol were transferred to ORR custody.²⁸

This current scheme is discriminatory and ineffective. Authority to screen Mexican children should be transferred to ORR or another agency equipped to deal with trauma and vulnerable children. Border Patrol's primary goal is to stop the illicit flow of goods and people into the country, they are not equipped to deal with children who have just completed harrowing journeys and are already exhausted and confused. The screeners do not know how to ask about abuse or trafficking and most interviews are conducted in a public environment that children find threatening. Under these conditions it is unsurprising that Mexican children never have a chance to tell their stories and seek protection.

²⁷ UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), available at http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

²⁸ UNHCR, *Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border* (June 2014), available at http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf.

B. Deportation

The screening process conducted by Border Patrol also results in many children with viable asylum claims to be deported.²⁹ In fulfilling obligations under the Convention on the Rights of the Child, states shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.³⁰ Although the U.S. is not a party to the Convention on the Rights of the Child, it is widely accepted that the prohibition of forcible return is part of customary international law.³¹ Additionally, the U.S. must respect the non-refoulement obligations codified in the 1951 Refugee Convention and the Convention Against Torture.³²

Unaccompanied minors from Mexico and Central America are fleeing brutal violence and have substantial fear of returning home. A UNHCR report found an alarming toll of young Central American males who are attacked, killed, or simply disappear after being deported from the United States.³³ Through proper investigation techniques, age and gender appropriate environments, and therapeutic training immigration officials will be able to ascertain candid statements from child migrants. These statements must be taken seriously if they indicate a credible fear of return and these children must not be deported.

²⁹ American Immigration Lawyers Association, *Case Examples of Families in Detention and Subject to Rapid Deportation* (September 22, 2014), available at <http://www.aila.org/infonet/family-detention-case-examples>.

³⁰ U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 27, 39th Sess., May 17–June 3, 2005, CRC/GC/2005/6 (Sept. 1, 2005).

³¹ UNHCR, *Refugee Protection: A Guide to International Refugee Law* (2001), available at http://www.ipu.org/pdf/publications/refugee_en.pdf.

³² U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 26, 39th Sess., May 17–June 3, 2005, CRC/GC/2005/6 (Sept. 1, 2005).

³³ UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), available at http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

Deportations of unaccompanied child migrants have also increased due to the policy of fast tracked proceedings or rocket dockets.³⁴ These expedited removal proceedings have immense due process implications. Children are being given as little as three days notice of their court hearing date, severely limiting their ability to find an attorney; immigration courts have also been granting extremely short continuances, as little as one week, to find an attorney.³⁵ This is especially troubling as so many unaccompanied children may qualify for asylum or other immigration protections that often require the skills of a practiced immigration attorney. Navigating deportation proceedings without an attorney is almost impossible; children who are not represented by an attorney are ordered deported over 75% of the time.³⁶ Although migrants do not have the right to appointed counsel, U.S. courts of appeals have repeatedly recognized that individuals facing deportation should be afforded sufficient time to locate and hire an attorney.³⁷ Because of the surge of unaccompanied children migrants, immigration legal nonprofits are at capacity and do not have the ability to take on new cases at such an accelerated pace.³⁸ These rocket dockets severely impact children's due process rights and their ability to defend against deportation.

³⁴ Julia Edwards, *U.S. to Put Child Migrants on Fast Track in Deportation Hearings: Official*, Reuters (July 8, 2014), available at <http://www.reuters.com/article/2014/07/08/us-usa-immigration-justice-idUSKBN0FD2A220140708>.

³⁵ Sarah Bronstein, *Update on Unaccompanied Children and Families*, Catholic Legal Immigration Network, Inc. (August 2014), available at <https://cliniclegal.org/resources/articles-clinic/update-unaccompanied-children-and-families-august-2014>.

³⁶ Jayashri Srikantiah, *The Immigration Rocket Docket: Understanding the Due Process Implications*, Stanford Lawyer (August 15, 2014), available at <https://stanfordlawyer.law.stanford.edu/2014/08/the-immigration-rocket-docket-understanding-the-due-process-implications/>.

³⁷ *Id.*

³⁸ *Id.*

C. Detention

After their initial screening at the border, many unaccompanied minors are transferred to detention centers or holding cells in violation of international and domestic standards. Children detained by Border Patrol have reported that these detention centers violate their most basic human rights.³⁹ The ACLU Border Litigation Project and several other immigrant and human rights organizations have filed a complaint with DHS in response to the conditions in detention centers.⁴⁰ The complaint outlines a number of abuses including denying medical care to children as young as five-months-old, refusing to provide diapers for infants, confiscating and not returning legal documents and personal belongings, making racially charged insults and death threats, and strip searching and shackling children in three point restraints during transport.⁴¹

Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.⁴² Unaccompanied children in detention are subject to brutal conditions including but not limited to, freezing concrete rooms with constant artificial light, lack of adequate food, sleep deprivation, and no contact with family or legal services. Unaccompanied children are also often detained much longer than the 72-hour limit set by U.S. guidelines.⁴³ Unaccompanied children should never be put in detention centers. Instead, children should be screened within the

³⁹ ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention* (June 11, 2014), available at <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 61, 39th Sess., May 17–June 3, 2005, CRC/GC/2005/6 (Sept. 1, 2005).

⁴³ El Pilkington, *Migrant Children Endure Border Patrol Ice Boxes*, *The Guardian* (January 26, 2015), available at <http://www.theguardian.com/us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes>.

72-hour time limit and then released to the custody of a family member or sponsor to await possible immigration hearings.

III. Conclusion

Central American and Mexican children fleeing violence and poverty are entering the United States in astonishing numbers. These children are forced to migrate from their countries of origin to escape gang violence and economic stagnation. Children who are apprehended at the U.S. border are then subject to human rights violations through discriminatory screening practices, unnecessary detention, and expedited deportation.

IV. Recommendations

To better invest in the rights of the child, Human Rights Advocates urges states in both sending and receiving countries to:

1. Transfer the screening of unaccompanied children from Border Patrol to an agency with expertise in child welfare.
2. Develop proper screening protocols to ensure that interviews are conducted in private non-threatening environments.
3. Provide children with access to legal representation and time to prepare their immigration claims.
4. Protect children in their countries of origin by abolishing the culture of impunity for gang violence and implementing independent and impartial judicial mechanisms.