

COMMUNITY RECEPTION AND PLACEMENT



**Model for
Unaccompanied Migrant
Children in Mexico**

**International
Detention Coalition**

Human rights for detained refugees,
asylum seekers and migrants

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asylum seekers and migrants

The **International Detention Coalition** (IDC) is a unique global network of over 300 civil society organizations and individuals in more than 70 countries that advocate for, research and provide direct services to refugees, asylum seekers and migrants affected by immigration detention.

Coalition members are supported by the IDC Secretariat office, located in Melbourne, Australia, and regional staff based in Berlin, Germany; London, United Kingdom; Geneva, Switzerland; Mexico City, Mexico and Kuala Lumpur, Malaysia.

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INTRODUCTION

What is the Model?

The Community Reception and Placement Model for Unaccompanied Migrant Children in Mexico (hereinafter, 'the Model') works to ensure that the use of detention is avoided for migrant, asylum seeker and refugee children and adolescents who are traveling without their parents or guardians (unaccompanied children). The Model provides a framework that authorities and other decision-makers can draw upon in order to develop and implement mechanisms that enable effective care and case management for unaccompanied children, preserving at all times the best interests of the child and their right to liberty.

The Model outlines specific proposals regarding: screening criteria and referral mechanisms for unaccompanied children; how to identify and respond to protection needs; and collaboration among public and private institutions and civil society organizations so that children can be placed in the community, ensuring the protection and guarantee of their rights during decision-making processes, in accordance with their best interests.¹

The Model was created following a study on immigration detention and alternatives to detention in Mexico, which was conducted by the International Detention Coalition (IDC).² The study identified areas of opportunity for the development and implementation of alternatives to detention for unaccompanied migrant children.

Alternatives to detention are "any law, policy or practice by which persons are not detained for reasons relating to their migration status."³ These persons should have freedom of movement while their migration situation is being resolved or while they await deportation or removal from the country.

¹ The term 'best interests' broadly describes the wellbeing of a child. As each case is unique, a general definition of what is in the best interests of the child cannot be given. Therefore, the 'best interests' of the child need to be examined on an individual basis, taking into account the specific features of each case. (United Nations High Commissioner for Refugees [UNHCR]. "Best Interests of the Child." Children - Protection and Care Information Sheet, June 2007. Available at <http://www.unhcr.org/4d944fc29.pdf>

² Coria Marquez, E. and G. Bonnici, *Dignity without Exception: Alternatives to Immigration Detention in Mexico* (Melbourne: International Detention Coalition, 2013). Available at www.idcoalition.org

³ R. Sampson, V. Chew, G. Mitchell and L. Bowring, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Revised), (Melbourne: International Detention Coalition, 2015). Available at www.idcoalition.org

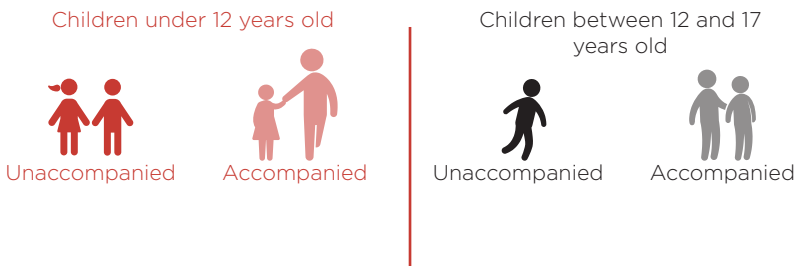
Why was the Model created?

Each year, thousands of children and adolescents leave their countries and enter Mexican territory. Whether at home or during their journey through Mexico, they often face situations in which they are especially vulnerable and have specific protection needs. Many are fleeing from violence or persecution and are at risk of or have already fallen victim to kidnapping, trafficking, domestic violence or labor exploitation. Others are in need of special care due to pregnancy or chronic physical or psychological conditions, among other situations. Regardless, if these children are apprehended by the National Institute for Migration (Instituto Nacional de Migration, or INM) and are found to be undocumented, they are placed in immigration detention centers known as migration stations (*estaciones migratorias*).

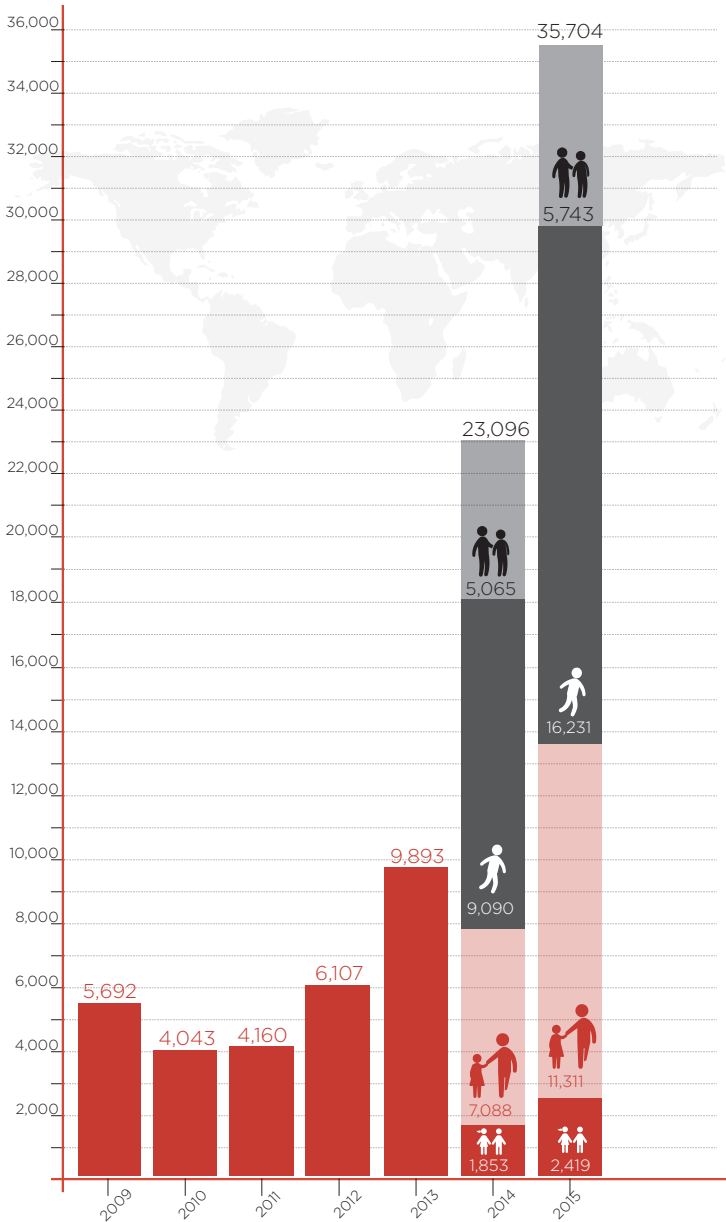
Since 2012, the number of children and adolescents detained in Mexico's migration stations has increased annually.

	2009	2010	2011	2012	2013	2014	2015
Total	5,692	4,043	4,160	6,107	9,893	23,096	35,704
12 to 17 years old	4,829	3,204	3,320	4,955	7,955	14,155	21,974
Accompanied	*	*	*	*	*	5,065	5,743
Unaccompanied	*	*	*	*	*	9,090	16,231
Under 12 years old	863	839	840	1,152	1,898	8,941	13,730
Accompanied	741	664	635	946	1,607	7,088	11,311
Unaccompanied	122	175	205	206	291	1,853	2,419

*Information and statistics not available



Children and adolescents held in immigration detention in Mexico, by year⁴



⁴ Secretaría de Gobernación. Mexico (2016). Boletines Estadísticos (2009-2015). Retrieved from http://www.gobernacion.gob.mx/es_mx/SEGOB/Boletines_Estadisticos

Detaining children for immigration purposes, combined with the fact they are unaccompanied makes them even more vulnerable. It prevents adequate case management and care, and inhibits fair decision-making regarding whether or not they are to remain in the country, according to their best interests.

Based on the principles of *pro homine* (whereby a law must be interpreted in the manner most advantageous to the person), non-discrimination and the best interests of the child—all of which are recognized in Mexico's Constitution—the referral of unaccompanied migrant children established in the Migration Law is a measure to prevent their detention for immigration purposes. On such referral, the law requires that the country's family welfare agency (known as DIF: Desarrollo Integral de la Familia) provide specialized care to these children in conditions that allow for their contact and interaction with the community. Additionally, the recent General Child's Rights Law and corresponding Regulations effectively prohibit the deprivation of liberty of all children in immigration detention centers.⁵ In order to respond effectively to the complex situations of unaccompanied migrant children, it is necessary to develop strategies and actions that allow for processes to determine the best interests of the child to take place without harming or interfering with the child's rights.

What does the Model include?

The Model is a local application of the Child-Sensitive Community Assessment and Placement (CCAP) Model, which is based on the principles of non-discrimination, participation, and best interests of the child, as well as the basic right of survival and child development, in the migration context.⁶

As such, the Model includes the five components of CCAP—1. Prevention; 2. Assessment and Referral; 3. Management and Processing; 4. Reviewing and Safeguarding; and 5. Case Resolution—all of which were adapted to Mexico's institutional, social and legal context, as well as to the specific situations faced by unaccompanied children in the country. Based on each component, the Model describes necessary actions in order to develop and implement alter-

⁵ See Article 111 of the Regulations for the General Child Rights Law (Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes, 2015). Note: Throughout this text, some references to the General Child Rights Law and Regulations were not included in the original version of the Model in Spanish, due to the fact that said Regulations were emitted after the Model's publication.

⁶ Corlett, D., Mitchell, G., Van Hove, J., Bowring, L. and K. Wright. *Captured Childhood*, (Melbourne: International Detention Coalition, 2012). Available at www.idcoalition.org

natives to immigration detention for unaccompanied children and adolescents in Mexico. It is important to note that the term 'child', used in its various forms throughout this document, refers to all persons under the age of 18, without discrimination of any kind.

ROLES NEEDED FOR CHILD RIGHTS PROTECTION

The designation of a case manager, guardian, and legal representative are essential in order to ensure that unaccompanied children's rights are protected throughout the entire decision-making process, based on the child's best interests, and until their case is resolved.

Case Manager

The case manager provides support and guidance to the child, beginning with an initial assessment and until all decisions are adopted and carried out, in accordance with the child's best interests.

The case manager's primary responsibilities are to:

- a) Identify the child's protection needs and specific vulnerabilities, from the moment the child is identified and throughout the decision-making process;
- b) Evaluate and manage appropriate placement in the community, based on risk and vulnerability assessments and the individual needs of each case;
- c) Promote informed decision-making both by the child as well as by appropriate authorities;
- d) Manage and ensure access to support networks and services for medical, psychological, psychiatric, educational, legal, housing and nutrition needs, etc.; and
- e) Develop and nurture trust in the various processes and promote effective case administration and resolution with the appropriate authorities.

While case management is an essential function, it does not necessarily need to be performed by a single person, official or department. For example, in the case of the DIF or family welfare system, the staff person that receives the child and conducts an initial assessment (see section on Initial Needs and Risk Assessment) can

be considered a case manager. Then, if the child is placed in a DIF shelter or another public care facility or home, DIF would continue to serve as the case manager, though not necessarily with the same staff person who conducted the initial assessment.

Similarly, when civil society organizations provide housing or alternative care programs for unaccompanied children, case management responsibilities would fall to the organization's staff (see section on Community Placement).

Guardian

The role of the legal guardian can be performed by the Attorney General for Child Rights (Procuraduría Federal de Protección de Niñas, Niños y Adolescentes) or by its state equivalents, as necessary. Responsibilities within this role include representing the rights and interests of unaccompanied children during all judicial and administrative procedures, as per the legal figure 'supplemental guardianship' (*representación en suplencia*).⁷

Regardless of the type of community placement (for example, a public children's home or private alternative care program), these protection offices would continue to be responsible for protecting and ensuring the child's rights during the entire time needed to determine their best interests, or until the child becomes of age (18-years-old).

Legal guardianship includes the adoption of rights protection mechanisms in order to:

- a) Advocate for and represent the rights and interests of the child during administrative or legal processes related to rights protection or restitution; for example, international protection requests, best interests determination, durable solutions, etc.;
- b) Ensure that all adopted measures and decisions are in accordance with the best interests of the child and guarantee full protection of their rights;
- c) Confirm that the child fully understands their rights and responsibilities, as well as the processes in which they are involved, and all measures or decisions taken;
- d) Supervise and ensure that the child's opinion and point of view are taken into account during the adoption and implementation of all decisions and protection measures;

⁷ Articles 4.XXIII and 92.VIII of the General Child Rights Law (Ley General de los Derechos de Niñas, Niños y Adolescentes, 2014).

- e) Ensure that the child's needs are met in a timely and effective manner by those responsible for providing care and support;
- f) Protect the child's rights to personal liberty and freedom of movement from being unnecessarily restricted;
- g) Confirm that the chosen community placement option is the most appropriate for the individual case; and
- h) Ensure access to effective legal assistance or judicial representation during all proceedings.

The appropriate staff at the child protection offices should establish and maintain communication with the child and with the institutions providing services to the child in order to: contribute to ongoing processes, understand the conditions and circumstances under which the child is received and cared for, listen to the child's questions or uncertainties, and supervise the appropriateness of the child's placement in the community, etc.

Legal Representative

The legal representative is a lawyer who provides unaccompanied children with legal orientation, assistance or representation regarding any administrative or judicial procedures in which the child is involved, including: age determination, determination of the best interests of the child, asylum seeker or refugee recognition, and any protection measure that is adopted based on the child's best interests.

The legal representative's primary responsibilities are to:

- a) Provide orientation to the child regarding general aspects of legal proceedings, rights, responsibilities, and complaint mechanisms, defense claims or other available resources and defense measures. Such orientation could be personalized from the beginning or provided in a group-setting;
- b) Address and explore different available legal options with the child, responding to their individual circumstances. This requires coordination and communication with the case manager and guardian; and
- c) Legally represent the child in taking legal actions regarding measures or decisions that affect their rights or interests (see section on Reviewing and Safeguarding).

All legal services should be provided free of charge to unaccompanied migrant children. These services can be provided by other actors as well, for example: by the guardian, in cases where there is no conflict of interest; by the child rights protection offices (under the

legal figure *representación en coadyuvancia* or third-party/assisted guardianship)⁸; by the attorney general; by law clinics; by pro-bono lawyer bar associations; by alternative care programs; or by civil society organizations that provide free legal services.

1. PREVENTION

The first component of the Model is prevention against detention. This includes legislation, policy and practice that prohibit the detention of children for migration purposes. Currently, Mexico's Migration Law (Ley de Migración, 2011) and Child Rights Law (Ley General de los Derechos de Niñas, Niños y Adolescentes, 2014), together with its corresponding Regulations (Reglamento de la Ley General de los Derechos de Niñas, Niños y Adolescentes, 2015), serve this purpose.

Article 112 of the Migration Law prevents unaccompanied children from being detained in immigration detention centers by establishing that from the moment they are presented before migration authorities, they should only remain under the responsibility of those authorities until they are referred to the family welfare system (DIF).⁹

Referral to DIF should occur immediately. In accordance with the principle of the best interests of the child, and the principles of *pro homine*, and non-discrimination based on one's national origin or migration situation, the referral to DIF does not authorize the child's deprivation of liberty for migration purposes, and as such prohibits it.

The Migration Law also recognizes unaccompanied children's right to obtain a temporary migration status until decisions based on their best interests can be made; and in that sense, the right to obtain regular migration status based on recognition of refugee status or for other humanitarian reasons.

The General Child Rights Law works to reinforce the protection of unaccompanied migrant, asylum seeker and refugee children's rights. First, it requires that the newly created attorney general and child rights protection offices safeguard unaccompanied children's rights and carry out any necessary action in order to protect and reinstate those rights. This includes protecting unaccompanied

⁸ Article 4.XXI of the General Child Rights Law (Ley General de los Derechos de Niñas, Niños y Adolescentes, 2014).

⁹ Article 112, fraction V, paragraph II of the Migration Law (Ley de Migración, 2011).

children from being deprived of their liberty for migration purposes and ensuring their wellbeing. Similarly, the child rights protection offices are charged with assuming supplemental legal representation (*representación en suplencia*), essentially taking on certain responsibilities of the guardian and possibly of the legal representative in cases where the child is without their parent or guardian and faces administrative or judicial proceedings in the country.

2. ASSESSMENT AND REFERRAL

Assessment and referral begins with the child's first contact with authorities and ends just hours later with the child's referral to the most appropriate alternative care option. This referral ensures the child's freedom and placement in the community as their case is being reviewed and during decision-making processes to protect their rights, in accordance with their best interests.

From this first moment of contact, authorities should presume that any person who appears or claims to be a child, is in effect, a child. As such, authorities must implement the mechanisms designed to protect the child's wellbeing, rights and interests.

Such protection mechanisms include those related to: age determination; whether the child is unaccompanied, separated from or accompanied by their parent(s) or guardian(s); assigning and making contact with a case manager who is specialized in conducting an initial needs and risk assessment; assigning and making contact with a guardian and legal representative; and referral of the child to the most appropriate community setting (non-detention).

Child's Contact with Authorities

A child's first contact with authorities may occur in two ways: one, through interaction with migration authorities (INM) during immigration revisions or verification checks; or two, through interaction with non-migration authorities.

Interaction with migration authorities during immigration revisions

According to the Migration Law, migration officers (those belonging to the INM) are the only officials who are authorized to review or verify a person's migration situation and bring them before the INM to be held in immigration detention centers.

All persons who, during an immigration revision or verification, are presumed to be unaccompanied children or adolescents must be treated as such and presented before the INM for their **immediate referral to DIF** (the family welfare system).

It is important to note that presentation before the INM as required by the Migration Law should only be formal in nature. It is never desirable that children be physically taken to immigration detention centers, as established by the principle of the best interests of the child. Instead, unaccompanied children may be transferred from the place where first contact with the migration officer was made, directly to a DIF facility.¹⁰

During this first moment of contact, the actions of INM's Child Protection Officers (Oficial de Protección a la Infancia, or OPI) should strive to:

- a) Safeguard the physical and emotional integrity of the child;
- b) Presume that the person is indeed an unaccompanied child or adolescent, from the moment of their interception, and record information regarding the child's identity, age, and travel situation, as observed and/or expressed;
- c) Manage referral logistics and accompany the child to the DIF facility after their interception or after they were taken briefly to the detention center;
- d) Provide information to the child regarding immediate actions to be taken, including those related to their transfer or referral (DIF facility and INM); and
- e) Inform immigration authorities of the interception, identification, and referral of the child, as appropriate.

As soon as the unaccompanied child physically arrives at a DIF facility, or failing that, at the immigration detention center, DIF staff should provide immediate attention and also immediately inform the attorney general or appropriate child rights protection office. If the child or adolescent is physically taken to an immigration detention center, the National Commission of Human Rights and state human rights commissions should also be alerted immediately in order to aid in protecting the child's rights.

¹⁰ Should this option be adopted as a formal mechanism, once the child's identity, age and travel situation (unaccompanied, separated or accompanied) are determined by an initial interview, the child should be formally referred from the INM to DIF. In cases in which there remains serious doubt regarding a person's age, formal referral may take place once it has been determined definitively that the person is indeed an unaccompanied child. In this case, the best interests determination would be the responsibility of the corresponding child rights protection office or DIF facility.

Interaction with other authorities

It is also important to highlight that because of the diverse situations faced by migrant children in Mexico, it is not uncommon that their first contact with authorities may not include migration officers. Rather, they may first come into contact with other government authorities, such as those that deal with civil justice or provide public or community services. This often occurs with children and adolescents who have been living in the country and require medical attention, are migrant workers, or have become victims of crime, violence or abuse, in any of its many forms.

In such cases, it is the authorities' responsibility and obligation, whether at the local, municipal or federal level, to ensure, protect and restore the rights of these children and adolescents. The guiding principle for all actions and decisions taken by authorities should be that they are dealing with unaccompanied children, regardless of their nationality or migration situation.

Similarly, unaccompanied children and adolescents that come before the INM to apply for a regular migration status,¹¹ or before the Mexican Refugee Commission (Comisión Mexicana de Ayuda a Refugiados, or COMAR) in order to request international protection, are protected from immigration detention by law.

In all cases of unaccompanied children, primary actions taken by the various competent authorities in order to protect children's rights should include: 1) Providing the same treatment and rights protection afforded all children who lack parental care and whose health or wellbeing is at risk; 2) Avoiding and rejecting all actions that may put the child's personal liberty at risk or limit the full enjoyment of their rights based on their nationality or presumed irregular migration situation; 3) Notifying and referring children to specialized child rights protection and care programs, such as the attorney general, child rights protection offices and appropriate DIF systems; and requesting the appointment of a guardian and legal representative.

Local, municipal and federal authorities that come into contact with children in any of the above situations are responsible for ensuring that these children are not held in immigration detention centers or deprived of their liberty based on their nationality or irregular migration situation. All authorities are also responsible for adopting the necessary measures in order to ensure and protect children and adolescents' rights, including those related to their migration situation.

¹¹ See, for example, Article 135 of the Migration Law (Ley de Migración, 2011).

Initial Needs and Risks Assessment

Within the first 36 hours of the arrival of the unaccompanied child to the DIF facility or otherwise to the detention center, necessary measures must be taken in order to assign a guardian, legal representative and DIF or other case manager.

At this time, the primary actions of the DIF official or case manager are to: ensure that the child has been informed about their situation and understands the process before them (INM should participate here), guarantee the child receives adequate attention to meet their needs and protect their rights, and refer the child to the most appropriate community environment or alternative care program for their immediate placement, or if placement has already been determined, verify that it is in the appropriate conditions.

In order to do this, the DIF official or case manager must interview the child in order to make an initial assessment. This initial assessment provides the outline for a series of immediate actions to be taken to protect the child's rights. These actions include selecting the most appropriate community placement option according to the child's vulnerabilities, protection needs, life experiences, age, gender, etc.

The initial assessment includes:

- a) Informing the child about their situation and procedures to take place;
- b) Interviewing the child in order to collect information that permits preliminary assessment of their best interests and allows their opinion to be heard and taken into account;
- c) Assessing preliminary risks;
- d) Maintaining communication and coordinating actions with the guardian; and
- e) Taking into account the opinions of the relative consulate or of COMAR, depending on the case.

The main objectives of the initial assessment are to:¹²

- a) Confirm the child's identity: name, age, nationality and travel situation (accompanied, separated or unaccompanied);
- b) Collect information about the child's family situation, the reasons for migrating or being alone in the country, the amount of time spent in the country, and their experiences in the country;
- c) Define immediate needs related to food, shelter, hygiene and medical and psychological care, etc.;

¹² This is made possible by Article 172 and 173 of the Regulations of the Migration Law (Reglamento de la Ley de Migración, 2012).

- d) Identify possible protection needs or specific or complex vulnerable situations, such as if the child: has a chronic physical or psychological condition, lives irregularly in Mexico, is a migrant worker, is a victim of crime or domestic violence, has had their life, liberty or safety threatened, whether in their country of origin or in Mexico, in addition to any other risk or vulnerability presented; and
- e) Identify available resources, as well as the child's needs, experiences, strengths and weaknesses for their placement in a community environment that is safe and secure.

If, based on the initial interview with the child:

- a) **There is serious doubt based on objective grounds regarding the child's age or travel situation**, child protection officers (OPI) or INM legal staff who have been trained to conduct such assessments may be called upon to assist in determining the child's age or travel situation. The legal representative and guardian support unaccompanied children throughout this entire process (possibly as the supplemental legal representative or *representante en suplencia*). Consular officials may also collaborate in this process, provided the child has been informed about and given their consent for consular assistance.
- b) **International protection needs are identified, or the child expresses need for or requests asylum**, the refugee commission (COMAR) must be notified, provided the child has been informed and given their consent. Migration authorities may also be notified in order to conduct proper follow-up, as needed.
- c) **Particular vulnerabilities or special protection needs are identified by the interviewer or expressed by the child**, the consulate of the child's country of origin will be notified, provided the child has been informed and given their consent to do so.

In all cases, the child should be referred to the most appropriate community placement option for their specific situation, where their individual needs can be met during the time it takes to collect the necessary information or until final decisions can be reached based on the child's best interests.

Based on the child's specific vulnerabilities and needs identified, a preliminary risks assessment may also be incorporated into the initial interview, in order to identify:

- a) Risks to the child's physical, psychological or emotional safety that may be present in the child's community or social environment (for example, threats or potential retaliation from a member of the local community); and

- b) Risks that impede or affect protection of the child's rights during best interests determination and/or during processing of an international protection claim or other ongoing procedures.

The preliminary risk evaluation provides initial information that can be used to select supervision measures for the unaccompanied child, if necessary, to be implemented in the community, at the alternative care program or facility that best meets the child's needs and provides for their safety during best interests determination.

Any supervision or risk mitigation measure that affects the child's freedom of movement must be proved to be necessary and appropriate for the specific case. The previously identified safety risks provide elements with which to select the most appropriate placement option, evaluating institutional and community capacity to respond to identified risks without depriving the child of their freedom.

Some elements to consider during such evaluation, not only in the initial risk assessment but also periodically, include:

- a) Risks to the child's physical, psychological or emotional safety that may be present in the community;
- b) The child's maturity and life experiences;
- c) The child's understanding of the nature of ongoing processes and procedures, including their commitment and interest in following them, and their understanding of potential safety risks involved; and
- d) Social networks, family or other people in the country that can support the child in the community during best interests determination.

Community Placement

The initial assessment works to identify and select the community placement option and reception conditions that best respond to the child's needs and ensure their rights are protected.

Once the assessment is complete, the case manager refers the child to the most appropriate community placement option or alternative care program and adopts the necessary measures to allow for the child's contact with the community while their protection needs are defined and/or legal procedures to determine their best interests are carried out.

Children and adolescents should not be placed in public or private shelters when other placement options are available that ensure

the child is cared for and has their rights protected while living in the community. Community placement options for children and adolescents can include either:

- a) Direct Placement: Community placement that allows the child to live independently, semi-independently, or under the care of family members or other trusted individuals, etc.; or
- b) Indirect Placement: Alternative care programs or group living arrangements, whether public, private or subsidiary in nature. These temporary placement facilities should be open or semi-open,¹³ and should avoid becoming places where a child is deprived of their personal liberty based on their nationality or migration situation.

The following should be considered in determining placement options or conditions:

- a) The child or adolescent's opinion;
- b) The child or adolescent's age, gender, ethnic and cultural origin, and life experiences;
- c) The preliminary risk assessment;
- d) Opinions from the consulate of the child's country of origin, or from COMAR, as necessary for each case;
- e) Alternative options for temporary placement in public and private institutions, as proposed by the INM;¹⁴
- f) The guardian's opinion; and
- g) Opinions from other actors involved in protecting the child's rights, according to the specific circumstances of each individual case.

In both direct and indirect placement options, unaccompanied children and adolescents should be assigned and supported by:

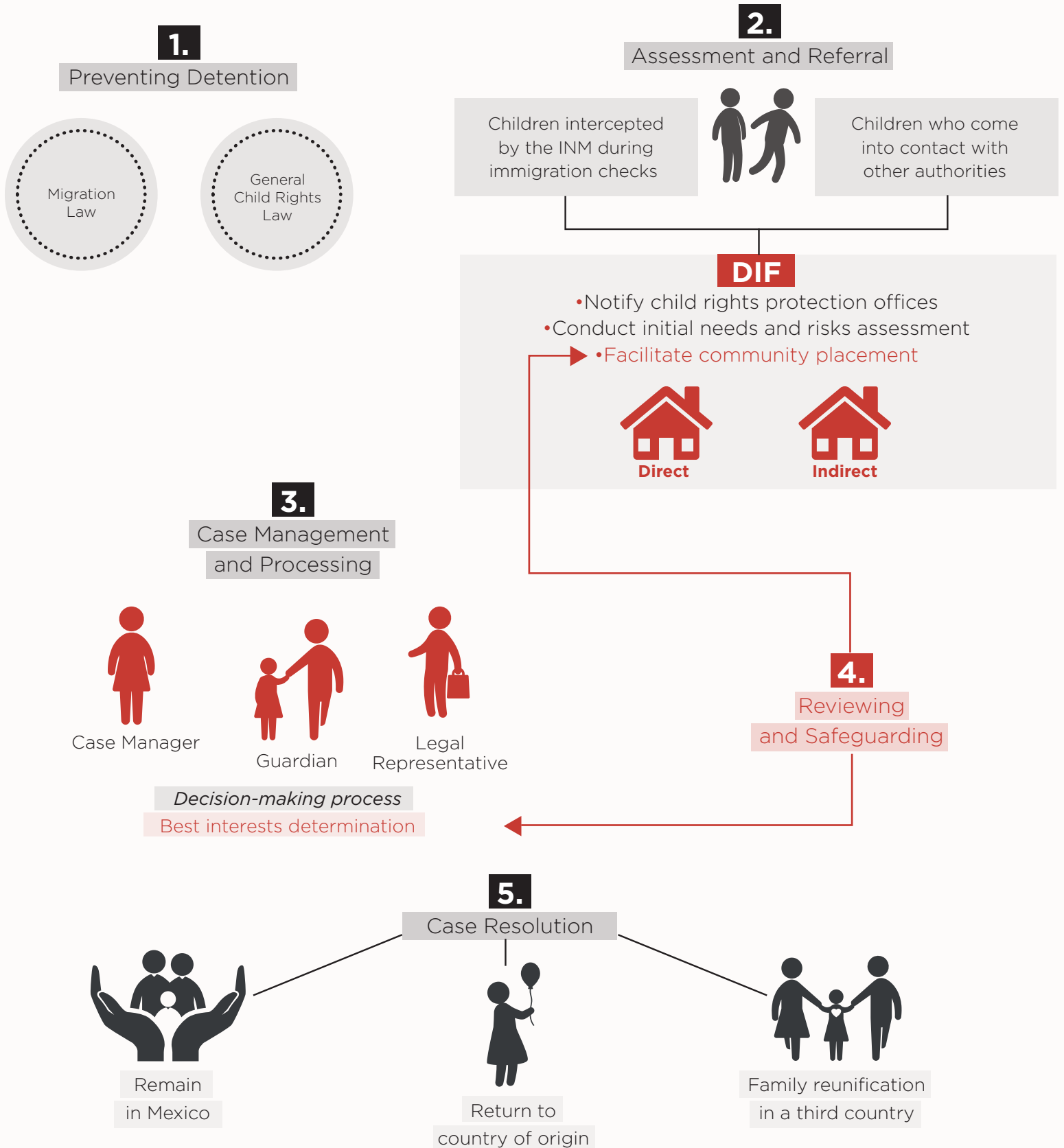
- a) A **guardian** who legally represents the child's interests, guarantees that the child is able to access and exercise their rights in the community, and periodically supervises that the child's needs are being adequately met (this role may be filled by the child rights attorney general and protection offices);
- b) A **case manager** who conducts follow-up, facilitates and supports access to basic services and monitors community conditions to ensure the child's healthy development: health, education, clothing, food, housing, legal assistance, etc. (this role may

¹³ Open places refer to those in which the large majority of a child's activities take place outside of the alternative care home or placement facility; and semi-open places refer to those in which some of the child's activities take place outside of the placement facility.

¹⁴ See Article 173, fraction V of the Migration Law Regulations (Reglamento de la Ley de Migración, 2012).

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- be filled by DIF, private institutions, or civil society organizations);
- c) A legal representative who provides legal assistance and support during administrative or judicial processes (including those related to the child's migration situation, family reunification, or return to their country of origin). This support is independent of any legal assistance provided by the consulate.

3. CASE MANAGEMENT AND PROCESSING

Case management and processing is a strategy to guarantee children's rights while at the same time managing community resources and services until solutions based on the child's best interests can be determined and adopted.

The majority of case management occurs once the child or adolescent is referred to the community placement option most appropriate for their care needs and rights protection.

Once the child is referred to the appropriate community placement option, case management actions are focused on supporting the child, and involve an individualized, flexible, and strengths-based model of care that protects their rights.¹⁵

The purpose of case management is to support, prepare and guide unaccompanied children and adolescents in the community, for the entire time needed to complete decision-making processes and actions based on their best interests, which will determine their stay in the country, family reunification in a third country, or return to their country of origin.

During case management, the child's options and durable solutions are carefully explored, their protection needs are assessed, and their best interests are determined, based on their individual circumstances.

After reviewing the initial assessment,¹⁶ the case manager may establish safety or security measures or supervising conditions where the child has been placed, should they be needed.

¹⁵ International Detention Coalition, *Case Management as an Alternative to Immigration Detention: The Australian Experience*, (Melbourne: International Detention Coalition, 2009) p. 4. Available at www.idcoalition.org

¹⁶ The case manager is not necessarily the same official or institution that conducted the initial assessment and decided the child's placement in the community.

The assigned case manager will meet with the child or adolescent to conduct a follow-up assessment focused on medium-term care. Here, the case manager seeks to:

- a) **Promote informed decision-making:** Ensure that the child understands their migration situation and process, as well as the legal, administrative and judicial options available to them; provide relevant information to authorities to inform decision-making; and ensure the child's understanding of the same.
- b) **Advocate for the child's wellbeing:** Facilitate access to community services and support networks, and to other assistance to meet special needs. The case worker will notify the guardian of any vulnerabilities or situations that arise that may put the child at risk or alter care or rights protection received (for example, if the child abandons or declines the housing, placement, education or medical services).
- c) **Build trust in the decision-making process based on the child's best interests:** Keep the child informed about the evaluation and analysis of their case and resolve any questions or concerns.
- d) **Participate in the best interests determination:** Provide the guardian with elements and information to be used in determining the child's best interests and participate in deliberation and decision-making processes.¹⁷

Determining the Best Interests of the Child

The United Nations Committee on the Rights of the Child asserts that the principle of the best interests of the child should be a primary consideration in all actions or decisions that concern children and adolescents. The Committee also states that decisions taken should be those that best satisfy the child's best interests and protect their rights and that decision-making process should include due process guarantees and an evaluation of the possible impact (positive or negative) the decisions may have on the child.¹⁸

It is recommended that an inter-institutional or multi-disciplinary member group conduct the best interests determination. The group could be chaired by the Child Rights Attorney General or child protection offices (Procuraduría) or family welfare system (DIF) and include both permanent participation and participation

¹⁷ Corlett, et al., *Captured Childhood*, p. 77.

¹⁸ United Nations Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, paragraph. 6. Available at <http://www.refworld.org/docid/51a84b5e4.html>

by special invitation from government actors, civil society members and representatives of international organizations such as the United Nations Children's Fund (UNICEF) and the United Nations High Commissioner for Refugees (UNHCR).

The criteria established in Article 177 of the Migration Law Regulations (2012) can be used as a starting point for determining the best interests of the child.¹⁹ However, other elements and criteria set forth in international human rights and child rights standards should also be included, such as: the child's level of integration or adaptation to the country, socio-economic conditions, family situation, education, and physical and psychological health, among others.

4. REVIEWING AND SAFEGUARDING

Review of the child's placement in the community is a constant process, as is review of the legal protection mechanisms in place to ensure fulfillment of the child's rights and interests.

There are two key moments in which revision should occur:

- 1) **After the initial assessment when the child is first placed in the community:** The case manager and guardian, along with the child, should re-examine the community placement option to ensure that it is appropriate for the individual case. If the placement option is inappropriate, a different type of community placement (direct or indirect), housing or alternative care model should be identified and adopted.

The appropriateness of the child's placement in the community should be reviewed and evaluated periodically in order to verify that the care and rights protection measures in place continue to effectively respond to the child's individual needs and situation.

- 2) **At the end of the decision-making process:** The decisions reached and actions planned as a result of the best interests determination may imply changes to or affect placement decisions in the short-, medium- and long-term.

¹⁹ The fourth paragraph of Article 177 establishes that: The best interests determination of an unaccompanied migrant child or adolescent will take into account, but will not be limited to the following: I. Whether family reunification may imply rights violations; II. Whether the child has requested asylum or is a possible victim or witness of a crime where their rights may be violated; and III. Any additional factor or situation considered by authorities to be relevant in order to ensure the child's protection and wellbeing.

When the best interests determination results in a decision to return the child to their country of origin, the case manager, together with the child, should evaluate the possible need to change the child's placement in the community or move the child to a different housing facility, all of which should be communicated to the guardian for approval.

At all times, unaccompanied children and adolescents have the right to oppose and file legal defense mechanisms against decisions related to their placement in the community, and decisions adopted under the framework of best interests determination. The legal representative should support the child in filing judicial or administrative defense mechanisms.

5. CASE RESOLUTION

Case resolution consists of the final, durable solutions that are adopted in accordance with the child's best interest, and the actions required to carry out those decisions.

In cases in which durable solutions imply that:

The child will remain in the country under the State's protection, the child may continue to live in the original alternative care program or placement option or they may change to a different placement option or physical space (this is a possible outcome for migrant children who are able to stay in the country and obtain regular migration status for humanitarian reasons, because they are determined to be refugees, or receive complementary protection, or because they have family ties in the country, etc.).

The case manager, with approval from the guardian, should evaluate the care and placement conditions in order to determine which will best satisfy the child's interests, wellbeing and development in the long-term.

The INM should work with the case manager and legal representative in order to issue the proper migration documentation, as a matter of priority. The INM should also work with COMAR in the case that the child has been granted complementary protection or refugee status.

Once the child becomes of age, or there is some other reason that justifies ending the care and protection provided, the child should continue to be supervised by the guardian and should receive regular support from the case manager in order to defend and ensure

rights access and protection (health, migration documentation, clothing, education, etc.).

The child will be returned to their country of origin, the guardian and case manager, in collaboration with the INM and with the assistance of the Child Protection Officers (OPI) will carry out the necessary actions for the child's return. Returns must be carried out in accordance with State agreements related to the return of unaccompanied children.

The child will be reunited with family in a third country, support from the Foreign Ministry will be requested, as well as from COMAR, depending on the case, with actions carried out in accordance to relevant established agreements.

*The Model is available at: www.idcoalition.org

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