

# GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

## End Child Detention Scorecard

# Mexico

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



## FINAL SCORE

# 36

The Mexican Government has a legal framework that prohibits the immigration detention of all children and adolescents, with policy that provides for appropriate care.

However, in 2017 more than 18,000 children and adolescents were detained. There are no effective processes for determining the best interests of the child, there are very few supports to ensure access to rights, and there is no mechanism for children and adolescents to participate in the decision-making process during their migration or asylum procedure. The capacity of the child protection systems need to be strengthened, particularly in terms of budgets and training of staff.

Despite these significant challenges, Mexico has seen some successful initiatives between government and civil society that provide a basis to improve Mexico's score.

	Mexico	Possible
Treaties	20	20
National laws	9	10
Processing	3	26
Placement	1	12
Rights	5	20
Oversight	5	12
<b>Sub Total</b>	<b>43</b>	<b>100</b>
Points off	-12	-15
Bonus points	+5	+15

### Treaties 20/20

Mexico has ratified all six Conventions and Protocols that assist in the protection of children in the context of migration.

**Recommendation:** The Government of Mexico is commended on this achievement. The Government is encouraged to work in collaboration with civil society to review the current application of the treaties, respond to international recommendations and ensure effective implementation.

## National laws 9/10

The Mexican legal framework prohibits children and adolescents from being placed in immigration detention, however it does not explicitly prohibit the detention of their parents or caregivers. Further, there is a lack of legislative harmonisation given that the Migration Law continues to allow for children and adolescents to be detained in “exceptional” circumstances, such as when appropriate placement options are not available. In practice, the exception has become the rule and, despite the explicit prohibition, the majority of children and adolescents continue to be detained.

**Recommendation:** The Government of Mexico is commended on their law to prohibit children and adolescents from immigration detention. It is recommended that the legislative branch approve the necessary reforms to harmonize of the Migration Law and the Law on Refugees, Complementary Protection and Political Asylum with the General Law on the Rights of Girls, Boys and Adolescents, based on the opinion approved by the Senate (LXIII Legislature) and the minutes to the Chamber of Deputies. In addition, the harmonization process must be holistic, ensuring application to all relevant administrative provisions.

## Processing 3/26

Identifying children and adolescents in the context of migration is a significant gap in Mexico, in both policy and practice. Protocols require that the Procurator Offices for the Protection of Children and Adolescents be notified of children in detention, and there are guidelines for the restitution of their rights. However, these are very rarely applied in practice, with the vast majority of children and adolescents remaining in detention before being returned to their countries of origin, without an adequate evaluation of their particular case or possible protection needs. In some cases, children and adolescents who apply for refugee status have the opportunity to leave detention centers, but only after spending weeks, or even months, in detention.

The General Law on the Rights of Children and Adolescents establishes a procedure to evaluate and determine the best interests of children in charge of the Protection Offices. However, the law is not implemented in a systematic and individualised manner. There is no independent guardian assigned to the immigration authority that is responsible for protecting the best interests of unaccompanied or separated children and adolescents. The migration authority frequently makes decisions about the child or adolescent without waiting for the best interests determination of the relevant authorities on child rights, which should be paramount in this situation.

In most cases, children and adolescents do not have any documentation to protect them from being detained while awaiting the resolution of their immigration or asylum procedure. There have been some cases where children have been placed into shelters without their own documents or documentation of the status of their case. In cases where the authorities have granted temporary stay, it has been reported that there have not been adequate processes to provide the children with the appropriate documentation. In any case the documentation often does not facilitate access to education, health services or other fundamental rights. Children and adolescents also do not have access to legal advice, case management or interpretation and translation services. When these services exist, they are mainly provided by civil society organizations, generally without financial support from the Mexican Government.

**Recommendation:** The Mexican Government should review, harmonize and improve the application of current protocols and guidelines for the identification and care of children and adolescents in the context of migration. It is recommended that the Mexican Government guarantees free legal advice, case management and a guardian and interpreter when necessary. The Mexican Government should identify current positive practices and collaborate with civil society organisations, legal clinics, public institutions and other stakeholders, through formal partnerships involving financial support. It is also recommended that the Mexican Government guarantee the effective implementation of the procedures established in the General Law on the Rights of Girls, Boys and Adolescents, as well as develop formal operating guidelines for the evaluation and determination of the best interests of the child, and ensure the effective role of multidisciplinary teams. In addition, it should provide training of personnel and allocation of necessary resources to ensure the sustainability of the Procurator Offices for the Protection of Children and Adolescents at the municipal, state and federal levels.

## Placement 1/12

In general, the Mexican Government only considers placement options in the community setting for children and their family members who are seeking asylum. These placement options are limited and almost always include conditions and restrictions on liberty.

While applying for asylum, some families have the opportunity to leave detention centers through the alternatives to detention program which is implemented jointly by the Government, UNHCR and civil society. The implementation of the alternatives program relies on civil society shelters. All families are detained until the application is formally acknowledged, which can take more than a month. Upon being freed from detention, families are placed in shelters with conditions that require them to stay in a single geographical area and to appear periodically before the authorities. These conditions are implemented without evaluating whether they are necessary in each individual case.

In general, families who do not apply for asylum are detained. Detention centres do not have spaces for families, so in general families are separated. Young children are usually allowed to remain with mothers, but adolescents are usually separated from parents.

Contrary to Mexico's legal framework, the majority of children and adolescents are either detained or remain in closed centres that compromise their right to liberty. This is due in part to the lack of specialised agencies and places in the System for Integral Development for the Family. Some unaccompanied children and adolescents, especially asylum seekers, have been referred to civil society organizations for support. However, in order to enable these referrals to take place, some shelters have become redesigned as extensions of detention, restricting the liberty and compromising the rights of the children and adolescents.

**Recommendation:** The Mexican Government should expand and strengthen community reception options, as well as explore and consider all housing and fostering options available. It is further recommended that the Mexican Government prioritises the placement of children and adolescents in the community setting, without conditions or restrictions on liberty. Before applying any condition, there should be an adequate evaluation of its necessity and proportionality in the individual case.

## Rights 5/20

A child or adolescent's physical location and access to the support of civil society organisations has a significant impact on their access to rights. Although access to education and health services, among other rights, is established in the regulatory framework regardless of migration status, in practice children and adolescents have limited access to these rights. The lack of a Single Population Registration Code or other documentation is a significant barrier preventing children and adolescents from being able to access their rights.

**Recommendation:** The Government of Mexico is encouraged to improve children and adolescents' access to rights in the context of migration. The Government is encouraged to allocate and prioritise public resources necessary to create and strengthen alternatives to detention.

## Oversight 5/12

Mexico has no automatic and independent review mechanism of immigration detention. The National Human Rights Commission has been designated as the National Mechanism for the Prevention of Torture and Ill-treatment, but it has not achieved detailed, systematic and regular monitoring of places and conditions of detention, in part because immigration detention is not recognised as deprivation of liberty. Civil society organisations are not permitted access to immigration detention for monitoring purposes, but various organisations deliver services to detained or formerly detained migrants, through which they have been able to document the functioning of the centres. The Government of Mexico can be congratulated improvements in the conditions of detention; however, due process and access to justice continue to be violated and even to deteriorate.

The Government is to be congratulated for the regular publication of statistics on the use of immigration detention, with disaggregated data on age, sex and migration status, among others although it could be improved by indicating incidences where people have been detained multiple times, length of detention and the ages of adult detainees. In addition, the Government does not provide statistics to evaluate the effectiveness of alternatives to detention for children and adolescents, family groups or adults.

**Recommendation:** The Government of Mexico is recommended to conduct systematic monitoring of detention and publish the results. The National Human Rights Commission, within the framework of its designation as a National Mechanism for the Prevention of Torture and Ill-treatment, should undertake systematic monitoring and use its capacity to pursue complaints, as well as publishing its findings and making recommendations. In addition, it is recommended that civil society organisations be granted access to perform independent monitoring of detention centers. The Mexican Government is commended for publishing data on immigration detention, and the Government is encouraged to collect and publish data on the implementation of alternatives to detention.

## Points off -12/-15

Despite being forbidden in the Mexican legal framework, 2017 saw more than 18,000 children and adolescents detained in Mexico because of their migration status. In general, children and adolescents are immediately detained and returned within 3 to 7 days to their countries of origin, although in some cases they can be detained for months. These children and adolescents rarely have an evaluation of their particular case or any identification of their protection needs. The children and adolescents who apply for asylum spend weeks or months in detention before being released and placed in the community setting, often with restrictions on their freedom or free movement.

**Recommendation:** The Mexican Government must urgently prevent the immigration detention of children and adolescents in law, policy and practice, as well as strengthen the work of the Mexican Commission for Refugee Aid and the Child Protection Offices of Children and Adolescents to guarantee access to international protection, representation during the asylum procedure and to uphold the rights of children and adolescents. The System for the Protection of Children and Adolescents should be strengthened in order to promote norms and policies that address the needs of children and adolescents and guarantee their rights in an effective and timely manner.

## Bonus points +5/+15

The Mexican Government has committed to ending immigration detention of children and adolescents. However, it has been severely criticized for not implementing practices to enable this commitment can be honored. Although small-scale efforts have been made to explore the use of alternatives to detention for asylum-seekers, they have not become systematic practices. These efforts include a pilot for 20 unaccompanied children and adolescents, implemented in 2015 by the Government and two civil society organizations with specialist knowledge in alternative care, SOS Children's Villages and Casa Alianza, with the coordination and technical support of the International Detention Coalition. In 2016, pilot projects were carried out independently for families and adults requesting refugee status, which are now programs implemented by the National Institute of Migration and the Mexican Commission for Refugee Aid in collaboration with shelters and civil society organizations, and with the support of UNHCR.

Despite the many lessons learned and positive results of these initiatives, the Mexican Government has not implemented alternatives to detention in a systematic and coordinated way. Moreover, the implementation and strengthening of current alternatives has been left almost entirely under the direction of civil society and international organizations - public resources need to be urgently invested in order to ensure sustainability.

**Recommendation:** It is recommended that the Mexican Government should expand alternatives to detention, based on positive practices and lessons learned from past and current initiatives. The Government should provide the Procurator Offices for the Protection of Children and Adolescents, the System for the Integral

Development of the Family, and civil society organizations with the resources, information and coordination necessary to develop in a sustainable manner their work to protect the right to liberty of children and adolescents.

This scorecard has been assessed by the Mexico NextGen Committee which includes:

- Aldeas Infantiles SOS México
- Asylum Access México
- Coalición Internacional contra la Detención (IDC)
- Instituto para las Mujeres en la Migración
- Red por los Derechos de la Infancia en México (REDIM)
- Sin Fronteras IAP

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:  
[media@endchilddetention.org](mailto:media@endchilddetention.org)

# Additional Resources & Information

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## Treaties & National Laws

- Camara dos Deputados: [Decreto No 50.215](#)
- Republic of Brazil
  - [Decreto No 99.710](#)
  - [Decreto No 58.819](#)
  - [Decreto No 592](#)
  - [Decreto No 591](#)
  - [Decreto No 6.085](#)
  - [Federal Constitution](#)
- The Statute of the Child and Adolescent: [Decreto No 8.069](#)
- Migration Law: [Decreto No 13.445](#)
- EBC: [Entenda o que diz a lei sobre infratores menores de 18 anos](#)

## Directives & Services

- ACNUR Brasil: [Booklet for Asylum Seekers in Brazil](#)
- EBC: [Burocracia dificulta atendimento a crianças refugiadas desacompanhadas](#)

## Community Integration & Support

- Sao Paulo Portal de Governo
  - [Casa de Passagem Terra Nova orienta refugiados na busca por emprego](#)
  - [Secretaria de Desenvolvimento Social: Migrantes/Refugiados](#)
- Estadão Internacional: [Exercito preparara abrigo para refugiados](#)
- TAB: [Refugiados no Brasil](#)
- [Right Of Refugees To Social Assistance In Brazil](#)
- ACNUR Brasil: [Coletanea de Instrumentos de Protecao Nacional e Internacional de Refugiados e Apatridas](#)

## Infrastructure & Oversight

- First Secretary of Brazil to the UN Leonardo Abrantes: [Speech, Third Thematic Session on Safe, Orderly and Regular Migration in Geneva 2017](#)