CROSSING THE BORDER ALONE

Catholic Responses to Unaccompanied Children Migrating to the United States

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Recognizing that children require special protections, the Center for the Human Rights of Children pursues an agenda of interdisciplinary research, education, and service to address critical and complex issues affecting children and youth, both locally and globally. The Center applies a human-rights approach to the problems affecting children, reaffirming the principle of the indivisibility of human rights and the importance of promoting economic, social, cultural, civil, and political rights of children. Moreover, it does so with respect for the rights and responsibilities of parents, teachers, and other caregivers entrusted with raising children.

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# TABLE OF CONTENTS

**THE REAL “HUMANITARIAN EMERGENCY”**  
Current Contexts of Unaccompanied Migrant Children 4

**CHILDREN’S RIGHTS VIOLATIONS**  
Definitions and Details 7

**CROSSING THE BORDER ALONE**  
Vulnerabilities Children Face Legally 9

**A CATHOLIC CALL TO RESPONSIBILITY**  
Critiques of Unjust Immigration Structures 11

**SOLIDARITY IN ACTION**  
Resources for Getting Involved 14

**WORKS CITED** 15
Ernesto was only 16 when he began his journey alone to the United States. He knew it would be dangerous. He knew that many others had died striving for a chance at a better life. But he still made the decision to leave Honduras to try and cross the U.S./Mexico border, all by himself (Terrio, 2015).

What makes a young person decide to embark on such a dangerous journey? Often the search to find the “American dream” becomes a nightmare, particularly for persons under the age of 18. Many are fleeing gang violence, domestic abuse, and destitution. Boys, girls, and even those who do not fit the gender binary are vulnerable to sexual exploitation and human trafficking. Many are trying to reunite with family members they haven’t seen in years. Some are as young as 6 years old; most are between 16 and 18. However, all qualify for minor status, and should be guaranteed increased protection under U.S. law.

Using a children’s rights framework that correlates with Catholic responses to unaccompanied children, this booklet outlines why we have to attend to and care for the lives of children crossing the U.S. border. It aims to address the special protections that unaccompanied children crossing borders deserve, though are frequently denied, from a legal and ethical perspective.

Unaccompanied children face the same hardships as other migrants. They navigate militarized borders, endure brutal weather conditions, and face a legal system designed to detain and “deter” immigrants, leading to structural denial of their human rights. Throughout their journey, they encounter many different people – smugglers, border patrol agents, employers – that see them as an exploitable commodity instead of human beings worthy of dignity and respect (Heyer, 2012). Unaccompanied children are not only vulnerable while traveling. Portrayed as either helpless victims or illegal criminals, unaccompanied children are also legally vulnerable, since the

“I mean, you just can’t care about the odds or you wouldn’t do it. You know that 40 percent will die because they get killed or kidnapped. How did I decide? It was the American dream...”

ERNESTO, 16, HONDURASUS
government acts simultaneously as legal guardian and law enforcer. (Heidbrink, 2014).

Large numbers of children at State borders worldwide have raised concern for the ways that governments treat unaccompanied minors. Catholic institutions, universities, and individuals have advocated for policy changes that affect unaccompanied children, heeding the biblical command to “welcome the stranger” and care for those

In 2014, Customs and Border Patrol apprehended over 68,000 unaccompanied children at the U.S./Mexico border.

- CUSTOMS AND BORDER PATROL

who are most vulnerable within society. In the summer of 2014, Pope Francis gave a speech in Mexico, calling attention to the “humanitarian emergency” of so many
unaccompanied children and asking the international community to welcome and protect them as they arrive at the border. Speaking on behalf of the Catholic Church, he also called for policy reform that would promote development in the countries of origin while making immigration safe and legal. As the United States Conference of Catholic Bishops said, “the lives of migrant children do not somehow fall outside the Church’s commitment to protect and nurture life at all its stages,” (USCCB, 2014).

While numbers of unaccompanied children decreased in 2015 to about 40,000, this was largely due to U.S. funding that further militarized Mexico’s southern border. As of April 2016, already 33,000 unaccompanied children have been apprehended (Customs and Border Patrol, 2016).

Unaccompanied children need to be acknowledged as vulnerable, yet active agents. They are decision makers in need of particular care and should not be treated as mini-adults or unaccounted units within family migration statistics (Heidbrink, 2014).

Who Counts as an Unaccompanied Child?
In 2005, The United Nations Committee on the Rights of the Child met to specifically address the treatment of unaccompanied minors outside of their country of origin. The document defines an unaccompanied child as:

- **Someone who is under 18 years old**
- Has been **separated** from both their parents and/or other relatives
- And are **not being cared for by an adult** who is legally or customarily responsible for them

Not everyone who is identified as being “unaccompanied” actually is such. Sometimes children will report their status as “unaccompanied” in order to protect undocumented family members. However, once a child is deemed “unaccompanied,” the legal rights of the parents are taken away, and thus the child is put into legal custody of the State.

Where Are the Children Coming From?
In 2014, the majority of children coming to the U.S./Mexico border were coming from the countries that make up the “Northern Triangle” of Central America – Guatemala, Honduras, and El Salvador. Children were also coming from Mexico, though it is important to note that Mexico is a receiving country for many Central American migrants as well as a sending country. However, unaccompanied children from all over the world are increasingly entering the U.S. from this border, highlighting the global scope of the issue.

Why Are Children Migrating Alone?
There are many reasons that such a large number of children are fleeing their home countries. Recent studies show a complex confluence of factors including:

- The desire to reunite with family members already living in the United States
- Increased **gang violence** in Central America and Mexico
- **Poverty** and unemployment
- **Domestic abuse** and/or **gender-based violence**
- Ineffective (or non-existent) **State intervention** that leaves children vulnerable (Center for Gender and Refugee Studies, 2015)
Adopted by the United Nations General Assembly in 1989, the Convention on the Rights of The Child (CRC) was a document specifically created to protect children's particular rights.

Some articles that directly relate to unaccompanied children include:

- **Article 2: The right to non-discrimination**
  A child cannot be discriminated based on country of origin, race, gender, religion, socio-economic status, etc.

- **Article 3: Best Interests of the Child**
  Decisions that affect children must be made with the child's best interest in mind (including policy, budgets, and laws).

- **Article 4: Protection of Rights**
  Governments have a responsibility to protect children's rights.

- **Article 5: Parental Guidance**
  Parents are supposed to be protected by governments so that they can raise their children.

- **Article 6: Survival and Development**
  Children have a right to live and healthily develop.

- **Article 9: Separation from Parents**
  Children have a right to live with their parents, unless it is unsafe for them to do so.

- **Article 10: Family Reunification**
  If family members live in different countries, families should be free to move between those countries so that they can stay in contact/reunite.

- **Article 11: Respect for the View of the Child**
  Children have the right to express their views and be heard.

- **Article 16: Right to Privacy**
  Children have a right to privacy and should be protected from attacks on their family or home.

- **Article 19: Protection from Violence**
  Children have the right to be protected from violence in all its forms – physical or psychological.

- **Article 20: Right to Special Care**
  If children cannot be looked after by their families, they have a right to special care that respects their cultural, religion, and language.

- **Article 21: Refugee Status**
  Children who have been forced to leave home have the right to refugee status and special protection.

- **Article 28: Right to Education**
  Children have a right to receive at least primary education in a school setting that respects their dignity.

- **Article 32: Child Labor**
  Governments must protect children from dangerous, harmful, or exploitative work that may impede their education.

Though ratified by 196 countries worldwide, the Convention on the Rights of the Child has not been ratified by the United States. Though ratified by 196 countries worldwide, the Convention on the Rights of the Child has not been ratified by the United States. Though ratified by 196 countries worldwide, the Convention on the Rights of the Child has not been ratified by the United States. Though ratified by 196 countries worldwide, the Convention on the Rights of the Child has not been ratified by the United States.
• **Article 34: Sexual Exploitation**
Children have the right to be protected from sexual exploitation (and other forms of exploitation, i.e. Article 36)

• **Article 35: Child Trafficking**
The government must do as much as possible to protect children from being kidnapped, sold, or trafficked

• **Article 37: Detention and Punishment**
Children who break the law should not be imprisoned with adults or treated cruelly. They have a right to contact with their families while detained.

• **Article 40: Juvenile Justice**
Children should be acknowledged as minors, provided with legal counsel, and fairly treated in the justice system

**Children’s Vulnerabilities**
Vulnerability for children is defined by the absence or violation of the rights spelled out in the Convention on the Rights of the Child (Heidbrink, 2014). Certainly, many of these rights are violated in the cases of unaccompanied children, making them extremely vulnerable.

It is an outright embarrassment that the United States is the only country that has not ratified the CRC. This makes it difficult to hold the U.S. legal systems accountable for violations of children’s human rights. However, the CRC has been looked to as a standard for legislation, and particularly Article 3 (the “best interest of the child”) has been used as a guide for reforming the legal systems.
Vulnerabilities Children Face Legally
Though fleeing difficulties in their country of origin, the hardships do not stop for unaccompanied children when they arrive at the border. As mentioned above, children are deserving of extra protection due to their minor status. Often these protections have been ignored within the U.S. legal system, causing children to endure the already unjust conditions that adult migrants face.

The legal system is complex, full of acronyms, and slowly evolving due to lawsuits and activists demanding internal reform. For example, since children were being detained for extended periods of time with convicted criminals and non-related adults, legal reforms such as the Flores Settlement Agreement (1997) redefined protocol for the apprehension, detention, and release of children. Now, unaccompanied children awaiting legal hearing are put in the “least restrictive setting” that is more (but not fully) conducive to children’s rights.

Mexican youth are increasingly vulnerable to trafficking and exploitation along the U.S./Mexico border. The Contiguous Territories Agreement dictates that a minor from Canada, the United States, or Mexico can be deported to their home country within 72 hours without necessitating a legal hearing (Heidbrink, 2014). Because of this agreement, Mexican children were identified as being vulnerable to trafficking and exploitation, since smugglers could use them to cross the border, knowing they would be returned if caught. Thus, one of the reasons the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008 was implemented was to protect Mexican children from this “revolving door” of exploitation (Terrio, 2015).

Another important policy change happened in 2003. The custody of unaccompanied children was transferred to the Office of Refugee Resettlement (ORR). It was considered a conflict of interest for Immigration and Customs Enforcement (ICE) to be caring for unaccompanied
children while simultaneously prosecuting them for unauthorized immigration. However, there is still some ambiguity regarding the relationship and information sharing that happens between ICE and ORR (Heidbrink, 2014).

Why is it Important to Screen Unaccompanied Minors?
Once apprehended, the Department of Homeland Security (DHS) is responsible for screening children to determine their age, country of origin, and (unaccompanied) status. If the child does meet the definition of being an “unaccompanied alien child” (UAC), then ICE is responsible for transferring the child to a special facility that meets the “least restrictive setting” standard within 72 hours (Women’s Refugee Commission, 2015).

The UNHCR did a study that highlighted the importance of this screening process, finding that 58% of the 404 children they interviewed coming from Mexico, Honduras, El Salvador, and Guatemala had a potential or actual need for international protection (UNHCR, 2014).

Though this screening process is incredibly important for identifying unaccompanied children and asylum claims, recent policies implemented by the U.S. put children at risk.

For example, in 2015, Georgetown Law Human Rights Institute studied the impacts of a U.S. funded project aimed at militarizing Mexico’s southern border in order to “stem the tide” of migrants entering the U.S. The number of unaccompanied children entering the U.S. significantly decreased between 2014 and 2015, though this is not representative of the numbers of children who attempt to leave their home countries. Human rights violations abound at the Mexico border, meaning that children are not properly screened for their age/status/claims for asylum, experiencing long stretches of detention, and often denied access to legal counsel. Mexico has ratified the Convention on the Rights of the Child; however, both the United States and Mexico are guilty of the same violations of children’s rights.
From the outside, it may seem strange that Catholic institutions are addressing legal policies and human rights violations from a faith perspective. However, already in 1963, Pope John XXIII re-envisioned the Church’s relationship to the State with the document *Pacem in Terris*. The encyclical highlights the importance of human rights and the role the Church could play in critiquing oppressive structures in the modern world. This is one reason why the Pope, the Conferences of Catholic Bishops, both in Mexico and the United States, and Jesuit Universities have engaged issues of immigration from a particularly Catholic perspective. Although the approaches differ in either opting for reform of the legal system or the abolishment of immigrant detention, they all argue from the perspective of Catholic social teaching, which upholds the dignity of the human person.

In 2014, The United States Conference of Catholic Bishops (USCCB) specifically outlined how Catholic social teaching gave the context of their response to unaccompanied children. One can easily see how the principles of human dignity, the inherently social nature of the human person, and the preferential option of and for the poor and vulnerable correlate with a children’s rights framework:

**Human Dignity**

One of the main tenets of Catholic social teaching is that all life is sacred. Upholding the dignity of the human person, who is endowed with intelligence and free will, should be the “foundation of a moral vision for society (USCCB, 2014).” Often times, the term “pro-life” is used when discussing abortion and end of life decisions, but the Catholic Church has a commitment to nurturing life at all stages. Thus, to protect the human dignity and lives of unaccompanied children, the USCCB specifically addressed the pressing legal issues that face unaccompanied children, such as the right to due process and proper screening to “ensure that they will be given the help necessary to ensure their well-being (USCCB, 2014).”

**Social Nature of the Human Person**

Though human dignity focuses mostly on the individual, Catholic social teaching depicts human beings as “not only sacred but also social (USCCB, 2014).” Connections with other people are essential to well being, and unaccompanied children frequently attempt to reunite with family members already living in the United States.

Family reunification is one of the main points that Catholic immigration
campaigns have focused on, and indeed, much immigration policy tears families apart. Interestingly, the USCCB is also a contracted non-profit organization that is working with unaccompanied minors after they have reunited with family members. The transition can be difficult for children and/or adolescents who are used to getting by without guardians. The USCCB therefore calls for more funding to support children as they adjust to living with family members, attending school, and integrating into a new culture after a traumatizing journey (Center for Migration Studies, 2016).

Unlocking Human Dignity: Dismantling the Immigrant Detention System
In 2015, The USCCB, along with Migration and Refugee Services and the Center for Migration Studies, released the document “Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System.” The document is prophetic in its insistence to “dismantle the current legal and physical detention infrastructure,” calling the immigrant detention system inhumane, illegal, and expensive (USCCB, 2015). This document draws attention to a major funding problem. The daily cost of one detention bed in 2013 was $158 per night, whereas alternative programs through non-profit organizations cost a fraction of this; furthermore, the Immigration Court system, which should facilitate prompt hearings and thereby reduce detention costs, receives only 1/60 of the overall funding that goes to Customs Border Patrol and Immigration and Customs Enforcement. The result of this under-funding is that though technically, minors are not supposed to spend more than 72 hours in detention, children are often stuck for a longer period awaiting legal hearings in inhumane and overpriced conditions.

The document calls for community-based Alternatives to Detention (ATDs). These programs would honor the social nature and dignity of human beings. Instead of isolated, criminalizing treatment in holding facilities, children awaiting trial could be supported by communities in a truly “least restrictive setting.”

Preferential Option of and for the Poor and Vulnerable
Because unaccompanied children are among the most vulnerable out of the already vulnerable migrant population, the preferential option of and for the poor certainly pertains to them. “In a society marred by deepening divisions between rich and poor, our tradition recalls the story of the Last Judgment – ‘For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me’ – and instructs us to put the needs of the poor and vulnerable first (MT 25:35).” The Gospels call to stand with people on the margins of society grounds Catholic action.
Jesuit Universities

Jesuit Refugee Service/USA surveyed 13 Jesuit universities and found cohesive policy recommendations coming from legal clinics, research groups, and other initiatives happening on Jesuit campuses. They have advocated for:

- Guaranteed legal representation for minors
- Increased funding for legal representation
- An end to expediting processes for unaccompanied children and families
- Legal recognition of gang-based asylum claims
- Reform of the U.S. detention system

Concluding Thoughts: Historical Responsibility

Catholic responses and human rights frameworks have addressed the need for development in countries of origin, the violence in Central America and the rampant corruption of governments, legal rights to due process, and the desperate need for the ratification of children’s rights in the United States.

However, much of this has ignored the bigger historical and political picture of U.S./Latin American relations, and how the border is a sight where “the Third World grates against the first and bleeds” (Anzaldúa, 3). The issue of unaccompanied children is not an isolated event, much like poverty, corruption, organized crime, and systematic denial of legal access are not new or separate phenomena.

Ta-Nehisi Coates reminds us that “there exists, all around us, an apparatus urging us to accept American innocence at face value and not to inquire too much. And it is so easy to look away, to live with the fruits of our history and to ignore the great evil done in all of our names (Coates, 8-9,2015).” One must not forget that children usually cross borders at times of or in the aftermath of social, political, or economic crises. Respecting the rights of children crossing the U.S. border is not only a humanitarian responsibility and a moral and legal obligation – it is also the demonstration of accountability for the US history in Mexico and Central America.

Immigration Court only receives 1/60th of the funding that goes to Customs Border Patrol and Immigration and Customs Enforcement.

– USCCB, 2015
Clearly, there is lots of work to be done if unaccompanied children are to be respected and protected. Whether you are called to work with the legal system or organize in your church community, there are lots of opportunities to get involved:

- **Join the Justice for Immigrants Action Network**
  The Justice for Immigrants Action Network is an online community that aims to educate communities, in particular Catholic ones, about the importance of immigration reform and how it relates to Catholic social teaching. Join this site to find more information on immigration and receive updates on campaigns and actions nationwide.

- **Become a Child Advocate through the Young Center for Immigrant Children’s Rights**
  The Young Center is training bilingual volunteers to be legal advocates for unaccompanied children in Chicago, IL, New York, NY, Harlingen, TX, Houston, TX, and Washington, D.C. Contact the Young Center if you feel called to walk alongside a child navigating the complexities of the legal system.

- **Volunteer with the CARA Family Detention Pro Bono Project**
  CARA is a coalition of Catholic institutions and lawyers associations that have come together to stand against unjust family detention facilities, most recently in Dilley, Texas. If you are a attorney, law student, or paralegal with interest in asylum work, reach out to CARA.

- **Organize within a Network of Parishes through Catholics and Immigrants:**
  This program led by the Chicago Archdiocese trains laypeople who are migrants to be leaders in their own communities. Contact Catholics and Immigrants if you are interested in empowering undocumented parishioners to educate their communities about their rights to dignity and family unity.

- **Donate to Jesuit Refugee Services:**
  Jesuit Refugee Services’ goal is to accompany, serve, and advocate for refugees in over 45 countries. While providing emergency relief and access to education, JRS also advocates for just and generous policy reforms.
  [http://jrsusa.org/](http://jrsusa.org/)

- **Keep updated through the Center for Human Rights of Children:**
  Look for events and updates focused on children’s human rights from this center located at Loyola University Chicago.
  [http://www.luc.edu/chrc/](http://www.luc.edu/chrc/)


