

NOT SAFE ANYWHERE:

HAITIANS ON THE MOVE NEED URGENT INTERNATIONAL PROTECTION

As the political and economic situation continues to deteriorate in Haiti facilitating massive human rights violations, kidnappings, and generalized violence, tens of thousands of Haitians are moving across the Americas in search of safety. But states across the region are failing to provide it. This briefing illustrates that countries are limiting access to international protection and failing to shield Haitians from a range of human rights violations in host countries, including detention and unlawful pushbacks, extortion, anti-black racism, abuses including gender-based violence by armed groups, and destitution. States urgently need to provide Haitians with protection measures including asylum and other routes to legal residency so they can re-build their lives in safety.

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1. INTRODUCTION

Over the last year, the political and economic situation has continued to deteriorate in Haiti, facilitating massive human rights violations, kidnappings, and generalized violence.

At the same time, tens thousands of Haitians have travelled overland, often from Chile and Brazil, along dangerous routes, including through the Darien Gap, a remote road-less stretch of jungle between Panama and Colombia, to reach Mexico and the United States in a continued search for safety and stability.¹

Amnesty International began to monitor the situation of Haitians on the move in September. In October, a team of Amnesty International (AI) and Haitian Bridge Alliance (HBA) researchers visited Tapachula, southern Mexico, where the majority of asylum claims in Mexico are processed,² and where tens of thousands of Haitians are currently stuck in limbo awaiting the processing of their asylum claims.

The International Organization for Migration (IOM) reported that, in the period between 19 September and 19 October 2021, countries across the region returned some 10,800 Haitians back to Haiti, 16.5% of those children.³ The majority of those were returned by the US, sometimes using excessive force in the process, as seen on the US-Mexico border in September, when US border authorities on horseback abused Haitians⁴ before deporting them. US Title 42 expulsions have further exacerbated this problem, as raised by multiple civil society organizations.⁵ Mexico has also continued deportation flights to Haiti⁶ and pushbacks to Guatemala.⁷ According to the IOM, deported Haitians face “dire” conditions,⁸ including widespread gang violence, devastation following a recent earthquake, and risk for COVID-19 in a country where vaccination rates are reportedly around 0.5%.⁹ Representatives of an NGO in Haiti told Amnesty

¹ According to the IOM, Between January and October 2021, an estimated 100,000 migrants crossed the Darien Gap, of which 62 per cent were Haitians (up from 23 per cent in 2020) and an estimated average of 800 to 1,000 migrants are crossing every day, moving north to join the approximately 20,000 to 25,000 Haitians currently in transit in Mexico. See IOM, Crisis Response Plan, Large Movements of highly vulnerable migrants in the Americas from the Caribbean, Latin America and other regions, 8 October 2021, Page 1. https://reliefweb.int/sites/reliefweb.int/files/resources/Large%20Movements%20of%20Highly%20Vulnerable%20Migrants%20in%20the%20Americas_IOM%20Response%20Plan.pdf

² Gobierno de Mexico, Datos de cierre de septiembre 2021, https://www.gob.mx/cms/uploads/attachment/file/671382/Cierre_Septiembre-2021__1-October-2021_.pdf

³ IOM, Situational Report, Returns of Migrants and Reception Assistance in Haiti, 19 September to 19 October 2021, No. , https://reliefweb.int/sites/reliefweb.int/files/resources/sitrep_1_-_reception_of_returnees_haiti_-_19_sept_to_19_oct_2021_2.pdf

⁴ Amnesty International, USA: Stop U.S. abuses against Haitian people (AMR 51/4773/2021), www.amnesty.org/en/documents/amr51/4773/2021/en/

⁵ Doubling Down on Deterrence: Access to Asylum under Biden, September 2021, www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence_-_Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf

⁶ Although Mexican authorities refer to these flights as “voluntary assisted return,” Amnesty International chose to not use this terminology, since previous and recent research reveals that INM fails to adequately inform people detained in migratory detention facilities about their rights and even pressures them to discourage them to apply for asylum. See Gobierno de Mexico, Reinician vuelos de retorno humanitario a Haití, 29 September 2021, www.gob.mx/sre/prensa/reinician-vuelos-de-retorno-humanitario-a-haiti-283934?idiom=es

⁷ Civil society organizations on the southern border have documented that these returns often happen at night, and as such there are no clear numbers of the pushbacks. OSC's lanzan campaña #ProtecciónNoContención para exigir al gobierno de México proteger a las personas migrantes, <https://imumi.org/2021/10/25/osc-lanzan-campana-proteccionnocontencion-para-exigir-algobierno-de-mexico-proteger-a-las-personas-migrantes/>

⁸ UN, Haiti: ‘Dire’ situation awaits thousands of migrants forced to return from Americas, 30 September 2021, <https://news.un.org/en/audio/2021/09/1101812>

⁹ Reuters, Covid-19 Tracker, <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/haiti/>

International that many people deported from the US arrived back in Haiti handcuffed, hungry and disorientated.¹⁰

Under international and regional human rights law, states cannot remove people from “their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations,” which is the principle of non-refoulement.¹¹ Additionally, people who meet the definition of a refugee have additional protections against refoulement. While the 1951 UN Refugee Convention provides a clear definition of who a refugee is and obligations that states must abide by, including the prohibition against returning people to places where their “life or freedom would be threatened”,¹² or “to any other place”¹³ where the person has a “well-founded fear of persecution” based on five grounds, the regional instrument, The Cartagena Declaration, provides for an expanded definition of who should be provided with refugee protection. Under the UN Refugee Convention people qualify for protection for under refugee status “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.”¹⁴ The Cartagena Declaration, adopted by most Latin American countries, expands that definition and commits states, including Mexico and Chile through the adoption of the instrument’s protections into their domestic laws, to protecting people fleeing from “generalized violence”, “internal conflicts”, and “massive violations of human rights.”¹⁵

International refugee law also provides protection where people become refugees “sur place”¹⁶ due to changes in their home country after their initial departure for any other reason. According to Paragraphs 94 of the UN Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection,¹⁷ to qualify for international protection a person need not have initially left their country on account of a well-founded fear of persecution, but may still meet the definition of a refugee and is entitled to the protections granted even after having been out of their country for some time, if they are unwilling to return to their home country due to a well-founded fear they now have of returning based on the five grounds mentioned above. The sur place recognition of refugee status is also applicable to the Cartagena refugee definition and many states have recognized and applied this principle, particularly “in situations where there is no other right to legally stay in the country and the person cannot be returned.”¹⁸ As such, AI/HBA believes that authorities across the region, in evaluation of asylum claims by Haitians, must consider that in some instances Haitians who have been outside Haiti for some time may now qualify as refugees “sur place”.

The human rights and humanitarian crises in Haiti have ballooned in recent years. In April, the Observatoire Haïtien des Crimes contre l’humanité (OHCH) and Harvard Law School’s International Human Rights Clinic alleged complicity of the Haitian government in three massacres targeting impoverished neighbourhoods carried out between 2018 and 2020. The report pointed to evidence that the

¹⁰ Interview by phone with NGO in Haiti, 15 October 2021, Haiti.

¹¹ OHCHR, “The principle of non-refoulement under international human rights law”, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

¹² The Refugee Convention, 1951, www.unhcr.org/4ca34be29.pdf

¹³ UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, www.refworld.org/docid/45f17a1a4.html

¹⁴ The UN Refugee Convention, 1951, the grounds include “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

¹⁵ Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984, www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html

¹⁶ UNHCR, Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of ‘sur place’ claims within the meaning of Article 1A(2) of the 1951 Convention Relating to the Status of Refugees, 14 February 2017, <https://www.refworld.org/docid/58ee206a4.html>

¹⁷ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, February 2019, Paragraphs 94-96, www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html

¹⁸ UNHCR, Expert roundtable Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees Montevideo, Uruguay 15 and 16 October 2013 Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration, paragraphs 28 and 36, www.unhcr.org/53bd4d0c9.pdf

attacks, carried out by gangs, were supported by state actors.¹⁹ In July, Haiti's President Jovenel Moise was assassinated, with the motives and perpetrators of the killing remaining unclear.²⁰ Human rights defenders and journalists are increasingly at risk,²¹ and impunity is the norm.²²

Insecurity is rife, with Haiti topping the list of countries with the highest kidnapping rates,²³ and following the most recent earthquake in August, the UN estimates that some 800,000 people need assistance.²⁴ As of August, the US State Department's own travel advisory advised against all travel to Haiti, due to "kidnapping, crime, civil unrest, and COVID-19."²⁵

Despite these dire conditions, this initial research by Amnesty International (AI) and Haitian Bridge Alliance (HBA) finds that countries across the Americas are failing to provide international protection and safety for Haitian on the move, exposing them to a range of human rights violations in host countries, including detentions and illegal pushbacks, extortion, anti-black racial discrimination, abuses including gender-based violence by armed groups, and lack of access to adequate housing, healthcare, and employment, causing destitution.

2. METHODOLOGY

This research is primarily based on information gathered by interviewing Haitian people during a trip to Tapachula in the Mexican state of Chiapas, carried out from 11-17 October 2021. Nearly all those AI/HBA spoke to in Tapachula left Haiti some four to six years ago and were living predominantly in Chile prior to moving again towards Mexico and the United States. A smaller number of those interviewed lived in Brazil.

During the visit, AI/HBA spoke to more than 60 Haitians, sometimes in in-depth interviews with individuals or small groups of family members and friends. Researchers employed a mix of random and snowball sampling techniques to identify Haitians, who were interviewed in Kreyol and who in their majority asked researchers not to name or otherwise identify them for fear of reprisals. In some cases, AI/HBA has omitted specific information that could reveal identities. The team also met with representatives of COMAR (the Mexican Commission for Refugee Assistance), and local NGOs.

On 21 October, Amnesty International sent an access-to-information request to the Mexican authorities to gather information on the number of deportations to Haiti it had carried out, and the resources used to facilitate them. Under national law, they have 20 days to respond.

¹⁹ Harvard Law School International Human Rights Clinic and Observatoire Haïtien des crimes contre l'humanité, Killing with Impunity: State-Sanctioned Massacres in Haiti, 2021, http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf

²⁰ Amnesty International, Haiti: Investigation urged into killing of Haitian President and grave human rights violations under his watch, 7 July 2021, www.amnesty.org/en/latest/press-release/2021/07/haiti-investigation-urged-into-killing-of-haitian-president-and-grave-human-rights-violations-under-his-watch/

²¹ Amnesty International, Haiti: Authorities must protect relatives of murdered journalist and activist from death threats, 6 August 2021, www.amnesty.org/en/latest/news/2021/08/haiti-authorities-must-protect-relatives-of-murdered-journalist-and-activist-from-death-threats/

²² Freedom House, Freedom in the World, Haiti, 2021, <https://freedomhouse.org/country/haiti/freedom-world/2021>

²³ Guardian, 'Haitians are kidnapped every day': missionary abductions shed light on growing crisis,' 20 October 2021, www.theguardian.com/world/2021/oct/20/haiti-kidnapping-abduction-missionaries

²⁴ UN, Haiti: \$187.3 million appeal to support people affected by earthquake, 25 August 2021, <https://news.un.org/en/story/2021/08/1098392>

²⁵ US State Department, Haiti Travel Advisory, 23 August 2021, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>

3. UNSAFE IN MEXICO

In recent years, the number of people seeking asylum in Mexico has soared. According to the Mexican authorities, people fleeing Honduras made up the greatest portion of those seeking asylum in Mexico until mid-October,²⁶ but have since been overtaken by Haitians.²⁷

Tens of thousands of Haitians are currently awaiting the outcome of their asylum claims in Tapachula, where they must wait until their claims are resolved. More than 26,000 Haitians have requested asylum in Mexico this year, up from just under 6,000 claims per year in 2020 and 2019, according to Mexican authorities.²⁸ Less than half the claims for international protection Haitians made in 2020 and 2021 were successful, compared with a 97-98% success rate for Venezuelans or 84-85%²⁹ for Hondurans in that period.³⁰

While Mexico's Foreign Secretary announced in September that it would grant asylum to 13,000 Haitians,³¹ so far in 2021 only 44% of Haitian applicants have been successful³² in acquiring either refugee status or complementary protection.³³ In an opinion article, the head of COMAR stated that the vast majority of Haitians are not refugees, a sweeping statement that is contrary to the spirit of conducting individual evaluations of protection needs as part of asylum interviews, such screenings being a requirement of international law.³⁴ COMAR officials also told AI/HBA staff that Haitians are generally not considered for refugee status under the Cartagena Declaration, to which Mexico is party, because they previously had a chance to receive protection in other countries that they had lived in, such as Chile and Brazil — a position inconsistent with information gathered by AI/HBA (further details provided below).

One of the reasons for the overstretched refugee system in Chiapas is that Mexico's immigration authorities are providing few alternative legal routes to residency, beyond asylum. While Mexican law provides for humanitarian visas, and other legal avenues to residency, people searching for safety who arrive in southern Mexico are all effectively left with no other option but to apply for asylum. Local NGOs confirm that COMAR is too overwhelmed and under-funded to deal effectively with every request. Meanwhile, according to information AI/HBA was able to gather, Mexican immigration authorities are either conducting mass deportations to Haiti,³⁵ pushing Haitians back to Guatemala, or restricting their movement within Mexico to the state of Chiapas.

²⁶ Gobierno de Mexico, Datos de cierre de septiembre 2021, www.gob.mx/cms/uploads/attachment/file/671382/Cierre_Septiembre-2021__1-October-2021_.pdf

²⁷ Andrés Ramírez, head of COMAR, Twitter post, 19 October 2021, https://twitter.com/AndresRSilva_/status/1450420474777845762, "La llegada masiva de haitianos desde mayo de este año es tal, que a mediados de octubre los haitianos son ya la nacionalidad con mayor número de solicitantes de la condición de refugiado en México, al rebasar a los hondureños. @comar_sg"

²⁸ Gobierno de Mexico, Datos de cierre de septiembre 2021, www.gob.mx/cms/uploads/attachment/file/671382/Cierre_Septiembre-2021__1-October-2021_.pdf

²⁹ Gobierno de Mexico, Datos de cierre de septiembre 2021, www.gob.mx/cms/uploads/attachment/file/671382/Cierre_Septiembre-2021__1-October-2021_.pdf

³⁰ Percentages include people who were granted refugee status and/or complementary protection.

³¹ TelesurTV, 'México dará refugio a 13 mil migrantes haitianos,' 29 September 2021, www.telesurtv.net/news/mexico-haiti-asilo-migrantes--20210929-0007.html

³² Gobierno de Mexico, Datos de cierre de septiembre 2021, https://www.gob.mx/cms/uploads/attachment/file/671382/Cierre_Septiembre-2021__1-October-2021_.pdf

³³ Options for regularizations detailed in Article 133 of the Migration Law include several grounds in addition to family bonds, such as being victim or witness of a serious crime in Mexico or being in a situation of vulnerability that preclude voluntary return or deportation. According to Article 52, the Mexican authorities may grant humanitarian visas not only to asylum seekers awaiting a decision by COMAR or persons who are victims or witnesses of a serious crime in Mexico, but also "when there is a humanitarian cause or in the public interest that makes their internment or regularization in the country necessary, in which case they shall be granted humanitarian visas. See Migration Law, 2011, www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_200521.pdf. Article 144 of the Migration Law regulation which provides details regarding this provision, also includes in this last category "persons in a situation of danger to their life or integrity due to violence or natural disaster." See Migration Law Regulation, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf

³⁴ Andrés Ramírez, 'La llegada masiva de haitianos a México,' Eje Central, 21 October 2021. www.ejecentral.com.mx/la-llegada-masiva-de-migrantes-haitianos-a-mexico/

³⁵ Amnesty International, *Mexico must stop mass deportations*, (AMR 41/4790/2021), www.amnesty.org/es/documents/amr41/4790/2021/es/

“You (asylum seekers) can’t leave here... but you can’t work without documents.” –

group of Haitians speaking to Amnesty International in Tapachula, Mexico.

“You can’t leave here... but you can’t work without documents” a group of Haitians told Amnesty International outside Tapachula’s Olympic Stadium, where COMAR has temporarily set up an appointment system to deal with the large volume of asylum requests. It was a sentiment that researchers heard throughout the visit.

According to information Amnesty International was able to gather, since around August 2021, the National Institute of Immigration (INM) has been detaining migrants and asylum seekers who try to leave Chiapas and returning them to Tapachula. The result of the practice is that all migrants and asylum seekers in Chiapas, including tens of thousands of Haitians, are trapped in Tapachula, essentially converting it into roofless prison. While the exact number of migrants currently in Tapachula is unclear, estimates range from 40,000 to 50,000, in a population of approximately 350,000, which is straining public services, the banking and money transfer system, and community relations.

One Haitian family told Amnesty International that INM officials detained them at a bus station in central Mexico as they tried to buy tickets to the US-Mexico border. They said officials held them in a vehicle for 11 hours, without access to a bathroom, before taking them to a detention centre where they were held for a week. At the detention centre, they say officials gave them no information about the possibility of claiming asylum, there were no interpreters, and officials had them sign some 20 documents in Spanish that they did not understand, before returning them to Tapachula without further processing.³⁶ Haitian Bridge Alliance spoke with several families, including a pregnant woman, who were taken off a bus coming from Tapachula and told by INM officials to find another way to get to the US-Mexico border. The families walked for two days with little food or water before they found another bus station.

Under international law, any deprivation of liberty must be clearly set out in law, strictly justified by a legitimate purpose, necessary, proportionate, and non-discriminatory. Detention solely for migration-related purposes should only be carried out in the most exceptional of circumstances.³⁷

Amnesty International has requested clarity from the Mexican authorities about the legal basis for detaining and returning migrants and asylum seekers to Chiapas. However, as far as the organization can establish, this practice of INM began early in the summer. In interview with AI/HBA, representatives from COMAR indicated that previously asylum applications could be initiated in one state and transferred to other states within Mexico, something provided for under Mexican law,³⁸ but they also confirmed that process has also been suspended for now, removing another legal tool for asylum seekers to leave Chiapas. Amnesty International believes detentions by the INM and returns to Chiapas, may meet the definition of arbitrary detention.

Besides forcing migrants and asylum seekers to remain in Chiapas, the INM continues mass expulsions of Haitians back to Guatemala, something NGOs working on the southern border say is common practice, and practice contrary to international human rights and refugee law.

While in Tapachula, on 15 October at approximately 6pm, just before dark, an Amnesty International delegate witnessed immigration officials deporting some 15 Haitian people, including four children, to the Guatemala border in minivans. They said they had crossed the River Suchiate into Mexico that same day, but immigration officials stopped and detained them while they were in taxis on their way to Tapachula,

³⁶ Interview in person with Haitian family, 11-17 October 2021, Tapachula.

³⁷ The International Covenant on Civil and Political Rights, Article 9, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, Para: 12-16, https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

³⁸ Mexico. Regulations to the Law on Refugees and Complementary Protection, 2012, Article 23 http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LRPC.pdf

and without providing an individualized assessment of their needs for protection or providing information about their right to seek asylum, forcibly returned them to Guatemala without due process.³⁹

Similarly, weeks earlier, according to the accounts of local organizations, INM officials and Mexico's National Guard took many Haitians, and other nationalities, deported from Del Rio, Texas and other localities in Mexico to airports in the south of Mexico and then to the Guatemala border, where they abandoned them, also without conducting administrative processing or individualized risk assessments.

Mexican authorities have an obligation to ensure people seeking asylum not only have a fair assessment of their need for protection, but that their human rights are respected and protected in the process. They must be provided with access to food and other essential services without discrimination. Yet, AI/HBA's initial research suggests that Mexico's current practices, especially of restricting migrants and asylum seekers to Tapachula, is making the process of seeking international protection gruelling, especially for tens of thousands of Haitians, many who worked low-wage jobs before arriving in Mexico and have little to no savings to rely on and are often unable to meet their needs for food and housing.

Amnesty International heard and saw many destitute Haitian asylum seekers gathering and sleeping rough in public parks. One said they had to constantly wash their family's clothes, as they only had one or two pairs each.⁴⁰ Another man who arrived in Mexico in September 2020 said that while he hoped to remain in Mexico, his partner was nine months pregnant, and he worried he would be unable to provide for the baby.⁴¹ Researchers also heard repeatedly from sources that pregnant Haitian women need access to healthcare services but are afraid to access them due to language barriers and experiences of intersecting forms of discrimination in accessing healthcare, based on language, race, and nationality.

Many Haitians work in Tapachula's informal economy as their only means to get by while awaiting their claims for months, with scarce humanitarian assistance and unable to formally work or find any in a saturated market. Although Mexican law provides that applicants for refugee status may receive humanitarian visas until such time as their immigration status has been resolved, which includes the right to work,⁴² in practice, INM has stopped issuing these visas. Even local businesses are reportedly complaining that Mexican authorities have converted Tapachula – located in a state with poverty rates of 78%⁴³ – into a “pressure cooker.”⁴⁴

Many Haitians who spoke to AI/HBA expressed interest in staying in Mexico, or any other country where they could support their families and receive assurances that they would not be returned to Haiti. Yet, they were struggling to survive in such an adverse context.

4. UNSAFE IN CHILE

A majority of those interviewed in Tapachula left Chile and repeatedly cited the inability to regularize their immigration status there as the main factor in their decision to leave. Most told AI/HB that while the Bachelet administration had facilitated temporary work permits, renewing their documents or residency had been increasingly difficult, if not impossible, under the current Piñera administration. None of those who spoke to AI/HBA had applied for asylum in Chile, largely because they were unaware of the process.

In recent months, Chile has seen increasing xenophobia and anti-migrant sentiment, fuelled by the current government's policies.⁴⁵ Racial discrimination and other forms of intersecting discrimination, ranging from

³⁹ Interview in person with a group of Haitian people 11-17 October, Mexico-Guatemala border.

⁴⁰ Interview in person with Haitian man and woman, 11-17 October, Tapachula.

⁴¹ Interview in person with Haitian man, 11-17 October, Tapachula.

⁴² Mexico, Migration Law, 2011, Article 52, V.C, www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_200521.pdf

⁴³ CONEVAL, Estadísticas de pobreza en Chiapas, 2020, www.coneval.org.mx/coordinacion/entidades/Chiapas/Paginas/principal.aspx

⁴⁴ Infored 360, 'Están haciendo de Tapachula una olla de presión por migrantes,' 14 August 2021, <https://infored360.mx/estan-haciendo-de-tapachula-una-olla-de-presion-por-migrantes/>

⁴⁵ Amnistía Internacional Chile, 'Hacia la construcción de una legislación migratoria con enfoque de derechos humanos en Chile, Minuta de Amnistía Internacional para presentación ante Comisión de Gobierno, Descentralización y Regionalización del Senado, sobre el Proyecto de Ley de Migración y

constant microaggressions to overtly racist acts, was another factor that Haitians repeatedly said influenced their decisions to leave Chile. This is something organizations have previously documented.⁴⁶

“You can be doing the same job (as a person of another race or nationality), and they pay you less and ask for more.” – Haitian man in his 30s, Tapachula.

One man in Tapachula told Amnesty International his family decided to leave Chile because their children were suffering racist bullying in school.⁴⁷ Others said they felt they were discriminated in their places of work. As one man in his 30s put it: “You can be doing the same job (as a person of another race or nationality), and they pay you less and ask for more.”⁴⁸ One man in his 50s told Haitian Bridge Alliance that he was never paid after working for four days on a construction project, which happened to him often. He said it was not worth reporting the wage theft to the Chilean authorities.⁴⁹ A woman told Amnesty International that on the bus in Chile she sometimes felt white people would move to another seat, rather than sit next to her. She felt people also spoke to her differently because she was black. One woman told Haitian Bridge Alliance that street vendors tried to prevent her from being a street vendor by not giving her the papers necessary to sell and by throwing water and other things at her when she tried to open shop.⁵⁰

5. UNSAFE JOURNEY

All the Haitians AI/HBA interviewed had arrived in Tapachula using a combination of buses, boats and walking. The journey overland through Central America, and the Darien Gap especially, is notoriously punishing for migrants and asylum seekers, who describe the jungle as heaving with armed groups, dangerous animals, and scattered with the bodies of those who do not make it up and down a large mountain, which can take some ten days to walk. One woman said her youngest child, now 14 months old, lost so much weight during the journey that she currently has the weight of a six-month-old baby.⁵¹

Many Haitians AI/HBA spoke with said they were robbed at gunpoint at least once on the journey. Multiple Haitian refugees had witnessed armed groups raping women migrants, including girls as young as 12 years old, who they say arrived with clothes covered in blood. One man said he witnessed armed men wearing military boots and holding military weapons rape two women from his group of 25 people.⁵² Another man said that they saw one of the rapists when they arrived at the refuge centre in Panama, but no one reported the crime because they feared reprisals.⁵³

Most states in the Americas are party to the UN International Convention to Eliminate all forms of Racial Discrimination.⁵⁴ Under international law, states have a duty not only to ensure that law enforcement and

Extranjería, Boletín N°8970-06', 22 abril 2019, Chile; Amnistia Internacional Chile, Twitter, 27 September 2021, <https://twitter.com/amnistiachile/status/1442592367278649349>; France 24, UN concerned about 'xenophobia' against migrants in Chile, 27 September 2021, www.france24.com/en/live-news/20210927-un-concerned-about-xenophobia-against-migrants-in-chile; OAS, IACHR Condemns Violent, Xenophobic Acts against Venezuelan Migrants in Iquique, Chile, 5 October 2021, www.oas.org/en/iachr/jsForm?File=en/iachr/media_center/preleases/2021/263.asp

⁴⁶ Priya Morley et al., A Journey of Hope: Haitian Women's Migration to Tapachula, Mexico, 2021, <https://imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20Tapachula.pdf>; S. Priya Morley et al., “There is a Target on Us” – The Impact of Anti-Black Racism on African Migrants at Mexico's Southern Border, 2021, <https://imumi.org/attachments/2020/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>

⁴⁷ Interview in person with Haitian man, 11-17 October, Tapachula.

⁴⁸ Interview in person with Haitian man, 11-17 October, Tapachula.

⁴⁹ Interview in person with Haitian man, 11-17 October, Tapachula.

⁵⁰ Interview in person with Haitian woman, 11-17 October, Tapachula.

⁵¹ Interview in person with Haitian woman, 11-17 October, Tapachula.

⁵² Interview in person with Haitian man, 11-17 October, Tapachula.

⁵³ Interview in person with Haitian man, 11-17 October, Tapachula.

⁵⁴ International Convention on the Elimination of All Forms of Racial Discrimination, Status of Ratifications, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=en

public bodies refrain from racial discrimination but have an obligation to develop programs and campaigns to prevent discrimination in wider society.⁵⁵

Despite this, Haitians consistently told AI/HBA that they experienced racial and other intersecting forms of discrimination both during their journey and in Mexico, from ordinary people and government officials or bodies.

“Wherever we go, they (people) look at us like ‘children of poor people.’” — a Haitian man in his 20’s, Tapachula, Mexico.

“Wherever we go, they (people) look at us like ‘children of poor people’”, one man told Amnesty International.⁵⁶ Another man said people look at him, but sometimes do not respond when he speaks to them. A woman told Amnesty International that when looking for a room for her family in Tapachula, she was told that the owner of an available property did not want to accept dark-skinned people (“*morenos*”).⁵⁷ Haitian Bridge Alliance heard several people complain of having to pay two to three times more for food, taxis and other goods than Mexican customers.

Numerous interviewees also told AI/HBA that the long lines outside Mexico’s COMAR advanced more quickly for migrants of other nationalities, especially those with white or lighter skin, than for black Haitians. While this may be due to COMAR’s limited number of Kreyol-Spanish interpreters, many Haitians experience this as racial discrimination, and the government will need to demonstrate that they have made all possible efforts to provide adequate numbers of interpreters, or in practice, this could amount to direct intersectional discrimination, in addition to poor communication.

Another man said that *en route* to Mexico, police in Ecuador, Colombia, Honduras and Guatemala all stopped the bus he was travelling on, requested passports and then extorted everyone onboard, forcing them to pay USD 20-30 for them to continue. On one occasion in Honduras, he said, the police made all the white people get off the bus, and then extorted all the black people who they kept inside. He was unsure if they also extorted the lighter skinned migrants, but felt Haitians were racially profiled and discriminated, a violation of international human rights law.⁵⁸ A woman complained to Haitian Bridge Alliance that she heard insults against Haitians in almost every country she travelled to. “It hurts because we are people too,” she said.⁵⁹

6. UNSAFE IN HAITI

“We would prefer to be in our country, but we would need security.” — Haitian man, Tapachula, Mexico

All those interviewed in Tapachula expressed fear of being deported to Haiti. “We would prefer to be in our country, but we would need security,” said a man in his 30s. Another man told Amnesty International he

⁵⁵ Committee on the Elimination of Racial Discrimination, General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, 17 December 2020, UN Doc: CERD/C/GC/36; UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non-Citizens, 1 October 2002, www.refworld.org/docid/45139e084.html.

⁵⁶ Interview in person with Haitian man, 11-17 October, Tapachula.

⁵⁷ Interview in person with Haitian woman, 11-17 October, Tapachula.

⁵⁸ Interview in person with Haitian man, 11-17 October, Tapachula.

⁵⁹ Interview in person with Haitian woman, 11-17 October, Tapachula.

fled Haiti some years ago, just months after unidentified men killed a relative who he lived with and who belonged to a political party. He says no one was ever prosecuted for the killing.⁶⁰

Other interviewees – mostly from rural and low-income neighbourhoods of the country – also said they left Haiti after gangs killed a family member or because they were at direct risk of being kidnapped.

One person said they fled shortly after gangs burnt down their house and they were too afraid to report the incident.⁶¹ Another interviewee showed researchers a scar on one arm, which he said occurred in Haiti in 2015, when he tried to escape an assault.⁶² A woman reported fleeing Haiti after armed men went from house to house in her neighbourhood, burglarizing, beating and raping her family and her neighbours. She said that reporting to the police was futile because the police could not protect her, and she feared retaliation.⁶³

“The life of a Haitian has more value here, than in my country.”

– Haitian man, Tapachula, Mexico.

“The life of a Haitian has more value here, than in my country”, another man who left Haiti in 2014 told researchers. He said the police were often unable to enter his neighbourhood to address generalized violence.⁶⁴

Since many of those interviewed have left Haiti, the security situation has deteriorated further, and while some may have left Haiti in search of a better life or due to chronic failings in healthcare and education, all those who spoke to AI/HBA are now more afraid than ever of returning to a country significantly worse than the one they left.

7. CONCLUSION

AI/HBA’s initial research suggests that multiple states across the region are failing to provide safety for Haitians from a range of human rights violations.

In September, UN agencies jointly called on states to provide a “comprehensive regional approach” for Haitians on the move, and to provide them with protection measures including asylum and “or other legal stay arrangements for more effective access to regular migration pathways”,⁶⁵ a call that AI/HBA reiterates to state across the region.

Amnesty International has long documented harmful policies of the Mexican and US governments that limit access to asylum to hundreds of thousands of people,⁶⁶ including unaccompanied children, seeking safety

⁶⁰ Interview in person with Haitian man, 11-17 October, Tapachula.

⁶¹ Interview in person with Haitian person, 11-17 October, Tapachula.

⁶² Interview in person with Haitian man, 11-17 October, Tapachula.

⁶³ Interview in person with Haitian woman, 11-17 October, Tapachula.

⁶⁴ Interview in person with Haitian man, 11-17 October, Tapachula.

⁶⁵ IOM, UN Agencies Call for Protection Measures and a Comprehensive Regional Approach for Haitians on the Move, 30 September 2021, www.iom.int/news/un-agencies-call-protection-measures-and-comprehensive-regional-approach-haitians-move

⁶⁶ Amnesty International, *Americas: Amnesty International submission to the United Nations (UN) Special Rapporteur on the human rights of migrants* (AMR 01/3658/2021), www.amnesty.org/en/documents/amr01/3658/2021/en/

from persecution or serious human rights violations in their country of origin.⁶⁷ US Title 42 expulsions have further exacerbated this problem, as raised by multiple civil society organizations.⁶⁸

The recent, much publicized mass expulsions of Haitians from Del Rio, Texas, reportedly to Haiti and Mexico under Title 42 policies⁶⁹ — a measure initially implemented by the Trump administration under the pretext of COVID-19 that authorizes expulsions without screenings or asylum protection — clearly demonstrate that the US authorities are similarly restricting access to international protection for Haitians.

Indeed, in October, upon resigning, a top legal advisor to the US Department of State condemned the mass expulsions of Haitian asylum seekers under Title 42 as constituting unlawful forced returns.⁷⁰ Just before that, in September, the US Special Envoy to Haiti resigned, reportedly also critiquing in his resignation letter the Biden administration’s “inhumane” mass deportation of Haitians to Haiti, which he referred to as a “collapsed state.”⁷¹

AI/HBA initial research similarly finds that Mexico is implementing measures that, in practice, may be restricting access to protection for Haitians in several ways. Mexican authorities are preventing effective protection of rights by their current practice of restricting all Haitian asylum applicants to Tapachula, which is overloading the system and leading to unsafe conditions and destitution due to lack of access to shelter, food, and other basic needs. In addition, the failure to consider the range of options for regularization as allowed by Mexican law is further overloading the system. Incidents of summary, unlawful forced returns and pushbacks to Haiti and Guatemala without assessments of protection needs further illustrate a lack of access to protection by violating the principle of non-refoulement.

Furthermore, by seemingly failing to apply the Cartagena Declaration standards to Haitians seeking international protection and failing to consider the “sur place” principle — which enables individuals to meet the definition of refugee status based upon an inability to return to their country of origin no matter their initial reason for leaving — Mexican authorities are neglecting to uphold their international and regional commitments.

In sum, the testimonies documented in this research suggest that responsibility for the range of human rights violations faced by Haitians lies with governments across the region, including Chile, which appeared to have failed to provide information about access to asylum or to offer other protection mechanisms to people in need of international protection. This research also finds that multiple countries have taken insufficient measures to address anti-black racism from state officials, bodies, and wider society against Haitians who need safety and refuge.

8. RECOMMENDATIONS

- Immediately end all deportations to Haiti, including Title 42 expulsion flights by the US that violate the principle of non-refoulement.
- Urgently provide Haitians with access to systems of protection, without discrimination, including fair, individualised evaluations for refugee status, and other legal status through legal residency and with appropriate safeguards, in line with the 1984 Cartagena Declaration.
- Provide individualized screenings for all Haitians at risk of return as a key protection against refoulement, and urgently provide Haitians access, without discrimination, to the full complement of systems of protection in line with the 1984 Cartagena Declaration.

⁶⁷ Amnesty International, *USA: Pushed into Harm's Way: forced returns of unaccompanied migrant children to danger by the USA and Mexico* (AMR 51/4200/2021), www.amnesty.org/en/documents/amr51/4200/2021/en/

⁶⁸ Doubling Down on Deterrence: Access to Asylum under Biden, September 2021, www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence_-_Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf

⁶⁹ Washington Post, 'Most of the migrants in Del Rio, Tex., camp have been sent to Haiti or turned back to Mexico, DHS figures show,' 1 October 2021, www.washingtonpost.com/national/haitians-border-deportations/2021/10/01/bfa38852-222a-11ec-8fd4-57a5d9bf4b47_story.html

⁷⁰ Politico, 'Top State adviser leaves post, rips Biden's use of Trump-era Title 42,' 10 October 2021, www.politico.com/news/2021/10/04/top-state-adviser-leaves-post-title-42-515029

⁷¹ Guardian, 'US envoy to Haiti resigns over 'inhumane' decision to deport migrants,' 23 September 2021, www.theguardian.com/us-news/2021/sep/23/haiti-us-envoy-resigns-daniel-foote-migrant-deportations-letter

- Increase funding for systems of protection - such as the Mexican Commission for Refugee Assistance (COMAR) - to improve capacity to process asylum claims across the region.
- Ensure consistently enforced rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials, forbidding racial profiling, and ensure robust systems of monitoring and access to effective remedy for victims
- Take steps to address xenophobic attitudes and behaviour towards non-citizens, or stigmatization based on race, colour, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.
- In coordination with UN agencies, develop programmes which support the integration of Haitian communities in host countries.

Haitian Bridge Alliance (“HBA”) is a nonprofit community organization that advocates for fair and humane immigration policies and connects migrants with humanitarian, legal, and social services, with a particular focus on Black migrants, the Haitian community, women, LGBTQIA+ individuals, and survivors of torture and other human rights abuses. Since 2015, HBA has provided services to asylum seekers and other migrants at the U.S.-Mexico border, in U.S. detention, and during U.S. immigration proceedings. As HBA Co-Founder and Executive Director Guerline Jozef says, “We went to the U.S.-Mexico border to help our Haitian brothers and sisters, but we saw Africans and Central Americans in need as well. We stayed for everyone else.”

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Index: AMR 36/4920/2021

Publication: **October 2021**

Original language: **English**

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