The Time is Now:
Mexico Must Grant Refugee Protections to Haitians under the Cartagena Declaration
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About Us

About CDH Fray Matías

The Centro de Derechos Humanos Fray Matías de Córdova, A.C. (CDH Fray Matías) is a non-governmental, nonprofit human rights organization based in Tapachula, Chiapas, on Mexico’s southern border with Guatemala. In 2024 CDH Fray Matías completes its 27th year of operation. CDH Fray Matías, among other things, provides legal assistance and comprehensive accompaniment to defend the human rights of people in the context of mobility—migrant individuals and families. CDH Fray Matías recognizes the intersectional vulnerabilities migrants face as they arrive in Tapachula, the main southern gateway into Mexico.

CDH Fray Matías’s work stems from the recognition that those in mobility face multiple human rights violations and institutional obstacles to access their rights, affecting their ability to achieve a dignified life. Often migrants arrive having experienced significant rights violations and harms, including forced displacement in their home of origin and in the countries they transited through. These realities underscore the need for international protection.

As a local human rights organization, CDH Fray Matías recognizes the importance of promoting and participating in processes of social and community integration among diverse local actors in the region, redefining the history and intercultural composition that characterizes the Sonconusco region and the city of Tapachula.

About Global Justice Clinic*

The Global Justice Clinic (GJC) is part of the Center for Human Rights and Global Justice at New York University School of Law. GJC works with social movement organizations and community partners to prevent, challenge, and redress human rights violations stemming from economic, climate, and racial injustice. GJC regularly engages with cross-border challenges that require transnational collaboration and, using a rights-based, legal empowerment approach, works in solidarity with those most impacted by global injustice. GJC engages in this work by providing high-quality, professional human rights lawyering services to individual clients and nongovernmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad.

Since its founding, GJC has worked on human rights in Latin America and the Caribbean, with a special focus on Haiti. GJC’s Haitian Immigrant Rights Project has partnered with Haitian-led immigrant rights’ organizations in the United States, Haiti, and elsewhere, supporting Haitians to expose injustices and combat marginalization in areas including climate justice and migrant rights. GJC coordinates the Hemispheric Network for Haitian Migrants’ Rights (Rezo Emisferik pou Dwa Migran Ayisyen), which links Haitian migrant rights leaders and Haitian migrant-serving institutions across borders to more effectively advocate for the rights of Haitian migrants and asylum-seekers. The content herein includes the inputs and orientation of network members as well as other GJC partner organizations from the region.
About Our Collaboration

GJC is particularly concerned with the United States’ and other Global North actors’ involvement and complicity in enabling or directly causing a variety of human rights violations in the region, including those that stem from the externalization of the US border. For many years, GJC has stood in solidarity with organizations and activists throughout Latin America and the Caribbean to assist in regional work for the advancement of global justice. The collaboration between GJC and CDH Fray Matías is a result of CDH Fray Matías’s leadership in advancing the human rights of migrants in Mexico, its location in Tapachula and increased engagement with and support of Haitian asylum-seekers, and the two organizations’ shared passion for advancing policy changes to eradicate human rights violations. GJC and CDH Fray Matías also share a commitment to combating the discrimination and marginalization that Haitian migrants face. GJC and CDH Fray Matías conducted the relevant research on this topic, working side by side to engage in the legal and policy analysis necessary to generate this document.

* Research was conducted in English, French, and Spanish. Consequently, there are sources cited throughout the document in all three languages. Research concluded on March 17, 2024.
The gravity of Haiti’s human rights situation and its impact on the population requires the States of the region to uphold their obligations under the Cartagena Declaration on Refugees. While Latin American states often invoke their adherence to the Cartagena Declaration at the United Nations as a sign of commitment to protecting refugee rights, they often fail to translate those invocations into action. The challenges posed by the current situation in Haiti underscore the need for Latin American states to reform their practices and effectively implement the Cartagena Declaration.

In the current scenario, where humanitarian crises intertwine with political and social challenges, the urgency to understand and address refugee realities becomes even more evident. The document presented herein serves as an essential guide to understanding the situations compelling Haitians to seek refuge in Mexico, in line with the principles of the Cartagena Declaration on Refugees.

The report presents, in a detailed manner, how the social and political challenges confronting Haiti impose a legal and humanitarian responsibility on Mexico to protect and grant refugee status to this segment of the population in mobility. Through rigorous and well-substantiated analysis, it underscores the imperative to honor commitments regarding human rights and refugee status.

The text highlights how violence, widespread human rights violations, and the political crisis in Haiti have rendered the situation unsustainable for its population, compelling Haitian people to seek safety and protection in other countries, including Mexico, while rendering their return to their homeland unfeasible. Additionally, it emphasizes the importance of the Cartagena Declaration as a legal framework broadening the refugee definition and acknowledges the multiple circumstances that can jeopardize life, security, and freedom in the region.

The report presents the elements that require Mexico to apply the Cartagena Declaration to Haitian nationals and also spotlights the deficiencies and challenges evident in the Mexican State’s application of these principles. These are matters that the international community is extensively discussing and debating in the context of the 40th anniversary of the Cartagena Declaration, known as Cartagena+40.

The Cartagena Declaration and its principles are not simply formalities; they are tools to ensure the dignity and rights of those enduring extreme vulnerability that demand concrete acts of public policy, judicial guidelines, or requirements, enhanced regulatory frameworks, and inclusion in high-level and civil society dialogues that the Mexican State has with the international community, both in terms of regional strategy and refugee law.
Executive Summary

Under the Cartagena Declaration on Refugees (1984), Mexico must grant refugee status to Haitians in its territory.

Violence in Haiti is at a level typical of countries at war—in 2023, there were more killings in Haiti than civilian deaths in Ukraine. Armed groups engaged in criminal activity, commonly referred to as gangs or bandits, wield more power than the government or civil society. Some key social institutions, such as markets and water distribution networks, have been hijacked by gangs, while others, such as hospitals and schools, have been closed altogether. There is not one elected official in the entire country. In March 2024, shortly prior to publication, the country began experiencing an escalation of violence, which led to a declared state of emergency. Gangs looted the country’s main port, overtook the airport halting flights, and prevented de Facto Prime Minister Ariel Henry from returning to Haiti, precipitating calls from the United States and other powers for Henry to resign. The United Nations noted that Port-au-Prince was “under siege.”

Haiti is in political turmoil. Henry has committed to resigning once a new transitional government selects a prime minister to replace him. Widespread violence continues, and Haitian people are facing even greater levels of hunger.

Mexico has failed to offer sufficient protections to Haitians fleeing this reality. Mexican authorities have largely disregarded the deterioration of conditions in Haiti in their assessment of Haitians’ applications for refugee status under the Cartagena Declaration. Because of the generalized violence, massive human rights violations, and disintegration of public order in Haiti, Mexico has an obligation to grant Haitians refugee status under the Cartagena Declaration.

Legal Context

The Cartagena Declaration is a Latin American human rights instrument that provides an expanded definition of refugees. According to the declaration, refugees include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”

Mexico first incorporated the Cartagena Declaration into its domestic legal framework in 1990. In 2011, the government updated its refugee law to incorporate the regional refugee definition, exactly as written in the Cartagena Declaration, into the Mexican legal system. Consequently, the state has a legal obligation to recognize all people who seek refuge in its territory and conform to the Cartagena Declaration definition of refugee.

Despite this duty, Mexico has largely failed to apply the Cartagena Declaration to Haitians. Of 112,332 Haitians applying for refugee status in Mexico between 2021 and 2023, only 5,214 were extended protections, representing a mere 4.6 percent of applicants. Haitian nationals were less likely than any other nationality among the top five nationalities to apply for refuge in Mexico to have their applications approved in those same years.

Analysis

At least three of the elements enumerated in the Cartagena Declaration oblige Mexico to extend refugee protection to Haitians fleeing the following circumstances:

Generalized Violence. Gangs have plunged the country into conditions comparable to those of coun-
tries at war; the violence they perpetrate is frequent, widespread, and indiscriminate. Between 2019 and 2023, at least 11,108 people, including at least 151 children, have been killed, and at least 4,825 people have been kidnapped. Collective rape of women and girls has become "endemic."

Because of the systematic dismantlement of its institutions, the Haitian government is unwilling in some cases and unable in other cases to protect the population from gang violence. As a result, Haiti is one of the lowest-ranking countries on the Global Peace Index.

Massive Violations of Human Rights. Haitians face massive, systemic human rights violations. Pervasive gang violence and the state’s failure to adequately respond to it have threatened the bodily integrity of Haitians and, in some cases, risen to the level of torture and crimes against humanity. Declining access to food, water, healthcare, and education has caused severe violations of economic and social rights. Essential government institutions, such as the judiciary and the police force, have been hollowed out, preventing Haitians from attaining accountability for the other violations they suffer.

Other Circumstances Seriously Disturbing the Public Order. Public order in Haiti has crumbled. A state of emergency has been issued for March 2024, as gangs have escalated violent attacks against critical infrastructure and the remnants of the police force. The normal functioning of government institutions implied by the term “public order” has deteriorated noticeably: Parliament has not held a quorum in four years, and today there are no senators or deputies; the judiciary branch has gone from dysfunctional to defunct. De facto Prime Minister Ariel Henry has agreed to resign when a new government forms to replace his own. Haitian society has been further destabilized by natural disasters and other environmental events exacerbated by climate change. These events have destroyed critical infrastructure, gravely stricken the agricultural and housing sectors, and claimed hundreds of thousands of lives.

Recommendation

to come into compliance with its legal, political, and humanitarian responsibilities, Mexico must grant Haitians’ requests for refugee protection under the Cartagena Declaration, even when alternative relief is available. The year 2024 marks the 40th anniversary of the Cartagena Declaration, and the events of Cartagena +40 are an opportunity for Mexico to advocate for other Cartagena signatories to similarly extend refugee protections to Haitian asylum-seekers. It is long overdue.


9 Generalized violence does not preclude individual persecution and individual violence. Because of the declaration’s focus on “generalized violence,” this document does not assess cases of individual persecution. However, the severity and pervasiveness of the violence in Haiti suggests that cases of individual persecution are probable and likely common.


Ley General de Población [LGP], Diario Oficial de la Federación [DOF] art. 42 pfo. VI, 07-01-1974, últimas reformas DOF 17-07-1990 (Mex.).


It remains unclear if Henry will resign once the presidential transitional council selects its representatives, or after the council appoints a new prime minister. Thus, the timing of his future resignation remains unknown. Caitlin Stephen Hu & Michael Rios, Haiti’s Leader to Resign as Gangs Run Rampant Through Country Engulfed in Crisis, CNN (Mar. 12, 2024), https://cnn.com/2024/03/11/americas/haiti-prm-ariel-henry-resigns-gang-violence-intl-bnk/index.html.
NO HAY RESPECTO DE DERECHO HUMANO, Aquí EN MEXICO TODOS LOS QUE ESTAMOS BUSCANDO LA AYUDA DE LA COMUNIDAD INTERNACIONAL

SI EL GOBIERNO NECESITA AYUDAS DE LOS OTROS PAISES DEBE BUSCARLO DE OTRA FORMA. NO CON ASUNTO DE NOSOTROS LOS MIGRANTES

NO NECESITAMOS CAMPAMENTOS, SÓLO QUEREMOS LIBERTAD. APACHUHLA NO ES MEXICO, NOSOTROS QUEREMOS PERMANECER EN TODAS LAS CIUDADES, LOS ABUSOS SóLOANTE CON MIGRANTE HAY. ¿PORQUE???
The Cartagena Declaration is a Latin American human rights instrument that expands the legal definition of who constitutes a refugee.¹ The declaration states that refugees include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”² This definition (“regional refugee definition”) originated out of a need identified by several Latin American countries to “enlarge the concept of refugee,” following massive flows of refugees escaping civil wars and human rights violations in Central America in the 1980s.³ The regional refugee definition is notable not only for the five bases it introduces for recognizing a refugee but also for its objectivity: analysis of a person’s refugee status under the declaration depends not on whether that person has been individually persecuted—as required by the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967)—but rather on the general state of affairs in her country of origin.⁴ The declaration thus reflects a consensus shared by many in the American continents that states bear an obligation to offer protection to people whose life, safety, and integrity would be at risk if they were deported or returned to their country of origin.

Although the Cartagena Declaration originated as a nonbinding treaty, its incorporation into the national legal systems of fifteen states in the Americas, including Mexico, has given it binding status in much of the region.⁵ The Inter-American Court of Human Rights (IACtHR) has also made clear that signatory states are obligated to apply the declaration to people seeking refuge. The IACtHR has stated that the right to seek and receive asylum is a binding human right under the American Convention on Human Rights and, further, that its protections should apply to all people who satisfy the elements of the regional refugee definition.⁶ The principle of non-refoulement⁷ is a non-derogable norm of customary international law.⁸ Hence, states that have incorporated the declaration into their national legal systems and accepted the jurisdiction of the IACtHR must apply the regional refugee definition to claimants; failure to do so constitutes a breach of their international obligations.

This document demonstrates that Mexico has a legal obligation to apply the Cartagena Declaration to Haitian nationals who seek refuge in its territory and that the conditions in Haiti are such that Haitian nationals merit refugee status under the declaration. The ensuing section describes and analyzes the specific conditions in Haiti that align with the elements outlined in the regional refugee definition.

I. Introduction: The Cartagena Declaration
Conditions in Haiti Satisfy the Elements of the Cartagena Declaration

There are two key requirements for applying the regional refugee definition: first, a country must have a legal obligation under international and domestic law; and second, conditions in the applicant’s country of origin must satisfy the elements outlined in the Cartagena Declaration. Mexico meets the first requirement and is therefore legally bound to apply the regional refugee definition to migrants, including Haitians, seeking refugee status. Further, the violence, human rights violations, and public disorder in Haiti satisfy the elements presented in the Cartagena Declaration.

Mexico must ensure that people within its territory enjoy the right to seek and receive refugee status. Mexico’s international commitments, namely its ratification of the Universal Declaration of Human Rights and the 1951 Refugee Convention, and its accession to the American Convention on Human Rights require it to extend refugee protections to eligible Haitians seeking them. Further, the state has bound itself to apply the regional refugee definition via national law. Mexico first incorporated the Cartagena Declaration into its domestic legal framework on July 17, 1990, in the General Population Law. In 2011, the government updated its refugee law, such that Article 13(I) of the Law on Refugees, Complementary Protection, and Political Asylum now incorporates the regional refugee definition, exactly as written in the Cartagena Declaration and without qualification, in the Mexican legal system. Consequently, irrespective of any political or administrative concerns the state may have, Mexico is legally bound to grant refugee status to people who, based on an objective analysis of the circumstances in their country of origin, meet the elements of the declaration. While Mexico has invoked the declaration to extend refugee status to people of other nationalities, Haitian people remain largely excluded from this practice, despite their evident qualification for protections.

Haitians merit being recognized as refugees under the Cartagena Declaration’s definition. In March 2024, shortly prior to publication, the country began experiencing an escalation of violence, which led to a declared state of emergency. The state of emergency was issued in response to gangs setting fire to several police stations, raiding two prisons and enabling more than 4,000 incarcerated people to escape, and besieging the main international airport. Henry has agreed to resign pending the presidential transitional government naming a prime minister to replace him.

Even prior to March 2024, Haiti was home to “unprecedented insecurity” that, due to the country’s acute political crisis, has not been alleviated. At least part of the country’s current instability can be traced back to the 2010 earthquake that cost hundreds of thousands of lives. The disaster not only killed 25 percent of the country’s civil servants but also was followed a year later by an election that many considered premature and which was marred by low voter turnout and foreign intervention. This election facilitated the rise of the political party Parti Haïtien Tête Kale (PHTK). Since then, the PHTK and its affiliates have overtaken the Haitian government and spearheaded its dissolution. The 2016 election that placed former president Jovenel Moïse in power was highly contested, with only 20 percent of the population voting. Many Haitian and foreign commentators believe Moïse
did not have a constitutional mandate to govern. During his presidency, Moïse undermined democracy, legislating by decree and eroding government institutions at all levels. The deterioration of democratic institutions continued after Moïse’s assassination in 2021 and the subsequent takeover by Henry as acting prime minister. Under Henry’s watch, there are no longer any elected officials at any level of government, nor is there a functioning judiciary.

Haiti’s government has not only failed to prevent or respond to human rights violations but also repeatedly facilitated and committed human rights abuses. With gangs active in all ten departments of the country and having seized near-complete control of the capital, including the main international airport, practically no one is safe from violence. The connection between the PHTK and gangs developed over time and first drew international attention after the La Saline massacre, in 2018, after which it was established that government authorities participated in the collective killing. The state sanctioned more killings in Bel Air and Cité Soleil in 2019 and 2020, respectively. Gang interests have also compromised the rule of law in Haiti: gangs took over the main courthouse in Port-au-Prince in June 2022 and could prevent up to 40 percent of the country’s eligible voters from participating in future elections. Vulnerable populations, such as women and children, are frequently the victims of homicides, kidnappings, and sexual abuse.

The current crisis in Haiti is not one that Haitian politicians or people created alone. Foreign actors laid the foundation for this crisis centuries ago through colonization, enslavement, the independence debt (also called the independence ransom), and racist and exclusionary foreign policy. The impacts of this history continue to feed the crisis to the present day. The international community’s long-standing neglect and oppression of Haiti, combined with the opportunism of some Haitian political and social sectors and the interests of foreign capitals, has contributed to the instability that currently pervades Haiti.

Haiti is in an unprecedented crisis. William O’Neill, the UN Independent Expert on the Situation of Human Rights in Haiti, has called the current situation the worst he has seen in more than thirty years working in the country. In Resolution 2699 (2023), the UN Security Council noted the severity of this violence, authorizing the deployment of multinational forces in Haiti to “re-establish security.” This development underscores the severity of the political and security crises and illustrates Haitians’ unique vulnerability.

Consequently, Haitian people in mobility merit protection under the Cartagena Declaration.

The rest of this section will present the arguments as to why at least three of the five bases enumerated in the regional refugee definition—generalized violence, massive violations of human rights, and other circumstances disturbing the public order—apply to Haiti and thus oblige Mexico to extend refugee protection to Haitians.

A. Haitians Flee Their Country Because of Threats to Their Lives, Safety, and Freedom

The regional refugee definition stipulates that refugees are people who “fled their country because their lives, safety or freedom” were threatened by one or more of the five conditions outlined in the Cartagena Declaration as sufficient to necessitate protection. Threats to their “lives, safety, or freedom” encapsulate the reality of Haitian people. The Cartagena Declaration is not meant to give rise to an individualized inquiry about whether a particular claimant was specifically threatened or harmed by a basis for protection; rather, their geographic or spatial proximity to at least one of the bases suffices for purposes of the definition. In the case of Haiti, as the ensuing subsections will show, wide swaths of the country and its population are, and have been for some time, affected by generalized violence, massive violations of human rights, and other circumstances affecting public order. Haitians who have fled their country of origin satisfy the preceding clause of the definition.
B. Generalized Violence Harms and Threatens Haitians

An atmosphere of generalized violence in Haiti pervades and endangers the lives, safety, and freedom of Haitians to an extent equivalent to war. The root cause of this violence is political. The degradation of Haitian government institutions over the past ten years has permitted gangs to flourish, many of which have ties to politicians and Haitian elites. The gravity of this situation has led the international community to take dramatic steps, including the UN Security Council’s authorization of the deployment of Kenyan troops into Haiti and the US government’s decision to advise strongly against all travel to the country. Further, on March 9, 2024, the United States airlifted all nonessential embassy staff out of Haiti.

Under Mexican law, generalized violence consists of “encounters … that are continuous, general, and sustained, and in which force is used in an indiscriminate manner.” Such violence includes non-international and international conflicts and can be the product of the conduct of state or non-state actors. According to the United Nations High Commissioner for Refugees (UNHCR), to establish the existence of generalized violence, “[i]t would be appropriate to identify factual indicators relating to the number and type of security incidents, as well as the overall level of violence in the country of origin and its effect on civil populations.” The following analysis establishes the continuous, general, sustained, and indiscriminate nature of the violence in Haiti.

i. Gangs in Haiti

Today, armed groups most commonly referred to as gangs are dispersed throughout Haiti and wield significant power. About 200 gangs operate throughout the country, and they are primarily split between two warring factions, the G-Pèp federation and the G9 alliance. They have established presence in at least 63 communes throughout the country and control or exert significant influence over at least 80 percent of the Port-au-Prince metropolitan area, where about one-quarter of the nation’s population resides. As a result, millions of people live in areas subject to gang control.

In addition to their expansive reach, gangs sit at the helm of sophisticated criminal governance structures. They coordinate international criminal networks; generate significant profits from, inter alia, water distribution networks, electricity distribution networks, public transportation systems, markets, hijackings, extortion at organized checkpoints, kidnappings for ransom, and customs; and wield political power by influencing elections, targeting political opponents, and suppressing dissent. In territories under their control, gangs increasingly operate as intermediaries between residents and authorities; they impose “taxes” on civilians for crucial services and inflict violent punishment on people who resist or disobey them. They employ high-magazine automatic guns, such as AR-15s, AK-47s, and Galils, as well as drones to more effectively surveil their territory and the population; their stocks of weapons appear to increase daily; and the fact that shootouts can last entire days suggests that gangs are not lacking in ammunition.

In addition, they are more tactically advanced than ever before, in part because ex-policemen and soldiers have joined their ranks. Gangs orchestrate and spearhead campaigns of terror in Haiti.

In early March 2024, in one week gangs displaced more than 15,000 people. Gangs looted the country’s main port, overtook the airport halting flights, and prevented Henry from returning to Haiti, precipitating calls from the United States and other powers for Henry to resign. The United Nations noted that Port-au-Prince was “under siege.”

ii. Government Involvement in Gang Violence and Impunity

The prevalence of gangs in Haiti relates to politics. Political actors have long used gangs to repress opposition, including popular dissent decrying corruption and unchecked executive power. Not only has the state systematically failed to investigate gangs and provide avenues of justice to victims.
but also political actors often acquiesce to, if not actively commission, gang violence. In a 2023 report, UN Independent Expert on the Situation of Human Rights in Haiti O’Neill noted that many of these gangs, once functioning solely as militias for hire by politicians, are now self-sustaining groups that control large amounts of territory. The Réseau National de Défense de Droits Humains, one of Haiti’s leading human rights organizations, has documented that many gangs have received, and continue to receive, financing, weapons, and ammunition from government sources, in exchange for political support of politicians in areas that the gangs control. Since October 2022, at least 27 former or current Haitian officials have been the subject of international sanctions in response to their involvement in gang activity. At the time of publication in April 2024, Haitian people and observers alike debate the probability that gangs may claim more, and perhaps even formal, political power after Henry’s departure.

The Haitian National Police (PNH), responsible for combating and responding to crime, at times participates in it. Haitian civilians have reported seeing individual officers directly participating in gang attacks and police forces failing to provide protection to targeted neighborhoods or take action during lengthy attacks. In some cases, police members actively collude with gang members: it is estimated that every major gang in Port-au-Prince has at least one PNH officer within its ranks, a further illustration of the breadth of the corruption. Compounding the instability in Haiti is the fact that even when officials do not actively support gang activity, they lack sufficient power to challenge it. Human rights observers estimate there are between 9,000 and 14,000 active-duty police officers tasked with protecting Haiti’s population of more than 12 million. As problematic as the insufficient police force is the dysfunctional judicial system. Prior to his assassination, Moïse unconstitutionally removed several justices and allowed the mandates of many others to expire, undermining the legitimacy of the courts. Under Henry, long-standing politicization, under-resourcing, and general insecurity have resulted in court dysfunction, leaving many to view Haiti’s justice sector as “virtually non-functional.” This systematic weakening of the judiciary, combined with long-entrenched corruption within the judiciary, has made it nearly impossible for Haitians to access the justice system, allowing violence to go unchecked. Rather than prevent and address violence, the current political situation breeds it.

### iii. Homicides and Kidnappings

Gangs commit widespread violence in Haiti. As the tables below demonstrate, the level of violence occurring in Haiti is staggeringly high and has significantly worsened year after year.

For perspective, the number of homicides in Haiti in the first 8 months of 2023 outnumbered the total civilian deaths in Ukraine for that same year. The statistics in the tables above indicate that gangs contributed to 11,108 killings and 4,825 kidnappings between 2019 and 2023. In line with these high rates of violence, Haiti experienced the biggest deterioration in peacefulness among Central American and Caribbean states and the second biggest worldwide between 2021 and 2022 and is currently ranked 129 out of 163 countries on the Global Peace Index. More than 1,100 people were killed, injured, or kidnapped in January 2024, the most violent month in at least two years, and the violence shows no sign of slowing down.

### iv. Indiscriminate Violence

All people in Haiti, not solely members of gangs, are exposed to and harmed by gang violence. Gang members fire guns “indiscriminately,” in the words of the UN secretary general, and burn entire neighborhoods to the ground. Haitian people visiting the market or going to school have been wounded and murdered and have been victims of sexual violence. Those who try to flee violence have also been killed, as have those who disobeyed gang members’ orders or challenged their authority. The extent of the aforementioned indiscriminate violence means that many Haitians live in a perpetual state of fear.
v. Violence Targeting Women and Children

Increasingly, women and children, some as young as six months old, are victims of gang violence. Although assaults and other forms of violence are likely underreported, UNICEF documented a sixty-two percent increase in the rate of armed assaults against women and children between September 2020 and February 2021. As of January 2024, 465 women, 93 boys, and 48 girls have been victims of homicide. There are many reports of gangs recruiting children. Children alone make up more than half of the estimated 313,000 Haitians who have been displaced by gang violence throughout the country. Women have also been internally displaced at an alarming scale, making up more than half of the 146,000 internally displaced people in Haiti’s West department as of December 2023.

Sexual and gender-based violence are pervasive; women and children are the primary targets. Gangs use sexual violence as a weapon for expanding the territory under their control. Kidnapping victims often experience rape and sexual abuse, with many of them being “taken as hostages and kept as sex slaves.” In 2022, the UN Office for the Coordination of Humanitarian Affairs reported more than 16,470 cases of gender-based violence—a 377 percent increase compared to prior years. Collective rape of girls and women has become “endemic.” Between October 2022 and June 2023, the UN documented 452 rape cases and 247 killings of women.

Sexual violence carries long-term consequences: when acts of sexual violence result in pregnancy, most girls and women are forced to carry the fetus to term, given the prohibition on abortion in Haiti, while others turn to self-performed abortions, risking their lives. Survivors of sexual violence commonly experience stigma and reprobation from their communities.

vi. Self-Protection Movements

As an apparent response to the state’s failure to prevent, address, and redress gang violence, some Haitian civilians have formed self-protection groups, commonly referred to as the Bwa Kale movement. While some applaud Bwa Kale as necessary to survival and an example of community-driven protection, others acknowledge that Bwa Kale has led to harm and even deaths of innocent people. As of February 2024, the movement was estimated to have carried out at least 600 public executions. It is unclear how many of the victims were affiliated with gangs. Children have also been killed by self-protection groups. The fact that Haitian people have improvised weapons and self-organized...
to address violence is a testimony to the deep and pervasive insecurity in the country.

**vii. Frequency of Violence**

Gang violence in Haiti is continuous and sustained. As mentioned above, levels of violence have mounted over the past decade, worsening in the wake of Moïse’s 2021 assassination. In its October 2023 resolution authorizing the deployment of Kenyan forces to Haiti, the UN Security Council acknowledged that gang violence occurs at “high levels” and is “increasing.” Haiti’s failing government has allowed gang violence to become continuous, sustained, widespread, and indiscriminate. The current situation meets the criteria for generalized violence.

**C. Haitians Are Experiencing Massive Violations of Human Rights**

Haitians also have been, and continue to be, subjected to massive violations of their human rights. Haitian people face arbitrary and mass murders, kidnappings, torture and ill treatment, lack of access to basic social services, and lack of protection or access to remedies from the government. Volker Türk, the UN High Commissioner for Human Rights, noted in February 2024, “The already dire human rights situation has deteriorated even further, amid unrelenting and expanding gang violence, with disastrous consequences for Haitians.”

This element of the regional refugee definition is met when internationally recognized rights are subject to widespread or large-scale violations, namely situations of gross and systematic denial of civil, political, economic, social, and cultural rights. The Inter-American Commission on Human Rights recognizes massive violations of human rights as those that have harmed the “majority” of the population and focuses especially on the impacts to the rights to life, personal liberty, freedom of movement, judicial protection, health, food, and work. The UNHCR has explained that “massive” relates to the magnitude of the violations and can thus refer to a single event or a series of events. The IACtHR has found that the most important factor in determining if a massive human rights violation has occurred is whether it occurred with “the support or acquiescence of the government or whether the State has allowed the act to take place without taking measures to prevent it.” When non-state actors are the perpetrators, UNHCR has indicated that these violations “may exist when the state is either unable or unwilling to protect their citizens by failing to prevent, investigate, prosecute or sanction these violations.” Elements of planning or organization on the part of state or non-state actors can also indicate this but are not a requirement.

Under Mexican law, “massive violations of human rights” encompasses large-scale “violatory conduct against human rights and fundamental liberties in the country of origin that conforms . . . with a determined policy.” Mexico’s Supreme Court of Justice of the Nation determined that the element of massive human rights violations can be determined based on either quantitative or qualitative criteria. The quantitative criteria consider elements such as number, intensity, amplitude, generality, frequency or prolongation over time, while the qualitative criteria consider whether the violations harm the way of life of the communities in which they occurred by creating emotional uncertainty.

**i. Gang Violence: Violations of the Right to Life and Crimes Against Humanity**

Haitian people today face massive, systemic human rights violations, as they continue to be besieged by gang violence, the scale, pattern, and context of which amounts to gross violations of human rights. The violence is often political in nature; political actors abet, commit, and acquiesce to it. Many of these gangs have received, and continue to receive, financing, weapons, and ammunition from government sources in exchange for their political support, and many gangs have direct connections with the Haitian National Police (PNH).

Several instances of violence in Haiti have risen to the level of crimes against humanity. In November 2018, for example, armed gangs operating with
government support carried out a massacre in La Saline, a Port-au-Prince neighborhood regarded as the center of anti-government organizing and resistance. Gang members opened fire on residents—men, women, children, and infants as young as 10 months old—for more than 14 hours. Gang members also forcibly entered homes, raping, shooting, and beheading residents. Victims’ bodies were dismembered, burned, and thrown in the garbage or fed to pigs. During the course of the attack, the PNH never intervened to protect residents, despite being both nearby and aware of what was occurring, and the government has yet to offer assistance or reparations to survivors of the massacre and those displaced by it.

Police investigation of the massacre identified more than 70 individuals responsible for the attacks, including two former PNH officers and two senior government officials, Joseph Pierre Richard Duplan, “a former Port-au-Prince mayor who serve[d] as the president’s representative for the West department,” which includes La Saline, and Fednel Monchéry, the former executive director of the interior ministry. Several other similar massacres have since been reported.

### ii. Violations of the Right to Life and the Right to be Free from Torture

The gang violence besieging Haitian people includes torture. As defined in international law, torture refers to the “intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.” Under Mexican law, torture includes conduct intended to diminish or nullify, or capable of diminishing or nullifying, the personality of the victim. Gangs deliberately and systematically use rape and sexual violence, which also constitute torture under international law, against Haitian civilians as a means of instilling fear in the general population or as a form of punishment. There are reported incidents of women and girls being forced to become the girlfriends or partners of gang members. Refusing to become a gang member’s wife or to have sex with gang members has resulted in women and girls being forced out of their neighborhoods and sometimes killed.

Haitians face astronomically high levels of kidnapping, with 901 instances recorded between January and September 2023. Between 2019 and 2023, there were at least 4,825 kidnappings. From January to June of 2023, UNICEF reported close to 300 kidnappings, many involving women and children. Those kidnapped, especially women and children, are often subjected to physical and sexual abuse, including sexual slavery, which can amount to torture.

### iii. An Absent State and Impunity: Violation of Civil and Political Rights

Many of the human rights violations in Haiti occur as government officials do little to stop or remedy them—and even at times enable them. As described above, those in power have eroded government institutions and accountability mechanisms and removed checks on executive power. Judicial function is also severely limited, as many courts remain nonoperational following gang attacks and judicial actors remain targets of threats of violence and intimidation. In the few operational courts, staff are often unavailable and undertrained. Government neglect of ancillary institutions, including those responsible for carrying out autopsies and collecting forensic evidence, further impedes effective investigations and access to justice.

Police forces remain under-resourced and unable to prevent or respond to the violations resulting from gang violence in the country. Police force numbers continue to decrease: between January and September 2023, 1,045 officers stepped down and 40 were killed. From the date of Henry’s inauguration to January 2023, 78 police officers were murdered by gangs, an average of five per month.
Haiti currently has a force of between 9,000 and 14,000 officers, of whom only approximately 4,000 are available for active policing at any time. Additionally, police officers are sometimes even complicit in these gang activities, through either direct involvement or a lack of adequate response.

iv. Violations of the Right to Assemble and the Right to Freedom of Speech

Violence in Haiti has functioned to quell public assembly and free speech. The government has failed to protect human rights defenders and journalists from gang violence, resulting in a shrinking of the civic space. At least thirteen journalists have been killed in Haiti since 2022. Threats of violence and accusations of defamation inhibit people’s ability to express their views on politics or other matters. One organization, the Centre d’analyse et de recherche en droits de l’homme, was forced to suspend operations after a staff member was kidnapped in October 2023. Vulnerable populations in Haiti experience even greater violence and difficulty accessing resources, with government protection and support effectively nonexistent.


Haiti faces catastrophic levels of hunger, lack of access to clean water and healthcare, closures of hospitals and schools, an ongoing fuel shortage, and a cholera outbreak. Food insecurity has worsened as school closures have prevented more than 300,000 children from accessing hot meals. The UN estimates that approximately 44 percent of Haitians are currently facing acute food insecurity. While death by violence receives more attention than death due to lack of basic services, the latter is responsible for significant preventable death in Haiti. Many additional social and economic rights violations occurring in Haiti have resulted in increased insecurity for Haitians and have seriously disrupted the Haitian way of life.

vi. Climate Harms and Violations of Peasants’ Rights

Haiti is consistently named as one of the five countries most affected by the global climate crisis, despite contributing a mere 0.003 percent to global greenhouse gas emissions. As the effects of climate change worsen and Haiti’s government remains incapable of anticipating or adequately responding to extreme weather events and other climate-caused harms, peasant farmers, rural women, and poor urban communities in Haiti experience the worst of these devastating impacts. Extreme weather events such as drought, hurricanes, and floods are destroying agricultural livelihoods, undermining food sovereignty, and causing further poverty. Peasants in Haiti are regularly excluded from access to basic services and government support that could help them withstand climate-related shocks. In response to declining rural livelihoods, many Haitians are forced to migrate to poor urban communities, where much of the gang-related violence and insecurity occurs.

The violence and socioeconomic precarity that Haitians face at the hands of gangs, the widespread violations of civil, political, economic, and social rights, and an enabling—or, at the very least, incompetent—government constitute massive violations of human rights under the regional refugee definition.

D. Other Circumstances That Seriously Threaten Public Order

The corruption and destruction of democratic institutions in Haiti by political leaders have seriously threatened public order and upended Haitians’ way of life. The July 2021 assassination of President Jovenel Moïse and the ensuing extra-constitutional political moment, including escalating gang aggression, have only exacerbated the crisis. As the following section shows, there are several “circumstances that have seriously disturbed public order” in Haiti. While there is no universally agreed-upon definition of “public order,” it is generally understood to refer to the peace, security,
or stability of the society in question and the normal functioning of the institutions of the state that respect the rule of law and ensure the safety of its citizens. In addition, the UNHCR has understood “public order” as reflecting a “prevailing level of the administrative, social, political and moral order as assessed according to the effective functioning of the State in relation to its population and based on respect for the rule of law and human dignity to such an extent that the life, security and freedom of people are protected.” Under international human rights law, “other circumstances that have seriously disturbed public order” encompass “man-made acts, including internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature as long as they seriously disturb public order.” While Mexican law specifies that a disturbance should be the result of man-made acts, the UNHCR has determined that “[w]hether a disturbance to public order stems from human or other causes is not determinative for concluding a serious disturbance of public order; the central concern is the effect of a given situation.”

Commonly accepted indicators of events seriously disturbing public order include but are not limited to a declared state of emergency; violations of international humanitarian law; a significant number of people killed, injured or displaced; a lack of food, medical services, and supplies, and other vital services; a change in, or collapse of, government institutions, political systems or the police and justice system; the imposition of parallel or informal justice and administrative systems; and/or non-state actors controlling state territory. In other words, situations that seriously disturb public order can exist “irrespective of whether they result from natural hazards, disasters, conflict or other drivers.” Events in Haiti today seriously disturb the public order.

**i. Presidential Assassination and Collapse of Government Institutions**

Years of state corruption and the deliberate dismantling of democratic structures and accountability mechanisms have rendered civil and political institutions in Haiti largely ineffective, further increasing instability in Haitians’ everyday lives. President Moïse’s rule was largely contested, as many Haitian and foreign commentators believed Moïse did not have a constitutional mandate to continue to govern. Moïse’s administration systematically dismantled institutions, including those that checked executive power. Following Moïse’s assassination, a state of emergency was declared and Haitian leadership was contested. Henry assumed power—not as the result of a Haitian process but at the urging of the United States and other foreign governments—and has remained the de facto prime minister—through time of publication, when he had committed to resign. Several international actors, including the United States, United Nations, and European Union, backed his rule for over two years, allowing him to remain in office despite a lack of meaningful political engagement with the Haitian population or civil society actors.

As of January 2023, there is no longer a single elected official at any level of government in Haiti. Prior to his commitment to resign, Henry consolidated power through state capture and general corruption. The PHTK, the political party with which Henry is closely allied, has dismantled Haiti’s judiciary to the point of rendering it almost nonfunctional. In the 2023 fiscal year, the Haitian government allocated less than 1 percent of the national budget to the justice sector. The judiciary now lacks independence and fails to provide justice, accountability, and due process of law to Haitians. Henry’s unconstitutional move to pack Haiti’s highest court and his unilateral creation of a Provisional Electoral Council, sidestepping the process, have been regarded by civil society actors as illegitimate and have further contributed to the erosion of democracy and rule of law in Haiti.

Beginning in late February 2024, a coalition of gangs came together to attack and destroy critical infrastructure—for example ports, airports, and banks—with the goals to prevent Henry from returning to Haiti and force him to step down. Gangs attacked the international airport, took over a seaport, torched several police stations and raided two prisons, killing multiple police officers and facilitating the escape
of more than 4,000 incarcerated people. Approximately 15,000 people were displaced in one week. The government issued a month-long state of emergency in March 2024. Two weeks after the attacks commenced, Henry was still unable to return. On March 11, 2024, Henry announced that he would step down once a new government formed. At the time of publication, it remained unclear if his resignation would follow the creation of the presidential transitional council, or their subsequent appointment of a prime minister.

### ii. Impact of Climate Disasters

As stated above, Haiti is consistently named one of the five countries most harmed by the global climate crisis. Haiti remains especially vulnerable to the effects of climate change due to its underlying structural vulnerabilities, including environmental degradation, lack of infrastructure, and an absent government. For example, poorly constructed housing and lack of sanitation infrastructure create health risks, as flood waters contaminated with human waste easily enter homes. Port-au-Prince is one of the largest cities in the world without a sewage system.

Natural disasters—and the compounding effects of inadequate government response—pose a severe threat to Haiti. The country is frequently harmed by hurricanes. For example, in 2016, Hurricane Matthew, a Category 4 hurricane that hit the south of Haiti, affected more than two million people, killed an estimated 500 to 900 people, displaced 175,000 people, and caused losses and damages amounting to 22 percent of the country’s GDP. Haiti’s agriculture and housing sectors were the hardest hit, as up to 90 percent of crops and livestock were lost in some areas. Agricultural plots, seeds, and irrigation systems were destroyed in Haiti’s southern “bread basket,” creating a food security crisis that resulted in the migration of tens of thousands of Haitians out of Haiti. Climate disasters are expected to become more frequent and intense, which will exacerbate insecurity.

In addition to natural disasters, Haiti has experienced severe drought, further limiting agricultural productivity and access to clean water. Between 2013 and 2016, specifically, Haiti faced its most severe and widespread drought, which affected three million people. These droughts are expected to worsen, as climate disorder is predicted to double the length of the dry season, further lessening agricultural productivity and the supply of potable water.

### iii. Lack of Preparation for and Response to Natural Disasters

On January 12, 2010, Haiti was struck by a devastating earthquake that killed hundreds of thousands of people, displaced more than one million people, and destroyed significant government infrastructure. The magnitude of the death and destruction was due in part to underlying vulnerabilities: unsafe and unregulated construction, an absence of disaster preparedness education or planning, and the state’s inability to adequately respond to disaster. The international community responded to this event in the form of foreign aid, provided with minimal oversight and accountability, resulting in the vast majority of aid not reaching the Haitian population. Haitian people, human rights organizations, and observers criticized this aid as a band-aid that failed to yield long-term solutions. For example, insufficient housing meant that five years after the earthquake there were still more than 100,000 people living in camps.

Finally, in the wake of the earthquake, foreign powers intervened politically. International actors encouraged elections that many considered inappropriate and even unconstitutional. These elections were marred by fraud and evidence of foreign interference, further weakening Haiti’s political infrastructure.
The confluence of crises occurring in Haiti has produced a humanitarian and human rights catastrophe. Haiti is plagued by violence paralleling, if not outright constituting, an armed conflict. The pervasive violence and widespread rights violations affecting millions of Haitians are as severe as those experienced by civilians living in states at war and have been amplified by a worsening political crisis. The state has completely abdicated its duty to respect, protect, and fulfill human rights. As a result, hundreds of thousands of Haitians, including women and children, have been compelled to flee the country and disperse throughout the hemisphere in an effort to escape these abuses. During their journeys they continue to face violence and exploitation. In light of the dangerous reality in Haiti and for Haitians throughout the region, it is urgent that Haitians be recognized as the refugees they are.

Mexico has ignored the gravity of the situation in Haiti, violating both Haitians’ right to seek and receive refugee status and its domestic and international legal obligations. Of the 112,332 Haitians who sought refugee status in Mexico from 2021 to 2023, the Mexican Commission for Refugee Assistance (COMAR) extended refugee status or complementary protection to only 5,214—a mere 4.6 percent of applicants. By the end of 2023, COMAR had rejected 12,774 (11.4 percent) of the applications and left 94,344 (84.0 percent) unadjudicated. Between 2021 and 2023, Haitians were the nationality least likely, among the top five nationalities to apply for refuge in Mexico, to have their refugee applications approved. This disproportionate rejection occurred as Haitians filed more refugee applications in Mexico during those years than any other national group. Extending Cartagena protection to Haitians is not only required by law but also necessary to halt systematic discrimination.

2024 marks the fortieth anniversary of the Cartagena Declaration. To continue to ignore Haiti’s political, human rights, and humanitarian crises by denying Haitians refugee protection would signify that little has been accomplished in the last forty years. Cartagena +40 presents an opportunity for Mexico to assume a regional leadership role by applying the declaration to Haitians and encouraging other states to do the same. Mexico should assume this role with the support of, and in concert with, international organizations, such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration. The UNHCR should issue a guidance note on international protection considerations for Haitians, as it did in 2019 for Venezuelans, to pave a clear path for COMAR and migration authorities of other states to approve Haitians’ refugee applications. Together, Mexico and international organizations could help the Cartagena Declaration fulfill its legacy as a cornerstone of international refugee law.

Mexico has a legal, political, and humanitarian obligation to extend refugee status to Haitians under the regional refugee definition. As a signatory to the Cartagena Declaration and other human rights and refugee law instruments, Mexico must respect the principle of non-refoulement and the right of refugees to request asylum and receive a fair assessment of their situation. Fair assessment and meaningful access to asylum requires provision of Haitian Creole interpretation at every step of the application process. Extending Cartagena to Haitian migrants is the first step for Mexico to provide the necessary support for Haitian people to meet their basic needs and rebuild their lives in a safe and dignified manner.
IV. Endnotes


6. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, INTER-Am CT. H.R. (ser. A) No. 29, ¶ 78-29 (Aug. 19, 2014) (“the Court is of the opinion that the right to seek and receive asylum in the context of the inter-American system is enshrined as an individual human right to seek and receive international protection on foreign territory, including with this expression refugee status in accordance with pertinent instruments of the United Nations or corresponding domestic legislation, as well as asylum in accordance with the different inter-American conventions on this matter . . . the Court considers that the obligations under the right to seek and receive asylum are operative with respect to those persons who meet the components of the expanded definition of the Cartagena Declaration”).

7. Id. ¶ 210.

8. Based on this principle, states are bound not to return (refouler) or expel a person—asylum seeker or refugee—to a state where her or his life or liberty may be threatened as a result of persecution for specific reasons or due to generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order, nor to a third state from which she or he may later be returned to the state where she or he suffered this risk—a situation that has been called “indirect refoulement.” Id. ¶ 210, OHCHR, THE PRINCIPLE OF NON-REFOULEMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW 1, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf. The Institution of Asylum, And Its Recognition as a Human Right Under the Inter-American System of Protection (Interpretation and Scope of Articles 5, 22(7) and 22(8) in Relation to Article 1(1) of the American Convention on Human Rights), Advisory Opinion OC-25/18, INTER-Am CT. H.R. (ser. A) No. 25, ¶ 181, 190 (May 30, 2018).

10 Ley General de Población [LGP], Diario Oficial de la Federación [DOF] art. 42 pfo. VI, 07-01-1974, últimas reformas DOF 17-07-1990 (Mex.).


12 From 2020 to 2023, Haitian was one of the most common nationalities of applicants, if not the most common nationality, and yet Haiti experienced a lower refugee application approval rate than the other four top countries (Cuba, El Salvador, Honduras, and Venezuela). See La COMAR en Números, COMAR (Jan. 9, 2024), https://www.gob.mx/comar/articulos/la-comar-en-numeros-355058?idiom=es.


19 Consider, for instance, how thousands of voters lost their identification cards during the earthquake. Despite this significant loss, the government took no measures to replace people’s cards and thus excluded them from voting. Jake Johnston & Mark Weisbrot, HAITI’S FATALY FLAWED ELECTION 3 (2011), https://cepr.net/documents/publications/htai-2011-01.pdf.


26 Henry was nominated by Moïse but had not been sworn in prior to Moïse’s assassination, and his installment was strongly encouraged by prominent members of the international community (Brazil, Canada, the European Union, France, the Organization of American States, the secretary-general of the UN, Spain, and the United States), acting as the Core Group. Communiqué du Core Group, BUREAU INTÉGRÉ DES NATIONS UNIES EN HAITI (July 7, 2021), https://binuh.unmissions.org/fr/communique-du-core-group-4, Caitlin Hu & Etant Dupain, Is There a Democratic Solution to Haiti’s Current Crisis?, CNN (Feb. 12, 2021), https://www.cnn.com/2021/02/12/americas/haiti-president-constitution-us-support-crisis-intl/index.html. The deterioration of the Haitian government has worsened since Moïse’s assassination and Henry’s assumption of power, and with it the president’s assumption of the chief executive role to the point of essential inoperation in the present day. See World Report 2023: Rights Trends in Haiti, HUMAN RIGHTS WATCH (Jan. 12, 2023), https://www.hrw.org/world-report/2023/country-chapters/haiti. Despite demands for aid from Haitians, the United States did not protest Henry’s assumption of power but instead backed his government for over two years. Vera Bergen gruen, Haitian-Americans Say Biden Is Turning His Back on a Country He Promised to Help, TIME (Feb. 1, 2022, 7:00 AM), https://time.com/6143221/haiti-political-crisis-biden-administration/.


30 HARVARD LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC & OBSERVATOIRE HAÏTIEN DES CRIMES CONTRE L’HUMANITÉ, KILLING WITH IMPUNITY: STATE-SANCTIONED MASSACRES IN HAITI 3 (2021), http://hlsrpsstaging.wpengine.com/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf (“In the weeks before the attack, two senior officials from Moïse’s administration, Pierre Richard Duplan and Fednel Monchéry, met with then-police officer and gang leader Jimmy Chérizier (alias ‘Barbecue’) to plan and provide resources for the attack. On November 13–14, 2018, armed gangs led


33 Gangs control so much territory that the IACHR fears that a significant portion of the country’s voters will not be able to exercise their right to peacefully exercise their vote. IACHR, Human Rights Situation in Haiti ¶ 91 (2022) https://www.oas.org/en/iachr/reports/pdfs/2023/Informe_Haiti_EN.pdf.


40 S.C. Res. 2699, ¶ 1 (Oct. 2, 2023). Notably, no states voted against the Resolution—three states were in favor, two abstained (Russia and China), with China’s abstention being considered a “constructive position” towards the resolution.” Richard Roth, Caitlin Hu, & Tara John, UN Security Council Approves Sending Foreign Forces to Haiti,
IACHR has recommended that states consider applying the Cartagena Declaration to Haitians in human mobility and that specific consideration be given to “the humanitarian situation prevailing in the country and the serious impact on public order.” Protection of Haitians in Human Mobility: Inter-American Solidarity, INTER-AM. COMM’N H.R., Res. No. 2/2021 ¶ 24(b) (2021).


Generalized violence does not preclude individual persecution and individual violence. Because of the declaration’s focus on “generalized violence,” this document does not assess cases of individual persecution. However, the severity and pervasive nature of the violence in Haiti suggests that cases of individual persecution are probable and likely common.


Global Initiative Against Transnational Organized Crime, GANGS OF HAITI: EXPANSION, POWER, AND AN ESCALATING CRISIS 3 (2022) https://globalinitiative.net/wp-content/uploads/2022/10/GITOC-Gangs-of-Haiti.pdf (“[y]ears of political dysfunction in the Caribbean country have combined with deteriorating economic conditions, the COVID-19 pandemic and natural disasters, to create a weakening of state power. Under these conditions, gangs have multiplied, joined up forces and asserted authority in an increasingly destructive manner.”).


Reg. de la Ley Sobre Refugiados y Protección Complementaria, art. 4 pfo. VII, Diario Oficial de la Federacion [DOF], 21-02-2012 (Mex.) (unofficial translation).

under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions, HCR/GIP/16/12 ¶ 73 (Dec. 2, 2016).

52 Id. ¶ 71.


56 Referring to incorporated municipalities.


60 Id. at 4.

61 Id. at 4.

62 Id. at 14.

63 Id. at 4.

64 Id. at 18.

66 Id. at 5.


70 Id. at 3.


76 Examples of the many gang-perpetuated attacks in the recent past include the July 2022 attack by G-9 in Cité Soleil. The attacks included record of 52 incidents of rape, 10 of which were collective or repeated rape; April 2023 attack by the Titanyen, Base 5 Secondes, and Canaan gangs in Cabaret commune near Port-au-Prince, killing at least 100 people; the April 2023 clashes between the Brooklyn gang on one side and the Belekou and Boston gangs in Cité Soleil, which killed 70 people over six days; the August 2023 attacks, apparently by the Grand Ravine gang in Port-au-Prince, “that killed or injured some 28 people” and involved the “looting or setting on fire [of] at least 50 homes”; the September 2023 attack by the Haitian gang in Saut d’Eau that killed at least 12 (and perhaps as many as 23) people, injured at least 14 people, and resulted in the looting and burning of many houses and at minimum 10 vehicles; and the at least four-day attack in Port-au-Prince during January 2024. See Wildlore Mérancourt & Amanda Coletta, ‘Collective Rapes’ Surge as Weapon in Haiti’s Gang War, THE WASHINGTON POST (Jan. 29, 2024), https://www.washingtonpost.com/world/2024/01/29/haiti-gang-violence-rape/?tidd=1k_interstitial_manual_10 (describing collective rapes); The National Human Rights Defense Network, Massacre in Cité Soleil: Chilling Stories of Women and Girls Victims of Gang Rape (2022), https://web.mrdhh.org/wp-content/uploads/2022/08/10-Rap-Cite-Soleil-Femmes-et-Filles-violee-1Aout2022-ENG.pdf (describing the July 2022 massacre in Cité Soleil); Regional Overview Latin America & The Caribbean, ACLED (2023), https://reliefweb.int/report/haiti/regional-overview-latin-america-caribbean-april-2023 (describing the April 2023 attacks in Cabaret and Brooklyn); Spokesperson for the UN High Commissioner for Human Rights: Ravina Shamdasani, Haiti: Deaths and Injuries Amid Gang Violence, UN OHCHR (Aug. 18, 2023), https://www.ohchr.org/en/press-briefing-notes/2023/08/haiti-deaths-and-injuries-amid-gang-violence (describing the August 2023 attacks in Port-au-Prince); Marie Laurette Numa, New Violent Attacks Reveal...


83 In a 2023 report, “Human Rights Situation in Haiti,” the IACHR “expressed its deep concern over the state’s failure to investigate and punish the facts related to the massacres in accordance with Inter-American standards for these matters, as well as the State’s lack of capacity to investigate the occurrence of this type of events with due diligence,” which has in turn incentivized more “acts of mass violence and deepen[ed] the citizen security crisis.” See IACHR, HUMAN RIGHTS SITUATION IN HAITI ¶ 122 (2022) https://www.oas.org/en/iachr/reports/pdfs/2023/Informe_Haiti_EN.pdf.


87 BUREAU DES AVOCATS INTERNATIONAUX AND INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, FOREIGN SANCTIONS AGAINST HAITIAN INDIVIDUALS (DECEMBER 2020 – PRESENT) (2023), https://docs.google.com/document/d/1RG0k34Ca1D3QmxHtIXW-S_C8AeyjVUm1gktmiopdo/edit.


More Civilians Killed in Haiti This Year than Ukraine Amid Extreme Violence, BBC News, (Aug. 22, 2023), Ukraine: Protection of civilians in armed conflict - December 2023 update, UN OHCHR (Jan. 15 2024), https://ukraine.un.org/sites/default/files/2024-01/Ukraine%20-%20%20protection%20of%20civilians%20in%20armed%20conflict%20%2828December%202023%29_ENG_0.pdf#:&text=HRMMU%20verified%20that%20at%20least%20954%20people%20were%20killed%20in%20the%20previous%20month.


105 “Equally worrying, in certain areas of the capital, gangs intensified their coordinated attacks in an attempt to take control of new areas. During these extremely brutal attacks, gang members indiscriminately killed people trying to flee, including children, gangraped women and girls in their homes [] and destroyed numerous houses and buildings.” U.N. Integrated Office in Haiti, Human Rights Situation 3-4, (2023), https://binuh.unmissions.org/sites/default/files/2023_q3_rapport_trimestriel_droits_humains_en.pdf.


107 It is worth noting that the statistics presented in this section are likely underestimates: underreporting and unstandardized case documentation hinder data collection. UN Population Fund (UNFPA), Addressing Gender-Based Violence in Haiti (2023), https://reliefweb.int/report/haiti/addressing-gender-based-violence-haiti-june-2023 (“[q]uantifying the extent of gender-based violence (GBV) or sexual violence in Haiti is impossible.”).


As of January 2024, 170,000 of the at least 314,000 people who were internally displaced were children. At Least 170,000 Children Displaced Amid Escalating Violence in Haiti, UNICEF (Jan. 30, 2024), https://www.unicef.org/press-releases/least-170000-children-displaced-amid-escalating-violence-haiti.


SEXUAL VIOLENCE IN PORT-AU-PRINCE: A WEAPON USED BY GANGS TO INSTILL FEAR, BINUH (2022), https://reliefweb.int/report/haiti/sexual-violence-port-au-prince-weapon-used-gangs-instill-fear. Because of this rampant stigmatization and because men are often the ones who interface with immigration and other government agencies in Mexico, information about gender-based or sexual violence that women may have experienced in Haiti is less likely to be brought to COMAR’s attention. Despite the high rates of sexual violence occurring in Haiti and along the migration route, Mexican immigration authorities have failed to sufficiently consider the unique risks faced by Haitian women applying for refugee protections in Mexican territory. S. PRIYA MORLEY, EXECUTIVE SUMMARY: ECOLOGICAL CRISIS, CLIMATE JUSTICE AND RACIAL JUSTICE 65 (2022), https://promiseinstitute.law.ucla.edu/wp-content/uploads/2023/09/Executive-Summary-Ecological-Crisis-FINAL.pdf. To begin rectifying this issue, COMAR should “use a gender sensitive lens when evaluating asylum claims” to ensure that differences between how men and women experience migration are accounted for and that proper gender-specific care is offered to applicants. Specifically, “wives and partners of male asylum applicants must be screened separately and evaluated for their own potential asylum claims.” Id. at 79. Given Mexico’s commitment to protecting victims of sexual and gender-based violence, as well as its adoption of the American Convention of Human Rights and Brazil Declaration and Plan of Action, among other international instruments, the country has an obligation to ensure meaningful access to refugee protections to Haitian women and girls.


**Inter-Am Comm’n H.R. Res. 2/18, at 11 (Mar. 14, 2018).**


**Id ¶ 76.**

**Reg. de la Ley Sobre Refugiados y Protección Complementaria, art. 4 pfo. X, Diario Oficial de la Federacion [DOF], 21-02-2012 (Mex.) (unofficial translation).**

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137 Id. at 10.


140 See infra Section II(b)(i).

141 Id. Under international law, crimes against humanity are among several crimes enumerated in the Rome Statute, such as murder and rape, that are committed as part of an attack directed at any civilian population, widespread or systematic, and pursuant to or in furtherance of a state or organizational policy. Rome Statute of the International Criminal Court, art. 7, 17 July 1998, C.N.651.2010 Treaties-8.


145 Id. at 9-11.

146 Id. at 9-11.


148 Id.


See infra Section II (b)(iii).


See infra introduction to Section II and Section II(b)(ii).

See infra introduction to Section II.


See infra introduction to Section II and Section II(b)(ii).


See infra introduction to Section II and Section II(b)(ii).


See infra introduction to Section II and Section II(b)(ii).


Reg. de la Ley Sobre Refugiados y Protección Complementaria, art. 4 pto. XI, Diario Oficial de la Federacion [DOF], 21-02-2012 (Mex.). UNHCR, LEGAL CONSIDERATIONS REGARDING CLAIMS FOR INTERNATIONAL PROTECTION MADE IN THE CONTEXT OF THE ADVERSE EFFECTS OF CLIMATE CHANGE AND DISASTERS ¶ 16 (2020).


Diana Roy & Rocio Cara Labrador, HAITI’S TROUBLED PATH TO DEVELOPMENT, COUNCIL ON FOREIGN RELATIONS (Mar. 4, 2024), https://www.cfr.org/backgrounder/haits-troubled-path-development.

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Id. at 5.

Id. at 5. The failure to guarantee satisfactory working conditions to magistrates, let alone pay them sufficiently, has also led them to strike, which has the unfortunate consequence of further delaying justice. Jean Pharès Jérôme, Haitian Justice Unaware of Its Own Authority, Le NOUVELListe (Dec. 11, 2023), [https://www.lenouvelliste.com/en/article/245882/haitian-justice-unaware-of-its-own-authority](https://www.lenouvelliste.com/en/article/245882/haitian-justice-unaware-of-its-own-authority).


Id.


Id.


Non-international armed conflicts (NIACs) have two key components. First, the armed groups engaged in the conflict must demonstrate a minimum degree of organization. Second, the armed confrontations that constitute the conflict must rise to a minimum level of intensity. The determination of whether a conflict constitutes a NIAC requires a case-specific weighing of the various pertinent factual indicators. See Internal Conflicts or Other Situations of Violence – What Is the Difference for Victims?, INTERNATIONAL COMMITTEE OF THE RED CROSS (Dec. 10, 2012), https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm. While this document does not explicitly explore the internal conflict prong of the Cartagena Declaration, there is a strong argument to be made that the situation in Haiti should be recognized as such, owing to the high degree of organization demonstrated by gangs (consider the sophistication of their weapons, systematized recruitment
methods, and hierarchical structures) and the deadly, pervasive intensity of the violence they commit. See, infra Section II(b)(i).


230 The journeys that Haitians take to other countries are often dangerous. Consider, for example, the perils associated with crossing the Darién Gap (the jungle connecting Panama and Colombia), including having to rely on smugglers, passing through difficult-to-navigate terrain, being victims of sexual violence and exploitation, and lacking basic necessities. Caitlyn Yates & Juan Pappier, How the Treacherous Darien Gap Became a Migration Crossroads of the Americas, Migration Policy Institute (Sept. 20, 2023), https://www.migrationpolicy.org/article/darien-gap-migration-crossroads. They also experience major challenges once they settle in countries in the Americas, which is one of the reasons that Haitians who previously settled elsewhere in the Americas decide to come to Mexico. These difficulties include being deprived of basic necessities, working in conditions that amount to slavery, and being subjected to racialized violence, anti-Black racism, and other forms of discrimination. See, e.g., IOM Study Focuses on Haitian Migration in the Turks and Caicos Islands, IOM (Dec. 11, 2011), https://www.iom.int/news/iom-study-focuses-haitian-migration-turks-and-caicos-islands; INTERUNIVERSITY INSTITUTE FOR RSCH. AND DEV., POST-EARTHQUAKE HAITIAN MIGRATION TO LATIN AMERICA 42 (2020); Jacqueline Charles, Chile Is Used to Welcoming Migrants. But Haitians Don’t Always Get a Warm Reception, MIAMI HERALD (Mar. 5, 2018), https://www.miamiherald.com/news/nation-world/world/americas/haiti/article202589599.html; Haitian Immigrants Victims of Xenophobic Attacks in Brazil, TELESUR (Aug. 9, 2015), https://www.telesurenglish.net/news/Haitian-Immigrants-Victims-of-Xenophobic-Attacks-in-Brazil-20150809-0002.html.


