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International **Human Rights** & **Conflict Resolution** Clinic

**VIOLATIONS OF HUMAN RIGHTS OCCURRING IN MEXICO
AS A RESULT OF THE REMAIN IN MEXICO PROGRAM**

A REPORT FOR
HOPE BORDER INSTITUTE

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I. Introduction

In January 2019, the U.S. and Mexico jointly announced the implementation of the Migrant Protection Protocols (MPP) whereby migrants who arrive in the United States without proper documentation are returned to Mexico until their formal removal proceedings.¹ In conjunction with MPP, both states have jointly applied a “metering” system, which limits the number of asylum-seekers (both Mexican and non-Mexican) arriving at ports of entry.² In practice, asylum-seekers at ports of entry are given a number for passage across the border and are required to wait in Mexico until their number is called.³ Once their number is called and they cross the border, they are apprehended, taken into Customs and Border Patrol (CBP) custody, and given a date for their formal court proceedings. Then, per MPP regulations, they are mandatorily returned to Mexico where they are required to wait until their hearings. As a result of MPP and metering, migrants have had to spend months waiting in Mexican cities along the border. In implementing these policies, the United States has shifted responsibility for its own immigration protocols to Mexico, calling on the Mexican government to carry the burden of care for hundreds of thousands of asylum-seekers. While Mexico has stated that for the duration of their stay, migrants “will be entitled to equal treatment with no discrimination whatsoever and due respect will be paid to their human rights,”⁴ it has consistently failed to uphold this promise. In the last year, migrants affected by MPP and metering have suffered grave human rights abuses both in the United States and in Mexico, as has been widely documented by human rights organizations and major media outlets.⁵

II. Purpose and Methodology

Although the U.S. is certainly responsible and should be held accountable for human rights violations against migrants in MPP and metering, this report will focus exclusively on violations occurring in Mexico and the responsibility of the Mexican State. We have chosen this scope for two main reasons. First, the current landscape in U.S. immigration law is intentionally confusing, convoluted, and ever-changing. It is incredibly difficult to maintain current and accurate information about migrants in U.S. detention, which poses unique challenges for litigation efforts.⁶ Second, unlike the U.S., Mexico is a party to many human rights treaties and is therefore obligated to comply with their provisions.

The first part of this report will describe Mexico’s various human rights obligations. The second part will explain the State’s responsibility to respect, protect, ensure, and fulfil those obligations. Third, this report will detail violations of human rights as a result of the MPP and metering programs. More specifically, this third section will analyze (1) extortions, kidnappings, and other criminal acts, (2) enforced disappearances, (3) torture and other cruel, inhuman, and

¹ See U.S. Dep’t of Homeland Security, Memorandum on Policy Guidance for Implementation of the Migrant

² See Elizabeth Trovall, *‘Metering’ Policy at the Southern Border Faces Renewed Scrutiny*, NPR (July 3, 2019), <https://www.npr.org/2019/07/03/738586876/metering-policy-at-the-southern-border-faces-renewed-scrutiny>.

³ *Id.*

⁴ MPP Memo, *supra* note 1, p. 3.

⁵ See e.g., *US: Asylum Seekers Returned to Uncertainty, Danger in Mexico*, HUMAN RIGHTS WATCH (Jul. 2, 2019), <https://www.hrw.org/news/2019/07/02/us-asylum-seekers-returned-uncertainty-danger-mexico>; see also Robbie Whelan, *Violence Plagues Migrants Under U.S. ‘Remain in Mexico’ Program*, WALL ST. J. (Dec. 28, 2019), <https://www.wsj.com/articles/violence-plagues-migrants-under-u-s-remain-in-mexico-program-11577529000>.

⁶ See e.g., *East Bay Sanctuary Covenant v. Trump*, Case No. 18-17274, (9th Cir. 2019).

degrading punishment or treatment, (4) arbitrary and prolonged detention, (5) economic, social, and cultural rights (i.e. health, adequate standard of living, work, and education), and (6) discrimination, as they pertain to migrants. Finally, the fourth part of this report will address the possibility that crimes against humanity and genocide are being committed against migrants along the U.S. and Mexico border.

To gather information for this report, four American interviewers working with three Spanish-language interpreters spent four days in Ciudad Juárez, Mexico. A total of twenty formal interviews were conducted with migrants from Mexico, Guatemala, Honduras, Venezuela, Cuba, and El Salvador. The interviews were conducted at the Center for Comprehensive Migrant Services (CAIM); at a migrant shelter run by the Mexican federal government; and in informal settlement camps established by migrants mostly of Mexican origin by the bridges that serve as ports-of-entry into El Paso, Texas. Potential interviewees were identified by HOPE representatives. Those who agreed to be interviewed were informed of this report's purpose before the interviews began; were given the right to request that any personal identifying information be redacted for the safety of the interviewee and their family; and were told that they had the right at any time to end the interview or withdraw their consent for HOPE to use the interview in its report. Notes from these interviews are attached as Annexes 1–20.

III. Mexico's Human Rights Obligations

Mexico is a party⁷ to many international human rights treaties.⁸ These include the Convention against Torture (CAT)⁹ and its Optional Protocol (CAT-OP),¹⁰ as well as its individual complaints procedure (CAT art. 22)¹¹ and inquiry procedure (CAT art. 20)¹²; the International Covenant on Civil and Political Rights (ICCPR)¹³ and both of its Optional Protocols (ICCPR-OP1¹⁴ and ICCPR-OP2-DP¹⁵); the Convention for the Protection of All Persons from Enforced Disappearance (CED),¹⁶ including the inquiry procedure (CED art. 33)¹⁷;

⁷ Unless otherwise indicated, all ratification status information provided in the footnotes below comes from U.N. Treaty Body Database, *Ratification Status for Mexico*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=112&Lang=EN (last visited Dec. 5, 2019). Unless mentioned in the footnotes below, the ratification or accession was made without explicit reservation (interpretive declarations are not included here).

⁸ *Pacta sunt servanda* is the general principle of international law asserting that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” This general principle of law has been codified in the Vienna Convention on the Law of Treaties art. 26, 1155 U.N.T.S. 331 (May 23, 1969).

⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85. Mexico ratified the CAT on Jan. 23, 1986.

¹⁰ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, 2375 U.N.T.S. 237. Mexico ratified the CAT-OP on Apr. 11, 2005.

¹¹ Mexico accepted CAT art. 22 on Mar. 15, 2002.

¹² Mexico accepted CAT art. 20 on Jan. 23, 1986.

¹³ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. Mexico acceded to the ICCPR on Mar. 23, 1981. Mexico included a reservation to art. 25(b).

¹⁴ Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. Mexico accepted the ICCPR-OP1 on Mar. 15, 2002.

¹⁵ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414. Mexico acceded to the ICCPR-OP2-DP on Sept. 26, 2007.

¹⁶ International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3. Mexico ratified the CED on Mar. 18, 2008.

the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁸ and its Optional Protocol (CEDAW-OP)¹⁹; the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)²⁰ and its individual complaints procedure (CERD art. 14)²¹; the International Covenant on Economic, Social and Cultural Rights (ICESCR)²²; the International Convention on the Rights of Migrant Workers (CMW)²³ and its individual complaints procedure (CMW art. 77)²⁴; the Convention on the Rights of the Child (CRC),²⁵ including two of its Optional Protocols (CRC-OP-AC²⁶ on children in armed conflict and CRC-OP-SC²⁷ on the sale of children); the Convention on the Rights of Persons with Disabilities (CRPD),²⁸ including its Optional Protocol (CRPD-OP)²⁹; the Genocide Convention³⁰; and the Palermo Protocol (on human trafficking).³¹ In addition to these broad multilateral treaties, Mexico has also ratified the regional American Convention on Human Rights (ACHR)³² and

¹⁷ Mexico accepted CED art. 33 upon ratification (Mar. 18, 2008).

¹⁸ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. Mexico ratified the CEDAW on Mar. 23, 1981.

¹⁹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Oct. 6, 1999, 2131 U.N.T.S. 83. Mexico accepted the CEDAW-OP on Mar. 15, 2002.

²⁰ International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195. Mexico ratified the CERD on Feb. 20, 1975.

²¹ Mexico accepted CERD art. 14 on Mar. 15, 2002.

²² International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. Mexico acceded to the ICESCR on Mar. 23, 1981. Mexico has not accepted the individual complaints procedure within the Optional Protocol to the ICESCR (ICESCR-OP).

²³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3. Mexico ratified the CMW on Mar. 8, 1999.

²⁴ Mexico accepted CMW art. 77 upon ratification (Mar. 8, 1999).

²⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Mexico ratified the CRC on Sept. 21, 1990. Mexico has not accepted the individual complaints and inquiry procedures contained within a third Optional Protocol (CRC-OP-IC).

²⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, May 25, 2000, 2173 U.N.T.S. 222. Mexico ratified the CRC-OP-AC on Mar. 15, 2002.

²⁷ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, May 25, 2000, 2171 U.N.T.S. 227. Mexico ratified the CRC-OP-SC on Mar. 15, 2002.

²⁸ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3. Mexico ratified the CRPD on Dec. 17, 2007.

²⁹ Optional Protocol to the Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2518 U.N.T.S. 283. Mexico ratified the CRPD-OP on Dec. 17, 2007, including its inquiry procedure within arts. 6-7.

³⁰ Convention on the Prevention and Punishment of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277. Mexico ratified the Genocide Convention on July 22, 1952.

³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319. Mexico ratified the Palermo Protocol on Mar. 4, 2003. Mexico also ratified the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209, on Mar. 4, 2003.

³² American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123. Mexico ratified the ACHR on Mar. 2, 1981. Mexico has not recognized the competence of the Commission (ACHR art. 45). *Signatories and Ratifications, American Convention on Human Rights*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <https://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm> (last visited Dec. 5, 2019). Mexico included a reservation to Article 23 ¶ 2 at the time of ratification. *Id.* The American Declaration of the Rights and Duties of Man, May 2, 1948, was also adopted by the American States, including Mexico.

recognizes the jurisdiction of the Inter-American Court of Human Rights (IACtHR).³³ Mexico's own Constitution sets forth human rights protections as well.³⁴

The treaties and documents mentioned above enshrine many human rights protections.³⁵ Among them are the right to be free from detention, both prolonged and arbitrary³⁶; economic, social, and cultural rights,³⁷ including the rights to health, work, standard of living, and education; the right to be free from all types of discrimination³⁸; the right to life³⁹; the right to be free from torture⁴⁰; the right to be free from slavery and trafficking⁴¹; the right to freedom of movement⁴²; the right to privacy⁴³; the right to freedom of thought, religion, and expression⁴⁴; the right to freedom of assembly and association⁴⁵; and the right to family.⁴⁶ As discussed below, Mexico has duties under international law to carry out its assurances to protect and ensure these rights.

IV. Mexico's Responsibility to Respect, Protect, Ensure, and Fulfil Its Human Rights Obligations

Under the international law and international human rights law doctrine of State responsibility, States like Mexico are held accountable for violations of human rights committed by their agents or other persons under the State's direction or control.⁴⁷ To establish State responsibility, two things must be shown: first, that there is an act that breaches an international obligation of a State (an "internationally wrongful act"), and second, the act in question is

³³ Mexico recognized the jurisdiction of the IACtHR on Dec. 16, 1998.

³⁴ CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CPEUM], Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.), *available in English at* https://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf.

³⁵ We list many rights included in the treaties above briefly here; in Annex A, we include the full text of the treaty protections for the rights in this list. This list and the accompanying annex are *not* exhaustive, but rather demonstrative, highlighting the rights most relevant to this report.

³⁶ *See, e.g.*, ICCPR art. 9; CED arts. 1-2; CPEUM art. 19; ACHR art. 7; *c.f., e.g.*, ICCPR art. 10 (detailing the rights of the accused and the non-arbitrarily detained); ICCPR art. 11 (preventing imprisonment for breaking contractual obligations).

³⁷ *See, e.g.*, ICESCR art. 6-7, 11-13.

³⁸ *See, e.g.*, ICCPR arts. 26-27; CEDAW arts. 1-2; CERD arts. 1-3; CRPD art. 5; ACHR art. 24; *c.f., e.g.*, ICCPR art. 20 (preventing discriminatory advocacy and propaganda).

³⁹ *See, e.g.*, ICCPR art. 6; CMW art. 9; ACHR art. 4; *see also* ICCPR art. 16 (presenting the right to be recognized as a person).

⁴⁰ *See, e.g.*, CAT arts 1-3; ICCPR art. 7; CMW art. 10; ACHR art. 5.

⁴¹ *See, e.g.*, ICCPR art. 8; Palermo Protocol art. 3; ACHR art. 6.

⁴² *See, e.g.*, ICCPR art. 12; CMW art. 8; CPEUM art. 11; ACHR art. 22; *c.f., e.g.*, ICCPR art. 13 (detailing the rights of movement for aliens abroad).

⁴³ *See, e.g.*, ICCPR art. 17; ACHR art. 11.

⁴⁴ *See, e.g.*, ICCPR arts. 18-19; ACHR arts. 12-13.

⁴⁵ *See, e.g.*, ICCPR arts. 21-22; ACHR arts. 15-16.

⁴⁶ *See, e.g.*, ICCPR arts. 23-24; ICESCR art. 10; ACHR art. 17.

⁴⁷ *See generally* Draft Articles on Responsibility of States for Internationally Wrongful Acts [hereinafter ARSIWA], in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), *available at* http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (including its commentaries) (describing the circumstances under which a State is responsible for a breach of an international obligation, including human rights obligations).

attributable to that State.⁴⁸ Since international obligations are structured variously as prohibitions against certain behaviors⁴⁹ and as affirmative duties requiring identified State action,⁵⁰ internationally wrongful acts can take the form of either action or omission.⁵¹

When a violation is an action, the conduct must be attributable to the State for responsibility to attach. Where the individual actor is a direct agent of the State—such as a member of the military, immigration authorities, or the police—attribution is always found,⁵² even when these groups exceed the authority given to them by the government.⁵³ When a non-State actor, such as a member of a cartel,⁵⁴ violates a human right, the State may still be liable depending on the extent to which the government controls either the group as a whole⁵⁵ or the conduct amounting to the violation.⁵⁶

Even if the State is not directly responsible for the actions of a non-State actor, it may still be liable for failing to protect its citizens and those within its territory from private conduct. This is especially true when human rights violations are at issue, because in addition to the obligation to “respect” rights, States also have affirmative duties to protect, ensure, and fulfil them.⁵⁷ Finding State responsibility for human rights violations on grounds of omission requires

⁴⁸ ARSIWA art. 1 (“Every internationally wrongful act of a State entails the international responsibility of that State.”).

⁴⁹ See, e.g., Genocide Convention (banning genocide).

⁵⁰ See, e.g., ICCPR art. 2(1) (declaring the duty of each State party to “ensure” the rights presented in the Covenant); see also Human Rights Comm., General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, ¶ 8, U.N. Doc. No. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter General Comment No. 31] (“[T]he positive obligation on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.”).

⁵¹ ARSIWA, art. 2.

⁵² ARSIWA, art. 4.

⁵³ ARSIWA, art. 7.

⁵⁴ Conversely, a private party exercising government functions can be individually (criminally) responsible for human rights violations. See, e.g., *R v. TRA* [2019] UKSC 51 (appeal taken from EWCA (Crim)) (finding that members of non-State armed groups may be prosecuted for torture under U.K. and international law).

⁵⁵ The ICJ subscribes to a “strict control” test when determining whether a group is a *de facto* State organ. See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep. 43, ¶ 393 [hereinafter *Genocide Case*] (“[T]o equate persons or entities with State organs when they do not have that status under internal law must be exceptional, for it requires proof of a particularly great degree of State control over them, a relationship...described as ‘complete dependence.’”); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, 1986 I.C.J. Rep. 14, ¶ 109 (June 27) (asking whether “the relationship of the *contras* to the United States Government was so much one of dependence on the one side and control on the other that it would be right to equate the *contras*, for legal purposes, with an organ of the United States Government”). In contrast, the ICTY employs an “overall control” test, which requires less than “complete dependence” to find attribution to the State, particularly for hierarchically structured non-State armed groups. *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment of the Appeals Chamber, ¶¶ 120-37 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999) (determining that if a group is “under the overall control of a State, it must perforce engage the responsibility of that State for its activities, whether or not each of them was specifically imposed, requested or directed by the State.”).

⁵⁶ The ICJ uses an “effective control” test to decide whether conduct taken by non-State actors is attributable to the State. See *Genocide Case*, *supra* note 55, ¶ 396 (examining whether a private party “nevertheless acted on [a State’s] instruction or under its direction or control”).

⁵⁷ OLIVER DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW* 280 (2d ed. 2014); U.N. Special Rapporteur, *Report on the Right to Adequate Food as a Human Right*, ¶ 66, U.N. Doc. E/CN.4/Sub.2/1987/23 (July 7, 1987) (“State responsibility for human rights can be examined at three levels: the obligation to respect, the obligation to protect, and the obligation to fulfil human rights.”).

not just that there be a situation threatening human rights, but also that the State knew or should have known about that situation, that the State had the means to stop it (in whole or in part), and that the State did not do so.⁵⁸ For example, if these conditions are satisfied, the Mexican State could face liability for not responding to kidnapping and extortion⁵⁹ performed by cartels and other criminal groups outside of its control.

V. Violations of Mexico’s International Human Rights Obligations Occurring Because of MPP and Metering

This section will explore the Mexican State’s responsibility for the human rights violations of migrants who have been placed in MPP and metering programs. Although Mexico is a party to many human rights treaties, the following analysis will focus primarily on the ICCPR and the ICESCR (with mentions of the CED and the CAT). Both treaties are fundamental, legally binding, and widely ratified.⁶⁰ Along with the UDHR, they make up the International Bill of Human Rights.⁶¹ The ICCPR and the ICESCR address a wide range of human rights and therefore provide a comprehensive framework with which to analyze the many human rights violations that we observed and heard about at the border. That being said, there are many other human rights treaties with which one could analyze our data. The following analysis is therefore meant to be illustrative, not exhaustive. In other words, we argue that Mexico is in violation of its obligations under the ICCPR and ICESCR, which may encompass violations of its obligations under other human rights treaties as well.

1. *Extortion, Kidnapping, and Criminal Acts—Violations of the Right to Life, Liberty, and Security*

This section addresses the patterns of extortions, kidnappings, and other criminal acts that Mexican authorities likely committed and/or failed to prevent, investigate, and prosecute in violation of Article 6 (right to life) and Article 9 (right to liberty and security of person) of the ICCPR—two provisions that are closely related to one another.⁶² The Human Rights Committee (the “Committee”) has described the right to life as “the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”⁶³ The Committee goes on to specify that

⁵⁸ See, e.g., United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. Rep. 3, ¶ 68 (May 24) [hereinafter *Iran Hostages*] (finding Iranian liability for the attack of non-State actors on the U.S. embassy in Tehran based on the fact that Iran knew of its obligations to protect the embassy, could have taken action, but did not).

⁵⁹ In this example, Mexico would be liable for kidnapping and extortion to the extent that these domestic crimes implicate human rights the country has committed to respect, protect, and fulfil. In this case, kidnapping and extortion may deprive people of their protected rights to freedom of movement and freedom from arbitrary detention and torture.

⁶⁰ See ACLU – FAQ: THE COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last updated April 2019).

⁶¹ See *Id.*

⁶² See Human Rights Comm., General Comment No. 35, ¶ 55, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter General Comment No. 35] (“The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6, paragraph 1, may overlap with the right to security of person guaranteed by article 9, paragraph 1.”).

⁶³ Human Rights Comm., General Comment No. 36, ¶ 3, U.N. Doc. CCPR/C/GC/36 (Oct., 30, 2018) [hereinafter General Comment No. 36].

a State's obligations extend "to reasonably foreseeable threats and life-threatening situations that can result in loss of life."⁶⁴ In fact, States may be held liable for violations of Article 6 "even if such threats and situations do not result in loss of life."⁶⁵

Incidents that do not rise to the level of a violation to the right to life can often fall under the category of a violation to the right to liberty and/or security of person. The Committee has described the right to personal security as a protection against "intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained." This includes instances where States authorities "unjustifiably inflict bodily injury."⁶⁶ A deprivation of the right to liberty, on the other hand, consists of a "more severe restriction of motion within a narrower space than mere interference with liberty of movement under article 12."⁶⁷ Some examples include police custody, involuntary transportation, confinement to a restricted area of an airport, and the use of physical restraining devices.⁶⁸

It should be noted that "the right to personal security may be considered broader than the right to life to the extent that it also addresses injuries that are not life-threatening."⁶⁹ Therefore, some injuries like "extreme forms of arbitrary detention that are themselves life-threatening" violate both the right to life and the right to personal liberty and security.⁷⁰ According to the Committee, severe forms of arbitrary detention include "holding hostages and arrests for the purpose of extorting bribes or other criminal purposes."⁷¹

A. Mexican authorities may have extorted, arbitrarily detained, and inflicted life-threatening injuries against migrants in violation of the right to life, liberty and security of person

Several migrants whom we interviewed suffered these exact types of violations. Juan Pablo's story is particularly illustrative.⁷² Juan Pablo is a 24-year old Venezuelan man in MPP who is fleeing persecution in his native country. Upon arriving with his dad and sister in Monterrey, Mexico, on October 3, 2019, Mexican immigration officers took away all three of their passports, took photos of them without their consent, and confined them to a small room for six hours. At no point were they given an explanation for their detention. They were eventually allowed to leave the airport with their belongings after which they purchased a flight to Ciudad Juarez.⁷³

When they landed in Ciudad Juarez the following day, armed national police officers took the three of them to an office by the airport. After confiscating their passports and ID cards and looking through their bags and belongings (without their consent), the police officers told them that they knew they were migrants looking to cross into the U.S. and that they would not allow them to leave unless they paid \$300 USD. When Juan Pablo's family said they did not have that much money, the police officers forced them to get into their patrol car and drove them

⁶⁴ *Id.* ¶ 7.

⁶⁵ *Id.*

⁶⁶ *Id.* ¶ 9.

⁶⁷ General Comment No. 35, *supra* note 62, ¶ 5.

⁶⁸ *Id.* ¶ 5.

⁶⁹ *Id.* ¶ 55.

⁷⁰ *Id.*

⁷¹ *Id.* ¶ 5.

⁷² *See* Annex 9.

⁷³ It should be noted that detentions at airports tend to be treated with more leniency than those outside of airports, which may affect a determination of a violation to the right to liberty.

to an isolated area outside the city. Once there, they forced Juan Pablo's father to exit the vehicle and told him that if he did not pay \$6,000 USD, they would not let him and his family go. After Juan Pablo told the officers that he did not have any money or family members in the U.S. who could pay that kind of money, the officer threatened to rape Juan Pablo's sister, kidnap her, and disappear her until "god knows when." The officers also threatened to handcuff the family and leave them in that remote area outside the city, which they later learned was heavily trafficked by smugglers and cartels. The officers then hit Juan Pablo's father in the side where he had recently had hernia surgery and then choked Juan Pablo until Juan Pablo's sister told the officers she would give them all the money she had. The officers took her purse, the gold chains from Juan Pablo and his sister, and all of their belongings.

Given the life-threatening nature of the arbitrary detention, this incident is likely to constitute a violation of the victims' right to life in addition to their right to liberty and security of person. Other migrants whom we interviewed shared similar incidents of extortion, kidnappings, physical abuse, and life-threatening criminal acts by Mexican authorities.⁷⁴ Therefore, we conclude that Mexico may have repeatedly deprived migrants of their right to life, liberty, and security in violation of Articles 6 and 9 of the ICCPR.

B. Mexican authorities likely failed to protect, investigate, and prosecute the abduction and bodily harm of migrants by private criminal groups in violation of the right to life, liberty, and security of person

In addition to refraining from committing acts that violate migrants' right to life, liberty, and security of person, States also have positive obligations under Articles 6 and 9 of the ICCPR to protect, investigate, and prosecute. Regarding the right to life, the Committee has clarified that States must respond to "reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State."⁷⁵ More specifically, the right to life requires that States "take adequate measures of protection, including continuous supervision, in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities...."⁷⁶ This duty to protect the right to life is heightened for persons in "vulnerable situations" who have experienced "pre-existing patterns of violence" as well as for people in "state-run facilities, such as ... refugee camps and camps for internally displaced persons."⁷⁷ In addition, States have a duty to "address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity." This includes "high levels of criminal and gun violence."⁷⁸ Regarding the right to liberty and personal security, States must take positive measures to "protect individuals against abduction or detention by individual criminals or irregular groups ... operating within their territory."⁷⁹ States must also take "appropriate measures in response to death threats against persons in the public

⁷⁴ See e.g. Annex 13 (describing extortion, kidnapping, and torture by the Mexican military); see also Annex 7 (describing repeated incidents of arbitrary arrests, extortion, robbery, and physical abuse by Mexican police); see also Annex 18 (describing incidents of extortion and physical abuse by different types of Mexican State authorities); see also Annex 11 (describing kidnapping, prolonged detention, and extortion by investigative police officers).

⁷⁵ General Comment No. 36, *supra* note 63, ¶ 21.

⁷⁶ *Id.* ¶ 21.

⁷⁷ *Id.* ¶ 25.

⁷⁸ *Id.* ¶ 26.

⁷⁹ General Comment No. 35, *supra* note 62, ¶ 7.

sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.”⁸⁰

Although our interviews suggest that some deprivations of life, liberty, and security of person are carried out by Mexican authorities, many are committed by private criminal groups whose conduct is not always attributable to the Mexican State. However, Mexican authorities that are not directly participating in criminal activities against migrants often turn a blind eye, thereby failing to protect, investigate, and prosecute said incidents. As a result, violence against migrants has grown in recent months, as reported in a number of major news outlets. For instance, the *New York Times* reported on December 21, 2019, that there had been “636 documented cases of violent attacks, including abduction and rape, against migrants who were returned to Mexico by United States authorities since the Remain in Mexico policy began in January, with 293 attacks in the last month alone.”⁸¹ Yet, Mexico has done little to address these patterns of violence. In fact, a recent global ranking of impunity placed Mexico as the country with the highest impunity rate in the Americas and the fourth highest globally.⁸²

Elia’s experience is particularly reflective of these patterns of violence and impunity.⁸³ Elia is a Nicaraguan migrant in MPP fleeing political persecution in her native country. She arrived to Ciudad Juarez with her son in the summer of 2019 and had been staying in a shelter. However, on August 12, 2019, after her first court appearance, she was told that she could no longer stay at the shelter for reasons unclear to her. That same day, her and her son were kidnapped while roaming the streets looking for another migrant shelter. A car pulled over and two men in dark sunglasses and guns came over and forced Elia and her son into the car. They took her to a house where she was beaten and raped “any way that they wanted.” They were kidnapped for four days before someone dumped them on the side of a road. Following her release, Elia stopped a police officer and tried to report the incident. However, the police officer proceeded to ask her whether she was a migrant and whether she had documentation. He then told her that someone would help them. However, no one ever did. As far as Elia knows, no investigation or prosecution had been conducted against her perpetrators.

In sum, this statistical and anecdotal evidence suggests that Mexico may have failed to protect, investigate, and prosecute a range of criminal acts against migrants in violation of their right to life, liberty, and security of person as recognized in the ICCPR.

2. *Enforced Disappearances*

The U.N. Declaration on Enforced Disappearances describes “disappeared” persons as those who are “detained or abducted against their will or otherwise deprived of liberty by government officials, or by organized groups or private individuals acting on behalf of, or with the direct or indirect support, consent, or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or by a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”⁸⁴

⁸⁰ *Id.* ¶ 9.

⁸¹ Miriam Jordan, *I’m Kidnapped’: A Father’s Nightmare on the Border*, N.Y. TIMES (Dec. 21, 2019), <https://www.nytimes.com/2019/12/21/us/border-migrants-kidnapping-mexico.html>.

⁸² JUAN ANTONIO LE CLERCQ ORTEGA & GERARDO RODRIGUEZ SANCHEZ LARA, *ÍNDICE GLOBAL DE IMPUNIDAD MEXICO 2018* 7 (UDLAP, 2018).

⁸³ See Annex 2.

⁸⁴ G.A. Res. 47/133, Declaration on the Protection of all Persons from Enforced Disappearances (Dec. 18, 1992), Preamble.

Enforced disappearances entail the violation of various human rights, including the right to life, the freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law.⁸⁵ Therefore, “when analyzing a case of forced disappearance, it should be noted that the deprivation of liberty must only be understood as the beginning of a complex violation that continues in time until the fate and whereabouts of the alleged victim is known.”⁸⁶ Given the ICCPR’s lack of a specific provision on enforced disappearances, this section will rely on the CED as the framework for our analysis.

A. Private criminal groups forcibly disappeared migrants with the likely support of Mexican authorities

Article 1 of the CED ensures that “no one shall be subjected to enforced disappearance” and that “no exceptional circumstances whatsoever ... may be invoked as a justification for enforced disappearance.”⁸⁷ In addition, a report on the right to liberty and security of person indicates that the definition of an enforced disappearance “is not subjected to any temporal requirement.”⁸⁸ In other words, the deprivation of liberty of a victim “may last even few hours or days.”⁸⁹

In Mexico, the enforced disappearances of migrants have been a problem for years. In 2011, for example, 72 migrants were infamously disappeared.⁹⁰ More recently, a 2017 U.N. report on enforced disappearances highlights incidents of migrants in Mexico being “captured by federal, state or municipal police or by migration officials and handed over to criminal organizations that detain them for ransom.”⁹¹ The U.N. report also notes instances where criminal organizations “captured migrants with the direct or indirect support, consent or acquiescence of the State.”⁹² More generally, the report indicates that a direct link exists between migration and enforced disappearances. Our interviews confirm that these patterns of enforced disappearances against migrants remain a serious issue in Mexico.

Miguel’s particularly horrific experience reflects this pattern of enforced disappearances in Mexico.⁹³ Miguel is a Honduran man fleeing gang violence and persecution in his native country. He made his way to Mexico with his four-year-old daughter, leaving his wife and six-month-old daughter back in Honduras. Upon entering Mexico through Chiapas, he applied for a humanitarian visa, which would allow him to remain legally in Mexico. On August 6, 2019, about three months after his arrival in Mexico, Miguel and his daughter made their way to Ciudad X⁹⁴ to look for work. His first night there, he and his daughter were waiting for an Uber

⁸⁵ General Comment No. 36, *supra* note 63, ¶ 57.

⁸⁶ TRIAL (SWISS ASSOCIATION AGAINST IMPUNITY), GENERAL DISCUSSION ON ARTICLE 9 (LIBERTY AND SECURITY OF PERSON) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 8 (Sept. 2018) [hereinafter TRIAL Report].

⁸⁷ CED, art. 1.

⁸⁸ Trial Report, *supra* note 86, p. 9.

⁸⁹ *Id.*

⁹⁰ Human Right Council, Report of the Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration, ¶ 40, U.N. Doc A/HRC/36/39/Add.2 (Jul. 28, 2017).

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Annex 13 (the interviewee’s name was changed to preserve anonymity).

⁹⁴ At Miguel’s request, the actual name of this city has been redacted. It will be referred to as “Ciudad X” throughout this report.

in the street when two Mexican military officers in uniform approached and questioned them. After Miguel provided his documentation and told the two officers that he was from Honduras, they put him and his daughter in their patrol car and drove them to a ranch in a remote location. They gagged him with duct tape, put a hood over his head, and kept him and his daughter in a room with other kidnapped people.

That night, he and his daughter were brought to a different room with four armed men dressed as civilians. They already knew all of his personal information (e.g. he had a wife and second daughter in Honduras) as well as the information he had provided to immigration authorities in Chiapas. For the next month, him and his daughter were kept in captivity and subjected to bouts of torture and extortion.⁹⁵ Throughout that month, people in uniform (e.g. police from different states, military, etc.) transferred them to different houses and hotels where they were constantly guarded by heavily armed civilians and military police. Following that month of captivity, one of his kidnappers told him that they were going to kill him and sell his organs because his family members had failed to provide any ransom money. They also threatened to sell his daughter. The next day, Miguel and his daughter were driven in an SUV to a remote, unpaved road where a car was waiting for them. The SUV driver told the second driver, “these are the ones who will be dismembered; you know where to go.” Once in the car, he noticed that the driver was taking them in the direction of the border wall in Ciudad Juarez. He managed to open the unlocked passenger door and escape with his daughter.

Unfortunately, the fate that Miguel and his daughter managed to escape is a reality for many migrants in Mexico. Because Mexican State authorities supported, consented to or acquiesced in these kinds of enforced disappearances, there may be a reasonable basis to conclude that Mexico is in violation of Article 1 of the CED.

B. State authorities likely failed to investigate and prosecute the enforced disappearances of migrants committed by private individuals who may not have acted with the support, consent or acquiescence of the State

Article 3 of the CED states that “each State Party shall take appropriate measures to investigate [enforced disappearances] committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.” Article 12 then provides certain protections for those bringing forth a complaint of enforced disappearance. It states, “each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities” and that “appropriate steps shall be taken to ensure that the complainant [and] witnesses ... are protected against ill-treatment or intimidation as a consequence of the complaint...”⁹⁶

Dolores’s experience reflects Mexico’s likely failure to investigate and prosecute enforced disappearances.⁹⁷ Dolores is a 22-year-old woman from Honduras who migrated to Mexico with her husband, her seven-year old daughter and her young son. When Dolores first entered Mexico in Chiapas, men in plain clothes kidnapped her and her family. They put ski masks over their heads, threatened to kill them, and beat her and her spouse. She eventually escaped with her daughter and made her way to Ciudad Juarez in order to cross into the United

⁹⁵ See *infra* Section V.3.

⁹⁶ CED, art. 12(1).

⁹⁷ See Annex 8.

States. However, while she waited for a bus in Ciudad Juarez that would take her to one of the international bridges, she and her daughter were once again kidnapped at gunpoint. She suspects that a cartel member had recognized her foreign accent at the bus stop and signaled others to kidnap her. Dolores and her daughter were then driven to a house with other kidnapped people. Although Dolores and her daughter were not at the house for very long, the kidnappers raped Dolores in front of her daughter. When Dolores and her daughter managed to eventually escape, they made their way to the border in hope of seeking asylum. However, American border patrol officers did not believe her story and sent Dolores and her daughter back to Ciudad Juarez. She fears going to the police or to the prosecutor's office in Mexico because she does not trust them.⁹⁸ In fact, at one point, her kidnappers told her that if she ever escaped and talked to State authorities, those authorities would report back to the criminal groups who would then find her again. As a result, Dolores has not left her shelter for fear of retaliation, even though her daughter has suffered sexual abuse at the shelter and both live in constant fear for their safety.

On its face, the support, consent or acquiescence of the State may not be particularly apparent in Dolores's case. After all, Dolores has a right to report the facts of the incident to the "competent authorities." However, it should be noted that the State is obligated to take steps to ensure that the complainant is "protected against all ill-treatment or intimidation as a consequence of the complaint." As is evidenced by the fact that none of the migrants we interviewed trusted State authorities enough to report *any* criminal acts committed against them for fear of retaliation and collusion with criminal groups, it seems fair to deduce that the State may not have taken the adequate measures to ensure that complainants are adequately protected from intimidation and ill-treatment. Therefore, Mexico is likely in violation of Article 3 of the CED.

3. *Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment*

Although the ICCPR has a provision on torture and other cruel, inhuman, and degrading treatment or punishment, we will instead analyze our relevant data under the CAT because of the treaty's heightened standards. In other words, if an action qualifies as torture under the CAT, it will most likely qualify as torture under the ICCPR.⁹⁹ Under CAT, there are "three essential factors necessary for an act to qualify as torture: (1) the infliction of severe mental or physical pain or suffering; (2) by or with the consent or acquiescence of the State authorities; and (3) for a specific purpose, such as gaining information, punishment or intimidation."¹⁰⁰ Examples of severe mental or physical pain or suffering include "beatings... sexual aggression... being kept in constant uncertainty in terms of space and time; threats to torture or kill relatives... the threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering."¹⁰¹ It should be noted that States also have a heightened duty towards

⁹⁸ Every migrant that we spoke to expressed a similar distrust of Mexican authorities. Many justified this distrust by pointing to incidents where they had been mistreated by Mexican authorities or knew of others who had.

⁹⁹ TORTURE IN INTERNATIONAL LAW: A GUIDE TO JURISPRUDENCE 8 (APT & CEJIL, 2009) ("In contrast to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)... there is no requirement in the ICCPR for a level of involvement or acquiescence by a State official for an act to be qualified as torture or ill-treatment.")

¹⁰⁰ LENE WENDLAND, HANDBOOK ON STATE OBLIGATIONS UNDER THE UN CONVENTION AGAINST TORTURE 24 (APT, 2002).

¹⁰¹ *Id.* ¶ 25.

migrants to protect them from torture.¹⁰² More specifically, States must ensure the protection of vulnerable groups at risk of being tortured (e.g. asylum-seekers and refugees) by “fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection...”¹⁰³

Unfortunately, many of the human rights violations mentioned earlier (e.g. enforced disappearances, kidnappings, extortion, physical abuse, etc.) often go hand in hand with torture. As such, this section will revisit Miguel’s experience as a way to illustrate the torture that Mexican authorities have committed in violation of the State’s obligations under the CAT and ICCPR.¹⁰⁴ As described above, Miguel and his daughter had been kidnapped and held in captivity for about a month. In that time, Miguel was the victim of torture at the hands of Mexican authorities. For instance, one day, armed men in military uniforms brought him and his daughter to a room with a bathtub. They asked him to give them information about his relatives in the United States. When Miguel told them that he was not in contact with any of his U.S.-based relatives, the men repeatedly submerged his head under water. They also put a gun to his daughter’s head and threatened to kill her if he did not provide phone numbers for anyone in the United States.

A week later, after Mexican military and police officers had transferred Miguel to another house, he was brought to a room with more military officers and heavily armed men in civilian clothes that Miguel suspected were cartel members. One of them told Miguel that he would be dismembered if he did not pay 60,000 pesos right then and there. By that point, Miguel and his daughter had not eaten in eight days and not been given water in two. Later in their captivity (shortly before their escape), Miguel and his daughter were taken to a room where a man asked him again to provide phone numbers of relatives in the United States. When Miguel insisted that he had no phone numbers to give him, the man put a gun to the back of Miguel’s head. He threatened to kill him and sell his daughter. He then pulled the trigger but the gun was not loaded. The man said that next time the gun would be loaded.

Although Miguel’s story is particularly grim, it illustrates the experiences of other migrants in our sample set. Vidico, another migrant whom we interviewed, was kidnapped, raped, and severely beaten for three days before he managed to escape.¹⁰⁵ Men in civilian clothes had abducted him one evening on the street as he bought cigarettes from a street vendor. Vidico suspects that his kidnappers knew he was a migrant by his accent when he bought cigarettes and by the way he dressed. He was then brought to a house with other kidnapped migrants. His kidnappers told him that he needed to call friends and family to send over \$18,000 if he ever wanted to leave. Since he had no relatives in the U.S., his kidnappers raped and beat him until he developed wide, deep wounds in his back. Three days later, he escaped when one of the kidnappers was high on drugs. Although it was not apparent that any Mexican State authorities were directly involved in Vidico’s torture, the frequency with which migrants in particular are tortured indicate that Mexico may have failed to “ensure implementation of positive measures of

¹⁰² See Comm. Against Torture, General Comment No. 2, ¶ 21, U.N. Docs CAT/C/GC/2 (Jan. 24, 2008) (“The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.”)

¹⁰³ *Id.*

¹⁰⁴ See Annex 13.

¹⁰⁵ See Annex 7 (the interviewee’s name was changed to preserve anonymity).

prevention and protection.”¹⁰⁶ In addition, as far as Vidico knows, no investigation or prosecution was ever carried out. According to a recent report by the Committee Against Torture, there exists a “high level of torture and mistreatment by the State, as torture was still being carried out in a generalized manner by State agents and security forces” and that Mexico suffers from “a climate of impunity” with “only seven per cent of crimes [] denounced and only 4.6 per cent of investigated crimes result[ing] in convictions.”¹⁰⁷

Therefore, interviews and statistical evidence suggest that Mexican authorities may have participated in the torture of migrants and also failed to protect, investigate, and prosecute non-State actors responsible for the torture of migrants. Therefore, there is a reasonable basis to conclude that Mexico has violated its obligations under the CAT (and most likely the ICCPR).

4. *Arbitrary and Prolonged Detentions*

Although this report already addressed arbitrary detention in the context of extortions, kidnappings, and enforced disappearances, this section will argue that the conditions of the migrant shelters likely constitute a form of arbitrary and prolonged detention in violation of the right to liberty (Article 9 of the ICCPR)¹⁰⁸ and the right to the freedom of movement (Article 12).¹⁰⁹ Given that the difference between a deprivation of liberty and a restriction on the freedom of movement is “one of degree or intensity, not one of nature or substance,” this section will argue that the conditions imposed in migrant shelters likely violate Article 9 and therefore likely violate Article 12 as well.¹¹⁰

Although one might not generally associate migrant shelters with liberty-depriving facilities like detention centers, “persons accommodated at a facility classified as a ‘reception,’ holding’ or ‘accommodation’ center and ostensibly not imposing detention, may, depending on the nature of the restrictions on their freedom of movement, and their cumulative impact, be considered under international human rights law to be deprived of their liberty.”¹¹¹ In other words, the name given to a facility is irrelevant to determining whether it deprives a person of their liberty. What matters is whether that person is “deprived of his or her liberty *de facto* and whether this deprivation is lawful according to international law.”¹¹²

¹⁰⁶ See *Alertan de Aumento de Secuestros y Torturas a Migrantes en México*, EFE (Oct. 29, 2019), <https://www.efe.com/efe/usa/mexico/alertan-de-aumento-secuestros-y-torturas-a-migrantes-en-mexico/50000100-4098834> (describing a rise in kidnappings and tortures of migrants in Mexico in recent months).

¹⁰⁷ Press Release, U.N. Human Rights Office of the High Commissioner, Committee Against Torture Reviews the Report of Mexico, U.N. Press Release (Apr. 26, 2019).

¹⁰⁸ See ICCPR Article 9(1) (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

¹⁰⁹ See ICCPR Article 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).

¹¹⁰ MASSIMO FRIGO, *MIGRATION AND INTERNATIONAL HUMAN RIGHTS LAW: A PRACTITIONER’S GUIDE* 175 (Róisín Pillay ed., 2004). [hereinafter Frigo]. (“Whether individuals are in fact deprived of their liberty in a way that engages protection of Article 9 ICCPR... or are merely subject to restrictions on their freedom of movement, will not always be clear... there is no clear line between restrictions on freedom of movement and deprivation of liberty: the difference is one of degree or intensity, not one of nature or substance.”).

¹¹¹ *Id.* at 176; see also High Comm’r Human Rights, Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012) at 9 [hereinafter UNHCR Detention Guidelines] (demonstrating that even alternatives to traditional forms of detention can be classified as detention depending on their conditions and restrictions.).

¹¹² See UNHCR Detention Guidelines, *supra* 111 at 9.

Factors that are relevant in determining whether a person is deprived of his or her liberty *de facto* include “the type of restrictions imposed, their duration, their effects on the individual, and the manner of implementation of the measure.”¹¹³ It is important to note that “a series of restrictions, which in themselves would not cross the threshold of deprivation of liberty may cumulatively amount to such deprivations.”¹¹⁴ In addition, if a migrant is detained, the conditions of that detention must be “humane and dignified.” More specifically, among other conditions, detention cannot be indefinite; in co-sex facilities, men and women must be separated; appropriate medical treatment must be provided; and children must have access to primary education.¹¹⁵

Our interviews suggest that migrant shelters in Mexico deprive migrants of their liberty *de facto* in violation of the ICCPR.¹¹⁶ As demonstrated in Sections V.1 through V.3 of this report, patterns of extortions, kidnappings, enforced disappearances, torture, and other criminal acts that are directed towards migrants make it impossible for them to leave their shelters without risking their lives and safety. In fact, the majority of migrants whom we interviewed explicitly said that they do not leave their shelter for fear that criminals will target them—a pattern of *de facto* detention that has been reported in major news outlets.¹¹⁷ In addition, many migrant shelters enforce policies that limit the movement and communication of migrants. One interviewee described how migrants were not allowed to leave their shelter after 5pm and were also not allowed to use their phones between 7am and 11pm.¹¹⁸ He also noted that employees of the shelter explicitly warned migrants that they would be placing themselves in danger if they left the shelter and advised them to remain indoors.

In addition, the conditions in the migrant shelter do not seem to be “humane and dignified.”¹¹⁹ First, in some migrant shelters, the sleeping quarters of men and women are not segregated. As we will see in Dolores’s case below, the lack of segregation allowed an older man to molest her daughter in the middle of the night.¹²⁰ Second, as will be discussed in the following section, appropriate medical treatment is not provided for in migrant shelters and children do not have access to primary education. Third, because of the long and unpredictable wait times associated with metering, many migrants in the program are resigned to wait in shelters for months at a time before U.S. officials can process them. Therefore, Mexico is likely responsible for the arbitrary and prolonged detention of migrants in State-run shelters in violation of migrants’ right to liberty and freedom of movement.

¹¹³ See Frigo, *supra* note 110 at 176.

¹¹⁴ *Id.*

¹¹⁵ UNHCR Detention Guidelines, *supra* 111 at 29.

¹¹⁶ *Id.* at 9.

¹¹⁷ For instance, one New York Times article describes a Cuban migrant in Nuevo Laredo who “used a simple strategy to stay out of harm’s way. He never went outside. He hunkered down in a migrant shelter until the appointed time to present himself to American border officials....” The article goes on to describe how “[c]riminals were making such easy prey of migrants coming and going from one migrant shelter that the federal police posted a permanent, round-the-clock sentry across the street.” (see Kirk Semple, *Migrants in Mexico Face Kidnappings and Violence While Awaiting Immigration Hearings in U.S.*, N.Y. TIMES (Jul. 12, 2019)).

¹¹⁸ See Annex 15.

¹¹⁹ See UNHCR Detention Guidelines, *supra* 111 at 26.

¹²⁰ See Annex 8.

5. *Violations of Economic, Social, and Cultural Rights, Especially Health, Adequate Standard of Living, Work, and Education.*

Although there is a tendency to separate economic, social, and cultural rights from civil and political rights, the two are not fundamentally different and have even been integrated in more recent human rights treaties.¹²¹ As with civil and political rights, economic, social, and cultural rights apply to everyone, including non-citizens, and are subject to principles of non-discrimination on a number of grounds, including national origin, birth, and other status. Like civil and political rights, they “carry legally binding obligations on States to respect, protect and fulfil.”¹²² However, although States have an immediate obligation under the ICESCR to “respect and, in most instances, to protect the Covenant rights” and to “take steps’, to the maximum of the resources available to the State, to realize the Covenant rights,” a State’s duty to fulfil is subject to “progressive realization.”¹²³ In other words, the ICESCR acknowledges that a State may not immediately be able to fully realize certain rights and takes into consideration resource constraints when assessing a State’s compliance with some of its obligations.¹²⁴ As this section will demonstrate, Mexico may have violated a number of migrants’ economic, social, and cultural rights as recognized in the ICESCR, including their right to health, adequate standard of living, work, and education.

The Right to Health

The right to health is ensured by Article 12 of the ICESCR. The right to health should not be understood as a right to be healthy. Rather, it should be understood as a “right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”¹²⁵ In practice, this means that health facilities, goods, and services “must be available, accessible, acceptable, and of good quality.”¹²⁶ Moreover, although the right to health is “subject to progressive realization and resource availability,” it also gives rise to obligations of immediate effect, including “the guarantee that the right [to health] will be exercised without discrimination of any kind.”¹²⁷ A State can also be liable for the conduct of private actors if it does not “regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others.”¹²⁸ As the following subsections will demonstrate, Mexico is likely in violation of Article 12 of the ICESCR because of its failure to ensure migrants’ access to good quality health facilities, goods, and services.

¹²¹ See High Comm’r Human Rights, Fact Sheet No. 33: Frequently Asked Questions on Economic, Social, and Cultural Rights (2008).

¹²² See Frigo, *supra* note 110 at 227.

¹²³ *Id.*

¹²⁴ *Id.* at 228.

¹²⁵ Comm. Econ., Soc., Cultural Rights, General Comment No. 14, ¶ 9, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment No. 14].

¹²⁶ *Id.*

¹²⁷ General Comment No. 14, *supra* note 125, ¶ 30.

¹²⁸ General Comment No. 14, *supra* note 125, ¶ 51.

A. Mexico likely fails to ensure migrants' access to health facilities, goods, and services

According to the Committee on Economic, Social, and Cultural Rights (the “ESCR Committee”), one of the main dimensions of accessibility is that it be “without discrimination”¹²⁹ and “affordable for all... including socially disadvantaged groups.”¹³⁰ The ESCR Committee goes on to specify that “even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.”¹³¹ In addition, as part of Mexico’s duty to respect the right to health, the State must “refrain from denying or limiting equal access for all persons, including... asylum-seekers... to preventive, curative and palliative health services.”¹³² A Human Rights Council report extends this requirement to refugees and internally displaced persons, too.¹³³ The ESCR Committee also provides examples of what a State violation might look like in practice. According to the ESCR Committee’s General Comment No. 14, “the denial of access to health facilities, goods and services to particular individuals or groups as a result of de jure or de facto discrimination” would constitute a violation of a State’s duty to respect the right to health.¹³⁴ The same would be true of a State that deliberately withholds or misinterprets “information vital to health protection or treatment.”¹³⁵

Our interviews suggest that Mexico has repeatedly limited migrants’ access to health facilities, goods, and services in violation of the ICESCR. The experiences of one Guatemalan migrant are particularly demonstrative of these violations.¹³⁶ José Luis is a 28-year old migrant who worked as a nurse in Guatemala until the summer of 2018 when he was targeted by Guatemalan military forces for participating in public protests against government health policies. Following a year of internal displacement, José Luis made his way to the U.S. where he was apprehended along the U.S-Mexico border and put in the MPP program. Since then, he has been staying in a migrant shelter in Ciudad Juarez where he helps the in-house nurse whom he describes as “overwhelmed with work.” As a result of his volunteer nursing work, he has seen the many ways in which Mexico has likely failed to ensure migrants’ access to their right to health.

He noted that even within State-run shelters, migrants are limited access to health services. José Luis stated that there are “many migrants in the shelter who are sick and bed-ridden.” However, given the very limited health services available at the shelter, many migrants

¹²⁹ See General Comment No. 14, *supra* note 125, ¶ 12(b) (“health facilities, goods and services must be accessible to all, especially the most vulnerable and marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds [i.e. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status], which has the intention of effect of nullifying or impairing the equal enjoyment of exercise of the right to health.”).

¹³⁰ *Id.*

¹³¹ *Id.* ¶ 18.

¹³² *Id.* ¶ 34.

¹³³ See Anand Grover (Special Rapporteur on the Right to Health), Report on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, ¶ 56, U.N. Doc A/HRC/17/25/Add.3 (Mar. 21, 2011) [hereinafter Grover] (“The principle of non-discrimination requires that all health services, goods and facilities must be accessible to all, including refugees, internally displaced persons, minority populations, and stateless persons.”).

¹³⁴ General Comment No. 14, *supra* note 125, ¶ 50.

¹³⁵ *Id.*

¹³⁶ See Annex 18.

do not receive medical attention, including some who have severe health conditions, like cancer. Migrants in makeshift camps along the border have had similar experiences. Although Mexican authorities provided the camp with a panic button in cases of emergencies, one migrant noted that despite using it repeatedly after one camp resident fainted, no medical emergency services ever arrived.¹³⁷

As a result of the limited access to health services in migrant shelters, José Luis has had to take many sick migrants to seek medical attention at public health centers (e.g. hospitals and clinics). However, he noted that these public health centers are also denying or limiting migrants' access to health services because of the sick migrants' national origin or immigration status. Upon arrival at the public health centers, employees always ask for the sick migrant's immigration status before administering any medical attention. In most public health centers that José Luis went to, employees explicitly stated that they couldn't provide medical services to anyone without "Mexican papers." In some public health clinics, employees have told sick migrants that Mexican citizens have priority over migrants. For those sick migrants who did receive medical attention in public health facilities, José Luis notes that they often deliberately withheld information that was vital to the sick migrants' health. For instance, José Luis took a diabetic woman who was feeling poorly to a public health clinic. Although the medical staff conducted a blood test that showed dangerously high blood sugar levels, she was told that nothing was wrong with her and that she should go back to her shelter.

As evidenced by the experiences of José Luis' and other migrants, Mexico may have failed to ensure migrants' access to health facilities, goods, and services by (1) limiting migrants' access to health services in State-run migrant shelters, (2) denying or limiting migrants' access to health services in public health facilities because of their national origin and immigration status, and (3) deliberately withholding information vital to the health treatment of migrants. Therefore, Mexico is likely in violation of its obligations under Article 12 the ICESCR.

B. Mexico likely fails to ensure good quality health facilities, goods and services for migrants

The right to health requires that "health facilities, goods, and services [] be scientifically and medically appropriate and of good quality,"¹³⁸ and that the State expand medical services to meet the needs of migrants, "particularly with respect to expensive, non-elective medical procedures."¹³⁹ The Committee also indicates that "insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups" is one way in which a State could be held liable for violating its obligations under the ICESCR.¹⁴⁰

First, as noted by José Luis, migrant shelters do not have enough medical goods and services to ensure quality medical attention even when it is provided. For instance, one Honduran man was suffering from a severe throat infection that rendered him incapable of speaking or swallowing.¹⁴¹ The medical services at the shelter failed to treat him for several days until a nurse finally provided him with a few unspecified pills, which ultimately did nothing to cure or

¹³⁷ See Annex 5.

¹³⁸ General Comment No. 14, *supra* note 125, ¶ 12(d).

¹³⁹ Grover, *supra* note 133, ¶ 83(c) and ¶¶ 68–69.

¹⁴⁰ General Comment No. 14, *supra* note 125, ¶ 52.

¹⁴¹ See Annex 13.

relieve the infection. This kind of incident was common among the migrants whom we interviewed. In addition, migrant shelters have become a breeding ground for sickness among children. Every parent whom we interviewed noted that their child (or children) had been sick at some point since they arrived at their migrant shelter. From only a few hours of conducting interviews at one of the largest State-run migrant shelters in Ciudad Juarez, we observed that many children had watery eyes, runny noses, and coughs. The situation had deteriorated to the point where one migrant we interviewed chose to settle with her children in an outdoor camp along the border instead of staying at a migrant shelter. She argued that “all the kids get sick at those shelters” and are not allowed to play outside, increasing the risk of contamination.¹⁴² In fact, as recently as December 26, 2019, a chickenpox outbreak had occurred at one of the largest State-run migrant shelters in Ciudad Juarez. About 50 migrants were affected.¹⁴³

Second, our interviewees indicated that a similar pattern of poor medical attention for migrants existed in public health facilities, too. For instance, after noticing that his infection had not improved, the Honduran man went to a public hospital where a doctor (who first asked him about his immigration status) prescribed him a set of multiple injections.¹⁴⁴ However, he was only ever provided two, which did not improve his condition.¹⁴⁵ A couple of weeks prior to our team’s arrival in Ciudad Juarez, a Ugandan woman died of pneumonia in one of the city’s State-funded hospitals in what was reported to be the result of poor medical attention.¹⁴⁶ Although medical staff at the hospital had confined her for 20 days and had been warned by another migrant (who was a trained doctor) that the Ugandan woman was suffering from tuberculosis, the medical staff never diagnosed her with the disease and as a result, never treated her for it. Although hospital executives claimed that medical staff had conducted tests that ruled out tuberculosis, the Ugandan woman’s autopsy showed that she had in fact died from tuberculosis-related health complications. To date, the Mexican State has yet to conduct an investigation.

These incidents seem to reflect Mexico’s failure to provide migrants with good quality health facilities, goods, and services at State-funded shelters and public health centers. Therefore, there is a reasonable basis to conclude that Mexico is in further violation of its obligations to ensure the right to health of migrants under the ICESCR.

C. Mexico likely fails to ensure mental health resources for migrants

Article 12 specifies that the right to health include both physical *and* mental health.¹⁴⁷ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health even stated, “there is no health without mental health. . .

¹⁴² See Annexes 3 and 17.

¹⁴³ Rosalía Vergara, *Detectan 50 Casos de Varicela en Albergue para Migrantes de Ciudad Juárez*, PROCESO (Dec. 26, 2019), <https://www.proceso.com.mx/612273/detectan-50-casos-de-varicela-en-albergue-para-migrantes-de-ciudad-juarez>.

¹⁴⁴ See Annex 13.

¹⁴⁵ A Cuban migrant shared a similar experience. Although she received superficial medical care for her diabetes at her shelter and at a public health facility, she suffered from a host of other medical conditions (e.g. kidney problems, convulsions, lung tumor, etc.) that went unaddressed by health professionals in Mexico. In November 2019, she died from health complications associated with stage 4 lung cancer. See Annex 1.

¹⁴⁶ *Africana Que Murió en Juárez Sí Tenía Tuberculosis*, ESTADO (Oct. 5, 2019), <https://www.eldiariodechihuahua.mx/estado/africana-que-murio-en-juarez-si-tenia-tuberculosis-20191005-1570627.html>.

¹⁴⁷ ICESCR art. 12.

[which] means more than the absence of mental impairment.”¹⁴⁸ In fact, the Special Rapporteur goes on to specify that “the mental health of migrants is also an issue of concern, as factors such as social isolation caused by separation from family and social networks, jobs insecurity, difficult living conditions and exploitative treatment can have adverse effects,” which include “higher incidents of stress, anxiety, and depression than residents.”¹⁴⁹

Yet, our interviews suggest that Mexico has neglected migrants’ right to mental health. As José Luis stated in our interview, “I’ve met so many migrants who have suffered a tremendous amount of pain and who need psychological help but just can’t get it because it is isn’t provided for at our shelter.”¹⁵⁰ For the one interviewee who did access mental health resources, those resources were wholly inadequate. For instance, after the interviewee’s seven-year old girl was molested in a migrant shelter, the shelter coordinator provided her one session with a psychologist.¹⁵¹ Although the psychologist confirmed that the young girl was depressed, she neglected to provide a written note that the mother could use as potential evidence against the perpetrator. José Luis even admitted that he himself exhibits symptoms of trauma and depression. For instance, he cited trouble sleeping, nightmares, loss of appetite, headaches, and difficulty concentrating. All of the migrants whom we interviewed exhibited some, if not all, of these symptoms. Some migrants also expressed experiencing other psychological symptoms like anxiety, bouts of fear and anger, and recurring upsetting memories. One interviewee even admitted to suicidal thoughts. Unfortunately, but unsurprisingly, his shelter does not offer mental health services or resources.

Therefore, Mexico seems to have not only failed to ensure migrants’ access to good quality health facilities, goods, and services, but has also failed in many cases to provide adequate mental health resources in likely violation of the ICESCR’s provision on the right to health.

The Right to an Adequate Standard of Living

Beyond the obligations mentioned above, the ESCR Committee interprets the right to health as “an inclusive right,” which extends to the “underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food... and housing,” to name a few.¹⁵² Given its inclusive nature, “violating the right to health may often impair the enjoyment of other rights.”¹⁵³ One of these rights is the right to an adequate standard of living, which also addresses some of these underlying determinants of health such as “adequate food, clothing and housing” and which is ensured under Article 11 of the ICESCR.¹⁵⁴ In this section, we will focus primarily on the right to adequate housing given the dire housing situation that many migrants find themselves in.

¹⁴⁸ Dainius Pūras (Special Rapporteur on the Right to Health), Report of the Special Rapporteur on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, ¶ 122(k), U.N. Docs A/HRC/29/33 (Apr. 2, 2015).

¹⁴⁹ Jorge Bustamante (Special Rapporteur on the Human Rights of Migrants), Report of the Special Rapporteur on the Human Rights of Migrants, ¶ 24, U.N. Doc A/HRC/14/30.

¹⁵⁰ See Annex 18.

¹⁵¹ See Annex 8.

¹⁵² General Comment No. 14, *supra* note 125, ¶ 11.

¹⁵³ High Comm’r Human Rights, Fact Sheet No. 31: The Right to Health.

¹⁵⁴ ICESCR art. 11(1).

According to the ESCR Committee, “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.”¹⁵⁵ The ESCR Committee emphasizes that the right to adequate housing “should be seen as the right to live somewhere in security, peace, and dignity.”¹⁵⁶ More specifically, this includes “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”¹⁵⁷ However, Mexico’s migrant shelters likely fail to meet the ICESCR’s standards for adequate housing. In addition, the MPP and metering programs seem to discriminate against migrants and limit their ability to access adequate housing. Therefore, Mexico is likely in violation of Article 11 of the ICESCR.

A. State-run migrant shelters do not seem to meet the standards for adequate housing

The Committee laid out the standards for adequate housing in its General Comment No. 4. First, adequate housing should provide legal security of tenure, which “guarantees legal protection against forced eviction, harassment and other threats.”¹⁵⁸ Second, an adequate house “must contain certain facilities essential for health, security, comfort, and nutrition,” which include, “sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”¹⁵⁹ Third, adequate housing must be habitable. More specifically, an adequate house must provide its inhabitants with “adequate space and protect[ion] from cold, damp, heat, rain or other threats to health, structural hazards, and disease vectors.” Importantly, an adequate house must guarantee the physical safety of its occupants. Fourth, adequate housing “must be in a location which allows access to employment options, health-care services, schools, childcare centers and other social facilities.”¹⁶⁰ Housing is deemed to be inadequate “if located in... dangerous areas.”¹⁶¹ It should also be noted that disadvantaged groups like migrants are entitled to “some degree of priority consideration in the housing sphere.”¹⁶² Our interviews illustrate the ways in which the existing migrant shelters in Ciudad Juarez likely fail to meet the standards of security of tenure, infrastructure, habitability, and accessibility, and therefore may not meet the standards for adequate housing.

First, a number of interviewed migrants mentioned that their shelter did not guarantee any protections against forced removal after an initial period of 10-15 days. For instance, one Salvadoran migrant was told that her and her family could only stay at the shelter for a period of ten days; afterwards, her and her family’s stay was subject to “good behavior.”¹⁶³ Given the lack of guarantee and the imprecision of the conditions, many migrants are scared to report misconduct to the migrant shelter’s staff for fear that they will be told to leave the shelter. For

¹⁵⁵ Comm. Econ., Soc., Cultural Rights, General Comment No. 4, ¶ 7, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter General Comment No. 4].

¹⁵⁶ *Id.* ¶ 7.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* 8(a).

¹⁵⁹ *Id.* 8(b).

¹⁶⁰ *Id.* 8(f).

¹⁶¹ High Comm’r Human Rights, Fact Sheet No. 21: The Right to Adequate Housing (2009) at 4.

¹⁶² General Comment No. 4, *supra* note 155, ¶ 8(e).

¹⁶³ *See* Annex 14.

instance, one woman whose 17-year old daughter was being harassed by an older man in their shelter refrained from reporting the misconduct to staff “because she was worried about getting kicked out of the shelter.”¹⁶⁴

Second, migrant shelters do not provide adequate infrastructure. More specifically, some shelters lack energy for cooking, means of food storage, access to kitchens, and proper sanitation. One interviewee mentioned that migrants at her shelter had to buy their own gas tanks to cook dinner (which is not provided).¹⁶⁵ At another shelter where military personnel are in charge of cooking meals, migrants do not have access to any kitchens or means to store and cook food. This has led to arbitrary deprivations of food by military personnel. Indeed, the military had warned residents not to complain or else they would be denied meals.¹⁶⁶ At one point, shelter personnel denied migrants coffee and water for a week after Telemundo tried to interview them.¹⁶⁷ In addition, an interviewed migrant noted that his shelter only provided one bathroom for hundreds of migrants.¹⁶⁸ Another migrant described the long period of time when the bathrooms at her shelter were out of order. As a result, the migrants in the shelter had to use outhouses, which made many people sick.¹⁶⁹

Third, in addition to inadequate infrastructure, migrant shelters may not meet the standards of habitability. As mentioned in the previous section, many shelters do not provide migrants with protection from disease vectors. One migrant noted that the shelter he was staying in had “lots of rodents and pests.”¹⁷⁰ As described in the above section on the right to health, shelters have failed to protect migrants from diseases and have actually facilitated the spread of illnesses as evidenced by the chickenpox outbreak that occurred at the end of December 2019. Shelters have also failed to guarantee the physical safety of migrants. A number of shelters have not provided men and women with separate rooms to sleep in. As a result, women have reported incidents of physical harm by men. For instance, one woman told us that an older man molested her seven-year old daughter in the middle of the night.¹⁷¹

Fourth, the exceptionally violent environments in which these shelters are located deny migrants’ access to employment options, schools, and other social facilities. As described in the previous sections, private criminal groups as well as State authorities have repeatedly targeted migrants near these shelters. As a result, many migrants have said that they cannot access employment options unless their employer agrees to pick them up and drop them back off every day.¹⁷² If not, they put themselves at risk of the extortion, kidnapping, and other criminal acts that migrants have repeatedly been the victims of. Even then, many migrants still feel like they are unable to safely access employment options. The same applies to migrants’ access to schools. Given the violent settings in which the shelters are located, migrants are unable to safely send their children to schools as is evidenced by the fact that few to none of the children in shelters attend schools. In addition, although shelters are sometimes located near shops, restaurants, and

¹⁶⁴ See Annex 6.

¹⁶⁵ See Annex 14.

¹⁶⁶ See Annex 13.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See Annex 8.

¹⁷⁰ See Annex 6.

¹⁷¹ See Annex 8.

¹⁷² See e.g., Annex 15.

other social facilities, migrants have stated that they are unable to access these establishments because of the migrant-targeting criminals that often frequent them.¹⁷³

In conclusion, the shelters that Mexico has provided migrants fall short when it comes to security of tenure, availability of facilities and services, habitability, and having safe location. As such, Mexico is likely in violation of migrants' right to adequate housing under the ICESCR.

B. Migrant camps are unlikely to meet the standards for adequate housing

Given the inadequacy and limited capacity of migrant shelters, migrants have settled near ports of entry in makeshift camps that are unlikely to meet any of the criteria for adequate housing. Although Mexican authorities have provided some minimal assistance to these migrants, the State's efforts seem to be wholly inadequate and do not seem to ensure migrants' right to adequate housing in the slightest.

First, there is no security of tenure. One migrant with whom we spoke said that a Mexican official along the border had threatened to wipe out the entire camp if migrants continued to argue with him about allowing more families to cross the bridge.¹⁷⁴ The same migrant also expressed concern about his border camp's exposure to the violence, harassment, and infiltration by cartel members whom he says are perfectly capable of wiping out the camp. He stated that cartel members had threatened migrants in the border camps if they were not in their tents by 10pm and if they continued to conduct night watches. In fact, during the week that we were conducting interviews in Ciudad Juarez, a cartel member had managed to enter the camp early one morning and threatened to kidnap children.¹⁷⁵ Second, the migrant camps lack basic services, materials, facilities, and infrastructure. More specifically, the camps do not have adequate sanitation and washing facilities,¹⁷⁶ energy for cooking,¹⁷⁷ heating and lighting,¹⁷⁸ food storage,¹⁷⁹ emergency services¹⁸⁰ or other facilities essential for health,¹⁸¹ security,¹⁸² comfort¹⁸³

¹⁷³ See e.g., Annex 16 (stating that he no longer goes to the local mall near his shelter after he was almost kidnapped on his way back from there).

¹⁷⁴ See Annex 5.

¹⁷⁵ *Id.*

¹⁷⁶ See Annex 10 (describing the sanitary conditions in her camp as "horrible." There are no showers and in order to bathe themselves, they pour water from the park bathrooms into a bucket and splash it on themselves with a cup. Because the water is freezing and they have no way to heat it up, they typically only shower once a week. In addition, although they have access to running water in the camps, potable water is not readily accessible. Migrants are required to venture out of the camp to acquire it.)

¹⁷⁷ In one camp that we observed, migrants had no choice but to burn bits of wood they found in the park for warmth and food.

¹⁷⁸ Migrant camps in the park do not have lighting or electricity, making them especially vulnerable to violence and other dangers.

¹⁷⁹ In one migrant camp by the Puente del Norte Bridge, tents were so closely packed together that there was limited room to walk through. Space and infrastructure for food storage was therefore extremely limited.

¹⁸⁰ As mentioned earlier, a panic button was installed in one camp in case of emergencies. When migrants in the camp tried to use it following a medical emergency, however, it failed to work. See Annex 5.

¹⁸¹ Similarly to the shelters, many of the migrants at border camps are sick or have been sick at one point during their stay, especially children. Although medical cars come by with basic health goods, these visits are sporadic and do not meet the needs of most sick migrants. As a result, many of the migrants we talked to are forced to purchase basic medicine that they cannot afford. (See Annex 17).

¹⁸² Although Mexican police patrol certain border camps at night, these safety measures are insufficient. As described in Annex 5, Mexican authorities and cartel members have repeatedly threatened the safety of migrants in border camps. One woman described how a dead body was found in the river right next to her border camp. (See

and nutrition.¹⁸⁴ Third, in no way do the migrant camps reach the threshold for habitability. Although migrants sleep in tents that provide some minimal protection against rain and wind, they are not protected from cold, damp, heat, disease vectors (e.g. rodents), and other threats to health.¹⁸⁵ Fourth, the border camps' location by ports of entry severely limit migrants' access to employment options, health-care services, schools, childcare centers, and other social facilities. As with the shelters, border camps are located in violent parts of the city where migrants are particularly susceptible to extortion, kidnappings, and other criminal acts (as evidence in section 1). As such, migrants are unable to safely leave their camps and access essential social facilities like jobs and schools.

Therefore, Mexico seems to have violated migrants' right to adequate housing as recognized in Article 11 of the ICESCR.

The Right to Work

Article 6 of the ICESCR “recognize[s] the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” Article 7 of the ICESCR further “recognize[s] the right of everyone to the enjoyment of just and favourable conditions of work,” including fair wages and equal remuneration for men and women, safe and healthy working conditions, reasonable leave and holidays, equal opportunity for promotion, and a “decent living.”

Migrants at the border seem to be deprived of these rights. One interviewee¹⁸⁶ reported that her husband was working as a construction worker in Juárez when a colleague hit him in the back with a plank; the husband quit his job shortly afterwards out of fear of other potential incidents. His shoulder continues to pain him, but as far as he knows, no action was ever taken against his colleague. The husband was also aggressively stopped by a police officer who wanted to take his work permit and other documentation, which also dissuaded the husband from returning to work. Violations of Article 7 clearly appear in the workplace harassment suffered by the interviewee's husband, particularly the guarantees of “just and favourable conditions of work” and “safe and healthy working conditions.” Both his coworker and the police harassed the husband severely enough to make him abandon his job altogether, resulting in an overall violation of Article 6 because his fear of continued harassment has denied him the “opportunity to gain his living by work.”

Numerous interviewees further reported not being able to work because of problems with documentation,¹⁸⁷ inadequate transportation options,¹⁸⁸ fear of leaving shelters and being

Interview 17). Another migrant described how her border camp was heavily exposed to “drugs, needles, and overdosing.” (See Interview 11).

¹⁸³ Many migrants sleep in overcrowded tents. For instance, one migrant described how all six of his family members slept in the same tent. (See Annex 5).

¹⁸⁴ None of the migrants in border camps have access to a kitchen and have no choice but to share poorly washed dishes, utensils, and other cooking items, which further spreads disease within the camp.

¹⁸⁵ In fact, two of the greatest concerns that we heard in the camps were the exposure to cold weather and the spread of diseases. (See e.g., Annex 17).

¹⁸⁶ See Annex 14.

¹⁸⁷ See, e.g., Annex 7 (lack of work permit); see also Annex 10 (lack of proof of education status).

¹⁸⁸ See Annex 17 (lack of late-night buses to facilitate transportation back to camp after work make accepting a job impossible).

identified by former harassers or abductors,¹⁸⁹ and fear of leaving children alone at shelters while at work.¹⁹⁰ Some have been denied work because they are the wrong nationality: two men reported being turned down by potential employers because they were non-Mexican migrants,¹⁹¹ and one woman was told in Juárez that dishwashing jobs were being reserved for Cubans because, as a Mexican, she could get a job at a factory.¹⁹²

The Right to Education

Article 13 of the ICESCR recognizes the right to education, including free and compulsory primary education, “generally available and accessible” secondary education (including vocational and technical secondary education), and higher education that is “equally accessible to all.” Education should be “directed to the full development of the human personality and the sense of its dignity, and [should] strengthen the respect for human rights and fundamental freedoms.” Education should also “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.”

The quality of education offered to the children of migrants at the border clearly does not meet the quality and consistency standards envisioned under the ICESCR. Parents with children in informal classes at shelters reported that the quality of teaching was sub-standard and not a substitute for a real school,¹⁹³ particularly as the classes consisted mostly of having the children work on coloring books.¹⁹⁴ One man reported that none of the children at his shelter go to school because Mexican schools do not recognize or validate school credits from Central American schools.¹⁹⁵ Children in the camps did not go to school, but are sometimes taught by volunteers.¹⁹⁶

6. Discrimination

Non-discrimination is a fundamental legal principle that is recognized in a wide range of international human rights treaties, including the ICCPR and ICESCR. Although both treaties contain a general non-discrimination clause, these clauses are complemented by provisions prohibiting discrimination on specific grounds.¹⁹⁷ For example, Article 24 of the ICCPR “prohibits any discrimination against children based on race, color, sex, language, religion, national or social origin, property or birth.” States have an obligation to “refrain from discriminatory actions that undermine the enjoyment of rights (duty to respect); prevent and

¹⁸⁹ See, e.g., Annex 13 (while holding a previous job in Juárez, was identified and robbed of all of his earnings); see also Annex 15 (afraid to take an offered manual labor job near the airport, where he was previously extorted by State authorities); see also Annex 8; see also Annex 16.

¹⁹⁰ See, e.g., Annex 6 (quit because daughter was being harassed at shelter); see also Annex 8 (daughter was molested at shelter and now fears being left there alone).

¹⁹¹ See Annex 13; see also Annex 7.

¹⁹² See Annex 4.

¹⁹³ See, e.g., Annex 15; see also Annex 16.

¹⁹⁴ See Annex 8.

¹⁹⁵ See Annex 18.

¹⁹⁶ See Annex 17 (reporting that, at the time of the interview in early November 2019, the volunteer was giving the children English lessons).

¹⁹⁷ ICELANDIC HUMAN RIGHTS CENTRE, THE RIGHT TO EQUALITY AND NON-DISCRIMINATION (last visited Jan. 1, 2020), <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination>.

protect against certain forms of discrimination by private actors (duty to protect); and take positive proactive steps to ensure the equal enjoyment of human rights (obligation to fulfill).” More specifically, States must ensure “both *de facto* and *de jure* equality and eliminate both direct and indirect discrimination.” This requires states to eliminate both plainly discriminatory laws, policies, and practices but also that it mitigate the discriminatory effect of seemingly neutral measures.¹⁹⁸

As has been evidence throughout Section III of this report, MPP and metering—though perhaps not intentionally or directly discriminatory—seem to have exposed migrants to discrimination with respect to their right to life, liberty, security of person, health, work, education, adequate standard of living, housing, freedom of movement, freedom from torture, and other rights not discussed in this report. For example, MPP and metering programs have driven migrants to settle in makeshift camps along the border and have made it near impossible for migrant children to access schools in likely violations to their rights to housing and education. Therefore, Mexico is has likely violated migrants’ right to non-discrimination as recognized by the ICCPR and ICESCR.

VI. Violations of International Criminal Law Occurring in Mexico Because of MPP

1. Crimes Against Humanity on the U.S.-Mexico Border

International criminal law (ICL) provides another lens to view the human rights violations committed on the border, emphasizing *individual* responsibility for actions as opposed to just State responsibility. Under ICL, individuals may be brought before the International Criminal Court for their involvement in certain crimes, especially those considered crimes against humanity (“CAH”). The Rome Statute of the International Criminal Court identifies certain human rights violations as CAH when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹⁹⁹ According to the Rome Statute, the particular atrocities eligible for CAH designation are the following: “Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution

¹⁹⁸ See Frigo, *supra* note 122 at 44–46.

¹⁹⁹ Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90. (entered into force on July 1, 2002) [hereinafter Rome Statute], <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>. Mexico ratified the Rome Statute on Oct. 28, 2005. *Mexico*, INT’L CRIMINAL COURT, https://asp.icc-cpi.int/en_menus/asp/states%20parties/latin%20american%20and%20caribbean%20states/Pages/mexico.aspx, last visited Dec. 9, 2019. The United States has not ratified the Rome Statute. See *The States Parties to the Rome Statute*, INT’L CRIMINAL COURT, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (not listing the United States). However, there are analogues to the Rome Statute’s description of CAH in customary international law. See Sean D. Murphy, Special Rapporteur, *First Report on Crimes Against Humanity*, U.N. Doc. No. A/CN.4/680 (Feb. 17, 2015), <https://legal.un.org/docs/?symbol=A/CN.4/680> (providing background on the emergence of CAH doctrine and some case law from other criminal tribunals, such as the International Tribunal for the Former Yugoslavia (ICTY)). See generally ROBERT DUBLER SC & MATTHEW KALYK, *Crimes against Humanity under Customary International Law and the ICC: The Chapeau Elements*, in *CRIMES AGAINST HUMANITY IN THE 21ST CENTURY* (2018) (comparing the chapeau elements within the two different sources of international law on crimes against humanity).

against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”²⁰⁰

Of these listed violations, the ones that seem to be occurring on the Mexican side of the border as evidenced by our interviews are murder, torture, rape, persecution against migrants, and enforced disappearance of persons. If the acts at issue satisfy the *chapeau* elements of the statute—being (1) “widespread and systematic,” (2) directed against a “civilian population,” (3) committed “with knowledge of the attack,” and (4) committed “pursuant to or in furtherance of a State or organizational policy to commit such attack”—they meet the criterion for identification as CAH.²⁰¹ Even though the attacks need to be widespread, the size of the territory on which the attacks are launched may, in fact, be relatively small.²⁰² Although the data gathered from our interviews is limited, it suggests that these crimes are systematic and widespread in border cities across Mexico (e.g. Ciudad Juarez). The second requirement is also met because three civilian groups are harmed by the situation on the border: migrants generally, Spanish-speaking migrants in particular, and asylum-seekers. Although the data we’ve collected cannot confirm that these crimes are part of a State policy, our interviews indicate that both Mexican and U.S. authorities have knowledge of these crimes and are sometimes responsible for committing them.

2. *Genocide on the U.S.-Mexico Border Against Migrants, Spanish Speaking Migrants and Asylum-Seekers*

A second crime under international criminal law that could be implicated here is genocide, prohibited both in the Rome Statute and the Genocide Convention.²⁰³ Genocide entails both individual and state responsibility (the Rome Statute codifies the individual responsibility and the Genocide Convention outlines State obligations with respect to genocide). These treaties both identify genocide where certain acts are committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”²⁰⁴ The particular acts qualifying as genocide are (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; and (e) Forcibly transferring children of the group to another group.²⁰⁵

In this case, specific “intent to destroy, in whole or in part, a national, ethnical, racial or religious group” may not exist, or if it does, may be difficult to prove. However, our research reveals that the acts of killing members of the group, causing serious bodily or mental harm to

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Patricia M. Wald, *Genocide and Crimes Against Humanity*, 6 WASH. UNIV. GLOB. STUD. LAW REV 621, 629 (2007) (“In one case the attack took place over an area of 20 kilometers; in others, three municipalities, three prefectures or two communes sufficed. Even a single prison camp qualified.”), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1155&context=law_globalstudies.

²⁰³ Mexico is a party to both of these treaties. *See supra* notes 30 and 199. In addition to the Rome Statute and the Genocide Convention, the United States also lists genocide as a Title XVIII crime. 18 U.S.C. 1091.

²⁰⁴ Genocide Convention art. II; Rome Statute art. 6.

²⁰⁵ Genocide Convention art. II.

members of the group, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part are occurring on the border.²⁰⁶ These violations were directed against the three civilian groups mentioned above, those of migrants generally, Spanish-speaking migrants in particular, and asylum seekers. If specific intent manifests, the situation on the border would then rise to the level of genocide under the appropriate statutes.

VII. Conclusion

In sum, Mexico seems to have violated its obligations under the ICCPR, ICESCR, and numerous other human rights treaties as a result of implementing MPP and metering. More specifically, our interviews suggest that Mexican authorities have committed and failed to protect, investigate, and prosecute the extortion, arbitrary detentions, kidnappings, forcible disappearances, torture, and life-threatening injuries of migrants in violation of the right to life, liberty, and security, freedom from torture, freedom of movement, and non-discrimination. In addition, Mexico has likely violated a range of migrants' economic, social, and cultural rights, including their right to health, adequate housing, work, and education. Although this report has primarily described the likely violations of Mexico's obligations under the ICCPR and ICESCR, we recognize that Mexico may have also violated its obligations under a range of other human rights treaties. Our analysis should therefore be read as illustrative rather than exhaustive. We also suggest that migrants may be the victims of crimes against humanity and genocide, though we recognize the limitations of our data in drawing those conclusions. Finally, we urge Mexico to comply with its obligations under the many human rights treaties it is a party to and to terminate its participation in MPP and metering.

**Appendices 1-20 are available upon request*

²⁰⁶ See *supra* Sections III.1–III.3.

Annex A

I. The Right to be Free from Arbitrary Detention

- a. ICCPR art. 9(1): “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
- b. CED art. 1:
 1. “No one shall be subjected to enforced disappearance.”
 2. “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.”
- c. CED art. 2: “For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”
- d. CPEUM art. 19: “No detention shall exceed three days without a formal order of commitment, which shall state the offense with which the accused is charged; the substance thereof; the place, time and circumstances of its commission; and the facts brought to light in the preliminary examination.”
- e. ACHR art. 7:
 1. “Every person has the right to personal liberty and security.”
 2. “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.”
 3. “No one shall be subject to arbitrary arrest or imprisonment.”
- f. ICCPR art. 10(1): “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
- g. ICCPR art. 11: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

II. Economic, Social, and Cultural Rights

- a. ICESCR art. 6(1): “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”
- b. ICESCR art. 7: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular”: fair remuneration, “safe and healthy working conditions,” equal opportunity for promotion, and appropriate holidays and leisure.

- c. ICESCR art. 11(1): “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”
- d. ICESCR art. 12:
 - 1. “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”
 - 2. “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”
- e. ICESCR art. 13(1): “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”
- f. CRC art. 27(1): “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”
- g. CRC art. 28(1): “States Parties recognize the right of the child to education”

III. The Right to Freedom from Discrimination

- a. ICCPR art. 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- b. ICCPR art. 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”
- c. CEDAW art. 1: “For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and

fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

- d. CEDAW art. 2: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”
- e. CRPD art. 5:
 - 1. “States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.”
 - 2. “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”
- f. CERD art. 1:
 - 1. “In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
 - 2. “This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”
 - 3. “Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”
 - 4. “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”
- g. CERD art. 2: “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races”
- h. CERD art. 3: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdictions.”
- i. ACHR art. 24: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”
- j. ICCPR art. 20:
 - 1. “Any propaganda for war shall be prohibited by law.”

2. “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

IV. The Right to Life

- a. ICCPR art. 6(1): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
- b. ICCPR art. 16: “Everyone shall have the right to recognition everywhere as a person before the law.”
- c. CMW art. 9: “The right to life of migrant workers and members of their families shall be protected by law.”
- d. ACHR art. 4(1): “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

V. The Right to be Free from Torture

- a. CAT art. 1(a): “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”
- b. CAT art. 2:
 1. “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”
 2. “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”
 3. “An order from a superior officer or a public authority may not be invoked as a justification of torture.”
- c. CAT art. 3(1): “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”
- d. ICCPR art. 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”
- e. CMW art. 10: “No migrant worker or member of his family shall be subjected to torture or to cruel, inhuman or degrading treatment.”
- f. ACHR art. 5(1): “Every person has the right to have his physical, mental, and moral integrity respected.”
- g. ACHR art. 5(2): “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

VI. The Right to be Free from Slavery and Trafficking

- a. ICCPR art. 8:
 1. “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”
 2. “No one shall be held in servitude.”
 3. “(a) No one shall be required to perform forced or compulsory labour.”
[(b) omitted].
- b. Palermo Protocol art. 3: “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”
- c. ACHR art. 6(1): “No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.”

VII. The Right to Freedom of Movement

- a. ICCPR art. 12:
 1. “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”
 2. “Everyone shall be free to leave any country, including his own.”
 3. “The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present covenant.”
 4. “No one shall be arbitrarily deprived of the right to enter his own country.”
- b. CMW art. 8: “Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.”
- c. CPEUM art. 11: “Everyone has the right to enter and leave the Republic, to travel through its territory and to change his residence without necessity of a letter of security, passport, safe-conduct or any other similar requirement. The exercise of this right shall be subordinated to the powers of the judiciary, in cases of civil or criminal liability, and to those of the administrative authorities insofar as concerns the limitations imposed by the laws regarding emigration, immigration and public health of the country, or in regard to undesirable aliens resident in the country.”
- d. ACHR art. 22:

1. “Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”
 2. “Every person has the right to leave any country freely, including his own.”
 3. “The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.”
 4. “The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.”
 5. “No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.”
 6. “An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.”
 7. “Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”
 8. “In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.”
 9. “The collective expulsion of aliens is prohibited.”
- e. ICCPR art. 13: “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

VIII. The Right to Privacy

- a. ICCPR art. 17: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”
- b. ACHR art. 11:
 1. “Everyone has the right to have his honor respected and his dignity recognized.”
 2. “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”
 3. “Everyone has the right to the protection of the law against such interference or attacks.”

IX. The Right to Freedom of Thought, Religion, and Expression

- a. ICCPR art. 18:

1. “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”
 2. “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”
 3. “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
 4. “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”
- b. ICCPR art. 19:
1. “Everyone shall have the right to hold opinions without interference.”
 2. “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
- c. ACHR art. 12(1): “Everyone has the right to freedom of conscience and of religion. This right includes the freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.”
- d. ACHR art. 13(1): “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

X. The Right to Freedom of Assembly and Association

- a. ICCPR art. 21: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”
- b. ICCPR art. 22(1): “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”
- c. ACHR art. 15: “The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.”
- d. ACHR art. 16(1): “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

XI. The Rights to Family

- a. ICCPR art. 23:
 1. “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”
 2. “The right of men and women of marriageable age to marry and to found a family shall be recognized.”
- b. ICCPR art. 24:
 1. “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, or on the part of his family, society and the State.”
 2. “Every child shall be registered immediately after birth and shall have a name.”
 3. “Every child has the right to acquire a nationality.”
- c. ICESCR art. 10(1): “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”
- d. ACHR art. 17:
 1. “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”
 2. “The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.”
 3. “No marriage shall be entered into without the free and full consent of the intending spouses.”
 4. “The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.”