

## The Militarization of Mexico's Border and its Impacts on Human Rights

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### 1. INTRODUCTION

Between 800,000 and one million people are estimated to traverse Mexico from Central America each year, endeavoring to reach the United States.<sup>1</sup> These migrants, asylum seekers, and refugees are forced north for a myriad of deeply personal reasons, but most commonly a combination of rampant crime and violence, economic insecurity, government failures, environmental forces, impacts from the global coronavirus pandemic, and, of course, a hope for a better life.<sup>2</sup> Government policies that militarize migration control make the already daunting journey more dangerous. To that end, the Inter-American Commission on Human Rights (IACHR) has repeatedly voiced concern about policies that aim to militarize borders and their direct negative impact on human rights.<sup>3</sup> But despite the corrosive effects on human rights, the militarization of national borders is increasing throughout the globe,<sup>4</sup> and it is especially stark between “first world” and developing countries.<sup>5</sup>

The United States has driven this trend by outsourcing border militarization to other countries, most recently and intensely to Mexico and other Central American nations.<sup>6</sup> In the United States, this preference for militarization has been bipartisan, consistent through both Democratic and Republican presidential administrations. We are accustomed to the militarized United States-Mexico border, but this alarming trend is increasingly apparent at Mexico's southern border. One can picture it as the United States extending its border more than a thousand miles south to crack down on migrants and asylum-seekers.

This research paper explores Mexico's recent push to militarize immigration enforcement following pressure from the United States. Militarization refers broadly to enhanced border enforcement, emphasizing “the use of military rhetoric and ideology, as well as military tactics, strategy, technology, equipment and forces,” which conflicts with the human rights of migrants and asylum seekers.<sup>7</sup> Militarization is key to the “prevention through deterrence” strategy, which aims to reduce immigration by making the journey more arduous and costly, if not deadly.<sup>8</sup> It forces migrants to evade increased border personnel and military technology, such as night vision technology, underground sensors, and drone surveillance. These intentional barriers force migrants to rely on expensive and exploitive guides and take more dangerous and remote routes.

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<sup>1</sup> Amarela Varela Huerta, *Femicide, State-Perpetrated Violence and Economic Violence: An Analysis of The Perverse Reality Driving Central American Women's Migration*.

<sup>2</sup> Kevin Lapp, *US Militarizing Borders in Central America*, JURIST (May 7, 2021 10:00 AM). <https://www.jurist.org/commentary/2021/05/kevin-lapp-us-militarizing-borders-in-central-america/>

<sup>3</sup> Organization of American States, *IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America*, OAS (July 23, 2019). [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/180.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/180.asp)

<sup>4</sup> Grant J. Silva, *On The Militarization Of Borders And The Juridical Right To Exclude*, 29 *Public Affairs Quarterly* 2, 217–234 (2015). <http://www.jstor.org/stable/44713988>

<sup>5</sup> *Id.*

<sup>6</sup> Lapp, *supra* note 2.

<sup>7</sup> Dunn, Timothy J. 1996. *The Militarization of the U.S.-Mexico Border, 1978–1992: Low-Intensity Conflict Doctrine Comes Home*. Austin: CMAS Books, University of Texas at Austin.

<sup>8</sup> Lapp, *supra* note 2.

The paper begins with a brief background on the migration situation in Mexico and Central America. Next, we focus on the creation of the Mexican National Guard and its deployment to the border. We then discuss how Mexico's migration enforcement and detention practices may be violating its own Constitution and international law. Finally, the paper explores the impacts increased enforcement and militarization have had on the human rights of migrants and recommendations to improve the migration system and protect human rights.

## 2. BACKGROUND ON MEXICO'S MIGRATION SITUATION

It's essential to begin this paper by acknowledging the complex migratory system surrounding Mexico and the Northern Triangle countries. The Central American migration system is inter-regional and the world's busiest migration corridor.<sup>9</sup> The migration system has an average flow of 9.3 million people annually.<sup>10</sup> It comprises Guatemala, Nicaragua, El Salvador, Honduras, and Costa Rica.<sup>11</sup> The majority of migrants travel to Canada and the United States, and they must cross Mexico by air, land, or sea to do so.<sup>12</sup> Mexico plays a critical role in this system as a source country, from which thousands of Mexicans migrate to the United States, and a transit country, through which migrants travel to reach the United States. Mexico is also becoming a destination country, where migrants are attempting to stay due to various factors, including increased enforcement and restrictive policies in the United States in Mexico.

The legal rules on immigration detention and expulsion are contained in the Mexican Constitution, the 2011 Migration Law, and the 2012 Regulations of the Migration Law.<sup>13</sup> In November 2020, Mexico's Congress amended the 2011 Migration Law to prohibit detaining children due to their migration status.<sup>14</sup> The reforms took effect in January 2021.<sup>15</sup> Some observers applauded this move. Others were skeptical that the country would adhere to such provisions based on its history of detaining significant numbers of children and failures to respect prior-existing child detention prohibitions. Finally, it is important to note that while Mexico does not impose criminal penalties for unauthorized entry or stay, it has one of the world's largest immigration detention infrastructures where migrants are administratively held while their cases are processed.<sup>16</sup> The following section begins the discussion of Mexico's National Guard.

## 3. THE CREATION OF THE MEXICAN NATIONAL GUARD

In February 2019, after intense debate within the government and local communities, Mexico's legislature approved constitutional reforms that created the 60,000-member National Guard.<sup>17</sup> The intended goal of the National Guard was to reduce crime and violence. Despite an initial push for military control by President Andrés Manuel López Obrador,<sup>18</sup> an amendment to Mexico's Constitution established that the Guard must be "civilian in nature."<sup>19</sup> Accordingly, the Mexican National Guard is explicitly under the civilian control of the Ministry of Security and Citizen Protection.<sup>20</sup> The following constitutional articles were amended in the process: 10, 16, 21,

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<sup>9</sup> Varela Huerta, *supra*, note 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Global Detention Project, *Mexico Migration Immigration Detention Profile*, GLOBAL DETENTION PROJECT (Feb. 2021). <https://www.globaldetentionproject.org/countries/americas/mexico>

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Kirk Semple & Paulina Villegas, *Mexico Approves 60,000-Strong National Guard. Critics Call It More of the Same*, N. Y. TIMES, (Feb. 28, 2019), <https://www.nytimes.com/2019/02/28/world/americas/mexico-amlo-national-guard.html>

<sup>18</sup> *Id.*

<sup>19</sup> Amnesty International, *Mexico's new National Guard is breaking its vow to respect human rights*, AMNESTY INTERNATIONAL (Nov. 8, 2020). <https://www.amnesty.org/en/latest/news/2020/11/mexicos-national-guard-breaking-vow-respect-human-rights/>

<sup>20</sup> *Id.*

31, 35, 36, 73, 76, 78, and 89.<sup>21</sup> In a hybrid fashion, the force combines officers from the Federal Police with military police units of the army and navy.<sup>22</sup> Military members keep their ranks, but the highest-ranked commander reports to a civilian, and war abuses are tried in civilian courts.<sup>23</sup>

It is important to note that in 2012, then-presidential candidate López Obrador made a campaign promise that he would refrain from using soldiers for civilian tasks like law enforcement.<sup>24</sup> Instead, he vowed to use a professionalized federal police force.<sup>25</sup> Thus, to many, the creation of the National Guard represented a broken campaign promise. The Washington Office on Latin America (WOLA) points out: “López Obrador has failed to demilitarize public security. On the contrary, he has deepened various aspects of the militarized model.”<sup>26</sup>

### A. After United States Pressure, Mexico’s National Guard Shifts Priorities and Deploys to the Border

In June 2019, the Mexican government deployed thousands of National Guard troops and security forces to its southern border with Guatemala.<sup>27</sup> By September 2019, 15,000 troops were stationed at the United States-Mexico border and 10,000 on the Mexico-Guatemala border.<sup>28</sup> The deployment came after months of heightened Central American migration through Mexico to the United States and intense pressure from former President Donald Trump’s administration for Mexico to accept terms to stem it.<sup>29</sup> The eventual agreement, formalized as a United States-Mexico Joint Declaration, committed Mexico to take “unprecedented steps to increase enforcement to curb irregular migration” and allow more United States-bound migrants to be returned to Mexico while awaiting their immigration proceedings.<sup>30</sup> In exchange, Mexico avoided heavy tariffs threatened by President Trump.<sup>31</sup>

The agreement represented a new era in Mexico’s immigration enforcement.<sup>32</sup> It reflected a stark shift from President López Obrador’s initial focus on facilitating migration and investing in southern Mexico and Central America to address the root causes of migration to an “enforcement-first” approach.<sup>33</sup> Following the decision to deploy troops to the border, advocates questioned diverting this force from combatting organized crime and violence—its intended purpose—to border and immigration enforcement, which advocates say is not a security threat to Mexico.<sup>34</sup> Moreover, advocates believed that the inadequately trained paramilitary force would be ill-equipped to confront the humanitarian issues of migrants fleeing poverty and violence.<sup>35</sup>

During the legislature’s deliberations, human rights activists and civil society groups warned about further militarizing policing and deploying the National Guard to the border.<sup>36</sup> They cited specific concerns about the military’s questionable record on human rights abuses, due process violations, and the potential for even worse abuses

<sup>21</sup> Adriana Sletza Ortega Ramírez & Luis Miguel Morales Gámez, *(In)seguridad, derechos y migración. La Guardia Nacional en operativos migratorios en México*, SCIELO (2021). [http://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S1870-21472021000100157](http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-21472021000100157)

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Julian Resendiz, *AMLO reneged on campaign vow to return soldiers to barracks after failed drug war and now uses them to solve America’s immigration crisis, experts say*, BORDER REPORT (May 13, 2021). <https://www.borderreport.com/regions/mexico/mexicos-use-of-soldiers-to-stem-migrant-flow-to-u-s-will-lead-to-abuse-experts-say/>

<sup>25</sup> Stephanie Brewer, *Militarized Mexico: A Lost War that has not Brought Peace*, WOLA, (May 12, 2021). <https://www.wola.org/analysis/militarized-mexico-a-lost-war/>

<sup>26</sup> *Id.*

<sup>27</sup> Kirk Semple, *Mexico’s National Guard, a ‘Work in Progress,’ Deployed to Curb Migration*, N. Y. TIMES, (June 14, 2019), <https://www.nytimes.com/2019/06/14/world/americas/mexico-migration-national-guard.html>

<sup>28</sup> Ariel G. Ruiz Soto, *One Year after the U.S.-Mexico Agreement Reshaping Mexico’s Migration Policies*, (June 2020), at 5.

<sup>29</sup> *Id.* at 1.

<sup>30</sup> Department of State, *U.S.-Mexico Joint Declaration*, (June 7, 2019). <https://2017-2021.state.gov/u-s-mexico-joint-declaration/index.html>

<sup>31</sup> Semple, *supra* note 17.

<sup>32</sup> Ruiz Soto, *supra* note 28, at 1.

<sup>33</sup> *Id.*

<sup>34</sup> Semple, *supra* note 17.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

against Central Americans and Mexicans of indigenous descent.<sup>37</sup> Tony Payan, Director of the U.S.-Mexico Center at Rice University's Baker Institute of Public Policy and professor at the Autonomous University of Ciudad Juarez, warned that the President's increased reliance on the military might lead to "an incredible increase in human rights violations and due process because the military is not trained except in the use of force during war."<sup>38</sup> Fernando Garcia, Executive Director of El Paso's Border Network for Human Rights, said that because the use of soldiers for immigration controls is a policy of deterrence, Central Americans will likely attempt to cross the Mexican border at more dangerous places, like mountains, jungles, and the open sea.<sup>39</sup> Accordingly, more migrants will be at risk of getting lost, drowning, and, ultimately, death.<sup>40</sup>

Just two weeks after the deployment of the National Guard to the border, the world received evidence of the horrific cost of such a border strategy in the form of a photo. The haunting image depicted Oscar, a Salvadoran man, with Valeria, his 23-month-old daughter, tucked inside his shirt. Both had drowned and were lying face down on the bank of the Rio Grande.<sup>41</sup>

## B. Biden Administration Continues to Pressure Mexico

The Biden Administration's efforts to build a humane immigration system and reverse harmful Trump-era policies have thus far been overshadowed by its failure to dispense with the core strategy of militarization and deterrence. The Biden Administration, like its predecessor, has continued to pressure Mexico and other Central American countries to increase border security to prevent migrant flows from Central America.<sup>42</sup> In 2021, the Biden administration, Mexico, Honduras, and Guatemala reportedly agreed to temporarily surge security forces to their borders to stem migration at the United States border.<sup>43</sup> The agreement purportedly calls for Mexico to keep 10,000 troops at its southern border. Guatemala will add 1,500 police and military personnel to its southern border, and Honduras will deploy 7,000 police and military to its border.<sup>44</sup> The agreement followed record-breaking numbers of unaccompanied children attempting to cross the United States-Mexico border and the most United States Border Patrol encounters with migrants since March 2001.<sup>45</sup>

## C. President López Obrador proposes making the National Guard Part of the Army

Any doubt about President López Obrador's preference for military control of the National Guard was eliminated in June 2021 when he announced plans to make the National Guard part of the army.<sup>46</sup> Specifically, the President intends to introduce constitutional reforms to place the National Guard under the Defense Department.<sup>47</sup> The proposal would completely eliminate civilian control of the National Guard and, per the President, help ensure it is not subject to budget cuts by subsequent administrations.<sup>48</sup> The reform will be presented to the Chamber of Deputies in 2023, one year before the President's term ends.<sup>49</sup>

<sup>37</sup> Resendiz, *supra*, note 24.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Kim Hjelmgaard, *In news, when words fail, graphic and shocking photos often don't*, USA TODAY (Jul. 2, 2019). <https://www.usatoday.com/story/news/world/2019/07/02/drowned-migrant-photo-oscar-alberto-martinez-ramirez-daughter-valeria/1595000001/>

<sup>42</sup> Resendiz, *supra*, note 24.

<sup>43</sup> Alexandra Jaffe, *Mexico, Honduras, Guatemala deploy troops to lower migration*, AP (Apr. 12, 2021). <https://apnews.com/article/guatemala-honduras-mexico-immigration-border-patrols-917c0fea87c0a807b371da207d34c8cc>

<sup>44</sup> Lapp, *supra* note 2.

<sup>45</sup> Jaffe, *supra*, note 43.

<sup>46</sup> Mark Stevenson, *Mexican President to Make National Guard Part of Army*, MILITARY.COM (Jun. 16, 2021). <https://www.military.com/daily-news/2021/06/16/mexican-president-make-national-guard-part-of-army.html>

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Melissa Galván, *La Guardia Nacional de AMLO: de cuerpo civil a formar parte de la Sedena*, EXPANSIÓN POLÍTICA (Jun. 16, 2021) <https://politica.expansion.mx/mexico/2021/06/16/voces-guardia-nacional-amlo-cuerpo-civil-a-formar-parte-de-sedena>

To many, this proposal reflects a broader trend by this President of perpetuating the “militarization of public security.” María Elena Morena, President of the Common Cause organization, warned that if President López Obrador continues to give more power to the military, the government will not be able to improve the capacity of civilian police forces.<sup>50</sup>

#### D. Legalties

There are legitimate questions about whether Mexico’s use of the National Guard violates its Constitution and international and inter-American standards.<sup>51</sup> The IACHR notes that under international and inter-American standards of International Human Rights Law, “all persons have the right to freely leave any country, including their own; as well as the right to request and receive asylum and the protection of their right and principle of non-refoulement.”<sup>52</sup> The principle of non-refoulement is a cornerstone protection under international human rights law that forbids returning migrants to countries where they would face “torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.” All migrants are entitled to the right of non-refoulement at all times and regardless of immigration status.<sup>53</sup>

Therefore, the IACHR “views with extreme concern the militarization of the borders and calls on the States to ensure that the measures they implement...are aimed at respecting and guaranteeing the human rights of migrants and refugees.”<sup>54</sup> The IACHR has also called out the use of immigration detention for punitive purposes and as an automatic and generalized way to respond to migratory movements. Instead, the IACHR urges that such detention should be a “last resort” and for “the shortest possible time in compliance with the principles of exceptionality, necessity, and proportionality.”<sup>55</sup>

Mexico’s National Human Rights Commission suggests Mexico may be violating its own Constitution because Article 1 guarantees all people in Mexico the rights granted by the Constitution. The Commission asserts the government’s enforcement and detention practices directly jeopardized a migrant’s guaranteed right to: freedom of movement, legal certainty, due process, consular assistance, and seeking asylum.<sup>56</sup>

Human rights organizations suggest that the “civilian character” of the National Guard is a veneer and therefore calls into question the National Guard’s constitutionality in that respect. For example, the IACHR found that although the Guard was created as a civilian body with police functions, its reliance on a military structure and military personnel casts doubt on its civilian nature.<sup>57</sup> Furthermore, it diminishes the government’s claims of demilitarization of public security. Similarly, WOLA asserts that while the National Guard is a civilian body in theory, it has a fundamentally military structure and institutional identity.<sup>58</sup> Specifically, “the majority of its roughly 100,000 members are military troops, it is deployed throughout the country in barracks, and its Commander is a military general—one who went from active to retired status while leading the [National Guard].”<sup>59</sup> Additionally, the Ministry of Defense took operational command of the National Guard in October 2020.<sup>60</sup>

In 2018, the Inter-American Court of Human Rights ordered the Mexican government to create an independent and impartial monitoring system to improve law enforcement accountability and transparency.<sup>61</sup> This directive

<sup>50</sup> *Id.*

<sup>51</sup> Organization of American States, *supra*, note 3.

<sup>52</sup> *Id.*

<sup>53</sup> UN Human Rights Office <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>54</sup> Organization of American States, *supra*, note 3.

<sup>55</sup> *Id.*

<sup>56</sup> Ramírez & Gámez, *supra*, note 21.

<sup>57</sup> Organization of American States, *IACHR Reminds Mexico of Its International Human Rights Commitments Concerning Citizen Security*, OAS (Jul. 25, 2020). [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/178.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/178.asp)

<sup>58</sup> Brewer, *supra*, note 25.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

now applies to the National Guard.<sup>62</sup> However, the government has indicated that it does not intend to comply with the Court's order.<sup>63</sup> It is unclear how a change to military control might impact these considerations.

#### 4. IMPACT ON HUMAN RIGHTS

Mexico's intensified border enforcement efforts, coupled with United States policies limiting access to asylum, have exposed and exacerbated significant shortcomings in Mexico's systems for protecting vulnerable migrants.<sup>64</sup> This section discusses human rights violations in more detail, beginning with a broad overview. It then explores the special topics of detention centers and the experiences of women migrants.

It is crucial to remember that migrant safety is often at risk before they embark on their journeys northward. The threat of violence by criminal organizations, a spouse, family member, or otherwise is often a factor encouraging migration. People also decide to flee after experiencing poverty and persecution in their home countries.

Upon embarking on their journeys, migrants must contend with the "prevention through deterrence" strategy enhanced by increased border personnel and military technology, such as night vision technology, underground sensors, and drone surveillance. These intentional barriers force migrants to rely on expensive and exploitive guides and take more dangerous and remote routes.<sup>65</sup> Indeed, in remarking on recent migration control efforts by the United States and Central American countries, White House Press Secretary Jen Psaki stated that "the objective is to make it more difficult to make the journey and make crossing the borders more — more difficult."<sup>66</sup>

In 2021, the Mexican National Guard and National Migration Institute (INM), which oversees migration in Mexico, made a record number of migrant apprehensions.<sup>67</sup> Women made up approximately 30 percent of those apprehended, and children represented 27 percent.<sup>68</sup> As anticipated, migrants and advocates have reported numerous human rights abuses by the National Guard and the INM.<sup>69</sup> In 2020 and 2021, National Guard members were implicated in alleged arbitrary executions.<sup>70</sup> Since 2020, the National Human Rights Commission has received about the same number of complaints against the National Guard as it has against the Ministry of Defense.<sup>71</sup> Between the Guard's establishment in 2019 and August 2020, the National Human Rights Commission recorded at least 219 complaint allegations, including "51 arbitrary arrests, 28 cases of cruel, inhuman or degrading treatment, three cases of torture, two unlawful killings, and two enforced disappearances."<sup>72</sup> Advocates have also recorded 1,300 cases of migrants returned to northern Mexico who have been raped, kidnapped, or attacked.<sup>73</sup>

Yet, experts warn that numbers are likely much higher due to a lack of transparency and an independent watchdog.<sup>74</sup> Also hindering effective reporting is the fact that victims often fear reprisal by security forces and therefore refrain from reporting. Further worsening the difficulties of reporting is the danger journalists face in investigating such crimes.<sup>75</sup> Journalists are particularly at risk in high-violence areas, like Tamaulipas, Veracruz, and Durango.<sup>76</sup>

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Ruiz Soto, *supra*, note 28, at 1.

<sup>65</sup> Laurent Faret, María Eugenia Anguiano Téllez, & Luz Helena Rodríguez-Tapia, *Migration Management and Changes in Mobility Patterns in the North and Central American Region*, SAGE JOURNALS (May 17, 2021). <https://journals.sagepub.com/doi/full/10.1177/23315024211008096>

<sup>66</sup> The White House, *Press Briefing by Press Secretary Jen Psaki, April 12, 2021* (Apr. 12, 2021). <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/12/press-briefing-by-press-secretary-jen-psaki-april-12-2021/>

<sup>67</sup> Women's Refugee Commission, *Stuck in Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021*, WRC (Feb. 2, 2022). <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf>

<sup>68</sup> *Id.*

<sup>69</sup> Ruiz Soto, *supra* note 28.

<sup>70</sup> Brewer, *supra*, note 25.

<sup>71</sup> *Id.*

<sup>72</sup> Amnesty International, *supra*, note 19.

<sup>73</sup> Congressional Research Service, *Mexico: Background and U.S. Relations*, Congressional Research Service (Mar. 21, 2022) <https://sgp.fas.org/crs/row/R42917.pdf>

<sup>74</sup> Amnesty International, *supra*, note 19.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

New travel regulations imposed by the López Obrador administration requiring proof of immigration status to purchase a bus ticket have led to discrimination and racial profiling of migrants and Mexicans alike.<sup>77</sup> Discrimination is particularly severe for Indigenous and Afro-descendent migrants and Mexicans.<sup>78</sup> Further worsening these problems, the government has required Ecuadorians, Brazilians, and Venezuelans to obtain a visa to travel to Mexico as tourists.<sup>79</sup> The visa requirement, implemented in August 2021, was in response to pressure from the United States to make it more difficult for citizens of countries who have been arriving at the United States border in high numbers to transit the country.<sup>80</sup>

As the government employs its militarized strategy, detention centers are increasingly overcrowded. More migrants are also forced to live in makeshift camps and under-resourced shelters where accessing even basic services is challenging.<sup>81</sup> In August 2019, more than 11,000 migrants were detained despite detention centers only having the capacity for 8,500.<sup>82</sup> In addition to overcrowding, inadequate health care and poor sanitary conditions are commonly cited as migrant concerns.<sup>83</sup> These factors, and the lack of government protection, make migrants even more vulnerable to criminal groups. The COVID-19 pandemic introduced new challenges into the migration system and exacerbated the challenges shelters and detention centers face in keeping migrants safe and healthy.<sup>84</sup>

What follows is a more in-depth look at the situation in migrant detention centers and the unique, at times harrowing, experience of women migrants.

### A. Detention Centers

As this paper stresses, countries across the globe have increasingly prioritized criminalizing and detaining migrants to deter “flows.”<sup>85</sup> These efforts are prompted by national security schemes that mischaracterize migrants as threats to the security, economy, and health of destination countries.<sup>86</sup> These policies build on racist and xenophobic stereotypes that migrants are sick, unsanitary, criminals, and engage in risky behaviors. The government and media play a role in perpetuating these stereotypes by promoting anti-immigrant rhetoric and disproportionately covering crime and disease statistics. These entities neglect to shine a light on positive stories, the plight of the migrant and the reasons for the journey, and our collective obligations to human rights. In sum, prioritizing the criminalization and detention of migrants sacrifices human security and respect for human rights to gain artificial feelings of national security.<sup>87</sup>

Immigration detention centers are a critical piece of this strategy and places where governments are increasingly forcing migrants.<sup>88</sup> Mexico utilizes detention centers with formal infrastructure and temporary centers strategically located along migrant routes.<sup>89</sup> Alethia Fernández de la Reguera Ahedo, author of *Immigration Detention: Practices of Humiliation, Disgust and Contempt*, has described these centers as “spaces where, in certain cases and in certain circumstances, the law is suspended if it is inconvenient for the political decision behind the applied immigration policy.”<sup>90</sup>

Fernández de la Reguera Ahedo posits that “the violation of human rights during detention processes begins with misinformation, ambiguity, and discretion in the application of both the Migration Law and the Regulations for the Operation of Immigration Stations.”<sup>91</sup> Officials commonly fail to provide detained migrants with clarity about

<sup>77</sup> Women’s Refugee Commission, *supra*, note 67.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Semple, *supra* note 17.

<sup>82</sup> Ruiz Soto, *supra* note 28, at 7.

<sup>83</sup> Global Detention Project, *supra* note 11.

<sup>84</sup> Ruiz Soto, *supra* note 28, at 15.

<sup>85</sup> Alethia Fernández de la Reguera Ahedo, *Immigration detention: practices of humiliation, disgust and contempt* (Dec. 16, 2020).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 142.

<sup>91</sup> *Id.* at 141.

their legal status and next steps for their futures. This is exacerbated by the fact that detention centers can be challenging to access for academic researchers, and advocacy organizations and lawyers who wish to provide legal and other forms of assistance.<sup>92</sup>

Detention centers are also a tool for governments to reinforce racist and xenophobic stereotypes by institutionalizing unsanitary conditions, lack of access to medical services, and overcrowding. The term “institutionalizing” is appropriate because these squalid conditions are the norm, not the exception. Fernández de la Reguera Ahedo describes this institutional use of disgust as:

An instrumentalization for racism, abandonment, neglect, and forgetfulness of migrants. It is a powerful mechanism to depreciate and humiliate the ‘other.’ Despite the similarities of life that may exist between a custodian or a migration agent and migrants, what prevails is distinction, contempt, difference.<sup>93</sup>

These dehumanizing conditions send a clear message of deterrence to migrants: If you come here, you will be humiliated, made to feel inferior, and your dignity and human rights will not be respected. But not only do these practices send a message to migrants. These practices have another harmful intent: to help justify the public’s desire to rid themselves of the migrant.

The National Guard has also been prone to violence in detention centers. In one instance, in March 2020, National Guard entered a migrant detention center in Tapachula, where Central American migrants and asylum seekers protested poor conditions and a high risk of contracting COVID-19. The National Guard allegedly stripped some of the migrants naked and assaulted them with Tasers, pepper spray, shields, and boots for several hours.<sup>94</sup> In another instance, in Hermosillo, the National Guard beat, threatened, and pointed their firearms at migrants in retaliation for protesting living conditions.<sup>95</sup> Sadly, this attack also provided evidence of gendered violence as the Guard sexually assaulted thirteen women, predominately from Cameroon and Central America.<sup>96</sup> After reporting these crimes to the Mexican Commission for the Defense and Protection of Human Rights (CMDPDH), members of the National Guard returned to assault those who had shared their stories.<sup>97</sup>

From an intersectional perspective, women, LGTBQI+, Black, Indigenous, and non-Spanish speaking migrants face even more acute risks. The following section is intended to spotlight the unique dangers that women migrants face.

## B. Women

Women are particularly vulnerable while traveling and awaiting resolution of their immigration cases. First, we must acknowledge that women often migrate precisely because of gender-based violence, which may include forms of sexual, physical, mental, and economic abuse.<sup>98</sup> Femicide, the intentional killing of women or girls, is a type of misogynist violence Central American women might also flee. As Amarela Varela Huerta, author *Feminicide, State-Perpetrated Violence and Economic Violence*, writes, nations should classify this migration as forced rather than a purely economic issue because:

The women who suffer through it are not searching for the ‘American Dream’ but are simply trying to survive. They hope to stay alive so that, later on, they can rescue their daughters, mothers, sisters, and partners – whomever they can – from the horrors back home.<sup>99</sup>

These women must travel with the understanding that they are at real risk of being tracked down by the abusers they are fleeing and that some may view their prior abuse as a mark of shame.

Sadly, these prior traumas are often compounded by new traumas experienced while seeking protection in Mexico and the United States. Women have reported tragic instances of rape, kidnapping, trafficking, and other

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 181.

<sup>94</sup> Amnesty International, *supra*, note 19.

<sup>95</sup> Amnesty International, *supra*, note 19.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Women’s Refugee Commission, *supra*, note 67.

<sup>99</sup> Varela Huerta, *supra*, note 1.



forms of harassment while in transit in Mexico and waiting at Mexican border cities. Mexican authorities are involved in many assaults. The Women's Refugee Commission recounted one harrowing instance:

A Honduran woman, Jessica, in the Mexico City detention center described to IMUMI how she and a friend were detained by the National Guard in Ciudad Juarez after being expelled from the US. The agents sexually abused both women, who remained in detention in Ciudad Juarez for two months before being transferred to the Mexico City detention center. The women were deported from Mexico before they had the chance to file a complaint against the agents.<sup>100</sup>

Due to fears of retaliation and collusion between Mexican authorities and organized crime units, victims of crimes commonly refrain from filing abuse reports, likely masking actual crime numbers.<sup>101</sup>

Accessing vital health care, including reproductive health, can be a significant challenge for women migrants in Mexico. Although Mexico's 2011 Migration Law guarantees access to health care regardless of immigration status, pregnant people have reported being turned away by local hospitals and denied medical care.<sup>102</sup> These challenges are made worse by the poor conditions women are forced to endure while their cases are processed.

Based on the preceding, Mexico must provide more protection to migrants and their human rights. To that end, the following section provides several recommendations Mexico can implement.

## 5. RECOMMENDATIONS

It is well past time for world leaders to stop criminalizing migrants and militarizing borders. Central American migration through Mexico has intensified as militarization has intensified over the last decade.<sup>103</sup> Moreover, now, migrants are more vulnerable due to enhanced enforcement and travel restrictions. Faret, Téllez, and Rodríguez-Tapia note that the caravans we have become accustomed to are a rational response to this vulnerability.<sup>104</sup> Although the journey's perils remain, caravans are a way for migrants, particularly women, to seek safety in numbers.<sup>105</sup> Impoverished and threatened people will surely find other strategies to overcome militarized borders.

Instead of focusing on criminalization and militarization, migration discussions should start from a human security perspective. Faret, Téllez, and Rodríguez-Tapia state that “[a] successful regional approach to migration requires human security to be at least at the same level as perceived threats to national instability that countries will invariably continue to place on their agendas.”<sup>106</sup> In contrast to national security, which aims to protect the State against external threats and internal stability, human security is rooted in protecting the well-being and physical safety of the individual and their community.<sup>107</sup> Human security is “people-centered.”<sup>108</sup> It can be viewed as “an extension of the search for dignity.”<sup>109</sup> Furthermore, human security and human rights are connected: “While human security-oriented policies promote human rights, human rights violations undermine human security.”<sup>110</sup> Ramírez and Gamez note that the countries with the greatest emigration (Guatemala, Honduras, and El Salvador) fail to guarantee human security.<sup>111</sup> Thus, the lack of human security is also a migration driver at its core.

Proceeding from a human security perspective, the region can begin to develop just migration policies with an understanding of the motivations that encourage—or force—migrants to leave their families, communities, and homes. Bearing in mind that crime and economic factors essentially expel many migrants from their home countries, one critical aspect of this process is investing in the development of home countries. As Fernando Garcia, Executive Director of El Paso's Border Network for Human Rights, notes, “[t]hese flows have to do with economics, with

<sup>100</sup> Women's Refugee Commission, *supra*, note 67.

<sup>101</sup> Varela Huerta, *supra*, note 1.

<sup>102</sup> Women's Refugee Commission, *supra*, note 67.

<sup>103</sup> Faret, Téllez, & Rodríguez-Tapia, *supra*, note 65.

<sup>104</sup> *Id.*

<sup>105</sup> Global Detention Project, *supra* note 11.

<sup>106</sup> Faret, Téllez, & Rodríguez-Tapia, *supra*, note 65.

<sup>107</sup> Ramírez & Gámez, *supra*, note 21.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

social conditions, with failed political systems.”<sup>112</sup> Thus, investing more time and resources into addressing these drivers would be a wise policy choice.

Kevin Lapp, Professor of Law at Loyola Law School, asserts that “the Biden Administration would be much wiser to focus its efforts on pro-development and stabilization efforts in Mexico and Central America that will do more to address the living conditions that drive migration.”<sup>113</sup> Similarly, Faret, Téllez, and Rodríguez-Tapia write that:

The prospect of real development in regions of origin must be part of the long-term policy mix, as should a recognition of the structural nature of flows. Under these conditions, the human security perspective and the need for decent mobility conditions should enter the debate and become a regional priority.<sup>114</sup>

Fortunately, the López Obrador administration has supported investing in the Northern Triangle to address the region's lack of opportunity and insecurity.<sup>115</sup> In 2019, Mexico proposed a \$100 million sustainable development initiative in southern Mexico and Central America.<sup>116</sup> And in December 2021, the United States and Mexico jointly announced *Sembrando Oportunidades*, “a new framework for development cooperation to address the root causes of irregular migration from northern Central America.”<sup>117</sup> Led by the United States Agency for International Development (USAID) and the Mexican Agency for International Development and Cooperation (AMEXCID), the initiative aims to help citizens of Northern Triangle countries “build prosperous futures in their home communities.”<sup>118</sup>

Additionally, the United States and Mexico should take leadership roles in strengthening asylum and broadening regular migration pathways.<sup>119</sup> The IACHR has admonished Mexico that a migration system that guarantees human rights must also ensure “the right of persons to freely leave any country, the right to request and receive asylum, and the right and principle of non-refoulement.”<sup>120</sup>

In recent years, the Mexican Commission for Refugee Assistance, COMAR, has received an unprecedented number of asylum applications.<sup>121</sup> But COMAR, underfunded despite the critical need, has a limited institutional capacity that has failed to keep up with the rapid growth in asylum requests.<sup>122</sup> This leaves many people to wait for months or even up to two years in precarious conditions in southern Mexico while their claims process.<sup>123</sup> For example, COMAR received a record 131,448 applications in 2021, an 87 percent increase from the prior high in 2019.<sup>124</sup> The growth is partly due to more migrants deciding to stay in Mexico instead of continuing to the United States in the face of restrictive policies in the United States and increased enforcement in Mexico. Thus, Mexico should consider investing in more COMAR officials duly trained to assist fleeing populations and detect asylum needs. A more significant COMAR presence will also help limit the need for asylum seekers to enter the country clandestinely to seek out a COMAR office.<sup>125</sup> Mexico should direct more of its budget to these initiatives.

In addition to strengthening asylum, the IACHR has urged Mexico to create “regular, safe, accessible and affordable migration pathways.”<sup>126</sup> These pathways must be economically and legally accessible, meaning

<sup>112</sup> Resendiz, *supra*, note 24.

<sup>113</sup> Lapp, *supra* note 2.

<sup>114</sup> Faret, Téllez, & Rodríguez-Tapia, *supra*, note 65.

<sup>115</sup> Congressional Research Service, *supra* note 73.

<sup>116</sup> *Id.*

<sup>117</sup> USAID, *U.S.-Mexico Joint Statement On Sembrando Oportunidades*, USAID (Dec. 1, 2021). <https://www.usaid.gov/news-information/press-releases/dec-1-2021-us-mexico-joint-statement-sembrando-oportunidades>

<sup>118</sup> *Id.*

<sup>119</sup> WOLA, *Mexico's Militarized Migration Crackdown Places Asylum Seekers, Migrants at Risk*, WOLA (Mar. 23, 2021). <https://www.wola.org/2021/03/mexicos-militarized-migration-crackdown-asylum/>

<sup>120</sup> Organization of American States, *supra*, note 3.

<sup>121</sup> Organization of American States, *IACHR Reminds Mexico of Its International Human Rights Commitments Concerning Citizen Security*, OAS (Jul. 25, 2020). [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/178.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/178.asp)

<sup>122</sup> *Id.*

<sup>123</sup> Women's Refugee Commission, *supra*, note 67.

<sup>124</sup> *Id.*

<sup>125</sup> WOLA, *supra*, note 119.

<sup>126</sup> Organization of American States, *supra*, note 3.

accessible to people who experience poverty and cannot provide the documentation typically required for these procedures due to no fault of their own.<sup>127</sup>

Finally, civil society organizations also have an essential role in developing and implementing programs to address migration issues. Faret, Téllez, and Rodríguez-Tapia note that civil society organizations have first-hand knowledge about realities on the ground and have “capacities for action as close as possible to the challenges of international migration.”<sup>128</sup> But their knowledge and capacities have historically been untapped at the regional level.<sup>129</sup>

## 6. CONCLUSION

Mexico will continue to face the difficult task of balancing migration enforcement with human rights protection and pressure from the United States to do more to stop the flow of migrants. While not the focus of this paper, future papers might take a more in-depth look at how the United States exerts pressure over other countries to implement its characteristic border militarization. This United States practice is destructive to the human rights of all people and must end. It should not require another photo of a parent and child dead for the United States to live and breathe its commitment to human rights. Shifting resources from criminalization and detention efforts to programs that affirm human rights would be a good start.

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<sup>127</sup> *Id.*

<sup>128</sup> Faret, Téllez, & Rodríguez-Tapia, *supra*, note 65.

<sup>129</sup> *Id.*