

Protection of haitians in human mobility: Inter-American solidarity

RESOLUTION 2/2021



OAS

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**PROTECTION OF HAITIANS IN HUMAN MOBILITY:
INTER-AMERICAN SOLIDARITY**

(Adopted by the IACHR on October 24, 2021)

A. INTRODUCTION

Given the recent exacerbation of the social, political, and institutional crisis, permeated by the grave context of structural poverty, which hinders the effective protection of the human rights of the Haitian population, the Inter-American Commission on Human Rights (Commission or IACHR) decides to adopt a resolution on the “Protection of Haitians in Human Mobility: Inter-American Solidarity.” The **purpose** of this resolution is to offer guidelines that make it possible for Haiti and the States of the Americas to adopt an integral, immediate, effective, and lasting response to ensure the rights of Haitian persons in international human mobility. These guidelines are adopted mindful of international obligations in respect of humanitarian assistance, protection, cooperation, and international solidarity, based on the principle of equality and non-discrimination, and the consequent duty to adopt differentiated treatments with an intersectionality approach.

In recent years the IACHR, through its different mechanisms, has closely monitored the human rights crisis in Haiti, which has deepened with the consequences of the COVID-19 pandemic, and as a result of the impact of August 14, 2021 earthquake. The accumulation of the consequences of the natural phenomena with the institutional challenges has aggravated the situation of risk in the context of human mobility of Haitian persons and their family members; this is reflected in the intensification and reactivation of international flows of mobility to other countries, of a mixed and successive nature.

Since 2019 the Commission has observed mounting challenges in the area of citizen security, as well as the increase in social protests, political tensions, and crises of governability in Haiti. In addition, the IACHR notes the increase in violent acts such as kidnappings, murders, and gender-based violence, and other attacks by armed groups against the civilian population. This situation has unfolded in a context of food and fuel scarcities; weakened and interrupted public services; unstable economic activity; and corruption. In particular, the IACHR is concerned about the deterioration of citizen security one finds in different sectors of the capital, Port-au-Prince, where there have been massacres in poor neighborhoods, such as la Saline, in November 2018; Bel-Air, in November 2019; and Cité Soleil, in May 2020. In addition, many attacks have targeted human rights defenders and journalists. In this context, the assassination of President Jovenel Moïse, on July 7, 2021, as well as the consequent reorganization of the country’s democratic institutional framework, constitute an additional challenge when it comes to protecting human rights in Haiti.

In addition to the situation described above is the impact of the August 2021 earthquake, with a magnitude of 7.2, which affected mainly the cities in the sud department. According to data from the General Directorate for Civilian Protection (DGPC) of Haiti, the earthquake caused the death of 2,207 persons, injured 12,268 persons, and more than 300 missing persons. According to information from the [United Nations Office for the Coordination of Humanitarian Affairs \(OCHA\)](#) and from the DGPC, as of September 3, more than 650,000 persons had been identified as needing emergency humanitarian assistance; in addition, 53,815 houses were totally destroyed in the earthquake, while 83,000 more suffered substantial damage.

The recent context of violence described has caused and aggravated various phenomena involving the international mobility of Haitians. In this context, the Commission notes that the Haitian population abroad – which according to the [IOM](#) numbers more than 1.2 million persons – is experiencing a recent reactivation of itineraries of mobility stemming from the impact of the earthquake. This situation, according to United Nations agencies, is reflected in the increase in [border crossings and asylum applications](#) in different countries of the region, and in the practices of [containment and hindering access to procedures for protection](#). In late 2020, the UNHCR reported a total of 81,268 Haitian asylum applications, in addition to 25,659 Haitians and their family members having refugee status. In addition, the IACHR takes note of situations of risk and [violation](#) of rights associated with the activities of [criminal networks](#) engaged in human trafficking. Similarly, the IACHR observes the long-term impacts of the 7.0 magnitude earthquake that struck on January 12, 2010 for Haitians in terms of human mobility. Among these consequences are, the emergence and expansion of communities of Haitians and their family members in various countries, including Brazil and Chile. As regards the international mobility of Haitians already established in third countries, the IACHR observes that the internal crisis Haiti is facing directly impacts Haitians' conditions of well-being, posing additional challenges to family reunification, the sending of remittances, and consular assistance. In cases of return, expulsion, and deportation, the IACHR notes that the Haitian State is facing challenges when it comes to ensuring mechanisms of social inclusion for the returnees, and even for protecting their lives and integrity.

The Commission recognizes the complexity and seriousness of the structural and more recent challenges to the protection and effective promotion of human rights in Haiti. In this context, and in view of their role in tackling the historical and contemporary asymmetries that disproportionately affect this population, States should adopt sustainable measures – preventive, structural, and urgent – emanating from imperatives of solidarity, cooperation, and shared responsibility.

B. RECITALS

RECALLING the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; the 1984 Cartagena

Declaration on Refugees; the United Nations Convention against Transnational Organized Crime and its Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol); the Protocol against the Smuggling of Migrants by Land, Sea and Air; the New York Declaration for Refugees and Migrants; the Global Compact on Refugees; the Global Compact for Safe, Orderly and Regular Migration; and other relevant international instruments.

ACKNOWLEDGING the obligation of States of the Americas to protect the rights of all persons, regardless of their immigration status, in keeping with the Charter of the Organization of American States (OAS); the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights (“Pact of San José, Costa Rica” or “American Convention”), the United Nations Charter; the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”); the Inter-American Convention against All Forms of Discrimination and Intolerance; the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”); the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Protecting the Human Rights of Older Persons; and the Inter-American Convention on Forced Disappearance of Persons.

EMPHASIZING that the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking – adopted by the Inter-American Commission in its Resolution No. 04/2019, of December 7, 2019 – provide guidance to the states regarding their duties to respect, protect, promote, and guarantee the human rights of all persons in contexts of human mobility, as well as to serve as a guide to the state authorities in the development of legislation, regulations, administrative decisions, public policies, practices, programs, and relevant case-law.

EMPHASIZING, in light of the American Convention, that States have the obligation to institute policies, laws, and integral practices that accord priority to the person and that are based on human rights, and that said duty also includes the responses to mixed, successive, and large-scale migratory movements, with respect to the principle of non-regressivity and non-derogability of human rights in all relevant matters.

REAFFIRMING, in line with the case-law of the Inter-American Court of Human Rights, that the principles of equality and non-discrimination, as well as *non-refoulement*, are *jus cogens*, i.e. that they constitute peremptory norms of international law.

NOTING that mixed and successive migratory movements require forms of protection with a gender perspective, differentiated treatment, and an intersectional approach in order to mitigate the disproportionate impacts and structural posturings, and, accordingly, protect persons in human mobility – such as women, adolescents, and children – who face greater risks of violence and vulnerability, such as human trafficking and sexual and labor exploitation.

UNDERSCORING that States have the obligation to provide protection, humanitarian assistance, and lasting solutions without discrimination, applying a gender perspective that is differentiated and intersectional that takes account of the best interest of children, as well as the particular vulnerability

of these persons, in order to guarantee, among other rights, personal integrity, health, housing, food, and access to education.

RECALLING the multidimensional and transnational nature of human mobility and the importance of shared responsibility among States, as well as the need for mechanisms of cooperation and international solidarity for the integral protection of the human rights of migrants, regardless of their immigration status.

NOTING that the phenomena of international human mobility of Haitians and their family members are associated in a complex and multidimensional manner to the duties of States involved to prevent the violation of human rights, and to provide comprehensive protection to these populations.

EMPHASIZING that according to the [Charter of the OAS](#), the member States are obligated to seek, collectively, solutions to the urgent or serious problems that could arise when the economic development or stability of any member state is seriously affected by situations that cannot be resolved by the efforts of that state.

OBSERVING that, in the context of natural disasters, according to the [Social Charter of the Americas](#), States undertake to improve regional cooperation and to strengthen their national technical and institutional capacity for prevention, preparedness, response, evaluation, risk reduction, and the mitigation of impact, and evaluation of these phenomena.

RECOGNIZING that the notion of international solidarity can be key for applying the universality and primacy of human rights in contexts that demand coordinated action in the face of scenarios of structural crises that affect the human rights of a population.

OBSERVING the need, in this context of humanitarian crisis, for the framework of integral protection of human mobility to go beyond the domestic sphere, and for mechanisms of protection to be adopted for those who make up the Haitian diaspora.

HIGHLIGHTING the importance of strengthening the mechanisms for access to public information in contexts of humanitarian crisis with the understanding that they constitute a necessary condition for exercising other human rights, and under the premise that respecting and guaranteeing the principles of transparency and accountability of the State reinforces citizens' trust in democratic institutions and participation in public affairs.

CONSIDERING that, as established in its report [“Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection”](#), the main challenges the region faces in relation to the procedures for the recognition of protection statutes have to do with the obstacles applicants face with accessing mechanisms of defense, assistance, and legal representation.

NOTING that keeping groups and populations in camps or provisional shelter for an indefinite time entails growing risks and violations, which may have a detrimental impact on access to and

enjoyment of human rights, including economic, social, cultural, and environmental rights, while also obstructing solutions and the reestablishment of family and community ties, and preventing access to essential services.

C. OPERATIVE PART

By virtue of the foregoing, in the exercise of the functions conferred by Article 106 of the Charter of the OAS, and in application of Article 41(b) of the American Convention and Article 18(b) of its Statute, the Inter-American Commission on Human Rights makes the following recommendations to the governments of member States:

I. General principles applicable to the crisis of human mobility

a. Principle of equality and non-discrimination and differentiated approaches to protection

1. In all measures they adopt to respond, prevent, and protect States should be governed by their obligation to guarantee the integral protection of human rights, based on the principle of equality and non-discrimination. Accordingly, States should adopt the measures necessary to guarantee that these Haitian persons and their family members are not subject to any discrimination in the enjoyment of their rights and freedoms merely because they are in the context of human mobility.
2. With respect to the persons returned to Haiti, the Haitian State should ensure that this population, under conditions of equality, enjoys the same rights and freedoms, that international law and domestic law recognize for all other inhabitants of Haiti.
3. States should take positive measures to guarantee equal terms with other persons, accessibility, availability, and quality of essential goods and services to ensure the social inclusion and integral protection of the human rights of Haitians and their family members in the context of mobility. And this should be done mindful of the obstacles and barriers to access that are all the greater due to their status as persons in human mobility and other factors.
4. States should guarantee that persons in human mobility have the right to access justice to protect all their rights, including full reparation for possible harm suffered, at no cost, and on an equal footing as nationals of the respective state. In this regard, the IACHR recalls the importance of the role played by the network of human rights ombudspersons and national human rights institutions, as well as the coordination of civil society organizations working on behalf of migrants and those working on the international protection of Haitians and their family members.
5. In order to respond to the challenges of protecting persons in different contexts of human mobility, States should adopt – in all their actions and plans they implement – differentiated,

intersectional, and intercultural approaches; address the multifaceted discrimination that may accentuate the obstacles and risks to the access and enjoyment of rights; and respond to factors such as gender, age, disability, ethnic-racial origin, socioeconomic status, and nationality, among others.

6. As regards the contexts of assistance and protection, States must incorporate approaches that take into account additional factors of discrimination, such as those that impact women and other persons who are members of groups at special risk.
7. In the context of the responses of the Haitian State to waves of violence and conflict that provoke the increase in mobility, States should incorporate a gender perspective and differentiated approaches based on an integral intersectional approach that considers the best interest of the child and the particular vulnerability of girls, adolescent females, and women in the context of human mobility. In particular, these perspectives should be based on a cross-cutting approach that takes into account the contexts and conditions that reinforce the effects of mobility on girls, adolescent females, and women, such as age, migrant or forcibly displaced person, economic precariousness status, or geographic location.
8. Implement services for an immediate response to gender violence against girls and women, in particular family violence and sexual violence, in the context of human mobility, as well as the particular risk to which women and girls are exposed if they become victims of exploitation and human trafficking. In addition, consideration should be given to ensuring the availability and continuity of sexual and reproductive health services, maternal health services, support for family planning, as well as protection from and treatment for sexual violence, including access to justice. In implementing such actions States should take into account a gender perspective, the best interest of the child, and the non-criminalization of migrants who are themselves victims of this crime.
9. With regard to preventing, investigating, and protecting victims of human trafficking, States should consider the current characteristics of the countries of nationality and origin of Haitians and their family members as elements of risk that require levels of special attention against crimes of exploitation and human trafficking. In this sense, they must incorporate a human rights perspective into their actions to provide protection to persons affected by institutional, social, and environmental crises in the country, as well as by the context of the health emergency and its impacts in the region.
10. Mindful of the principle of the best interest of the child, States have the obligation to implement mechanisms that prevent separation and promote immediate family reunification, while also considering the disproportionate risks of statelessness faced by children and adolescents in the context of the human mobility of Haitians and their family members.

b. Solidarity and International Cooperation

11. All forms of giving concrete meaning to international solidarity, for providing humanitarian assistance and protecting the human rights of Haitians and their family members in contexts

of human mobility should be implemented in strict respect for the obligations and standards of international law, the inter-American *corpus juris*, and the inter-American public interest.

12. In a coordinated manner and in keeping with their institutional capabilities, and in a close dialogue with Haiti, States should prioritize sustainable actions for the comprehensive protection of human rights of Haitians and their family members in the context of human mobility. Such mechanisms may include not only financial aid but also technical assistance, donations, and other forms of cooperation.
13. States should seek strategies, mechanisms, and spaces for consultation and information exchange that make it possible to reconcile the implementation of urgent measures with actions that support, among other things: (i) the strengthening of human and institutional capabilities in the country, (ii) ties with Haitian communities abroad, (iii) facilitating remittances, and (iv) expanding the supply channels and circuits for professional, academic, and scientific mobility. Adopting such actions would result in combining emergency demands with the need for structural sustainability that guarantees the non-repetition of risk factors and vulnerability of the population in human mobility.
14. In the context of the emergencies and crises faced by Haiti, States should implement coordinated actions to reduce risks and strengthen processes for receiving persons in mobility. Such actions should be guided by the principle of equality and non-discrimination, differentiated treatment, access to protection mechanisms, and the guarantee of non-refoulement. In their cooperation and solidarity actions, and to the extent of their capabilities and availability of resources, States should provide the means and the material, technological, and human resources, as well as the technical assistance necessary for strengthening the prevention, mitigation, and recovery capacities.
15. In relation to humanitarian assistance, as a mechanism for mitigating the factors driving forced mobility, the Haitian State should ensure the maintenance and reestablishment of logistic structures and channels that allow access to this type of support to the affected regions and communities. At all times, such actions should guarantee the non-discriminatory access of its population to the goods and services provided in this framework.

c. *Transparency and Sustainability*

16. States should consider mechanisms to ensure that the participation of organizations, businesses, and other non-state actors in initiatives that benefit the Haitian population, take place under the current regulatory frameworks, without discrimination, and with transparency and responsibility. Such initiatives include socio-labor inclusion; circulation of labor; implementation of development projects; access to benefits and social services, health, and education services; humanitarian assistance; and access to vaccines in the context of the COVID-19 pandemic.
17. All actions for prevention, protection, mitigation, and compensation should be designed, implemented, and evaluated by mechanisms that guarantee transparency, the involvement

and social participation of the people, groups, and communities directly affected. In particular, States should guarantee the participation of persons in mobility – especially women, adolescents, and children – in committees and working groups to respond to the crisis in the context of conflict, violence, and displacement, ensuring the incorporation of a gender perspective and differentiated approaches in the design, implementation, execution, and monitoring of the respective measures and policies.

18. The states should guarantee that actions for collecting, allocating, and distributing resources – including those from international humanitarian aid – are not discriminatory, and are aimed at strengthening projects and initiatives with a lasting and sustainable impact on human rights. This obligation also extends to resources and actions of international organizations, private entities, and other interested non-state actors.
19. To ensure the effective participation of Haitian communities, groups, and persons, and their family members in all the processes and initiatives that affect their rights, States should consider, among other issues, accessibility, availability of information, interpretation in French and Creole, and age and disability conditions.
20. The work of humanitarian workers must be protected by conditions of safety and security. Such measures are in order since these workers operate like human rights defenders, making a special effort to guarantee access to rights by persons in special situations of vulnerability.

II. Haitians and their family members in contexts of human mobility

a. Mechanisms of protection, entry to, transit through, and exit from territories

21. States should guarantee access to their territory and to fair and efficient procedures that guarantee an individualized evaluation of the differentiated protection needs for asylum-seekers, refugees, stateless persons, people who require complementary protection, victims of human trafficking, and unaccompanied children or children separated from their families, among others. Public health measures adopted to respond to the COVID-19 pandemic should not result in the denial of an effective opportunity to seek asylum, or some other type of protection, or give rise to the direct or indirect refoulement. Likewise,, the procedures that give rise to expulsions or deportations should also be evaluated individually, considering the circumstances of each person.
22. For this reason, States should consider implementing measures such as flexibility with visas, immigration requirements, and documentation required for their processing. Likewise,, they should take into account the standards on non-rejection at the border, the prohibition on collective expulsions, non-sanction for irregular entry or stay, and should not be subject to immigration detention.
23. The State should refrain from introducing requirements for admissibility of applications for protection – including for recognizing refugee status – that are not provided for in the

domestic legislation and that could have the practical effect of unreasonably or disproportionately impeding or hindering access to the territory or protection measures.

24. On evaluating requests for protection from Haitians, the states should consider:
- a. granting refugee status under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol;
 - b. applying the regional definition of refugee from the Cartagena Declaration on Refugees (1984) in keeping with the guidelines set out in Advisory Opinions OC-21/14 and OC-25/18 of the Inter-American Court of Human Rights, domestic legislation, or state practice, as the case may be. To this end, consideration should be given to the humanitarian situation prevailing in the country and the serious impact on public order;
 - c. granting complementary forms of protection, based on their domestic legislation or by direct application of the applicable international human rights treaties; or
 - d. adopting and implementing special regularization programs, or granting facilities for obtaining immigration statutes provided for in the domestic legislation, for humanitarian reasons, family reunification, or other criteria.
25. The protection procedures should not discriminate based on nationality, color, race, gender, language, religion, political opinion, social origin, or any other condition. In addition, such mechanisms should observe certain minimal guarantees that derive directly from the principle of non-refoulement as a peremptory norm of international law (*jus cogens*).
26. Transit and destination countries should consider the possibility of implementing cooperation mechanisms that take account of the difficulties and obstacles obtaining documents, certificates, and declarations in the country of origin, and, accordingly, address the situation of persons who have been unable to access any prior civil documentation. This is to prevent and address the risk of statelessness, in particular in the context of births and of the mobility of newborn persons and, in general, to guarantee full access to and the effective enjoyment of human rights.
27. With respect to preventing the risks of statelessness, States should immediately register all births in their territories and issue documentation that accredits the identity of the child, regardless of the immigration status of the Haitian mother and/or father in that country. States should consider that when a child is born in the territory of a given country and would otherwise be stateless, he or she automatically has the right to the nationality of the state in which he or she was born.
28. With the aim of regularizing the immigration status of Haitian persons in an irregular situation, States should consider implementing special measures to facilitate such persons obtaining documentation that can prove their identity and Haitian nationality.

29. As regards the requirements to confirm Haitian nationality abroad, when Haitians face legal or practical barriers to obtaining such documentation from the authorities of the country of origin, the countries in whose territories they are in and wish to remain, should consider issuing exemptions or facilitating documentation, as well as legalization or apostilles, to promote regularization of their legal status in the country.
30. When deportation or expulsion is in order, and it has been determined that the person does not require international protection and has no other need for protection, States should coordinate with the authorities of the Republic of Haiti to ensure the return occurs in conditions of safety and dignity, preserving family unity, prioritizing return with assistance, information, and prior consent.
31. States should consider implementing mechanisms of coordination with Haiti to ensure that returns take place in sustainable conditions and with respect for human rights.
32. Haiti has the obligation to provide, through its competent authorities, the means that allow the voluntary, safe, and dignified return of persons in mobility to their home or usual place of residence, and the reestablishment of family ties. The State should ensure the same conditions for the voluntary resettlement of this population in another part of the country.

b. Human security at borders

33. States should adopt actions to prevent the risks inherent to violations of the rights of persons in mobility who are in unsafe border areas. In this respect, the IACHR notes that security at immigration posts should always be oriented towards protecting persons and their rights.
34. In particular, States should adopt specific provisions to prevent risk factors at all phases of migratory journeys, such as acts by criminal groups and the risks of specific violence directed against women, children and adolescents, older adults, members of the LGBTI population, and other groups in vulnerable situations.
35. In the context of immigration operations and actions, coercive force shall be used only when all other means of control have been exhausted or have failed, in exceptional circumstances, and always proportionately, following the applicable legal provisions and in pursuit of reasonable aims. In the absence of any of these conditions, situations of abusive use of force can occur.
36. In the event that abusive use of force is detected, States should investigate with due diligence, punish those responsible, and make reparation to the victims, with differentiated and intersectional approaches, in keeping with the relevant inter-American standards.

c. Fighting xenophobia and discrimination, and the right to information

37. States should redouble their efforts to prevent xenophobia, discrimination, and related forms of intolerance based on ethnic-racial origin, gender, sexual orientation, disability, language, socioeconomic status, or situation of human mobility.
38. The foregoing duty includes the obligation to refrain from and avoid any action that promotes direct or indirect discrimination, or that is permissive of violence against persons in the context of human mobility, such as hate speech or the dissemination of stereotyped images or narratives related to Haitian national origin and Afro-descendent ethnic-racial origin.
39. States should include disaggregated variables on ethnic-racial origin and immigration status in the national statistical systems so that the Afro-descendant migrant population is included in public policies.
40. States should implement affirmative measures such as educational and awareness-raising campaigns aimed at promoting multicultural societies. Such measures should be taken to prevent and eradicate xenophobia and to combat patterns of discrimination based on gender and ethnic-racial origin.
41. States should prioritize the prevention and eradication of xenophobia, racial discrimination, and other factors that incite violence, in their communication, information, and dissemination strategies.
42. States should maintain information that is clear, timely, systematized, and accessible for Haitian migrants on the immigration and protective procedures available, including the requisite intersectional and intercultural approaches.

This Resolution is part of the ongoing work of the IACHR to monitor the human rights situation in Haiti, through its Rapid and Integrated Response Coordination Unit ([RIRCU](#)) for Haiti, which was established in February 2019.

Finally, the IACHR states its willingness and readiness to provide technical assistance to the Haitian State and other states, as well as to regional agencies, social organizations, and other institutions for institutional strengthening the institutions and policies that address human mobility, based on an integral-protection-of-rights approach and applicable international standards.