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Undocumented Workers and Labor Rights: The IACHR Provides a Blueprint for Positive Impact and Change

February 1, 2017
by Tatiana Devia

In 2004, [Leopoldo Zumaya](#), an undocumented farmworker, was working as an apple picker in Pennsylvania when he fell and severely injured his leg, causing permanent nerve injury. His employer reported his immigration status, but instead of receiving workers' compensation benefits, the insurance company refused to pay out the benefits to which Mr. Zumaya should have been legally entitled. Although Mr. Zumaya hired a lawyer, he was forced to accept a small settlement due to his immigration status. A year later, [Francisco Berumen Lizalde](#), an undocumented worker, seriously injured his hand after he fell off a scaffold during a painting job. After filing for workers' compensation, Mr. Lizalde was arrested for visa fraud and later deported. Mr. Lizalde was unable to continue with his claim. It appears his deportation was a [result of retaliatory actions](#) after he filed for workers' compensation.

In 2006, [the American Civil Liberties Union \(ACLU\)](#), the [National Employment Law Project](#), and the [University of Pennsylvania Law School's Transnational Legal Clinic](#) filed a [petition](#) with the [Inter-American Commission on Human Rights \(IACHR\)](#) to "find the United States in violation of its universal human rights obligations by failing to protect millions of undocumented workers from exploitation and discrimination in the workplace." The situation of undocumented workers is also at issue under the United States' obligations under the [International Convention on the Elimination of All Forms of Racial Discrimination \(ICERD\)](#), which the United States ratified in 1994. In its [Shadow Report](#) on the United States' compliance with ICERD, the ACLU documented the discriminatory treatment of undocumented migrant workers.

The [challenges](#) undocumented workers face when seeking to receive proper compensation and healthcare when injured at work is well-documented. Like Mr. Lizalde, injured workers fear deportation upon filing worker's compensation claims. State laws provide limited [labor protections](#), if any at all. The petition includes as a relevant factor of concern, the Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB* in 2002, which held that an illegally fired undocumented worker could not recover back wages.

On November 20, 2016, ten years after receiving the claim, the IACHR published its [decision](#) on this case. In a landmark result, the IACHR found the United States responsible for violating the workers' human rights. In its decision, the IACHR described the *Hoffman* case and included it due to its relevance for the issue at hand. The IACHR based its legal analysis on provisions of the [American Declaration](#): right to equality before the law (Article II); rights to juridical personality and to enjoy basic civil rights (Article XVII), and to a fair trial (Article XVIII); and right to social security. The IACHR noted that, based on international law and the inter-American system, a worker who enters into an employment relationship is entitled to the same rights as all

other workers, regardless of the worker's migratory situation. The IACHR found that the United States denied equal access to remedies and that workers were unable to recover under the worker's compensation programs. In the case of Mr. Lizalde, the IACHR found the United States responsible for violations under Articles XVII and XVIII of the American Convention. Further, the IACHR agreed with the [Concluding Observations](#) of the [U.N. Committee on the Elimination of Racial Discrimination](#) (CERD) on the United States, which noted that *Hoffman* erodes "the ability of workers belonging to a racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace."

The IACHR noted the United States' obligation to provide remedies for its workers. Under the North American Agreement of Labor Cooperation (NAALC), the United States, as a signatory state, agreed to promote labor principles that apply to all workers, including non-citizens. Included in those NAALC principles is compensation in cases of occupational injuries. Finally, the IACHR determined that the United States, as a member of the [International Labour Organization](#) (ILO), must eliminate discrimination in the payment of benefits to workers. The ILO has [clarified](#) that all international labor standards should cover migrant workers irrespective of their immigration status.

The IACHR made several recommendations to address the violations, including provisions for adequate monetary compensation to remedy the violations. As undocumented workers face challenges and threats while reporting abuse and work-related injuries, [the IACHR's decision provides](#) a "blueprint that [has] the potential to impact the lives of millions of undocumented workers."

No Parents and No Protection: Mexico's Failure to Protect Unaccompanied Central American Asylum-Seekers

February 27, 2017
by Arielle Chapnick

Children fleeing violence, poverty, and abuse in Central America face a separate challenge prior to reaching the United States border: Mexican authorities.

These children come mainly from El Salvador, Honduras, and Guatemala, which is known as Central America's Northern Triangle. In 2015, Mexico's National Institute of Migration (INM), the agency responsible for enforcing the country's immigration laws, made nearly 36,000 [apprehensions](#) and detentions of children under the age of 18. Just over half of those children were [unaccompanied](#). Most [unaccompanied children](#) entering Mexico are boys between the ages of 12 and 17, although about one quarter of child migrants are adolescent girls. [Younger children](#) typically travel with their families, but sometimes travel on their own. While some of these children travel north for economic reasons, most are fleeing dangerous conditions in their home countries. Children escaping Central America [cite](#) forced gang recruitment, rape, sexual harassment, abduction for ransom, extortion, and other generalized violence as reasons for leaving their homes. Unaccompanied children also flee when grandparents or other elderly caregivers are [unable to protect](#) them from violence or threats due to their advanced age.

In theory, Mexico provides broad protections to child refugees as mandated by both national and international law. However, in practice, Mexican authorities consistently fail to provide intercepted children with the required assistance. In [2010](#), Mexico enacted the "Law on Refugees and Complementary Protection," which adopted the definition of a refugee from the United Nations High Commission on Refugees' 1951 Convention Relating to the Status of Refugees, to which Mexico is a party. Based on the Convention, Mexico [defines](#) a refugee as someone who is outside his or her country of nationality and is unable or unwilling to return due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group.

The United Nations Convention on the Rights of the Child, which Mexico [ratified](#) in 1990, requires that states parties "take [appropriate measures](#) to ensure that a child who is seeking refugee status...receive[s] appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention on the Rights of the Child and in other international human rights or humanitarian instruments to which the said States are Parties." Additionally, the Convention mandates that child detention "shall be in conformity with the law and shall be used only as a measure of [last resort](#) and for the shortest appropriate period of time." In accordance with the Convention, Mexican law provides "[protection](#) to refugees as well as to others who would face risks to their lives or safety if returned to their countries of origin." Further, the [1951 Refugee](#)

[Convention](#) mandates that refugees have “free access to the courts of law on the territory of all Contracting States,” among other legal protections.

In practice, less than one percent of unaccompanied children intercepted by Mexican immigration authorities are “[recognized](#) as refugees or receive other formal protection in Mexico.” While Mexican law requires special protection for child refugees, many children are unaware of the rights and protections available to them. In violation of Mexican law, [two-thirds](#) of undocumented Central American children in Mexico are not informed of their rights by Mexican immigration agents. When refugee children are aware they can claim asylum in Mexico, Mexican officials often [threaten](#) them with longer detention sentences to dissuade them from filing claims. Additionally, the INM is woefully understaffed to fully provide for the thousands of children entering the country annually. There are only [15 agents](#) qualified to assess asylum claims, which leads to extended periods of detention for children who are awaiting protected status. Further, as part of its practice of detaining refugee children, the INM [splits up](#) detainees by sex. This leads to opposite-sex siblings traveling together being separated from each other for extended periods of time, which violates the United Nations Convention on the Rights of the Child’s [provision](#) against arbitrary interference with family.

By detaining thousands of refugee children and failing to inform them of their rights, Mexican immigration authorities put them at risk for abuse both within the country and in their home countries if deported. In failing to protect these children, the INM continuously violates both domestic and international refugee law. In order to be compliant, the INM must first limit widespread detention of children, especially unaccompanied children. [Separating](#) opposite-sex siblings and detaining them in different centers causes unnecessary psychological harm to vulnerable children. Additionally, the INM must train additional officers to review asylum claims in order to expedite the asylum processes for the thousands of children currently in detention. Further, the INM must ensure that its officers inform children seeking asylum of their rights and may not attempt to coerce them into self-deporting by threatening extended detention. Mexican authorities have failed to protect the thousands of unaccompanied children fleeing violence in Central America and seeking refuge or safe passage through Mexico. In order to abide by both domestic and international law, Mexican authorities must improve their processes for receiving and protecting unaccompanied Central American children traveling through and escaping to Mexico.

United States – Cuba Thaw: What Easing Restrictions on Cuba Means for Human Rights

March 1, 2017

by Audrey Mulholland

On December 17, 2014 President Obama [announced](#) new changes to the diplomatic and economic relationship between the U.S. and Cuba. These initial changes represented the first step in normalizing relations between the two countries since President Eisenhower initiated the first trade [embargo](#) on Cuba over fifty-six years ago.

Diplomatic relations further expanded on March 15, 2016 when even more restrictions were lifted ahead of President Obama's visit to Cuba. The new [policy](#) allows U.S. citizens to travel to Cuba, expands Cubans' access to U.S. financial institutions, and authorizes increased U.S. business presence in Cuba. The [objective](#) of this drastic shift in U.S. foreign policy towards Cuba was to empower the Cuban people and encourage the Cuban government under current president, Raúl Castro, to respond with political and economic reforms. Despite this progress, the official [trade embargo](#) still endures and requires an act of Congress for removal. Many in Congress remain outspoken against any reduction of sanctions. However, a shift away from isolationism may prove the most effective pursuit towards the improvement of human rights in Cuba.

The [beginning](#) of strained relations between the U.S. and Cuba dates back to the late 1950s and early 1960s after Fidel Castro overthrew a U.S.-backed regime and formed a socialist state aligned with the Soviet Union. Upon rising to power, Castro [nationalized](#) private land and companies, increased taxes on U.S. imports, and expanded trade with the Soviet Union. The United States [responded](#) with economic sanctions, which transformed into a full trade embargo under President Kennedy. Diplomatic relations further [sour](#)ed in 1961 following the Bay of Pigs invasion, a failed CIA-supported attempt to overthrow Fidel Castro. Only a year later, the Cuban Missile Crisis ushered in the height of the Cold War, resulting in distrust, animosity, and the severing of all ties.

Despite reducing illiteracy, improving health care, and increasing access to education and housing, Fidel Castro's [regime](#) committed numerous human rights violations. Castro jailed many political opponents and dissenters and [repressed](#) freedom of expression, association, and peaceful assembly. Today many of these violations continue under his brother and current Cuban president, Raúl Castro. Government dissenters, independent journalists, and human rights defenders are subject to arbitrary detention and short-term [imprisonment](#). Government critics often face criminal prosecution. The Cuban government maintains strict control over media and access to information, greatly limiting public discourse. . These rights are preserved in the Universal Declaration of Human Rights and Articles 19, 21, and 22 of the [International Covenant on Civil and Political Rights](#). In conflict with the conventions of the [International Labour Organization](#), Cuba has only one state-controlled workers' union and the principles of freedom of association, collective bargaining, protection of wage, and the prohibition of forced labor are often [ignored](#). Despite

holding a regional position on the UN Human Rights Council, Cuba frequently [violates](#) agreements and understandings in international law. As U.S. sanctions began to lift, the Cuban government has demonstrated some willingness to reform, releasing fifty-three political prisoners and agreeing to allow entry to international human rights organizations.

In light of Cuba's history of human rights abuses, many in [Congress](#) and the [U.S. government](#), including Secretary of State Rex Tillerson and President Trump, are vocal supporters of the trade embargo. They believe that not enough concessions are being made by Cuba to warrant the restoration and normalization of diplomatic relations, citing concern for human rights violations and freedom for Cubans. These arguments are inconsistent as the United States sustains a number of diplomatic relationships with countries with enduring human rights abuses. Additionally, the trade embargo has failed in its role as a mechanism for economic and humanitarian reform. Rather it has created friction between the U.S. and the international community. The United Nations General Assembly has adopted a [resolution](#) twenty-three years in a row condemning the U.S. embargo and calling for its repeal. The General Assembly identifies the sanctions imposed by the U.S. as a [blockade](#), which violates state obligations under the UN Charter and international law. A number of human rights organizations and [policy centers](#) have postulated that a positive relationship between the U.S. and Cuba could be the catalyst for human rights improvements in the country rather than its exacerbation.

The [Cuban government](#), under President Raúl Castro, has allowed for more open debate and the freer exchange of information. Removal of the embargo would improve the livelihood of Cubans who continue to endure hardship under a struggling economy. A diplomatic relationship also has the potential to increase the monitoring of human rights in Cuba putting pressure on the government to address key issues. An increase in travel and social interaction between the U.S. and Cuba will naturally expand dialogue. While the road to political and social reform in Cuba is still long, a removal of the trade embargo has the potential to greatly impact the livelihood of Cubans for the better.

Reparations for Forced Sterilization in the United States and Peru

March 28, 2017

by Zuleika Rivera

The United States and Peru are culturally different and have different legal systems; however, both have a history of forced sterilization and have failed to provide reparations for the victims. In 1996, the Peruvian government implemented a [Family Planning Program](#), which included sterilization as a federally authorized family planning method that systematically targeted poor rural and indigenous people for sterilization.^[1] After it was enacted, Peruvians complained about the program's implementation, mainly citing coerced or forced sterilization.^[2] In the United States, Indiana enacted the first sterilization law in 1907 and California followed suit in 1909.^[3] *Buck v. Bell*, a landmark Supreme Court decision in 1927, upheld Virginia's forced sterilization statute for the "unfit" and paved the way for other states to follow.^[4] The practice continued well into the 1980s in the United States as the focus shifted from the "feeble-minded" to black and Latino welfare recipients.^[5] Information regarding sterilization procedures in both the United States and Peru has come to light, and judicial proceedings in both States have mainly ignored the issue or used the judicial system to circumvent responsibility. However, the only state that has implemented a reparations framework is North Carolina. Peru and the rest of the United States have yet to follow suit on reparations for the victims of forced sterilization.

Peru

The Family Planning Program was a state sponsored policy mainly directed towards rural, indigenous women who primarily spoke Quechua or another indigenous language. One of the main purposes of the program was to control the population, mainly in rural areas where Sendero Luminoso, a guerilla group that fought the government from the 1980s to 1990s, was prevalent. The Family Planning Program was, in part, a result of the guerrilla movement, and an attempt to prevent future generations from rebelling. After the government implemented the Family Planning Program, the Office of the Ombudsman began receiving complaints about the irregularities in the application of the program.^[6] The Office investigated the reports and found that women were not free to elect their preferred birth control method, there was a quota doctors had to satisfy, and there was a lack of follow up after sterilization procedures.^[7] Subsequent reports consistently state that from 1996 to 2000 there was a lack of informed consent, sterilization of illiterate and married women, procedures that did not ensure the health of the patients, and lack of reparations for women sterilized without consent.^[8]

María Mamerita Mestanza, a rural indigenous woman, is one of the thousands of Peruvian women forced to undergo a sterilization procedure. She was thirty-three-years-old and the mother of seven children when she was pressured into accepting a sterilization procedure in 1998.^[9] Healthcare personnel harassed her and threatened to turn her in to the police until she accepted the surgery claiming that she needed to undergo the procedure because she was in violation of a new law requiring anyone with more than five children to pay a fine or go to jail.^[10] She was released the next day, despite the presence of complications, and a few days later she died.^[11] Her husband

filed a case before the local court in 1998 but the court found insufficient grounds to prosecute.[12] The case has remained in legal limbo since then because the [State refuses to acknowledge this practice as a crime against humanity](#). The case went to the Inter-American Commission on Human Rights (IACHR) and resulted in a [friendly settlement](#), but the State has not met all the agreements.[13] Recently, the prosecutor's office dismissed the case domestically, effectively ending the investigation.[14]

United States

In 1927, the Supreme Court legalized sterilization in the United States and over time, targets for sterilization turned from the “feeble-minded” to women “who transgressed middle class sexual boundaries, either intentionally or as victims of sexual assault.”[15] In the late 1960s and 1970s thirty-three lawsuits involving coercive sterilization were filed.[16] The plaintiffs in these suits were all poor and some received welfare.[17] Women encountered multiple hurdles when filing lawsuits, such as lack of standing because the law no longer recognized them as being at risk, or because they had signed a form, even though the women had not given informed consent. Judges also justified dismissing their cases because they claimed some women belong to a certain subculture and doctors could not have known the damaging effect of sterilization on these women.[18]

The documentary *No Más Bebés* explains the story of Latina women in Los Angeles coerced into accepting sterilization procedures.[19] *Madrigal v. Quilligan* demonstrates the double layer of discrimination many women in the United States faced as both women and members of a minority group. Throughout the case, the attorneys for *Madrigal* presented evidence against the government, including testimony from a whistleblower medical resident, victims, and experts; however, the judge decided these women were sterilized because of a miscommunication between the doctors and their patients.[20] While the judge rejected the argument that women had not provided their informed consent, immediately after the decision, the hospital's consent forms were written in both English and Spanish and county hospitals hired bilingual counselors.[21]

Reparations

Reparations come in many forms other than monetary damages, and they can serve to shift the focus to recognizing and addressing the victim's needs.[22] There are two kinds of reparative processes: administrative and judicial.[23] Judicial processes, focused on justice, involve high expenses, gathering of evidence that is not always available, victim testimonies, and potential re-victimization.[24] Administrative processes are typically closed, have a lower threshold of evidence, and may spare the victims the pain of re-victimization.[25] Within the reparations process, compensation tends to be either material or symbolic.[26] Material reparations include monetary damages to the victims and their beneficiaries, while symbolic reparations include publicly admitting the violation or establishing a public memorial.[27] A combination of both monetary and symbolic reparations can more fully heal a victim's wounds than only applying one mode of reparation.

North Carolina implemented an administrative reparations program, which incorporated monetary compensation and symbolic reparations.[28] The Governor ordered a taskforce to investigate North Carolina's history of sterilization, and established a compensation fund based on the

report.^[29] The State advertised the establishment of the fund and awarded monetary damages to anyone who met three criteria: 1.) the victim was sterilized by the Eugenics Board, 2.) the victim came forward within three years of implementation of legislation, and 3.) the victim was still alive in 2013.^[30] However, the process was closed after three years and victims that could not prove the Eugenics Board directly ordered their sterilization were not awarded damages.^[31]

The Inter-American system is an international mechanism for the protection of human rights violations that may provide redress for victims of human rights violations.^[32] Victims can petition the IACHR to receive international protection when all domestic remedies have been exhausted. The Inter-American system of human rights derives from the Organization of American States and is composed of two main organs: the IACHR and the Inter-American Court on Human Rights (IACtHR) both of which hear petitions from victims of human rights violations.^[33] The Inter-American system can function as a tool to resolve structural problems that permitted the violation and provide a remedy for the victims.^[34] The Inter-American system may seek to restore the victims to the situation that existed before and, when this is not possible, the system has turned to monetary damages and symbolic reparations.^[35] The Inter-American system also includes guarantees of non-repetition, which have become an important part of the system.^[36] Independent of the political will of the states, both Peru and the United States have an international obligation to implement the recommendations of the IACHR in good faith.^[37] Peru is also obligated to comply with the judgments issued by the IACtHR.

Recommendations

The broader repercussions of forced sterilization on women and their families are ongoing and should not be ignored. A comprehensive reparations framework would help affected communities heal. The framework should also include the implementation of policies that allow both countries to adopt a purely administrative process with Task Forces for investigation before determining what reparations would best fit each country.^[38] Specifically, material reparations should be awarded to the victims including monetary damages, rehabilitation processes that improve their condition, and a formal recognition of the rights these victims have and how they were violated.^[39] California and Peru should include a curriculum in their public schools that teaches children about the history of sterilization in each country, as well as, recognizes its past and have civil society participate in this process.^[40]

Additionally, both governments should issue a public apology for all forced sterilization procedures and include an open victims list where victims may come forward.^[41] Equivalently, each country should change the laws, statutes or practices that still allow for these procedures, establish public forums where victims can voice their concerns with the process and what they prefer from the process, and compensate living victims as well as the families of victims.^[42]

There is no single resolution. Each local community must create its own specific reconciliation and healing processes, tailored to the victims' and society's needs. For example, in Peru, it is clear the victims wish to continue with a judicial process because they refuse to give up on former President Fujimori's prosecution.^[43] However, this does not mean that some type of administrative process cannot go hand-in-hand with the judicial process.

Conclusion

Peru and the United States must compensate the victims of forced sterilization regardless of whether there is a final judgment on the matter. Peru committed a crime against humanity when it forcibly sterilized women in poor and rural areas.^[44] The State systematically targeted poor, indigenous, and rural women under the guise of expanding women's rights in the state and introducing feminist policies.^[45] The President of Peru, as well as the Health Minister, were fully aware of the consequences of this plan and actively monitored how many women were sterilized.^[46] The United States, specifically California, committed human rights violations when it coerced women into signing sterilization procedure and violated their right to privacy.^[47] Many victims were left without a remedy because the state failed to find a violation of the right to reproduce or give informed consent.^[48] Both show how judicial systems may fail the victims even though the violations of their rights were clear.

Regardless of the different standards of law and jurisprudence in these two states, women can obtain a remedy through a reparations process even if the judicial system fails. A comprehensive framework, which addresses the victims needs and considers their goals will benefit both states while allowing society to heal and move forward.^[49] This framework should include an administrative process, which allows the victims more privacy while also being geared towards their wants and needs.^[50] Any process undertaken by either Peru or the United States, should empower and give voice to the victims.

^[1] See Segunda Fiscalía Supraprovincial [The Second Supraprovincial Prosecutor's Office], 27/7/16, "María Mamérita Mestanza Chávez et al. c. Eduardo Yong Motta et al.," No. 29-2011 19 (Peru 2016).

^[2] See Segunda Fiscalía Supraprovincial [The Second Supraprovincial Prosecutor's Office], 27/7/16, "María Mamérita Mestanza Chávez et al. c. Eduardo Yong Motta et al.," No. 29-2011 20-21 (Peru 2016).

^[3] See 1909 Cal. Stat. 1093-94.

^[4] See *Buck v. Bell*, 274 U.S. 200, 207 (1927).

^[5] See Rebecca M. Kluchin, *Fit To Be Tied: Sterilization and Reproductive Rights in America, 1950-1980* 3 (Rima D. Apple et al. eds 1st ed. 2009).

^[6] See Segunda Fiscalía Supraprovincial [The Second Supraprovincial Prosecutor's Office], 27/7/16, "María Mamérita Mestanza Chávez et al. c. Eduardo Yong Motta et al.," No. 29-2011 19 (Peru 2016)

^[7] See *id.* at 20.

^[8] See *id.* at 21.

^[9] See *generally* Chávez v. Peru, Petition 12.191, Inter-Am. Comm'n H.R., Report No. 71/03, Report No. 66/00, OEA/Ser.L/V/II.111, doc 20 rev. (2003).

^[10] See *id.* at ¶ 10.

^[11] See *id.* at ¶ 11.

^[12] See *id.* at ¶ 12.

^[13] See *id.*

^[14] Alberto Fujimori: archivan 77 denuncia de esterilizaciones forzadas, Perú.com (Dec 8, 2016), <http://peru.com/actualidad/politicas/alberto-fujimori-archivan-77-denuncias-esterilizaciones-forzadas-noticia-488093>

^[15] Kluchin, *supra* note 5 at 15.

^[16] See Kluchin, *supra* note 5 at 151.

^[17] See *id.* at 148.

^[18] See *id.* at 153-55.

^[19] No Más Bebés, PBS (2016).

^[20] See *id.*

^[21] See *id.*

^[22] See *id.*

^[23] See Ruth Rubio-Marin, *Women and Reparations*, Int'l J. of Transitional Just., 2007.

^[24] See *id.*

- [25] *See id.*
- [26] *See id.*
- [27] *See id.*
- [28] *See generally* Sarah Brightman et al., *State Directed Sterilizations in North Carolina: Victim-Centredness and Reparations*, *British J. of Criminology*, 474-493 (2015).
- [29] *See id.* at 474.
- [30] *See id.* at 483.
- [31] *See id.* at 489.
- [32] *Reparations in the Inter-American System: A Comparative Approach*, 56 *Am. U. Int'l L. Rev.* 1376, 1376 (2007).
- [33] Inter-American Commission on Human Rights, available at: <http://www.oas.org/en/iachr/mandate/what.asp>
- [34] *See id.* at 1383.
- [35] *See id.* at 1386.
- [36] *See id.* at 1387.
- [37] For the purposes of this article the functions and description of the Inter-American system have been simplified.
- [38] *See* Sarah Brightman et al., *State Directed Sterilizations in North Carolina: Victim-Centredness and Reparations*, *Brit. J. of Criminology*, 474-493, 481 2015 (establishing that a Task Force which investigates the history of sterilization will be beneficial to explaining the past and recognizing that the state has violated certain rights).
- [39] *See* Rubio-Marin, *supra* note 56 (recognizing that an approach that considers all forms of material reparations is better suited to address the needs of the victims).
- [40] *See id.* (including civil society allows for a process which includes the victims' voices and ensures the process is geared toward what the victims need and allows them to make sense of the past and move on).
- [41] *See id.* (detailing how a closed victims list may allow different victims to come forward when they feel psychologically prepared).
- [42] *See id.* (delineating that the process should focus on the victims and is sensitive to their needs including beneficiaries whose relationships have been disrupted by violations).
- [43] *Las víctimas de esterilizaciones forzadas claman justicia en Perú*, *El Telégrafo* (Jul. 30, 2016), <http://www.eltelegrafo.com.ec/noticias/mundo/9/las-victimas-de-esterilizaciones-forzadas-claman-justicia-en-peru> (noting that women want justice will appeal the case to the senior prosecutor and will present the case to the Inter-American Commission for failure to meet its obligations).
- [44] *See* Petición CIDH ¶ 21 [Petition filed in the Inter-American Commission of Human Rights] (accusing the state of Peru of committing human rights violations because it practiced a widespread and systematic attack on poor, rural indigenous women).
- [45] *See id.* ¶ 5 (outlining how the program was used as an excuse to target these women and prevent them from reproducing).
- [46] *See id.* ¶ 52-60 (explaining how the plan was hierarchical in nature and involved the highest level of government).
- [47] *See* *No Más Bebés*, PBS (2016) (examining the case and explaining how it was a violation of women's right to privacy and reproduce).
- [48] *See* Kluchin, *supra* note 6 at 94 (explaining how many times these women were left with decisions that ignored the fact they were coerced and only look to see if a document was signed).
- [49] *See* Rubio-Marin, *supra* note 56 (summarizing how to best include women into a reparations process and how to bring a gender justice system into design).
- [50] *See id.* (clarifying the different methods of reparations and arguing that administrative processes are better for the victim because they are a participant of the process and allows for a lower standard of evidence).

No Options: Nicaragua's Abortion Ban and its Impact on Women's Health

March 28, 2017

by Ariella Chapnick

Six countries [ban](#) abortion outright, even when a woman's life is in danger. [Nicaragua](#) is one of these countries. As the second poorest [country](#) in the Western Hemisphere, [Nicaragua](#) struggles with a high maternal mortality rate and inadequate healthcare for many of its impoverished citizens. The total abortion ban only serves to exacerbate these issues.

For over 100 years, Nicaragua permitted [therapeutic abortions](#), which are abortions typically performed to preserve a pregnant woman's life or health. To obtain an abortion, three [physicians](#) had to confirm that the woman's life or health is at risk. However, following the contentious presidential elections in 2006, Nicaragua's [government](#) amended the Penal Code. In 2008, the [Penal Code](#) was modified to ban abortion in all cases. This [ban](#) makes no exception for rape, incest, or the survival of pregnant women. The code mandates [prison sentences](#) from one to three years for women and girls who receive abortions. The law also applies to the [medical staff](#) who assist these women in the [procedures](#). Medical staff also receive a two to five year [ban](#) on working in medicine or the health sector. The code also includes "[criminal sanctions](#) for doctors and nurses who treat a pregnant woman or girl for illnesses such as cancer, malaria, HIV/Aids or cardiac emergencies if such treatment could cause injury to or lead to the death of the embryo or fetus."

As a result of this ban, [unsafe abortion](#) is the leading cause of maternal death in Nicaragua. International Pregnancy Advisory Services, an abortion advocacy group, estimates that at least 100 women [died](#) between 2011 and 2016 because they were denied abortions. Women who are diagnosed with [illnesses](#) such as cancer during their pregnancies are denied chemotherapy and other treatment. A 26 year old single mother, who was [diagnosed](#) with thyroid cancer. She was also two months pregnant. The only option she had was to possibly go to the hospital and be put on a feeding tube so she could wait to die. Luckily, this woman was provided with medication to terminate her pregnancy so she could undergo chemotherapy.

Even women who naturally [miscarry](#) a wanted pregnancy avoid seeking medical care for fear of accusations of attempting to self-abort and facing imprisonment. When women with pregnancy-related conditions seek medical care, physicians are often [unwilling](#) to treat them, for fear of accidentally injuring the fetus. Even if a [miscarriage](#) is in process, physicians will not intervene if they can still detect a fetal heartbeat. This delay or refusal of care puts women and girls at risk for receiving inadequate medical treatment.

By preventing access to abortion and necessary medical care, the Nicaraguan government effectively violates the bodily autonomy of half of its population. Nicaragua's [constitution](#) specifically promises to uphold human rights in accordance with the [Universal Declaration of Human Rights](#), the [American Declaration on the Rights and Duties](#)

[of Man](#), the [International Covenant on Economic, Social and Cultural Rights](#), the [International Covenant on Civil and Political Rights](#), and in the [American Convention on Human Rights](#).

Although the constitution references these various human rights conventions, Nicaragua's actual law does not comply with them. The United Nations [Universal Declaration of Human Rights](#) and [International Covenant on Civil and Political Rights](#) prohibit inhumane or degrading treatment, as well as arbitrary interference of privacy. The Inter-American Commission on Human Rights [American Declaration on the Rights and Duties of Man](#) and the United Nations [International Covenant on Economic, Social and Cultural Rights](#) provide special protection and care to pregnant women, as well as the general right to preservation of health. The Organization of American States [American Convention on Human Rights](#) identify the rights to personal liberty, humane treatment, and privacy. With the complete ban on abortion, the Penal Code violates the terms set out in these conventions.

To lower its maternal mortality rate and provide women with equal access to lifesaving healthcare, Nicaragua must reverse its total abortion ban. Permitting abortion on request in any circumstances is preferable. If this is not possible, permitting abortion to protect the life and health of the pregnant woman, as well as in cases of rape or incest, would dramatically reduce maternal mortality rates and dangerous self-abortion attempts. Nicaragua's women have made significant gains in political involvement and education. However, the lack of abortion access and reproductive freedom will prevent the majority of women from exercising control over their own bodies and futures.

President Donald Trump and the Threat to Human Rights

March 29, 2017

by Audrey Mulholland

In the chaos following President Donald Trump's assumption of power as the 45th President of the United States, numerous human rights organization including [Amnesty International](#) and [Human Rights Watch](#) were quick to label him a threat to human rights. In a time of growing uncertainty and dangerously divisive rhetoric, it becomes critical to parse out fact from fiction and to understand the practical implications of his policies.

During President Trump's first week in office he wasted little time. He signed [executive orders](#) reinstating the "Mexico City Policy," directing the construction of the U.S.-Mexico border wall, withholding federal funds from sanctuary cities, and blocking travelers from seven predominantly Muslim countries. He also [approved](#) the construction of the Keystone XL and Dakota Access pipelines and confirmed the U.S. withdrawal from the Trans-Pacific Partnership trade agreement. These decisions resulted in harsh criticism and [protests](#) around the country. While some of the effects of the executive orders were immediately felt, others require further [action](#) on the part of Congress to approve funding.

In his first week, President Trump made three key decisions that pose a significant threat to human rights in the United States and around the world.

Mexico City Policy

The reinstatement of the Mexico City Policy was not a surprising or unexpected act by an incoming Republican President. The policy has been revoked and reinstated since its inception during the Reagan Administration. The [Mexico City Policy](#), also known as the Global Gag Rule, blocks foreign aid to non-governmental organizations abroad that may include abortion counseling in their family-planning services. It forces the organizations to make [a difficult choice](#): eliminate abortion related counseling services or lose a significant portion of funding. In the past, the enforcement of the Mexico City Policy has led to higher abortion rates in the developing world, according to a [World Health Organization](#) report.

Regardless of the polarizing nature of abortion, the policy severely restricts women's access to reproductive healthcare services such as contraception. Many women's rights organizations argue that the policy doesn't reduce abortion rates, but rather has the opposite effect. According to [Marie Stopes International](#), the reduction of available family planning services could have incredible consequences to women's health worldwide. The organization estimates that the [repercussions](#) of the Global Gag Rule could lead to 6.5 million unintended pregnancies, 2.2 million abortions, 2.1 million unsafe abortions, and 21,700 maternal deaths between 2017 and 2020.

Keystone XL and Dakota Access Pipelines

In addition to their environmental implications, the Keystone XL and Dakota Access pipelines threaten human rights. The [Keystone XL Pipeline](#) will extend from Alberta, Canada to Nebraska threatening the land use of First Nations communities in Northern Alberta. The [Dakota Access Pipeline](#) will be built across the Missouri River, less than a mile away from the Standing Rock Sioux Tribe's reservation boundary. Both pipeline developments threaten the basic human right of access to clean water in the event of an oil spill. This risk manifested itself in December 2016, when a leak in the [Belle Fourche pipeline](#) in western North Dakota spilled over 180,000 gallons of crude oil into a creek. A [2010 UN General Assembly](#) resolution recognized the basic human right to drinking water and sanitation which are now being threatened by the development of pipelines close to indigenous communities.

The construction of the pipelines also violates the right of indigenous peoples to the preservation of a healthy environment, and the right to be consulted in legislation that may impact them. The Organization of American States (OAS) adopted the [American Declaration on the Rights of Indigenous Peoples](#) in 2016. This instrument preserves and affirms the rights to health, culture, lands, territories, and natural resources. [Article 19](#) explicitly recognizes the right of indigenous peoples to live in harmony with nature in a healthy and sustainable environment. [Article 23](#) further requires governments to obtain the free, prior, and informed consent of indigenous peoples before implementing legislation that may impact them. The Keystone XL and Dakota Access pipelines were authorized without the consent of indigenous peoples and remain a direct threat to their health and land rights.

Immigration Ban

President Trump signed an [immigration ban](#) his first week in office that went into effect immediately. The order barred US entry to individuals from seven Muslim-majority countries including Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for ninety days. The [executive order](#) also eliminated refugee admissions for 120 days, restricting Syrian refugees indefinitely. President Trump [clarified](#) that he would prioritize persecuted Christian refugees over Muslims, effectively transforming the immigration policy into a discriminatory Muslim ban.

Not only does the order violate domestic law under the [Immigration and Nationality Act of 1965](#), banning immigration discrimination on the basis of nationality, but it is a violation of international law as well. The United States is a party to the [1967 Protocol relating to the Status of Refugees](#), which expands the [1951 Refugee Convention](#). Article 3 of the Convention requires that States do not discriminate on the basis of race, religion, or country of origin, while Article 33 requires non-refoulement. The principle of [non-refoulement](#) states that nations will not return refugees and asylum-seekers to countries that may threaten their life or freedom. This provision is not only found in the 1951 Refugee Convention, but it is a binding principle of customary international law as well. The immigration ban was in direct violation of customary international law by deporting refugees who had already been approved for resettlement in the United States. The Ninth Circuit blocked the enforcement of the initial immigration policy, and a [new executive order](#) was issued on March 6, 2017. The most significant changes include the removal of Iraq from the list and the replacement of the indefinite ban on Syrian refugees with a 120-day freeze. The new immigration policy maintains the same character of discrimination and continues to threaten human rights. On

March, 15, 2017, a [federal judge in Hawaii](#) blocked the revised travel ban, temporarily stalling the Trump administration who plan to appeal.

These three areas represent current threats and violations to domestic and international human rights by President Trump. His administration has brought fear and a policy of isolationism to the executive branch of the United States. The lack of due diligence and concern for international human rights standards is particularly alarming. President Trump's administration and policies must be vigilantly patrolled for human rights violations. Non-governmental organizations in partnership with concerned citizens should continue to challenge and pressure the federal government to uphold and respect human rights in all policies.

Refugee Rights Advocates Call to Rescind Safe Third Country Agreement Between the United States and Canada

April 12, 2017
Chelsea Lalancette

The United States and Canada operate under a “safe third country” agreement in their refugee processing and screening system, which has come under intense criticism from immigrants’ rights advocates.

Under this treaty, both countries [designate](#) each other as a “safe third country,” meaning that refugees who are in either of the countries are presumed to be safe and must apply for asylum where they are. Under this presumption, Canada does not allow asylum seekers coming from the United States to enter its borders and vice versa. The law is meant to deter “asylum shopping.” As U.S. immigration policy becomes increasingly restrictive, however, [advocates](#) worry that the U.S. is no longer a safe country for refugees and have called for Canada to rescind the agreement.

The Safe Third Country Agreement is a treaty [signed](#) in 2002 which entered into effect in 2004. Because of the Safe Third Country agreement, Canada turns away refugees at the U.S. border, but it still [processes](#) refugees who present themselves to immigration authorities in Canadian territory. Refugees who have family members in Canada may present themselves at the Canadian border and, upon presenting sufficient evidence of their family ties, be accepted into Canada. On the other hand, those who cannot prove local family ties are turned back to the U.S. or even deported to their countries of origin. Even for those who do have family ties in Canada, the inaccessibility of records and the costs of DNA testing can make obtaining adequate [proof](#) excessively costly.

This system has created an incentive to attempt dangerous illegal crossings into Canada for those who are in the United States and wish to apply for asylum in Canada. In order to avoid rejection at the border and possible deportation, refugees regularly hire [taxis](#) to drive them to the Canadian border in order to attempt to walk across. A safe house called [Vive](#) in Buffalo, New York, houses migrants who plan to cross, either legally or illegally into Canada. Migrants’ first choice is to present themselves legally at the Canadian border, where they risk being turned away and deported to their home countries. Their second choice is to attempt to enter illegally where they risk being caught or injured on the journey. While they weigh their prospects, many migrants are paralyzed with fear and they live for months or years in limbo at the shelter.

Since President Trump’s election, the number of illegal border crossings into Canada has [increased](#) dramatically. In the first two months of 2017 alone, the Canadian Royal Mounted Police apprehended 1,134 asylum seekers as they crossed illegally, nearly half of the number of total apprehensions in 2016. The migrants [include](#) individuals and families, some of whom have lived in the U.S. for several years. Many suffer severe [frostbite](#) and lose fingers on their journeys.

Critics have recently urged Canada to repeal the Safe Third Country agreement, citing subpar treatment of refugees and asylum seekers in the U.S.. A Harvard Law School Immigration Clinic [Report](#) states that the U.S. is no longer a Safe Third Country, citing increasing rates of internal immigration enforcement and detention, especially following President Trump's executive orders on immigration. A group of twenty-two Canadian [law](#) schools researched the issue and came to the same conclusion, and they, along with other NGOs such as the [Canadian Council for Refugees](#) and [Amnesty International Canada](#), are calling for cancellation of the agreement. The Canadian Border Services Agency has resisted rescinding the program. In justifying that decision, Ahmed Hussen, the Canadian Minister for Immigration and Refugees, [stated](#) that President Trump's executive orders on immigration have no bearing on the Safe Third Country Agreement, and that eligible asylum seekers continue to have fair access to a hearing. Canada's decision is likely [caused](#) by fear that the Canadian Border Services Agency would be overwhelmed if forced to process arriving asylum seekers, as well as a desire to maintain a positive political relationship with the United States.

In defending the Safe Third Country agreement, the Canadian Immigration Minister Ahmen Hussen [states](#) that the United Nations High Commissioner for Refugees supports the agreement and has said that both the U.S. and Canadian asylum systems offer due process. The [status](#) of a Safe Third Country, or "First Country of Asylum" is unclear under international law. Such a principle is not mentioned in the 1951 [Refugee Convention](#), but it is implied from Article 31, which states that a refugee should not be punished for illegal presence in a country if she is arriving directly from a country where she was under threat. Safe Third Country policies have come under [criticism](#) in Europe, where the Dublin Regulation allows asylum seekers' applications to be processed only in one country, usually the first European country the refugee reaches. In the European context, the UNHCR has issued [guidelines](#) saying that any decision to return a refugee to a third country should be made on a case by case basis, taking into account that refugee's ties to the third country and the country's treatment of refugees in policy and in practice. The UNHCR advises that a refugee should only be returned to a country where she will not only be free from persecution or deportation, but will also have adequate access to social assistance, legal counsel, healthcare, work, and education.

By systematically rejecting asylum seekers at the border, Canada and the U.S. certainly do not provide the suggested case by case review. Furthermore, as the Harvard [report](#) points out, the U.S. does not treat refugees fairly and should not be considered a safe third country, therefore Canada should rescind the Safe Third Country Agreement.

Left in the Dark: Venezuela's Abandonment of its Mentally Ill Citizens

April 17, 2017

by Arielle Chapnick

Plummeting oil prices, soaring inflation, and economic mismanagement have left [Venezuela](#) in a severe economic crisis. Widespread food and medicine [shortages](#) wreak havoc on the country's 30 million people. In the midst of this crisis, Venezuelans struggling with mental illness and their families face enormous obstacles in obtaining adequate psychiatric care and medication.

Prior to the drop in oil prices and the death of President Hugo Chávez, state-run biomedical factories produced sufficient [medication](#) for the population. However, due to the devaluation of Venezuelan currency and the crumbling economy, the Venezuelan [government](#) is no longer able to purchase the materials required for medication production. The government cannot afford to [import](#) medication from other countries. As a result, about [85 percent](#) of psychiatric medications are unavailable in Venezuela. The Venezuelan government [forbids](#) foreign governmental and non-governmental donations of food, medication, and supplies. Current [President Nicolás Maduro](#) refuses to recognize the country's health crisis.

These shortages have severely affected Venezuela's state-run psychiatric facilities. Facilities have had to release thousands of patients due to inability to feed, provide medication for, or care for the mentally ill. However, even when patients are released, their families, if alive, will often not accept them into their homes. In 2013, there were 23,630 long-term psychiatric [patients](#) in public hospitals. However, by 2015, only 5,558 [patients](#) remained in state care.

The patients that do remain in state hospitals suffer from lack of food and medication, poor hygiene, and other dangerous conditions. Reporters from [The New York Times](#) visited six psychiatric facilities throughout Venezuela and found inadequate conditions and lack of necessities at each. [El Pampero Hospital](#), a state-run facility in Barquisimeto, has not employed a psychiatrist for two years. There is [running water](#) for only a few hours each day and food scarcity has caused patients to lose immense amounts of weight. The hospital has no [soap](#), toothpaste, or other hygiene products. Dwindling [supplies](#) of sedatives, tranquilizers, and other medications have led otherwise stable patients to mentally and emotionally deteriorate. With few other options, hospital staff strip and lock suicidal and potentially violent patients in [solitary confinement](#). Thousands of mentally ill [patients](#), who previously thrived with adequate food, medication, and care, have quickly become incapacitated.

By failing to provide basic services to patients in its public hospitals and refusing any international aid, Venezuela violates the [United Nations Convention on the Rights of Persons with Disabilities](#). Venezuela [ratified](#) the Convention in 2013, which includes [protections](#) for those who "have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Article 11 of the Convention requires States Parties to take "all necessary measures to ensure the [protection](#) and safety of persons with disabilities in situations of risk, including...humanitarian

emergencies.” Additionally, Article 28 recognizes the right for persons with disabilities to have an adequate standard of living, including “[adequate](#) food, clothing and housing, and to the continuous improvement of living conditions.” Further, these actions violate the [Organization of American States Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities](#), which Venezuela ratified in 2006. Article 3 of the Convention makes “[treatment](#), rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities” a priority for all States Parties. Venezuela’s own laws require the state to address the welfare of citizens with disabilities. In effect since 1993, Venezuela’s [Law for the Integration of Disabled Persons](#) mandates adequate healthcare and public institutions for persons with disabilities.

By refusing aid and failing to acknowledge the impact the financial crisis has had on public mental health facilities and their patients, Venezuela violates institutionalized persons’ rights. The widespread lack of food, medication, and hygienic supplies, combined with [dilapidated facilities](#), deprives thousands of vulnerable people of stable and healthy lives. So long as the Venezuelan government ignores the economic crisis’ devastating effects on state-run psychiatric hospitals, there is little hope for improvement for patients residing within their walls.

The Americas' Failure to Protect the rights of Indigenous Peoples

April 19, 2017

by Audrey Mulholland

According to the [Organization for American States \(OAS\)](#), over 50 million people living in the Americas self-identify as indigenous.

Indigenous peoples throughout the Americas have faced historic and persistent oppression, exploitation, and human rights abuses. Many experienced similar fates of forced removal from ancestral lands and relocation threatening sovereignty and autonomy. Today, systemic oppression has resulted in widespread poverty and continuous threats to land rights and self-determination. The Americas have failed to protect and preserve the rights of indigenous peoples. States have been slow to acknowledge and adopt human rights mechanisms and there is a significant lack of enforcement. As a result, indigenous peoples in the Americas are forced to continuously and ardently fight for their rights.

United States

The United States' relationship with Native American tribes is marred by a history of forced assimilation and repression. In the early to mid-1800s, the United States government began a [process of removal](#), forcing all Native American tribes west of the Mississippi River, a tragic event that became known as the Trail of Tears because of the resulting death of thousands of indigenous peoples. A process of continued exploitation and [forced assimilation](#) followed as children were forced into US boarding schools, and as agricultural and Western practices were thrust upon tribes. Today, there are around [566 recognized tribal groups](#) in the United States. These tribal groups continue to face threats to the preservation and integrity of their land and territory. The United States has failed to be proactive and demonstrate concern for the rights of indigenous tribes. In September 2007, the United States [voted against](#) the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), finally adopting the declaration in 2010. Although the UNDRIP is not legally binding, States who have adopted it agree to uphold a universal framework protecting indigenous rights. However, despite this acceptance, the US government continues to make decisions that threaten the rights of indigenous tribes. Modern disputes include the construction of the [Dakota Access Pipeline](#) that threatens the environment of the Sioux tribe in North Dakota, and the expansion of a ski area on the [San Francisco Peaks](#), a sacred site to at least 13 tribes in the Southwest. The failure in both of these cases to seek the [free, prior, and informed consent](#) of Native American tribes on legislative decisions and projects that may affect them is a direct violation of the Declaration.

Canada

In Canada, the [relationship](#) between the First Nations tribes and the government parallels that of the United States; another history marked by forced assimilation and consolidation onto reservations. There are [concerns](#) regarding the quality of life and living conditions on many

reservations today. Particularly, there are numerous health concerns related to the lack of access to clean water. In 2016, there were 85 [drinking water advisories](#) affecting First Nations' communities across Canada. The water was [contaminated](#) by bacteria such as E. coli, cancer-causing Trihalomethanes, and uranium, making it unsafe to drink and resulting in advisories that could last for years. Such an infrastructure failure should not be occurring in Canada on such a massive scale. It demonstrates the government's failure to adequately fund, regulate, and maintain suitable water systems. Although the 2016 Canadian budget allocated more funds to infrastructure building in First Nations communities, there is a continued failure to prioritize policies that would improve the healthcare and housing of indigenous peoples. Like the United States, Canada also voted against the UN Declaration on the Rights of Indigenous Peoples, only [adopting it in 2016](#). This stands as a clear pronouncement of Canada's lack of concern and urgency regarding the rights of indigenous peoples.

South America: Chile

In [South America](#), there are 40 million people that belong to 600 indigenous peoples' groups. Indigenous peoples often face [threats to land rights](#) as a result of resource extraction and are often hindered in their political participation. For instance, the [Rapa Nui of Easter Island](#), a territory of Chile, have faced significant human rights abuses over the years. Chile annexed Easter Island in 1933 without the consent of the indigenous Rapa Nui people. The Rapa Nui were relocated to one segment of the island while other settlers took over. Although the Rapa Nui were [granted Chilean citizenship](#) in 1966, their political rights are continuously violated. As the Rapa Nui began to protest and reclaim their land, they faced [violent evictions](#) from Chilean forces who frequently arrested and mistreated peaceful protestors. Chile continues to deny the Rapa Nui autonomy and rights to their ancestral lands. This is a situation faced by many indigenous groups in South America.

The protection and assertion of the rights of indigenous peoples have not been a priority for States in the Americas. After 30 years of negotiation, a consensus was reached and the OAS finally adopted the [American Declaration on the Rights of Indigenous Peoples](#) in June 2016. Despite years of abuse, exploitation, and oppression, States fail to provide redress and adequate support for the livelihood of indigenous peoples. Even after adopting both a UN and American Declaration on the Rights of Indigenous Peoples, basic rights continue to be violated. Although it appears different on its face, the system of oppression and exploitation of indigenous peoples is thriving in the Americas. States need to prioritize the basic rights of indigenous peoples and provide enforcement mechanisms to the declarations before any real progress can be made.