



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

2010 NGO Consultations

CURRENT ISSUES ON REFUGEE PROTECTION IN THE AMERICAS Americas Regional Session, 30 June 14:00 – 15:45

Migration movements in the Americas have become more complex in recent years and are increasingly 'mixed' in character. While the motivation and reasons of those participating in those migration movements may differ, people travel together, use the same modes of transport, employ the services of the same smugglers and many times are exposed to the same risks and abuses. Family reunification, the search for economic and professional opportunities and growth, the impact of the globalization of the economy and world labor market, as well as social exclusion, discrimination, inequality, poverty, unemployment, economic crisis, environmental/natural disasters, and major structural reforms in many countries of Latin America and the Caribbean are the main reasons for these movements.

We have to acknowledge that they are different categories of people participating in those migration movements, but they also have different needs. On the one hand, there is still, though, a small but nonetheless significant percentage of men, women and children in search of international protection in the hemisphere. They are fleeing persecution in the form of human rights violations, armed conflict, and gang-related violence, often due to the acts of non-state actors.¹ Others are victims of human trafficking and have been subjected to deception or coercion for the purposes of exploitation during their journey or in host countries. On the other hand, there are categories of undocumented migrants, who merit special treatment from a human rights perspective, regardless of their migration status. These include, for example, unaccompanied migrant children and migrants who have been subjected to sexual violence, but other categories of persons may need to be considered. From a human rights perspective, all persons subject to the jurisdiction of a State are entitled to the respect and enjoyment of basic human rights.

Over the past years, countries throughout the Americas have witnessed increasing irregular migratory movements as countries of origin, transit or destination or a combination thereof. These movements are largely intra-regional, with the United States of America hosting the highest number of migrants and refugees, but also take place to countries outside of the hemisphere (mainly to Europe)². Besides traditional migratory patterns from the south to the north of the continent, increasing south-south migration has been documented, particularly in Latin America. Furthermore, the increasing arrival of extra-continental migrants and refugees, mainly from far distance countries in Africa and Asia, have been documented in the region and their irregular entry, lack of documentation and resort to smugglers are sources of concern to many states who perceived this new trend as an asylum abuse.

As in other regions, human smuggling is a characteristic feature of irregular migration throughout the region, creating difficult protection challenges for States which have a legitimate interest in preventing and combating transnational organized crime while upholding their international obligations on human rights and refugee protection and in particular, the respect of the right to seek asylum and the respect of the principle of

¹ The number of refugees in the Americas is estimated at 803,500, which represents 8 per cent of the refugee population worldwide. See UNHCR, 2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons. 16 June 2009, pp. 7 and 8, available at: <http://www.unhcr.org/4a375c426.html>

² IOM World Migration Report 2008. "Managing Labor Mobility in the Evolving Global Economy"

non-refoulement. Borders are a particularly sensitive area for migrants and refugees who do not have the required documentation for entry. Human rights violations and abuses often take place at, or in the vicinity of borders. Sexual abuse, exploitation, extortion and kidnapping among other violations are increasingly reported as taking place in border areas in the region.

Within this environment, States are confronting increasing difficulties in ensuring adequate protection safeguards for refugees and migrants with specific protection needs. Some States have responded to the challenges of these irregular mixed migratory movements principally by stricter control measures, oftentimes without incorporating sufficient protection safeguards and assistance measures. Such application of migratory control measures without adequate differentiation in terms of profiling, protection, assistance and referral measures and mechanisms often results in failures or gaps in protection – for example, cases of refoulement, prolonged detention of refugees, asylum-seekers or irregular migrants and denial of access to the territory, onward movements of refugees due to the lack of effective access to asylum procedures, lack of attention to growing numbers of unaccompanied minors, and inadequate protection responses for victims of trafficking. Furthermore, many other migrants who suffer from severe abuse and exploitation on route (e.g. kidnapping) or in destination (e.g. forced labor exploitation) or those who are stranded in transit also fall into a “protection gap” whereby they cannot access certain remedies designed for trafficked persons or asylum-seekers even though their immediate needs might all be the same.

Regional Conference on Mixed Migration

On 19 and 20 November 2009, the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the Organization of American States (OAS), in cooperation with the Office of the High Commissioner for Human Rights (OHCHR), convened the *Regional Conference on Refugee Protection and International Migration in the Americas - Protection Considerations in the Context of Mixed Migration (herein and after, Regional Conference)* in San José, Costa Rica. The principal objective of the Regional Conference was to enhance the response to mixed migration in the Americas in a protection-sensitive manner, both at the national level, as well as through enhanced utilization of the existing regional migration processes (i.e. Regional Conference on Migration, South American Conference on Migrations and the Specialized Migratory Forum of MERCOSUR) and human rights mechanisms of the Inter-American System (Inter-American Commission and Court of Human Rights).³

In plenary sessions and through active engagement in eight working groups at the Regional Conference in San Jose, participants acknowledged achievements and identified outstanding challenges in the implementation of national and regional migration policies that respect the human rights of all migrants and refugees and respond to the specific protection needs of, inter alia, refugees, trafficked persons and unaccompanied/separated children. In this regard, participants requested the support of UNHCR and IOM in the following three specific areas:

1. Diagnostic study of the current situation, trends, and protection and assistance needs of migrants and refugees within mixed migration flows, emphasizing extra-continental migrants and refugees,
2. Enhancing profiling and referral mechanisms in the region,

³ A complete documentation of the San José Conference, including its concept note, is available at <http://www.acnur.org/t3/el-acnur/eventos/conferencia-regional-2009> and <http://www.iom.or.cr>.

3. Enhancing capacity of national authorities to identify, protect and assist most vulnerable migrants and refugees within mixed migration

The Importance of Strong National Partnerships and Elements for Discussion

Protecting persons in need of international protection as well as other persons with specific needs taking part in migration movements will require that all stakeholders concerned use their strengths and capacities in different manners. For example, partners in civil society and academia can advance in the identification of trends and root causes of migration. What other possibilities can be envisaged, what best practices and lessons learnt should be disseminated in the region?

National partners can use the angle of organized migration to advance the building of capacity of border authorities and also to focus advocacy efforts. Likewise, our engagement in protection in mixed migration movements could consolidate/enhance asylum systems. The international protection of refugees is taking place within a broader regional context: mixed migration movements. Working in such a new environment, is this a way forward in areas such as the Caribbean and some countries in Central America?

However, some countries may tend to manage migration solely with a security agenda focusing mainly on migration control measures and facilitating return over the access to fair RSD procedures and the assessment of the protection considerations of those participating in migration movements. Protection safeguards need to be implemented for the prompt identification and referral of those in need of international protection and those who might have specific needs.

The good will of countries could be exhausted by the large number of asylum-seekers who abandon their claims moving to the North and/or migrants who try to enter the asylum system in order to legalize their tenure in a country due to the lack of more legal alternatives for regular migration. How can these genuine concerns be properly addressed? How can effective migration policies be adopted and implemented in a sensitive manner, in accordance with international human rights and refugee norms and standards?

What could work in alliance to improve our response to groups with specific protection needs such as unaccompanied minors and women and girls at risk of becoming victims of trafficking, regardless of whether they are in need of international protection as refugees?

As you can see, the protection considerations of those involved in mixed migratory movements go beyond those who are in need of international protection as refugees, but presuppose a concerted and stronger partnership of all actors involved: hosting governments, international and civil society organizations, the academia and the populations themselves.

How can we continue to work together to address the protection considerations of those involved in migration movements in Latin America? This is one of our most important challenges and opportunities in the region.