



**Regional Conference on Refugee Protection and International  
Migration in the Americas – Protection Considerations in the  
Context of Mixed Migration  
San José, Costa Rica  
19-20 November 2009**

**Summary Report**



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## **Introduction:**

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) and under the auspices of the Government of Costa Rica convened the *Regional Conference on Refugee Protection and International Migration in the Americas - Protection Considerations in the Context of Mixed Migration* in San José, Costa Rica. The principal objective of the Conference was to enhance the response to mixed movements in the Americas in a protection-sensitive manner, both on the national level, as well as through enhanced utilization of the existing regional migration processes and human rights mechanisms of the Inter-American System.<sup>1</sup>

The Conference was the third of four regional conferences which UNHCR organized together with partners as part of a three year European Commission-funded project to sensitize key stakeholders in different regions about the protection challenges of mixed movements and to promote the 10-Point Plan of Action on Refugee Protection and Mixed Migration<sup>2</sup> as a framework for the development of comprehensive and protection-sensitive migration strategies. IOM, as part of its principle to uphold the human dignity and well-being of migrants, co-organized the last two conferences with the financial support of the United States Department of State, Bureau for Population, Refugees and Migration (BPRM).<sup>3</sup>

In plenary sessions and through active engagement in eight working groups, participants acknowledged achievements and identified outstanding challenges in the implementation of national and regional migration policies that respect the human rights of all people on the move and respond to the specific protection needs of *inter alia* refugees, trafficked persons and unaccompanied/separated children. The discussions were informed by a number of background documents including a UNHCR paper highlighting main migration trends, protection challenges and practical examples in the region.

As a major challenge, the rise in irregular migration throughout the continent, including through human trafficking and migrant smuggling, has exposed an increasing number of people on the move to abuse, exploitation and violations of their human rights. The identification of refugees and migrants who have specific protection needs has proven to be a key challenge in such situations. Participants also used the Conference as a platform to discuss protection concerns relating to a steady increase of refugees and migrants originating from countries outside the region in the Americas (extra-continental movements).

This report contains a summary of the main discussions and recommendations of the Conference. It is structured around the principal themes that arose during the discussions. These include: 1) Respecting the human rights of people on the move irrespective of status, 2) Profiling and referral

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<sup>1</sup> 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>. Also see <http://www.iom.or.cr>.

<sup>2</sup> UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

<sup>3</sup> For more information on the previous regional conferences under the framework of the 10-Point Plan of Action see <http://www.unhcr.org/pages/4a16aac66.html>.



mechanisms, 3) Differentiated processes and procedures for refugees, victims of human trafficking, unaccompanied/separated children and the specific needs of extra-continental refugees and migrants, 4) Durable solutions for refugees and migrants, and 5) Cooperation among key partners.

## **1. Respecting the human rights of people on the move irrespective of status**

During the Conference, participants repeatedly underlined that the human rights of all people on the move should be respected, protected and fulfilled irrespective of their reasons for traveling and irrespective of their legal status. Individuals who enter States irregularly are often subject to abuse and violations of their human rights, including violence by smugglers and traffickers, labour and sexual exploitation and denial of access to justice. Another main challenge (affecting refugees and migrants alike) is what participants described as “the normalization of violence” in border regions, including the kidnapping of refugees and migrants in the border regions of Mexico for the purpose of extortion and persisting gang-related violence in several countries in Central America.

Participants expressed concern about the fact that refugees and migrants are not always fully informed about their rights, including their right to seek asylum. Citizens are often not sufficiently informed about the risks and dangers of irregular migration in their countries of origin. It was highlighted that trafficking and smuggling networks in the Americas have profited from the lack of awareness of the risks and dangers associated with irregular migration.

Participants also shared their concerns about patterns of discrimination and an increase of xenophobic attacks against migrants and refugees in countries of transit and destination. It was alleged that the press often augments these sentiments, rather than countering them. The positive contribution of refugees and migrants to hosting communities is also rarely portrayed in the media.

### **a. Ensuring protection while controlling entry to territory**

Participants highlighted that the rise in irregular migration throughout the continent has led to a number of protection challenges, especially at points of entry. Some countries face difficulties controlling entry to their territories because they lack the resources to control borders, particularly in regions which are hard to access and/or are spread out. Lack of experienced border personnel and necessary oversight were found to account for instances where asylum-seekers were returned without determination of their international protection needs. There is also often an absence of adequate mechanisms in place to identify and address the specific protection needs of certain groups such as trafficked persons and unaccompanied/separated children. Participants mentioned that the high turnover of staff posted in border areas can pose additional challenges for the implementation of adequate protection safeguards.

Restrictive migration policies and an over-emphasis of national security concerns were identified by participants as factors contributing to the indiscriminate refusal of entry, including through interdiction at sea, irrespective of international protection needs. In some instances, this has led to violations of the principle of *non-refoulement*.<sup>4</sup>

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<sup>4</sup> The principle of *non-refoulement* under International Refugee Law and International Human Rights Law prohibits States from acting to ‘expel’ or ‘return’ individuals to situations where they may face persecution,



As a good example of State cooperation, participants highlighted the training of immigration, border and consular officials on the identification of fraudulent documents, jointly undertaken by the Governments of Canada, the United States of America (USA) and Mexico with the support of UNHCR under the framework of the Regional Conference on Migration (RCM) (see chapter on regional cooperation below).

#### **b. Reception arrangements, detention and the necessity of alternatives to detention**

Several participants recommended that all persons should be provided with care and assistance upon arrival, tailored according to their specific needs and in accordance with international human rights standards. A needs assessment should be conducted at an early stage upon arrival to address specific needs.

Participants reported that in some States, after being detained for irregular entry, persons are kept in detention facilities for prolonged periods of time or indefinitely without access to legal guarantees. Migrants are also detained for long periods pending deportation or determination of migratory status. Although under international refugee law, refugees are under certain conditions exempt from penalization for irregular entry (Article 31(1) of the 1951 Refugee Convention<sup>5</sup>), they are frequently automatically detained upon entry.

Concerns were raised that the conditions in some detention facilities fall short of the minimum standards set by international human rights law. Gaps relate to a shortage and/or bad quality of food, shortage of medical supplies and irregularities in due process. Overall, participants stressed that detention must not be arbitrary and should be applied as a measure of last resort. They called upon States to differentiate between detention imposed for immigration offenses and detention for criminal law offenses. Attention was drawn to the many cases in the Americas, where migrants were detained for irregular entry for prolonged periods, including periods of up to two years. Participants expressed concern that there remains a lack of alternatives to detention.

In all of the above-mentioned circumstances, participants recognized the role of the organs of the Inter-American System of Human Rights in the protection of the rights of migrants and refugees. They however stressed that there is a need to mobilize political support and to ensure allocation of resources to implement protection safeguards. Participants encouraged all stakeholders to make better use of the Inter-American Commission's Rapporteurships for the protection of the human rights of migrants, children, women and afro-descendants, as well as the advisory function of the Inter-American Court of Human Rights. Also, the research and advisory role of the Inter-American

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torture, inhuman and degrading treatment or other irreparable harm. The most prominent expression of the principle in international refugee law is Art.33 of the 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, *entered into force* 22 April 1954 [hereinafter: "The 1951 Refugee Convention"]. Art. 22 of the 1969 American Convention on Human Rights 1969 "Pact of San José, Costa Rica", 1144 U.N.T.S. 123, *entered into force* 18 July 1978, extends this protection to aliens in general.

<sup>5</sup> Article 31 (1) states "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."



Commission on Human Rights should be supported by States by providing adequate information to the Commission and by encouraging the undertaking of thematic reports and/or the inclusion of migrant and refugee issues into their annual reports.

**Recommendations:**

- i. *States are encouraged to harmonize their national legislation with their international obligations under international human rights and refugee law. Those States that have not ratified relevant conventions, including the 1990 Convention on Migrant Workers<sup>6</sup>, are encouraged to do so.*
- ii. *States are encouraged to adopt national and regional measures to combat xenophobia, discrimination against refugees and migrants and subsequent threats/attacks. Such measures could include public information campaigns on the positive contribution of migrants and refugees to the development of host societies, as well as close cooperation with the media.*
- iii. *States are encouraged to accept the jurisdiction of the Inter-American Court of Human Rights and to comply with recommendations and guidelines of regional and international human rights protection mechanisms. Civil society is encouraged to participate in the reporting process and the implementation of the recommendations of these mechanisms.*
- iv. *States are encouraged to pursue criminal offenses against offenders infringing upon the rights of refugees and migrants in their national courts to combat impunity.*
- v. *All stakeholders are encouraged to provide adequate information to refugees and migrants about their rights, as well as procedures for asylum application, mechanisms to report abuses and regular migration options. Regional information packages for refugees and migrants may be used to this end.*
- vi. *States and other key actors are encouraged to implement regional awareness campaigns highlighting the risks and potential dangers of irregular migration in countries of origin, transit and destination, and regular migration options. Specific attention should be paid to awareness campaigns addressing the vulnerability of unaccompanied/separated children, victims of human trafficking and migrant smuggling, and victims of sexual and physical abuse.*
- vii. *Detention should be a measure of last resort and experiences and initiatives on alternatives to immigration detention should be shared between States and other key actors in the region. Where detention is necessary, it should be applied in accordance with minimum standards under international human rights law.*

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<sup>6</sup> UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158.



- viii. *It is necessary to provide more resources to border personnel, to avoid the high turnover of staff and to equip border officials with clear guidelines on protection obligations in the form of a booklet or a manual which is easily accessible and readily available.*
- ix. *UNHCR and IOM are encouraged to carry out joint sub-regional training sessions of national authorities, including law enforcement officials on international refugee protection and human rights standards and how to implement them in practice. The joint training implemented by Canada, Mexico and USA with the support of UNHCR under the framework of the Regional Conference on Migration might be a useful guidance in this respect.*

## **2. Profiling and referral mechanisms**

Participants mentioned that in some countries persons arriving within mixed movements are treated without differentiation, for example, they are *a priori* barred from accessing the asylum procedure due to irregular entry. In other countries, all arrivals are channelled into the asylum procedure. The latter contributes to the perception of overburdened asylum systems. Several participants recommended the introduction of profiling or pre-screening mechanisms to better identify and differentiate between categories of arrivals and to address different needs early upon entry. This would help to ensure referral to the most appropriate procedures tailored to the specific needs of the individual, following a rights-based approach. Such profiling mechanisms could also be used to obtain more information about extra-continental arrivals and to improve the management of these movements.

A number of States reported positively on their experiences with profiling and referral mechanisms. Other States mentioned that they have enhanced information gathering on new arrivals to better understand reasons for travelling and to effectively address the needs of persons arriving in mixed movements. The co-organisers shared a profiling questionnaire with participants which had been developed *inter alia* based on the discussions with experts at the 10-Point Plan of Action Expert Roundtable “Different people – different needs,” held in Tunis in 2009.<sup>7</sup> IOM, furthermore, presented a form more specifically for the identification of victims of human trafficking.<sup>8</sup>

Participants positively acknowledged the added value of profiling and referral mechanisms. Experts, especially from some countries in Central America and the Caribbean, considered the development of such systems for the sub-region as an important operational priority.

### ***Recommendations:***

- i. *All stakeholders should engage in a needs assessment at an early stage to categorize different groups and use profiling or pre-screening mechanisms to tailor responses and referrals according to individual needs.*

<sup>7</sup> For more information on the roundtable see <http://www.unhcr.org/4ae6cb069.html>.

<sup>8</sup> *IOM Handbook on Direct Assistance for Victims of Trafficking*, Screening Interview Form, p. 50, [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/CT%20handbook.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf), 2007.



- ii. *The exchange of best practices in the region should be strengthened with a view to integrate and harmonize existing profiling and referral mechanisms. UNHCR and IOM are called upon to convene a workshop and explore possibilities of elaborating a common regional or sub-regional profiling and referral questionnaire, which could also be used to better address extra-continental arrivals. National institutions for the promotion and protection of human rights, the Red Cross, and civil society organizations should be invited to participate and monitoring procedures should be discussed.*
- iii. *All stakeholders are encouraged to implement the recommendations of the regional political and migration platforms and processes on profiling and referral mechanisms and make use of already existing tools of, including the trafficking screening questionnaire elaborated under the Regional Conference on Migration (RCM).*

### **3. Differentiated processes and procedures for refugees and for migrants with specific protection needs**

#### **a. Refugees**

States reconfirmed their international obligation to identify refugees and other persons in need of international protection and acknowledged that these persons are protected under international law including against *refoulement* to their country of origin because they may face persecution or serious threats to their physical security or integrity. Participants mentioned that although the number of refugees in the region has diminished, refugees both from within, as well as from outside the region continue to remain a component of the current migratory movements. In particular, the USA and Canada continue to rank among the major asylum countries in the world.

Participants noted that some asylum systems in the region do not have the capacity to adequately protect refugees. While almost all countries have implemented refugee legislation, weak operational structures impede effective implementation. Access to international protection is also frequently undermined by indiscriminate and security-oriented migration policies, which do not distinguish between those who are in need of international protection and those who are not.

Participants also expressed concern that international protection in the Americas is often provided on a too narrow basis. The interpretation of the refugee definition as enshrined in the 1951 Refugee Convention and its 1967 Protocol<sup>9</sup> or the definition recommended by the 1984 Cartagena Declaration on Refugees<sup>10</sup> (which has been incorporated into the national legislation of 14 countries in Latin America) is often too restrictive. It was also noted that victims of persistent gang-related violence are rarely recognized as refugees and often have no access to other (complementary) forms of protection.

Participants identified “onward” travel of asylum-seekers, mainly from the South to the North, as another key challenge. Even recognized refugees frequently travel from countries of first asylum to

<sup>9</sup> The 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, *entered into force* 4 October 1967.

<sup>10</sup> Cartagena Declaration on Refugees, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85).



their envisaged destination countries without the requisite documentation and/or by reliance on smuggler networks due to *inter alia* lack of adequate protection and/or in pursuit of better opportunities. It was noted in this respect that almost all of the recent extra-continental arrivals to the Americas were promised by transnational criminal networks to be smuggled into the USA or Canada.

Several positive examples were mentioned to illustrate how the protection of refugees in the Americas could be improved. The Immigration and Refugee Board of Canada, for example, has provided financial and technical support to and has cooperated with other countries, including Mexico and Costa Rica. In Argentina, the National Commission for Refugees (CONARE) with the support of UNHCR has established a database for individual profiles of asylum-seekers and refugees in order to facilitate determination procedures and find durable solutions. The Government of Brazil has improved its asylum system through a number of institutional reforms over the past years. It was also generally highlighted that the involvement of civil society organizations has positively impacted on refugee determination procedures and the provision of durable solutions for refugees in countries such as Argentina, Brazil, Uruguay, Panama and Nicaragua.

#### **Recommendations:**

- i. States are encouraged to allocate more resources for enhancing the capacities of national asylum procedures, and undertake trainings to ensure enhanced expertise of staff.*
- ii. All stakeholders are encouraged to promote twining projects and the exchange of good practices through international cooperation and north-south and south-south regional cooperation.*
- iii. States are encouraged to strengthen due process in asylum procedures in the region to address inter alia lack of access to legal representation, lack of access to adequate interpretation and lack of independent appeal procedures.*
- iv. States are encouraged to enhance cooperation with civil society organizations, including through tripartite agreements with NGOs and UNHCR, and to replicate good practices in the region, such as involving NGOs in the counseling of migrants and asylum-seekers, identification of vulnerable cases, monitoring of detention centers and border areas, and provision of legal aid and representation to asylum-seekers.*
- v. Asylum countries could benefit from enhanced information-sharing on migration trends and arrivals of asylum-seekers, as well as on policies and best practices in responding to arrivals.*
- vi. Access to protection for victims of gang-related violence could be strengthened by adopting eligibility guidelines and providing regular country of origin information.*



## b. Trafficked persons

The phenomenon of human trafficking, affecting in particular refugees and migrants, remains on the rise in the Americas and there continues to be a lack of preventative measures, as well as practical tools to identify and address the needs of trafficked persons. Most trafficked persons require particular attention due to the serious impact of the abuses suffered, including lasting effects on their personal integrity. In addition, continuous threats may arise given that trafficking is linked to organized crime.

Participants cautioned that victims of human trafficking are often not identified as such, but instead treated as irregular migrants or even criminals leading frequently to re-victimization and lack of required protection. Furthermore, they noted that the links between trafficking and smuggling networks can lead to the risk of being trafficked for all migrants and refugees using smuggling networks.

The identification of trafficked persons can be a challenging barrier, not least because victims and witnesses of human trafficking are frequently reluctant to report traffickers. They may fear retaliation by the trafficker and in some cases return or detention by the host authority. Authorities need to be trained on how to undertake quick assessment interviews and how to identify trafficked persons among mixed migrant flows. The IOM guidelines for the identification of victims of trafficking were highlighted as a useful screening tool for the identification of trafficked persons.<sup>11</sup> Participants also mentioned that trafficked persons are not always properly informed about their rights and available assistance programmes, including the possibility of applying for a refugee status and/or repatriation. It was highlighted that while trafficked refugees require special protection as victims of human trafficking, they also continue to be entitled to refugee protection.

Participants noted the great challenge of providing effective protection to victims of human trafficking once they are identified. Considering the dynamics of violence and abuse that characterize the trafficking experience, a needs-based approach is crucial to ensure adequate care for trafficked persons, including a risk assessment to ensure security and protection from *refoulement*.<sup>12</sup>

Participants also drew attention to the broader context of the crime of human trafficking and its relationship to economic globalization and an increase in the irregular labour market. Participants referred to various forms of human trafficking, including, for example, trafficking for labour exploitation and internal trafficking which need to be clearly identified and addressed in legislation and public policies to ensure appropriate and differentiated responses. It was stressed that enhanced awareness of the nexus between human trafficking and gender and age issues, as well as masculine sex industries, is crucial to prevent the trafficking of women and children. Participants welcomed that the majority of American States have ratified the 2000 UN Protocol to Prevent and

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<sup>11</sup> IOM Handbook on Direct Assistance for Victims of Trafficking, Screening Interview Form, p. 50, [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/CT%20handbook.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf), 2007.

<sup>12</sup> See United Nations High Commissioner for Human Rights, *Principles and Guidelines on Human Rights and Trafficking*, E/2002/68/Add.1 (2002).



Combat Trafficking in Persons, Especially Women and Children<sup>13</sup> and that a greater appreciation for the magnitude of human trafficking has evolved. As a consequence, there has been an increase in responses, including the establishment of national counter-trafficking coalitions, victim and witness protection initiatives, as well as cross-border cooperation to prosecute traffickers. Some countries in the region, such as México, the Dominican Republic, Guatemala and Costa Rica among others, have also designed and approved specific anti-trafficking legislation. Regional cooperation among public and private institutions on all levels is fundamental to combat the crime of trafficking and to provide for adequate protection safeguards. The Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking adopted by the Regional Conference on Migration was mentioned as a good example of regional cooperation.<sup>14</sup>

Participants noted that while there are increased efforts from various sectors to combat trafficking in persons, there is a need for coordination between these efforts in order to be able to coherently tackle the trafficking phenomenon.

**Recommendations:**

- i. A joint screening instrument should be elaborated by all stakeholders to better identify trafficked persons within mixed migration, and to ensure adequate and timely referrals to assistance and protection mechanisms.*
- ii. Existing cooperation mechanisms should be broadened to include more actors in counter-trafficking initiatives, in particular labour ministries and the private sector given the recognition of the existing nexus between trafficking in persons and the dynamics of labour markets.*
- iii. All stakeholders are encouraged to strengthen national coalitions against trafficking in persons and replicate good practices in countries that have not yet established such a coalition.*
- iv. States are encouraged to integrate counter-trafficking provisions into national legislation and policies concerning migration, labour, gender, children and security.*
- v. States are encouraged to develop common performance indicators in the framework of regional mechanisms and national counter-trafficking coalitions to facilitate the continual follow-up and evaluation of results of regional and national counter-trafficking plans of action.*
- vi. International/regional organizations and civil society organizations are encouraged to carry out a regional study to document the trends and characteristics of internal trafficking.*

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<sup>13</sup> UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

<sup>14</sup> Regional Conference on Migration (RCM), *Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking*, adopted in New Orleans/USA, April 2007.



- vii. *States are encouraged to replicate the good practice of some States to recognize refugee status for those victims of trafficking who fulfill the refugee criteria.*
- viii. *Regional fora could be used to enhance awareness campaigns and to alert societies of the criminal nature of human trafficking and the protection needs of victims. The adoption of guidelines with proper safeguards for the protection of victims of human trafficking as adopted by the Regional Conference on Migration should be replicated in other regional migration fora.*
- ix. *All stakeholders engaged in mixed movement management need to be trained to identify trafficked persons, to appreciate the different forms of human trafficking and to be sensitive to the protection needs of women and unaccompanied/separated children in particular.*

**c. Unaccompanied/separated children**

Participants underlined that many of the protection challenges for refugees and migrants as identified throughout the Conference are aggravated in the case of children, particularly for unaccompanied/separated children. Children are frequent victims of the exploitative practices of trafficking and smuggling networks. They are particularly vulnerable to sexual abuse and gang-related violence in border regions and may also qualify for refugee protection.

Not all States have specific safeguards in place in their processes and procedures to ensure the full respect for the rights and needs of children and to conduct a proper determination of their best interests, particularly concerning unaccompanied/separated children.<sup>15</sup> Border officials are often not equipped and trained to provide children with the required care and assistance in a child-friendly manner. Given the criminal and often violent activities of youth gangs in many regions, including Central America, juveniles are often treated harshly by border officials. Participants noted that juveniles who have broken the law should not be automatically refused access to the asylum procedures and should be treated in accordance with the applicable human rights standards.<sup>16</sup>

Concern was also expressed regarding the non-registration of births and/or difficulties experienced by children born to irregular migrant and refugee parents, particularly in border areas and its impact for the acquisition of a nationality.

In addition, participants referred to the need to protect children left behind by families that have decided to migrate.

It was welcomed that over the past years, Mexico, which is confronted with a particularly high number of unaccompanied/separated children, has sought to enhance protection for unaccompanied children. An Inter-institutional Dialogue on Unaccompanied Children in Mexico

<sup>15</sup> Compare UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6.

<sup>16</sup> See in particular the provisions of the 1989 UN Convention on the Rights of the Child. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.



brings together different State departments, as well as various international agencies to exchange views and experiences. Child protection officers are trained to provide protection to unaccompanied children in accordance with their specific needs. Other encouraging practices from the region were also discussed: in Argentina, unaccompanied children are designated a legal guardian to help identify their best interests and assist them in all legal procedures. Costa Rica has a database in which all cases of unaccompanied children are systematically integrated, and arrangements are made to ensure that unaccompanied children are assisted by trained staff from the national child's welfare institution upon arrival at the border.

**Recommendations:**

- i. *A best interest determination for the child should be undertaken at all stages of the migration process and children should be recognized as rights-holders by involving them in decisions that concern them, according to their age and maturity.*
- ii. *States should guarantee the protection of children and access to their rights, regardless of their migration status, equal to nationals (including the right to education and health) in accordance with the 1989 UN Convention on the Rights of the Child.*
- iii. *States and other key actors are encouraged to design and implement specialized protection and assistance mechanisms for unaccompanied/separated children to ensure implementation of the following protection safeguards: systematic registration (migratory and civil registry), timely designation of a legal representative, the identification of specific protection needs, including those of asylum-seeking children or those who have been trafficked, and referral to special procedures. When return is determined to be in the best interest of the child, it is also essential to ensure consular protection and specific supporting measures.*
- iii. *States are encouraged to ensure that all authorities involved in the protection and assistance of unaccompanied/separated children are equipped with child protection experts. International organizations and specialized civil society organizations could be invited to provide technical support to authorities. Specifically, training on interviewing techniques, specific treatment and assistance for children should be provided to government officials, consular staff, migration and police officials, social assistants, lawyers and judges. Initiating a project to replicate the appointment of child protection officers in Mexico in other countries in Latin America and the Caribbean would be a good practice.*
- iv. *Inter-agency standards for the assistance of unaccompanied children in the region should be elaborated which include differentiated processes and procedures with due regard for the case-specific situation of the children.*
- v. *Joint sensitization activities, as well as prevention campaigns on the risks of unaccompanied/separated or undocumented children's exposure to human rights violations, trafficking and smuggling should be undertaken by all stakeholders to raise awareness.*
- vi. *The promotion of systematic registration of children born to migrant and refugee parents regardless of their legal status could help to avoid statelessness.*



- vii. *Where appropriate, States are encouraged to conclude specific bilateral or regional agreements to ensure safe, dignified and orderly returns. Reception by a parent or legal guardian upon arrival in the country of origin, as well as the existence of reintegration programmes and monitoring activities are important factors to consider prior to returning children.*

**d. Extra-continental refugees and migrants**

For several countries in the region, the arrival of refugees and migrants from countries outside the region (extra-continental movements) is a relatively new phenomenon. It was noted that extra-continental group arrivals are *mixed in nature*. They include migrants and refugees, amongst them unaccompanied/separated children and victims of human trafficking. Extra-continental arrivals present particular challenges for States because they often arrive in small groups and due to language barriers and the lack of consular representations in the region. Difficulties have included the provision of shelter, food, health care, assessment of needs, and consular attention. Furthermore, almost all of the recent extra-continental arrivals to the Americas were promised by smugglers to be taken to the USA or Canada. In order to reach their envisaged destination country, even recognized refugees frequently travel onward without requisite documentation and/or by reliance on smuggler networks operating throughout the continent.

Several participants expressed concern about the practice of some States to automatically detain such arrivals and to indiscriminately reject all asylum claims made by asylum-seekers from outside the region.

Addressing this phenomenon requires the involvement of different government and civil society actors, as well as international organizations, with complementary expertise. Participants noted that many States, in particular in the Caribbean, require further technical and financial assistance and support to create operational systems.

Participants noted the importance of voluntary assisted return programmes for those who wish to return to their country of origin. Yet, return arrangements for extra-continental migrants in the Americas are often impeded by the lack of resources and logistical difficulties such as the issuance of documents for travel. Participants alleged a lack of cooperation between countries of origin, host countries and transit countries in the Americas.

**Recommendations:**

- i. *National authorities and other key partners could nominate a focal point for the arrival of extra-continental refugees and migrants who can closely cooperate with their counterparts to share information on profiles.*
- ii. *Enhanced cooperation between all stakeholders, including international organizations and civil society partners with different types of expertise is needed, as well as support for the Caribbean States to improve their assistance and protection capacities.*



- iii. *UNHCR and IOM should undertake a joint study on the magnitude, trends and protection considerations of extra-continental refugees and migrants.*
- iv. *States in cooperation with international organisations are encouraged to develop profiling mechanisms that could be used to collect information and to refer extra-continental refugees and migrants to differentiated processes and procedures.*
- v. *States and other key actors are encouraged to create regional funds for voluntary return and reintegration programmes.*
- vi. *Stakeholders should promote cooperation with countries of origin to develop common strategies to prevent smuggling of extra-continental refugees and migrants, and to ensure that more decisive action is taken in the prosecution of smugglers.*

#### **4. Durable Solutions for Refugees and Migrants**

Participants agreed that a comprehensive approach to mixed migration includes sustainable solutions for both refugees and migrants. Participants drew attention to the fact that in most countries in the region, national asylum systems focus almost exclusively on identifying asylum-seekers and adjudicating their claims. Less attention is paid to *integrating refugees* and guaranteeing their effective enjoyment of rights after they have been recognized as refugees.

Participants also stressed that solutions must be found for migrants within mixed movements who do not qualify for refugee status and/or complementary forms of protection. Attention was drawn to the problem of “stranded” migrants in the Americas, many of whom have been held in prolonged detention. Return arrangements for non-refugees in the Americas are often impeded by the lack of resources and logistical difficulties such as the issuance of documents for travel through transit countries. This is particularly aggravated in the case of extra-continental migrants. Beyond such logistical and financial constraints, however, it was also acknowledged that some States could place more political priority on resolving situations of prolonged detention. Frequently it is not clear which State department is responsible for situations of prolonged detentions. Participants encouraged civil society organizations in the region to assist in identifying and resolving situations of prolonged detention. Participants stressed the need for States to provide for specific protection safeguards and reintegration measures for unaccompanied/separated children and victims of human trafficking when return is deemed to be the best solution.

Experience in the Americas suggests that people returned will often attempt to leave their country of origin again to travel to their envisaged destination country. Breaking this circle of irregular migration from which smuggling networks profit was identified as the main challenge. In this regard, participants remarked that finding solutions should also include opening channels for regular migration such as labour migration opportunities. Participants commented positively on regularization and amnesty programmes for irregular migrants which have been implemented over the past years by several Latin American countries, for example Argentina (Patria Grande Programme), Brazil, Chile, Uruguay and Venezuela (Identity Mission). Temporary labour migration programmes have also proven to promote regular labour migration and combat labour exploitation.



### **Recommendations:**

- i. *All stakeholders are encouraged to develop programmes to support the local integration of refugees, particularly in areas relating to housing, employment and access to public facilities (health/education.)*
- ii. *States are encouraged to replicate successful regularization programmes for irregular migrants (such as those implemented in Argentina, Brazil and Uruguay).*
- iii. *If return is deemed to be the best solution for unaccompanied/separated children or victims of human trafficking, it is important to ensure proper coordination with the authorities of the country of origin. In addition, reintegration programmes should be promoted and strengthened.*
- iv. *Create funds for the voluntary return of rejected asylum seekers, in particular extra-continental migrants.*

## **5. Cooperation among key partners**

### **a. Cooperation at the national level**

Participants highlighted the need to strengthen cooperation between key partners at the national level, including relevant government authorities, international and regional organizations and civil society. Participants welcomed the variety of cooperation examples in various countries, but recommended to *institutionalize* cooperation with clearly defined referral *procedures*, be it on an intra-governmental level or on the level of State cooperation with civil society or international organizations present at the national level. It was also recommended to make more use of the specific expertise of civil society organizations. Participants agreed that the media should be more integrated in existing cooperation projects aiming at enhancing protection.

Some good practice examples were exchanged to illustrate how cooperation between key partners at the national level might be further enhanced: in Mexico, for example, the government has initiated a human rights plan of action for the identification of gaps in national human rights protection and to put in place concrete projects to address such gaps. Notably, the cooperation network not only comprises of all branches of government (executive, judicial and legislative), but also academia, civil society organizations and the Mexican Ombudsman.

### **Recommendations:**

- i. *States are encouraged to strengthen cooperation on migration issues between all governmental institutions and departments to enhance protection and assistance for those in need of protection, for example through written procedures and regular meeting.*
- ii. *It is important to institutionalize tripartite cooperation between State actors, international organizations and NGOs at the national level, for example in the form of*



*permanent national migration fora or in the form of a coalition for action such as in the case of Mexico.*

- iii. *Stakeholders are encouraged to engage the press in existing protection networks and cooperation on mixed migration to ensure that the needs of refugees and other persons in need of protection are better communicated to the public.*

## **b. Regional mechanisms and dialogue**

Participants expressed their hope that the OAS as one of the co-organizers of the conference will continue to serve as a regional focal point and key partner for States, international organizations, as well as civil society to develop and/or strengthen protection-sensitive migration strategies. Notably, the OAS in close cooperation with the IOM, the Organisation for Economic Cooperation and Development (OECD), the International Labour Organisation (ILO), the Economic Commission for Latin America and the Caribbean (ECLAC) have initiated a “Continuous Reporting System on Labour Migration” (Spanish acronym: SICREMI). The project is currently in its pilot phase and involves nine participating countries which have all designated national focal points for the implementation of the database. A challenge for this project remains in analyzing data to enhance effective protection strategies.<sup>17</sup>

It was acknowledged that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have already provided important guidelines for the treatment of undocumented migrants and refugees. Those States which have not yet ratified the regional human rights treaties and recognized the jurisdiction of the Court were encouraged to do so.

Participants also highlighted the important role of MERCOSUR, the common market of South American States. The Specialized Migratory Forum of MERCOSUR which regularly brings together the immigration directors of the Southern cone (Argentina, Brazil, Uruguay and Paraguay) and associated States is crucial for the development of protection-sensitive policies, as well as for capacity-building and training of key actors in the region. This forum has been a key platform for the adoption of policies to facilitate the movement and regularization of migrants, as well as for the protection of refugees.

Participants emphasized that the regional migration fora in the Americas have been instrumental to enhance sensitivity for protection and human rights considerations within mixed migration throughout the region. The Regional Conference on Migration (RCM) serves as a sub-regional forum in the Americas for the exchange of information and good practices of States in North America and Central America with regard to refugee and migrant protection. The RCM has recognized human rights and refugee protection as key objectives, has incorporated them in its Plan of Action and has adopted guidelines and developed specific frameworks to enhance protection and assistance to persons with specific needs. Yet, participants recognized that protection-sensitive migration

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<sup>17</sup> This database aims at obtaining a better picture of migration movements and sharing it with national policy makers. It will contain information on migratory trends in the region and monitor changes in the demographic profiles of migrants through indicators such as gender, age, education, countries of origin and destination, as well as on labour sectors and others.



strategies in line with human rights and refugee protection standards could be further advanced within the RCM.

The commitment for the respect of the human rights of migrants and refugee protection has also been underlined in the meetings and Declarations of the South American Conference on Migrations (SCM).

While there is no formal migration forum established in the Caribbean, UNHCR and IOM in cooperation with the Caribbean Community (CARICOM) have organized annual meetings of Caribbean States and territories to discuss migration and refugee issues, including protection considerations within mixed migration. Participants identified CARICOM as a key partner to further institutionalize cooperation between Caribbean States on mixed migration.

The cooperation among stakeholders at the regional level in the Americas is not limited to inter-State cooperation. The Regional Network of Civil Organizations on Migration (RNCOM) working under the framework of the RCM has brought together civil society organizations and has positively influenced its discussions. This open dialogue and cooperation with civil society should be enhanced and replicated in other regional migration fora.

Participants also recommended to utilize the 2004 Mexico Plan of Action to strengthen the International Protection of Refugees in Latin America as an important legal and operational framework for the protection of refugees and internally displaced persons in the region which brings together a variety of actors to fulfill these objectives.

**Recommendations:**

- i. The Co-organizers are encouraged to share the present report of the Regional Conference with the pro tempore presidencies of all regional migration fora. Stakeholders were encouraged to and include follow-up on relevant recommendations in the agenda of the next meetings.*
- ii. All stakeholders should enhance efforts to elaborate and promote the implementation of regional guidelines for the protection of migrants, refugees, victims of human trafficking and unaccompanied/separated children within the existing regional migration fora, most importantly within the South American Conference on Migrations, replicating the good experiences and lessons learned of the Regional Conference on Migration. Ensure effective follow-up and implementation of recommendations and agreements adopted within regional mechanisms.*
- iii. All stakeholders should exchange information on their specialized experience and expertise to provide technical support to the regional migration fora for the further advancement of initiatives and guidelines for the protection of migrants, refugees, victims of trafficking and unaccompanied/separated children.*
- iv. The role of regional mechanisms could be expanded to include capacity-building and sensitizing of national authorities, the media and the general public.*



- v. *The Specialized Migratory Forum of MERCOSUR could be further utilized for the promotion of harmonization and the exchange of good practices on issues such as the facilitation of free movement of persons, the protection of refugees, the regularization of migrants and the adoption of national policies and legislation on protection concerns.*
- vi. *Caribbean States and territories are encouraged to introduce the issue of protection considerations in mixed migration, including the issue of extra-continental and stranded migrants to the CARICOM agenda to identify common challenges of Caribbean States and to develop protection-sensitive strategies for the region.*
- vii. *Participation in regional mechanisms and processes by other branches of government (judicial and legislative) could be increased, as well as participation of other actors, including civil society and the media to strengthen dialogue between the governments and civil society.*
- viii. *States are encouraged to improve regional data-exchange and analysis regarding mixed migration, and to support the OAS database.*