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Regional Conference on Refugee Protection and International Migration in the Americas Protection Considerations in the Context of Mixed Migration

San José, Costa Rica
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1. Background

Migratory movements in many regions, including in the Americas have become more complex in recent years and are increasingly ‘mixed’ in character. People travel together, use the same modes of transport, employ the services of the same smugglers and are exposed to the same risks and abuses, but their motivations for moving differ. For some, the reasons include protection concerns forcing people to flee their home countries for their own security or to protect the integrity and dignity of themselves and their families.

In 2006, the United Nations High Commissioner for Refugees (UNHCR) launched a 10-Point Plan of Action on Refugee Protection and Mixed Migration (10-Point Plan)¹ to assist States to develop comprehensive and protection-sensitive migration strategies. To implement the Plan at a regional level, four different regional stakeholder conferences are being organized, including one in the Americas.² The International Organization for Migration (IOM), as part of its commitment to the principle that humane and orderly migration benefits governments, migrants and society, has also recognized the importance of comprehensive migration policies which address the challenges of mixed migration effectively and in accordance with international law, including protection obligations under human rights and refugee law.³ The Office of the High Commissioner for Human Rights (OHCHR), as well as the UN human rights mechanisms, have highlighted the need for human rights-based migration laws and practices to ensure respect and protection of the rights of all people on the move.

¹ UNHCR’s 10-Point Plan of Action is available at <http://www.unhcr.org/4742a30b4.html>

² These conferences form part of an EC-funded project on the 10-Point Plan. Further information on this project is available at <http://www.unhcr.org/497730212.html>

³ See IOM discussion note to the 2008 International Dialogue on Migration, “The Challenges of Irregular Migration: Addressing Mixed Migration Flows” available at http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/96/MC_INF_294.pdf

The overall contribution of Latin America and the Caribbean to global migration movements amounts to some 25 million people, which is equivalent to more than 13%, according to estimates.⁴ Over the past few years, countries throughout the hemisphere 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 hosting the highest number of migrants and refugees, but also take place to countries outside of the hemisphere (mainly to Europe)⁵. Besides traditional migratory patterns from the south to the north of the continent, increasing south-south migration has been documented, particularly in Latin America. The percentage of women and girls in these intraregional migration movements is particularly high.

Social exclusion, discrimination, inequality, poverty, unemployment, economic crisis, environmental disasters, and major structural reforms in many countries of Latin America and the Caribbean are the main reasons for these movements.

There is, 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.⁶ Others are victims of human trafficking and have been subjected to deception or coercion for the purposes of exploitation. Moreover, 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.

UNHCR offices in Latin America and the Caribbean are also reporting small yet increasing numbers of asylum-seekers from refugee-producing countries in Africa (and to a lesser extent in Asia and the Middle East) who are arriving within much larger movements of migrants from those same regions. A few of these asylum-seekers had already been recognized as refugees in countries neighboring their own. They have traveled to the Americas in search of effective protection and durable solutions which were unattainable in their first countries of asylum.

Protection challenges arising in the context of maritime migration, such as distress situations or interception practices involving boats with migrants and refugees, add to the complex regional migratory picture.

⁴ Between 2000 and 2005, the number of Latin American and Caribbean migrants increased by 400,000. UNDESA, Population Division, Trends in Total Migrant Stock: See <http://esa.un.org/migration/index.asp?panel=1>

⁵ IOM World Migration Report 2008. "Managing Labor Mobility in the Evolving Global Economy"

⁶ 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>

During the period of January 2008 to July 2009, there were at least 260 persons reported drowned or missing at sea in the northern Caribbean region⁷, including a small number of persons who were moving in search of refugee protection. As in other regions, human smuggling is another characteristic feature of irregular migration throughout the region, creating difficult challenges for states which have a legitimate interest in preventing and suppressing transnational organized crime.

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.

Within this environment, UNHCR, IOM and States are confronting increasing difficulties in ensuring adequate protection safeguards for refugees and other categories of persons with protection needs, such as victims of trafficking. States have responded to the challenges of these irregular mixed migratory movements principally by increased control measures, oftentimes without incorporating sufficient protection safeguards. Such application of migratory control measures without protection safeguards can and does result in failures or gaps in protection – for example, cases of *refoulement* or prolonged detention of refugees, asylum-seekers or irregular migrants and denial of access, onward movements of refugees due to the lack of effective access to asylum procedures, lack of attention to increasing numbers of unaccompanied minors, and inadequate protection responses for victims of trafficking.

However, there are also some more encouraging developments, such as a number of innovative protection practices and projects which have been developed mainly within the framework of the 10-Point Plan. International agencies are increasingly joining efforts to address the challenges of mixed migration. One such example in the Americas is the annual seminar on mixed migration that IOM and UNHCR organize in the Caribbean. The identification and referral mechanisms for victims of trafficking in which different agencies participate is another example.

2. The work of regional migration *forum*

Sub-regional migratory *forum*, such as the Regional Conference on Migration (Puebla Process), the South American Conference on Migrations, and the joint IOM/UNHCR seminar series in the Caribbean, have made progress in mainstreaming protection issues in regional migration management policy discussions. For example, new refugee laws have been adopted in various countries, legislation to protect the victims of trafficking has been approved and some countries now grant migrants equal rights to nationals. Intra-regional, free movement agreements (MERCOSUR and CA-4) have also been put in place.

⁷ This figure refers only to the maritime tragedies reported by national authorities and/or Coast Guards as a result of rescue-at-sea operations, and may not reflect the true magnitude of the problem. The total number of deaths on the high seas remains unknown.

The Ibero-American Summit on Migration and Social Development, held in November 2007, in Montevideo, Uruguay⁸ underlined the importance of state respect for international refugee and human rights law when dealing with migration issues, in particular when exercising their right to regulate the entry and stay of aliens in their territories as well as when providing the special protection to be accorded to refugee children.

Despite the progress achieved⁹, the main focus of these migration *fora* has to date been on State coordination. While these *fora* have allowed for some consideration of protection issues, protection concerns and protection responsibilities have not always been at the core of their policy discussions. The sub-regional nature of these *fora* has also limited the sharing of information, state cooperation, and transfer of best practices between countries and across different sub-regions in the hemisphere.

3. The Regional Conference

At the December 2007 High Commissioner's Dialogue on Protection Challenges ("the Dialogue") hosted by UNHCR, High Commissioner António Guterres strongly emphasized the need to uphold the rights and protect the welfare of all people, whatever their reasons for moving. The Dialogue drew attention to the need for coherent, comprehensive and integrated approaches to migration challenges, reconciling the responsibility to protect refugees and other persons with specific needs with the legitimate tasks of law enforcement, border control and migration governance. The Dialogue also called for increased collaboration among the international organizations concerned.¹⁰

In follow-up to the Dialogue, UNHCR has been organizing a series of regional conferences on refugee protection and international migration. This third conference responds to the mixed migratory movements in the Americas. It is hosted by the Government of Costa Rica and organized jointly by UNHCR, the Organization of American State (OAS) and IOM, in cooperation with OHCHR. The conference is supported by the United Nations Children's Fund (UNICEF), the UN Office on Drugs and Crime (UNODC), the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Institute of Human Rights (IIHR).

⁸ Information on the Summit is available at <http://www.acnur.org/biblioteca/pdf/4604.pdf>

⁹ Member States of both the Regional Conference on Migration and the South American Conference on Migration have reiterated their commitment to refugee protection and the respect of human rights of migrants in their declarations, plans of action and regional guidelines. Protection safeguards for asylum-seekers and refugees in the case of the return of regional and extra-regional migrants as well as for the return of child victims of trafficking and the return of unaccompanied minors have been duly incorporated in the regional guidelines adopted by the Regional Conference on Migration (Puebla Process). Further information is available at http://www.acnur.org/paginas/index.php?id_pag=6253

¹⁰ Further information on the first High Commissioner's Dialogue on Protection Challenges is available at <http://www.unhcr.org/476146702.html>

This regional conference intends to raise the profile of protection considerations in the context of regional migration dynamics and to encourage management approaches which respect protection imperatives. The results of these discussions will be used *inter alia* by UNHCR to develop a region-specific implementation strategy based on the 10-Point Plan.

3.1 Objectives

The development of protection-sensitive migration strategies requires a holistic and collaborative approach built on strong partnership between States, international organizations, academia and civil society organizations. Taking stock of and building upon the work of the regional *forum* on migration, this Regional Conference will offer participants an opportunity to:

- Identify the main protection challenges in a mixed migratory context in the Americas, including those specifically relating to refugees;
- Gather good practices and lessons learned related to the identification and protection of refugees, victims of trafficking and migrants with specific needs;
- Develop recommendations related to protection safeguards in migration control measures and border management;
- Identify areas where States require more targeted support from UNHCR, IOM and other international and non-governmental organizations to develop and implement protection responses within the mixed migration context;
- Enhance information-sharing and dialogue between international organizations with complementary mandates, and identify new avenues of inter-agency cooperation at national and regional level; and
- Contribute to a regional perspective to the global development of UNHCR's policy framework on international protection and mixed migration (10-Point Plan of Action), and strengthen the 10-Point Plan as an instrument of joint action in the Americas region.

3.2 Participation

Representatives from 20 States, as well as some academics and civil society representatives from North America, Latin America and the Caribbean are invited. The selection of States has been made according to the following criteria: 1) countries most affected by the dynamics of mixed migratory flows; 2) main destination countries in the Americas, and 3) countries which currently hold the Presidency *pro tempore* of the main regional migration *fora*.

The organizers also invite national and regional organizations that have an interest in the refugee protection or broader protection dimensions of mixed migration, based on their complementary mandates and expertise.

3.3 Proposals for the agenda

Additional to a limited number of presentations in the plenary, thematic working groups will be set up to address the topics, so as to ensure an open dialogue among participants. The working groups will deliberate separately and report back to the plenary sessions. The main conclusions and recommendations of the Conference will be shared with all participants, and the presentations will be published.

Introductory sessions:

- Opening session
- Regional migration trends and patterns in the hemisphere
- Overview of key regional protection challenges
- Profile of refugee and asylum-seeking populations in the hemisphere
- The 10-Point Plan in Action in the Americas

Suggested topics for the Working groups / thematic sessions:

- **Protecting human rights of people on the move irrespective of status** (preventing abuses during travel and stay, ensuring rescue at sea, access to proper and non-discriminatory reception arrangements taking into account applicable international norms and standards).
- **Identification, profiling and referral mechanisms** (differentiation at entry points; access to territory, identification and profiling tools, cooperation of intergovernmental and non-governmental organizations).
- **Asylum-seekers and refugees** (access to asylum procedures, mixed motivations in the context of refugee movements, smuggled refugees and asylum seekers, onward/secondary movements of asylum-seekers and refugees, durable solutions).
- **Victims of human trafficking** (awareness campaigns; identification, protection, referral mechanisms, trafficking-asylum nexus, safe accommodation; legal, medical and psychological support; voluntary return to the country of origin, and reception and reintegration upon arrival).
- **Children** (protection, asylum-seeking children, child victims of trafficking, best interest determinations and solutions).
- **Victims of physical or sexual violence or trauma.**
- **Protection-sensitive entry systems** (risks of human smuggling, protection-sensitive control mechanisms).
- **Intra-regional cooperation** (sharing good practices and lessons learnt.)

Closing sessions:

- Reporting back of Working Groups
- Synthesis, recommendations and next steps