

REGIONAL CONFERENCE ON REFUGEE PROTECTION
AND INTERNATIONAL MIGRATION IN THE AMERICAS -
PROTECTION CONSIDERATIONS IN
THE CONTEXT OF MIXED MIGRATION



BACKGROUND DOCUMENT

**Refugee Protection and
International Migration in the Americas:
Trends, Protection Challenges and Responses**

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Executive Summary

The Americas hemisphere has witnessed a significant increase in international migration since the 1970s, as elaborated in Section 1 of this paper. The main destinations of these movements are the United States of America and Canada, with some migrants heading for other traditional destinations in South America and the Caribbean. Their overall number has been estimated at 52.5 million.

While most of those on the move are in search of better economic opportunities, there are also persons present in broader migration movements who are primarily fleeing persecution, armed conflict, generalized violence, human rights abuses, or a combination thereof. By comparison with overall migration figures for the hemisphere, their numbers are thought to be relatively small (800,000) and to vary greatly from one country to another. The largest groups are from Colombia and Haiti. The presence of asylum-seekers from countries outside the Americas has been a constant feature of recent decades. Since 2005 a steady increase of migrants and refugees has been observed in some countries of migrants arriving from Africa and Asia. These extra-regional arrivals have drawn much attention, due in part to their arrival in groups directed by human smugglers.

The vulnerability of these individuals to risks commonly associated with cross-border movements is highlighted in part two of the paper. The most dangerous risks are those associated with human trafficking, and the use of precarious means of transport. While mortality rates among migrants *en route* cannot be determined with accuracy, incidents of death while crossing borders or at sea remain high. Other forms of violence and abuse also threaten migrants' safety. These can include kidnappings, theft and destruction of identity documents, robbery, assault, sexual violence, extortion, and even murder. The risks faced by unaccompanied children are especially alarming. Although reliable data is not available on these risks and their consequences, there are indications that the number of victims is increasing.

Asylum-seekers face additional hazards when reception facilities are inadequate to meet their specific needs and when they are denied access to determination procedures. The consequences of expulsion or repatriation are particularly serious for refugees, due to the risks of persecution or serious human rights violations upon return. The paper identifies a series of institutional hurdles that asylum-seekers and refugees face, notably in countries where legal frameworks and asylum policies are deficient. Domestic legislation and administrative practice, when not in line with International Refugee and Human

Rights Law, can also bar access to vital documentation and impede integration within host communities.

The paper describes, in part three, a wide range of initiatives taken at national, regional and sub-regional levels, aimed at addressing the specific protection needs of individuals within broader migratory movements. They mainly include consultative mechanisms and policy statements by institutions such as the Organization of American States (OAS), the Ibero-American Conference, and the Southern Common Market (MERCOSUR). Special mention is made of initiatives taken under various regional processes, notably the Regional Conference on Migration, in the field of training and information exchange.

Part three of the paper also enumerates protection measures taken at the national level throughout the region. These measures include protection available through the refugee protection regime, as well as other forms of protection which address specific needs of, for example, trafficked persons, unaccompanied children outside their country of origin, people at risk of being subjected to torture and migrant victims of criminal activity, who cannot return to their country of origin without risks.

The paper concludes with a series of recommendations ranging from enhanced cooperation among key actors, to improved data and exchange of information, to more specific protection measures including at borders, referral procedures, differentiated treatment, and reception arrangements. Out of these, the recommendations indicated below most specifically address the conference topic, in particular the identification and protection of refugees and people with specific needs:

- States to promote stronger partnership among national governmental institutions, such as refugee commissions, migration offices, border agencies, and national human rights institutions, through the creation of intergovernmental coordination bodies, the organization of joint training activities and the establishment of referral mechanisms;
- International organizations to enhance inter-agency coordination, including through the establishment of a joint regional task force and development of Standard Operating Procedure (SOPs) to respond to the protection and assistance needs of different groups of people;
- States, with the support of other stakeholders, to put into operation the achievements of regional migration *fora* by developing implementation strategies and by fostering the design and implementation of projects for the protection of refugees and other groups with specific needs, taking into account age, gender and diversity considerations;

- States and relevant stakeholders to undertake research on the situation of victims of trafficking and unaccompanied minors involved in mixed movements in the Americas;
- States to promote alternatives to detention and to ensure that detention practices comply with international and regional human rights standards;
- States to develop mechanisms involving different actors to distinguish among the various categories of persons involved in mixed migratory movements, and to refer them to the appropriate authorities for a formal determination of their asylum claims and of other follow up procedures and processes;
- States, international organizations and members of civil society to ensure the proper assessment of the needs of trafficked persons, unaccompanied children and victims of sexual and physical abuse including under the refugee protection framework;
- States to establish an asylum procedure that is both fair and efficient and which applies the refugee definition in line with applicable international and regional standards, including those outlined in the 1984 Cartagena Declaration on Refugees;
- States, international organizations and members of civil society to implement differentiated protection responses tailored to the specific needs of indigenous peoples and Afro-descendants, including the assessment of their needs for international protection as refugees;
- States, with the support of international organizations and members of civil society, to undertake best interests determinations (BIDs) in line with the Convention on the Rights of the Child;
- States and international organizations to further promote and support the initiatives of civil society organizations which address the different protection needs of people on the move; and
- Relevant stakeholders to ensure the provision of information, including on mechanisms to denounce abuses and/or any form of exploitation.

Introduction

1. In 2004, 20 countries in Latin America adopted the Mexico Plan of Action (MPA) to Strengthen the International Protection of Refugees in Latin America.¹ This regional initiative remains a key strategic and operational framework to address the humanitarian consequences of “forced displacement in Latin America, particularly the Andean Region”.
2. Despite its subregional and population-specific scope, the MPA noted then that “with the exception of the Andean region, asylum-seekers and refugees are caught up within migratory flows across the continent”. It further recognized that “the region also provides protection and durable solutions to refugees from other continents”.
3. Today, 5 years after the adoption of the MPA, it is ever more apparent that the movement of people across international boundaries has grown in magnitude and complexity in the Americas. Building upon progress made under the MPA² and taking into account the context of mixed movements, it is therefore important to give more consideration to the broader and interrelated conditions of international migration surrounding refugee protection in this part of the world, and also to the complementarity of the MPA and UNHCR’s *10-Point Plan of Action on Refugee Protection and Mixed Migration*.³
4. To follow-up on the implementation of the *10-Point Plan of Action on Refugee Protection and Mixed Migration*, UNHCR initiated in 2007 a number of activities worldwide, including a series of regional stakeholders conferences on refugee protection and international migration. The third of such conferences⁴, hosted by

¹ *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004. Available at: www.unhcr.org/refworld/docid/424bf6914.html. (All weblinks contained in this paper were accessed in November 2009.)

² In 2007, UNHCR took stock of the main results attained under the framework of the MPA in Latin America. See UNHCR, *Mexico Plan of Action: The impact of regional solidarity*, 2007. Available at: www.acnur.org/biblioteca/pdf/5483.pdf.

³ In 2006, the United Nations High Commissioner for Refugees (UNHCR) issued the *10-Point Plan of Action on Refugee Protection and Mixed Migration* to assist States worldwide in developing comprehensive and “protection-sensitive” migration strategies and incorporating refugee protection considerations into these broader schemes. See UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1. Available at: www.unhcr.org/refworld/docid/45b0c09b2.html.

⁴ The Conference was funded by the European Commission and the United States Department of State, Bureau for Population, Refugees and Migration.

the Government of Costa Rica and organized jointly by UNHCR, the OAS and IOM, in cooperation with OHCHR, discussed mixed movements in the Americas⁵.

5. This background document aims to raise protection considerations in the context of mixed migration dynamics in the Americas by providing an overview of the main migration trends, demonstrating that migratory movements in the region include a refugee component, and presenting a brief description of some of the key protection challenges and responses identified in the region.

⁵ A Summary Report of the Conference is available at: www.acnur.org/biblioteca/pdf/7702.pdf

1. Mixed Migratory Movements in the Americas

1.1 Regional migration trends

6. As a region, the Americas host more than a quarter (52.5 million) of the total global number of persons residing outside their countries of origin (195.2 million).⁶ While international migration affects each country in the Americas differently, certain general patterns can be identified. These are briefly described in the following paragraphs and summarized in Tables at the end of the document.

1.1.1 Increasing international migration in the Americas

7. International migration in the region increased significantly in the last quarter of the twentieth century. The relatively stable figure of approximately 19 million international migrants in the 1960s and 1970s increased sharply at the beginning of the 1980s reaching more than 52 million people in 2005.⁷ It is estimated that this figure will reach 57.5 million during 2010. This significant growth is almost exclusively due to the influx of migrants in North America.

8. The share of the total number of migrants hosted by *North America* increased from 16.6 per cent in 1960 to 23 per cent in 2005. It is not expected to change significantly before 2010. At the same time, the number of international migrants has more than tripled since 1960 when it stood at 12.5 million, rising to 45.6 million in 2005.

9. The situation is different in *Latin America and the Caribbean region* where the total number of immigrants has remained more or less constant with approximately six million people, but the proportion of the total number of immigrants worldwide hosted by this region dropped from 8 per cent in 1960 to 3.5 per cent in 2005.⁸ In contrast, the estimated total number of emigrants from Latin America and the Caribbean stood at nearly 25 million in 2005, marking a

⁶ UN Department of Economic and Social Affairs, *International Migration Stock: The 2008 Revision*, July 2009, POP/DB/MIG/Stock/Rev.2008. Available online at: <http://esa.un.org/migration/>.

⁷ UN Department of Economic and Social Affairs, *World Economic and Social Survey 2004*, 2004, E/2004/75/Rev.1/Add.1. Available online at: www.un.org/esa/policy/wess/wess2004files/part2web/part2web.pdf.

⁸ Immigrants also represent a smaller percentage of the national population (declining from 2.8% in 1960 to 1.2% in 2005).

rapid increase of 4 million people since the year 2000.⁹ This figure represents 13 per cent of the total number of international migrants worldwide, thus revealing that a significant number of people from this subregion live outside their countries of origin.¹⁰

10. In the year 2000, Mexico (9.2 million) and Colombia (1.4 million) stood out as the major migrant-producing countries in Latin America and the Caribbean. Several other countries had more than 500,000 of their nationals living abroad at that time.¹¹ It is reasonable to assume that, based on the rapid increase experienced since 2000, other Latin American countries have also exceeded the threshold of 500,000 emigrants.

1.1.2 North America: the main destination

11. The *United States of America* is the major pole of attraction for migrants from both the region and from around the world. Today, one in every five migrants worldwide chooses the United States of America as his/her final destination.¹² In 2005, the number of migrants in the United States of America was estimated at 38.4 million people, which represented nearly 13 per cent of its total population.¹³

12. There has been an important movement of migrants originating from Latin America and the Caribbean towards the United States of America. Currently, this group of migrants represents approximately 55 per cent (close to 18 million persons) of the total number of international migrants in the United States of America.¹⁴ In fact, three of every four migrants from Latin America and the Caribbean choose the United States of America as their destination.¹⁵ People from other regions of the world choosing the United States of America as their final

⁹ ECLAC, *International Migration, Human Rights and Development in Latin America and the Caribbean*, LC/G.2303(SES.31/11), 12 March 2006, Montevideo, Uruguay. Available online at: [www.eclac.org/publicaciones/xml/4/24024/DGI-2303\(SES.31-11\)-Migration-web.pdf](http://www.eclac.org/publicaciones/xml/4/24024/DGI-2303(SES.31-11)-Migration-web.pdf).

¹⁰ *Ibid.*

¹¹ Cuba, El Salvador, Brazil, Dominican Republic, Jamaica, Peru, Ecuador, Haiti, Guatemala, and Argentina.

¹² See UN Department of Economic and Social Affairs, *Trends in Total Migration Stock: the 2005 Revision*, POP/DB/MIG/Rev.2005/Doc, February 2006. Available online at: www.un.org/esa/population/publications/migration/UN_Migrant_Stock_Documentation_2005.pdf.

¹³ See UN Department of Economic and Social Affairs, *supra* footnote 7.

¹⁴ *Ibid.*

¹⁵ By nationality, Mexicans are the leading group of Latin American migrants in the United States of America (9.2 million). Nationals from countries in Central America are also represented, especially El Salvador (817,335), Guatemala (480,665), and Honduras (282,850). In the case of South America, Colombia (509,870), Ecuador (298,625) and Peru (278,185) are the main countries of origin. In the Caribbean, Cuba (872,715), Dominican Republic (687,675), and Jamaica (553,825) stand as the top three countries of origin. See ECLAC, *supra* footnote 9.

destination originate primarily from Asia (26.8 per cent) and Europe (13.1 per cent).¹⁶

13. According to UN estimates, the number of migrants in *Canada* reached more than 6 million people in 2005, representing nearly 19 per cent of the country's total population.¹⁷ The number of migrants in Canada from Latin America and the Caribbean rose to more than 700,000 people in 2006, representing nearly 11 per cent of the total number of foreigners settled in the country.¹⁸

1.1.3 Other destinations of intra-regional migration

14. It is estimated that intra-regional migration in *Latin America and the Caribbean* involves more than 3 million people.¹⁹ This type of migration has traditionally been concentrated in a small number of destination countries, notably Argentina, Venezuela, Brazil, and Mexico. Other countries in the region, such as Costa Rica, Paraguay, Chile, and the Dominican Republic, also host a significant number of immigrants.²⁰ The majority are women.²¹

15. In *Mexico and Central America*, three distinct trends are observed currently: (1) the recurrent movement of Guatemalans to the southern region of Mexico,

¹⁶ By 2007, the two major countries of origin outside Latin America for migrants in the United States of America were the Philippines (4.5%) and China (4.1%), excluding Taiwan. In 1990, the Philippines (4.6%) was also the major non-Latin American country of origin of migrants in the United States of America, followed by Canada (3.8%). See Migration Policy Institute. *Migration Information Source*. 2009. Available online at: www.migrationinformation.org/DataHub/state.cfm?ID=US

¹⁷ UN Department of Economic and Social Affairs, *International Migration Report 2006: A Global Assessment*, 2009, ESA/P/WP.209. Available online at: www.un.org/esa/population/publications/2006_MigrationRep/report.htm. The 2006 national census in Canada revealed that the foreign-born population had grown by 13.6% since 2001, and that the majority of migrants (58.3%) continued to arrive from Asia, notably China (14.0%), India (11.6%), Philippines (7.0%), and Pakistan (5.2%). See Statistics Canada, *Immigration in Canada: A portrait of the Foreign-born Population, 2006 Censuses*. December, 2007. Available at: www12.statcan.ca/census-recensement/2006/as-sa/97-557/pdf/97-557-XIE2006001.pdf.

¹⁸ In 2001, Latin American and Caribbean migrants accounted for 8.9% of the total foreign-born population. At that time, it was estimated that two out of three regional migrants came from the Caribbean, in particular from Jamaica (120,000), Guyana (83,000), Trinidad and Tobago (64,000), and Haiti (53,000). See ECLAC, *América Latina y el Caribe: migración internacional, derechos humanos y desarrollo*, 2008, available at: www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/9/34889/P34889.xml&xsl=/celade/tpl/p9f.xsl&base=/tpl-i/top-bottom.xslt. In 2006, however, migrants from Latin America and the Caribbean accounted for 10.8%, while Colombia (2.3%) and Mexico (1.5%) were the leading countries from the region. See Statistics Canada, *supra* footnote 17.

¹⁹ See ECLAC, *supra* footnote 9.

²⁰ See UN Department of Economic and Social Affairs, *supra* footnote 7.

²¹ See ECLAC, *supra* footnote 9.

composed to a large extent of seasonal and temporary workers; (2) an intense flow of Central American immigrants to Costa Rica (especially from Nicaragua), and to a lesser extent to Belize (especially from Guatemala and El Salvador); and (3) the transit of Central and South American migrants through the territories of Mexico and Central American countries, *en route* to the United States of America.²²

16. In *South America*, Argentina has been the preferred destination of people from neighbouring and nearby countries searching for work opportunities.²³ Similarly, for many years, Venezuela has been a major pull for citizens from countries in the Andean region. Other countries, such as Paraguay and Chile, have also seen an increase in the number of immigrants and in return migration, although a significant number of their nationals continue to live abroad.

17. Migration in *the Caribbean* is complex, given the region's long tradition of international mobility. The most visible manifestation of undocumented migration in the Caribbean region may be the movement of persons by sea towards the United States of America. The predominant migrant populations using maritime routes are Cuban, Haitian and Dominican nationals. However, Caribbean migration is not limited to maritime movements, nor is it limited only to the United States of America or Canada as principal destinations. Intra-Caribbean migration is very prevalent and, in recent years, there has also been a notable increase in the number of extra-regional migrants arriving to the Caribbean, primarily from Africa, in an irregular manner.²⁴

1.1.4 Destinations outside the region

18. Latin American and Caribbean migrants are increasingly heading to outside destinations, involving an estimated 3 million people. While Spain and Japan are the most frequent countries of destination, there are significant numbers of migrants from the Caribbean in the Netherlands and the United Kingdom as well as some South Americans in Italy, France and Portugal.²⁵

²² See ECLAC, *supra* footnote 18.

²³ *Ibid.* .Historically, nationals of Chile, Paraguay, Bolivia, Brazil, Uruguay, and more recently Peru, have accounted for 2% or 3% of the overall Argentinean population.

²⁴ International immigrants make up more than 10% of the population in half the countries in the Caribbean region, with countries such as Guadeloupe, Martinique, Netherlands Antilles, Trinidad and Tobago, and the Bahamas as some of the preferred destinations. With only few exceptions (most notably Bahamas and Jamaica), the large majority of such immigrants come from other Caribbean countries. See UN Department of Economic and Social Affairs, *supra* footnote 7.

²⁵ See ECLAC, *supra* footnote 9. Other countries, such as Australia and Israel, have also attracted persons from Latin America, especially Chileans and Argentineans.

1.1.5 The growing phenomenon of irregular migration

19. By definition, the size of irregular migration is difficult to determine. However, bearing in mind the upward trend of international migration in the region, it is reasonable to assume that irregular migration is also on the rise. Although there are no figures as to how this phenomenon affects the Americas as a whole, some countries produce rough estimates of the number of unauthorized aliens in their territories. They include the United States of America, as a major destination for migrants in the region and around the world, where the overall unauthorized immigrant population was estimated between 11.6 million and 11.9 million individuals for 2008.²⁶

20. Two other indicators provide useful, albeit partial, country-level information on the number of irregular migrants. The first indicator is the number of individuals applying to migratory regularization programmes. In Argentina, for example, the “*Patria Grande*” Programme enabled 552,909 individuals, mainly from Paraguay, Bolivia, and Peru, to regularize their migratory situation between April 2006 and January 2008.²⁷ The second indicator is the number of deportees: in the case of Mexico, 46,695 individuals were deported to their home countries between January and August 2009, mainly to Guatemala (45 per cent), Honduras (36 per cent) and El Salvador (15 per cent).²⁸

1.2 Selected categories of people on the move

1.2.1 Asylum-seekers and refugees

21. As of 2009, countries in *the Americas* provide asylum to 803,500 refugees from all corners of the world. This represents 7.6 per cent of the world’s refugee population, which was estimated at 10.5 million at the end of 2008.²⁹ The majority

²⁶ See respectively, United States Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008*, 2009. Available online at: www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf. See also Pew Hispanic Center, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow, 2008*, Available online at: <http://pewhispanic.org/files/reports/94.pdf>.

²⁷ See presentation by Adriana Alfonso from the Dirección Nacional de Migraciones of Argentina during the Special Meeting on Current Topics in International Refugee Law, CP/CAJP-2570/08 rev.1 corr.1. Available online at: http://scm.oas.org/doc_public/ENGLISH/HIST_08/CP19783E04.doc.

²⁸ Instituto Nacional de Migración, *Eventos de extranjeros devueltos por la autoridad migratoria mexicana, según país de nacionalidad*, 2009. Available online at: www.inami.gob.mx/estadisticas/2009/agost/cuadro3.2.1.xls.

²⁹ UN High Commissioner for Refugees, *Regional Strategic Presentation Summary of the Bureau for the Americas: 44th Meeting of the Standing Committee*, 23 February 2009. Available online at: www.unhcr.org/49a2d7932.pdf.

of refugees in the Americas is hosted by the United States of America (279,548 refugees), Venezuela (200,161 refugees), Canada (173,651 refugees), and Ecuador (101,398 refugees), and represents nearly 94 per cent of all refugees and other persons in need of international protection in the region. These four countries also receive the largest share of asylum applications in the region.

22. In *Latin America*, the armed conflict in Colombia has caused forced displacement in large numbers. Statistics for 2009 indicate that more than 3 million Colombians are internally displaced and over 350,000 individuals have crossed the border into neighbouring or nearby countries to seek protection.³⁰ It is estimated, however, that the number of persons in need of international protection in the region is much higher than reflected in the statistics. Refugees in countries within the Andean region, especially in Venezuela and Ecuador,³¹ mostly consist of individuals who, in spite of being eligible for international protection, have not requested refugee status for security reasons and/or to avoid stigmatisation. Many Colombians have sought international protection in other countries, including Panama and Costa Rica, as well as more distant destinations such as the United States of America, Canada, Chile, Brazil, and Argentina.

23. From the *Caribbean*, Haitians account for the second largest refugee group in the hemisphere, with refugee flight a prominent feature during times of political instability and due to the activities of illegal armed groups that have affected the country in recent years. Today, there are more than 23,000 recognized Haitian refugees in the region, 75 per cent of whom are hosted by the United States of America. Canada, Mexico and Jamaica are also important asylum countries for Haitian refugees, albeit in relatively small numbers in the latter two countries.

24. Almost all countries in the hemisphere receive asylum-seekers and refugees from other regions outside the continent. The scope of the situation, however, varies greatly depending on specific sub-regions and countries. For countries such as the United States of America, Canada, and Brazil, so-called extra-regional refugees generally make up the larger part of the refugee population. In the case of Brazil, for instance, nearly 80 per cent of the refugee population is composed of extra-regional refugees, mainly from Angola and the Democratic Republic of Congo.

25. Extra-regional asylum-seekers and refugees represent a growing group in other countries as well, especially since 2005. In Argentina, for example,

³⁰ UN High Commissioner for Refugees, *supra* footnote 29.

³¹ In Ecuador, the national authorities launched a registration campaign in March 2009 aimed at documenting around 50,000 Colombians in need of international protection living in the Ecuadorian Northern provinces.

individuals from Senegal have been the largest asylum-seeking population by nationality for the past four years. Other countries, including Ecuador, Venezuela, Colombia, Panama, Costa Rica, and Mexico, have received significant numbers of asylum-seekers from Africa (especially from Somalia, Eritrea, and Nigeria) and Asia (especially Afghanistan, Iraq, Bangladesh, and Nepal) in recent years. A similar trend has been noted in specific countries in the Caribbean, with the majority of extra-regional asylum-seekers mainly from African countries arriving in Trinidad and Tobago.

26. The United States of America stands out as the most important refugee resettlement country in the world. In its 2008 fiscal year, the United States of America admitted 60,200 refugees through its resettlement programme. Canada, for its part, has also been among the top resettlement countries in recent years, with a total of 10,800 refugees resettled in 2008. Since 2005, countries in Latin America (mainly Argentina, Brazil, and Chile) have emerged as new resettlement countries, albeit on a smaller scale, particularly for Colombian refugees formally recognized in Ecuador and Costa Rica. The resettlement programmes in Brazil and Chile, moreover, were extended in 2008 to benefit Palestinian refugees.³²

1.2.2 Trafficked persons

27. In the Americas, as elsewhere, understanding the true scope and trends of international human trafficking is a great challenge, due to the absence of accurate data. UNODC has collected data on various aspects of the phenomenon worldwide, including the number of trafficked persons identified. From 2003 to 2007, there were slightly over 3,000 trafficked persons identified in 24 countries in the Americas.³³ This data, however, relates primarily to known cases being investigated or prosecuted through criminal justice systems and, as such, does not provide a complete picture as to the extent or trends of the phenomenon of human trafficking in the region.

28. UNODC also collected information on the victims from the Americas region detected in other countries around the world. In Spain, for example, a total of 4,571 trafficked persons were identified by the national authorities in the years 2005 and 2006, including 966 Brazilians, 204 from Paraguay, and a few Colombians. The report revealed that a smaller number of trafficked persons from the Americas were also identified in other European countries and in Israel.³⁴

³² UN High Commissioner for Refugees, *supra* footnote 29.

³³ UN Office on Drugs and Crime, *Global Report on Trafficking in Persons*, February 2009. Available online at: www.unodc.org/documents/Global_Report_on_TIP.pdf.

³⁴ *Ibid.*

29. IOM has also gathered information on the situation of human trafficking in several countries in the region. In Argentina for instance, from 2002 to 2006, a total of 150 trafficked persons were identified and assisted, mostly cases of domestic trafficking. Cases of transnational trafficking involved nationals from Paraguay and, to a lesser extent, from Brazil and the Dominican Republic.³⁵ In Chile, 128 individuals were identified as victims of transnational trafficking, of whom 50 Chinese were the largest group. Other trafficked persons were nationals of countries in the region, including Paraguay, Peru, Bolivia, and Colombia.³⁶

1.2.3 Unaccompanied minors outside their countries of origin

30. There is no overall estimate of the number of unaccompanied children outside their country of origin in the region. Information available at the national level is generally produced in the context of immigration or child welfare systems. Although the data provide only an overview of the number of unaccompanied children who were detected by the national authorities, such figures are a useful indicator of the magnitude of the problem in given countries. It should be noted, however, that the information produced by the country of destination and that produced by the country of origin for a given period do not always yield the same results.

31. According to one source, the number of unaccompanied children outside their country of origin and under the custody of the US Office of Refugee Resettlement – an agency of the Department of Health and Human Services – was very similar for fiscal years 2005 to 2007: 8,015 (2005), 8,160 (2006), and 8,227 (2007).³⁷ During this three-year period, approximately 80 per cent of all children in custody originated from El Salvador, Guatemala, and Honduras. Three out of four children were males.³⁸

32. In Mexico, the National Institute of Migration reported that 17,553 unaccompanied Mexican minors were repatriated from the United States of America in 2007. That same year, some 5,983 unaccompanied children outside their country of origin were found in different locations throughout Mexico.³⁹

³⁵ IOM, *La Trata de Personas en Argentina, Chile y Uruguay*, 2008. Available online at: www.oimconosur.org/varios/_archivos/investigacion_trata.pdf.

³⁶ IOM, *Investigación sobre trata de personas en Chile*, 2008. Available online at: www.oimconosur.org/archivos/descarga.php?id=../imagenes/archivos/145.pdf&name=Investigación%20sobre%20trata%20de%20personas%20en%20Chile.

³⁷ See report prepared for the Congressional Research Service by Mr. Chad Haddal entitled *Unaccompanied Alien Children: Policies and Issues* in January 2008. Available online at: <http://opencrs.com/document/RL33896/>.

³⁸ *Ibid.*

³⁹ Instituto Nacional de Migración, *Boletín No. 266/08*, September, 2008. Available online at: www.inami.gob.mx/index.php?page/boletin170908.

33. Finally, a recent study based on the 2001 national censuses of three countries, including Argentina and Chile, suggests that a conservative estimate of the number of unaccompanied alien children in Argentina and Chile reached 3,830 and 1,710 minors, respectively.⁴⁰

⁴⁰ See Yaqub, Shahin (2009), 'Child Migrants with and without Parents: Census-Based Estimates of Scale and Characteristics in Argentina, Chile and South Africa'. *Innocenti Discussion Paper* No. IDP 2009-02. Florence: UNICEF Innocenti Research Centre. Available online at: www.unicef-irc.org/publications/pdf/idp_2009_02.pdf.

2. Protection challenges affecting individuals or groups in mixed migratory movements

34. The crossing of international boundaries has become a dangerous endeavor for thousands of people in the Americas. With the increase in irregular migration, the associated dangers have become more apparent. Despite a well-established body of Human Rights and Refugee Law in the region, the facts remains that people on the move are increasingly facing risks to their lives and physical safety and are exposed to abuses of their human rights.

2.1 Common risks for people on the move

2.1.1 Physical safety

35. Clandestine entry by land or sea poses great risks for individuals. In the United States of America, for example, the number of deaths of migrants crossing its southern border has doubled in recent years, rising from 241 in 1999 to 472 in 2005, with a total death toll of 2,397 victims within this period.⁴¹ A significant number were males who died in different areas of the Arizona desert from heat-related exposure.⁴² The number of incidents of border-related violence, including assault and robbery, perpetrated against migrants by smugglers also increased during the same period.⁴³

36. UNHCR Offices in the region have reported an increasing number of maritime incidents resulting in significant losses of life, in particular in the Caribbean. In the period from January to August 2009 alone, more than 350 individuals were involved in such incidents in diverse locations off the coasts of Florida, the islands of Turks and Caicos, southeast Haiti and in waters near the British Virgin Islands. These situations resulted in 46 confirmed deaths and 118 victims missing at sea. A significant number of the victims originated from Haiti, but there were also other victims from countries such as Cuba and Sri Lanka, all of whom were believed to have been trying to reach the United States of America.

37. UNHCR and its partners regularly receive reports of abuses, including sexual and gender-based violence, committed against migrants and asylum-seekers who transit through Central America and Mexico in their quest to enter the United States of America or Canada. In Mexico, for example, increased cases

⁴¹ See United States Government Accountability Office, *Illegal Immigration: Border-Crossing Deaths Have Doubled Since 1995; Border Patrol's Efforts to Prevent Deaths Have Not Been Fully Evaluated*, August 2006. Available online at: www.gao.gov/new.items/d06770.pdf.

⁴² *Ibid.*

⁴³ *Ibid.*

of kidnapping of migrants for the purpose of extortion have been reported as well as other serious human rights abuses, such as rape, torture and murder. Youth gangs (“maras”) and other criminal groups in border areas between Mexico and Guatemala are also known to prey on irregular migrants as they pass through the territory.

38. Smugglers, in their attempts to avoid law enforcement authorities, have been known to expose desperate migrants, including the elderly, women and children, to unnecessary risks that sometimes end up proving fatal. These risks include abandoning their clients in the middle of the desert or sea, or packing them so tightly into trucks or containers that they die of suffocation.⁴⁴ Smuggled migrants may also fall victim to trafficking, in cases of debt servitude for example, thus rendering them even more vulnerable.

39. As individuals involved in irregular movements may lack information as to the risks involved in the different stages of the migration movement, some States in the region have made important efforts to launch information campaigns to raise public awareness regarding these dangers, including those associated with the trafficking of persons, and other forms of violence.

2.1.2 Reception arrangements and detention practices

40. Only a small number of countries in the region have adequate mechanisms to receive migrants and asylum-seekers lacking economic means in a safe and dignified manner. In Canada, for example, asylum-seekers are eligible for basic social assistance and services from national authorities. Some municipal authorities in Brazil have hosting facilities for vulnerable population where new arrivals can be accommodated.

41. In many countries, however, a lack of material and human resources often impedes the fulfillment of minimum standards and the satisfaction of basic needs of this population, including accommodation, food, clothing, and medical attention. Moreover, there are not any specific reception mechanisms in place to deal with minors, women at risk, ethnic minorities or persons with disabilities.

42. This challenge is even greater in border areas, where reception capabilities are often non-existent. Some encouraging initiatives have nevertheless been undertaken by civil society organizations to help improve the situation in border

⁴⁴ Inter-American Commission on Human Rights, *Third Progress Report of the Rapporteur on Migrant Workers and Their Families*, Juan E. Méndez, 16 April 2001, OEA/Ser./L/V/II.114. Available online at: www.cidh.oas.org/annualrep/2001eng/chap.6.htm.

regions. Examples include *Albergue Belén*⁴⁵ at the southern Mexican border and *Casa de Acogida Maria Peregrina* in the city of Arica near the border with Peru. Both Migrant Houses are run by the Scalabrinian Order of Catholic priests.

43. Automatic administrative detention is widely practised in the region for individuals who enter the territory in an irregular manner to deter people from crossing the border without authorization.⁴⁶ This results in a growing “criminalization” of irregular migration. This is further compounded in countries where there are no facilities in place to ensure that irregular migrants and asylum-seekers are not kept in detention centres along with convicted criminals. A welcomed development has been the announcement, in 2009, by the Department of Homeland Security of the United States of America, of a major overhaul of its detention system to improve conditions and review its alternatives to detention programmes.

44. Migrants and asylum-seekers do not always have the opportunity or the means to exercise their right to request the judicial or administrative review of their detention. The lack of free legal counseling may prevent the individual from challenging the grounds for detention.⁴⁷ In some cases the unavailability of interpreters or translation services, and a general absence of information in a language the individual can understand, can have the same effect.

45. To address this situation, some initiatives in the region aim at providing legal services in the context of migration procedures. In Argentina, the National Migration Office signed a Cooperation Agreement with the Public Ministry of Defense in 2008, setting up institutional mechanisms to facilitate legal and technical assistance to foreigners lacking material resources throughout administrative proceedings and judicial procedures, allowing them to challenge or request the revision of an administrative expulsion order. In Panama, UNHCR and the Norwegian Refugee Council (NRC) jointly opened a Legal Aid Centre to provide free legal aid and representation to asylum-seekers and refugees.

46. Centres where migrants are held - whether in prisons or in migrant detention facilities - are often overcrowded and lack appropriate conditions of

⁴⁵ By offering temporary accommodation and basic services to all migrants travelling through, or arriving in, Tapachula, Chiapas State, the centre provides an alternative to the State-run detention facilities (“migration stations”). Although providing welcome shelter and assistance to migrants and asylum-seekers at the southern border, the Albergue is often unable to accommodate asylum-seekers for the entire period during which their application is being processed. For further reference, see www.migrante.com.mx/Tapachula.htm.

⁴⁶ Inter-American Commission on Human Rights, *supra* footnote 44.

⁴⁷ UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante*, 25 February 2008, A/HRC/7/12, available at: <http://www.unhcr.org/refworld/docid/47cfb2d62.html>

hygiene and security, which exposes migrants and asylum-seekers to health ailments and abuses. Men and women are generally kept in separate facilities, but it is not always possible to take measures to ensure family unity. Moreover, most facilities used for migrant detention in the hemisphere generally do not have the capacity to receive individuals arriving in larger groups, and the authorities are not always prepared for this type of contingency.

47. While the compulsory stay in detention facilities is usually a temporary measure, migrants and asylum-seekers often find themselves spending weeks or even months in such facilities. So-called “stranded migrants”, especially migrants who stay in detention for prolonged and indefinite periods as a result of the lack of capacity of the State to implement a deportation measure, are a common phenomenon in some countries in the region, particularly in the Caribbean.

48. There have been a small but highly publicized number of cases of individuals stranded in so-called “international areas” in airports or similar entry points, where individuals endure dire living conditions during prolonged periods of time. In such cases, the lines of responsibility between immigration authorities, officials from airlines, or the airport’s private operators are often blurred, to the detriment of the rights and well-being of the individuals concerned. In some cases, asylum-seekers have had particular difficulties lodging protection claims before the competent authorities due to their physical location within airports.

49. States frequently have no formal arrangements to address the situation of detained persons with specific protection needs, or to refer them to the competent authorities. Few countries have developed domestic guidelines or protocols to inform such authorities, including immigration, border and police officials, about their roles and responsibilities *vis-à-vis* migrants and asylum-seekers with specific needs. Some training sessions in international refugee law and domestic legislation are facilitated by UNHCR, in cooperation with other actors such as IOM, OAS, OHCHR, UNODC and UNICEF. However, progress on this front is hindered by a lack of clear instructions and an absence of regular training programmes.

2.1.3 Xenophobia and discrimination

50. In general, non-nationals in the region, including migrants and refugees, do not experience frequent acts of violence or xenophobic sentiments on the part of host communities. However, social exclusion and discrimination may manifest themselves in more subtle ways. Forms of hostility by the local people may take the form of jokes or insults or, in worse cases, social stigmatization. This is a situation that affects not only migrants and refugees, but also other groups in society, such as indigenous peoples, Afro communities, the handicapped, and the

elderly. The recommendations adopted at the recent International Conference of Human Rights, Discrimination and Racism, held in September 2009 in Montevideo, Uruguay, represent a positive regional development in this respect.⁴⁸

51. Irregular migrants and asylum-seekers are unfairly associated, to varying degrees, with rising unemployment, violence or criminality in some countries in the region. This type of social stigmatization affects the individual's ability to live a dignified and normal life in the receiving country in a variety of ways. From finding a job to accessing public services, this segment of the population may encounter many obstacles that prevent them from fully enjoying their basic rights.

52. Similarly, the absence of appropriate documentation to non-nationals may result in forms of social exclusion, in particular when identity documents provided to certain groups do not conform to official standards or have a different format. For example, while access to basic public services may be guaranteed by law, refugees may not have access to them in certain countries because in practice some public service providers are not aware of the specificities of the refugees' documentation.

53. As incidents involving situations of social exclusion or racism are perceived as uncommon in some countries in the Americas,⁴⁹ they often receive little or no attention from the authorities. Law enforcement officials may not respond promptly to situations of harassment against migrants by individuals or in worse cases, they may themselves engage in acts of mistreatment or abuse.

54. The media does not always address migration-related issues in a responsible manner. From editorials to selected news clips and photo montages, some news outlets in the hemisphere present a distorted image or give a misleading impression of specific incidents by, *inter alia*, focusing on specific nationalities or failing to provide contextual information. These images frequently linger in the public eye and are rarely redressed.

⁴⁸ Its Final Declaration called upon Caribbean and Latin-American cities belonging to UNESCO's Coalition of Cities against Racism, Discrimination and Xenophobia, to promote UNHCR's new policy on refugee protection and solutions in urban areas and to develop public policies and strategies, under the programme of Cities of Solidarity of the Mexico Plan of Action, that protect refugees and promote their local integration. UNHCR also supports the deliberations of the OAS working group for the adoption of an Inter-American Convention Against Racism and all Forms of Discrimination and Intolerance.

⁴⁹ It has been observed that issues of xenophobia, racism and discrimination are rarely discussed openly in the Americas. In countries throughout Latin America and the Caribbean, in particular, the very existence of racial discrimination and xenophobia is either denied or believed to be minor in scope. See Inter-American Commission on Human Rights, *supra* footnote 44.

55. Similarly, little attention is given by host communities to the human side of migration, including its root causes, the consequences of the separation of families, or the positive contribution to the country made by migrants in past and present. In certain instances, attempts to address the multi-faceted challenges arising from mixed migratory movements in a comprehensive manner are sometimes perceived as equivalent to legitimizing or condoning irregular migration.

2.1.4 Forced returns of non-refugees

56. With the increase in international migration in the region, national authorities have a legitimate interest in curbing irregular movements and combating the smuggling of migrants. Authorities sometimes seem, however, to pay more attention to the unauthorized form of entry or the use of fraudulent documentation than to possible humanitarian concerns. Untrained frontline authorities may overlook the range of protection standards developed for vulnerable migrants and asylum-seekers, especially when they arrive in large groups.

57. Indeed, decisions on automatic or expedited expulsion mechanism are often taken based on the nationality of the individual, or the fact that a group of new arrivals used the same smuggler or traveled aboard the same ship. When such decisions fail to assess the actual or potential protection needs of new arrivals in a systematic way, there is a greater risk that migrants with specific needs and asylum-seekers will remain unprotected. The risks are perhaps more acute in situations of repatriation of persons with specific needs, including unaccompanied children and trafficked persons, especially when well-established notions such as the determination of the best interests of the child are not taken into consideration.

58. Even when repatriation is the adequate response, some countries still lack the capacity to ensure irregular migrants a safe and dignified return. Some positive developments are found in the Regional Conference on Migration, where Member Countries have created a fund for the assistance and return of highly vulnerable migrants and a set of guidelines for the voluntary return of irregular migrants, child victims of trafficking, and unaccompanied children. Under the auspices of the RCM, the Governments of Mexico, El Salvador, Guatemala, Honduras and Nicaragua signed a memorandum of understanding for the orderly, prompt, and safe repatriation by land of Central American national migrants.

59. In turn, few countries in the region effectively implement the return of rejected asylum-seekers. This risks undermining the credibility of asylum systems,

as it creates the impression that irregular migrants use the asylum door to circumvent immigration regulations and remain in the territory.

2.1.5 Collection of data

60. The availability of basic, updated information on the profiles of migrants, disaggregated by nationality, age and gender, thus continues to be a major challenge for the Americas as a region. States do not always produce statistical information on the various individuals and groups on the move in a standardized and systematic manner. International cooperation and data exchange on the protection of persons with specific protection needs in mixed migratory movements also needs to be improved.

61. Sometimes statistical information is produced but not shared with relevant actors, including UNHCR and civil society institutions, because it is considered sensitive and confidential. This significantly hinders a comprehensive understanding of the issue, and the development of adequate policy responses.

2.2 Specific protection challenges for asylum-seekers and refugees

62. The current political stability enjoyed by the Americas, combined with the fact that there are neither refugee camps nor massive cross-border movements, partially explain the perception that there are no longer asylum-seekers and refugees in the region. As discussed in Chapter 1, however, this is not correct.

2.2.1 Legal and policy framework

63. The large majority of countries in the hemisphere have ratified the 1951 Convention and/or its 1967 Protocol. However, there are five countries in the region that are not party to either instrument.⁵⁰ Despite their recognition of the social and humanitarian nature of the problem of refugees, these countries still have to determine how to contribute to the international regime for the protection of refugees. In the meantime, the protection of asylum-seekers and refugees in their territory continue to rely primarily on customary international law and more general human rights obligations, including those contained in the OAS Charter and the American Convention on Human Rights.

64. In some countries adequate legislation and procedures for determining the eligibility of refugees are absent, a situation that could give rise to arbitrary measures. The availability of a refugee protection system has sometimes been perceived as an element of attraction, and the suggestion has been made that

⁵⁰ Barbados, Cuba, Grenada, Guyana, and Saint Lucia.

inaction of the authorities would stem the flow of arrivals. Moreover, some States have not taken on the sovereign responsibility to determine who is a refugee in their territory and continue to depend on UNHCR to undertake the determination of refugee status. There are also countries of first asylum that admit asylum-seekers only on the strict understanding that they will be resettled. This problem is most acute in the Caribbean, where a majority of the countries are without domestic legal or institutional frameworks, and yet the arrival of people in need of international protection continues in small, steady numbers.

65. There are gaps also in countries which have an asylum framework in place.⁵¹ While several countries in the region have strengthened their domestic legal framework on the protection of refugees to bring it into line with international standards, some asylum laws contain specific provisions which create obstacles to the correct implementation of the 1951 Refugee Convention and its 1967 Protocol. Some countries, for example, have modified the refugee definition by including additional grounds for both exclusion and cessation of refugee status. Under these laws, refugees who commit criminal acts risk the termination of their refugee status although such acts should not impact their distinct status and normally should be dealt with through ordinary law enforcement measures.

66. Few countries in the region have adopted explicit and comprehensive asylum policies. Recent examples include Ecuador⁵² and Jamaica.⁵³ Several other countries, however, have yet to give more concrete expression to their commitments to the protection of refugees or have focused only on specific areas. This situation often results in a decreased sense of “ownership” of refugee problems and their resolution. In the region, this has additionally led to a marked emphasis on refugee status determination procedures with less attention being given to the actual exercise of rights by refugees and to an active search for durable solutions.

67. The lack of a comprehensive asylum policy also creates obstacles for the effective action and coordination among national authorities to ensure the effective enjoyment of rights by refugees. Thus, the authority in charge of refugee status determination is usually the sole authority responsible for overseeing the protection of refugees within the broader State system, while lacking sufficient resources or support. A positive development is the establishment of National Refugee Commissions, such as the case of Argentina, Brazil, Chile, and Uruguay.

⁵¹ See section 2.2.4 on Refugee Status Determination.

⁵² The Ecuadorean policy on refugee protection was formally issued on September, 2008. Available online in Spanish language at: www.acnur.org/biblioteca/pdf/7022.pdf

⁵³ The refugee policy in Jamaica was adopted on March, 2009. Available online at: www.acnur.org/biblioteca/pdf/7277.pdf

In those countries, an inter-ministerial body is responsible for refugee status determination and also takes action to convene other national and local authorities to coordinate actions to ensure the protection of the rights of refugees and their insertion in the social and economic life.

68. In a context in which migration dominates the public debate, refugee issues throughout the region are sometimes overshadowed by broader migration considerations, and authorities risk losing sight of the specific nature of refugee protection. Some States evince excessive reticence about granting asylum to refugees, invoking economic or migration-related reasons. Thus, instead of focusing on the forms or grounds for persecution alleged by the asylum-seeker, some authorities show at times more concern about the number of refugees already present in their territory or a potential increase in the number of asylum claims that may follow a favourable decision. While these may be legitimate considerations, UNHCR emphasizes that they should not undermine States' commitments under the 1951 Convention, including the determination of who is a refugee. Legitimate concerns about increasing numbers should rather be addressed through constructive dialogue on how to share burdens and responsibilities more equitably among countries in the region.

69. Despite the widely accepted notion that sovereign decisions on migration issues must be compatible with human rights standards, States do not always include adequate safeguards to ensure the right of asylum and the principles of refugee protection in the context of migration and border control measures. Furthermore, UNHCR sometimes experiences reluctance by national authorities to accept the Office's role in advising on protection-sensitive migration policies, notwithstanding the fact that measures adopted to deal with irregular migration can affect the asylum-seekers' access to safety, if applied indiscriminately.

2.2.2 Access to territory⁵⁴

70. Few incidents of *refoulement* by countries in the region have been reported in recent years. However, an increased risk of *refoulement* now arises in the context of regular repatriation or deportation procedures as some factors make it more likely for authorities to inadvertently turn away potential asylum-seekers. For example, in some countries undocumented migrants are not systematically interviewed by trained authorities on an individual basis before an expulsion or removal order is implemented at the border or at other entry points such as airports.

⁵⁴ See *supra* section 2.1.4.

71. Another factor increasing the risk of *refoulement* is that immigration officials and police officers working on the frontlines do not always have proper training or clear instructions for dealing with asylum-seekers. In some countries, frontline authorities, including those working at airports, seaports or land border crossings, do not systematically refer asylum-seekers to the competent authority for further processing. Furthermore, asylum-seekers and refugees who do not receive proper documentation or residency permits commensurate with their special status are also at risk of being inadvertently affected by repatriation exercises targeting undocumented migrants.

72. There have been reports of individual and entire group repatriations whereby the receiving government had sent people back to given countries without even establishing their nationalities to a reasonable degree of certainty. Language barriers are a common obstacle that can prevent authorities from obtaining basic bio-data from individuals as well as information regarding the reasons for departure or possible consequences of return.

73. Interception policies are widely implemented, including extra-territorially, especially in North America and the Caribbean. These practices commonly take the form of postes abroad for migration officers as well as the interdiction of vessels suspected of carrying irregular migrants on the high seas or in territorial waters. The indiscriminate application of these practices to all individuals traveling in irregular manner, without sufficient protection safeguards, has been known to hinder the access of asylum-seekers to safety and protection in other countries.

74. Some countries exercise the prerogative of requiring entry visas as a method to reduce the number of asylum-seekers, a situation that has adverse implications on persons in need of international protection, in particular on their access to protection systems.

75. Despite the prohibition to impose penalties on account of their irregular entry or presence contained Article 31 of the 1951 Refugee Convention, some countries have prosecuted asylum-seekers for illegal or fraudulent entry, under circumstances that at times appear to be at variance with refugee protection standards. There are also reports of recognized refugees who have been kept in prolonged detention for not collaborating with the authorities to identify and prosecute smugglers of migrants, and national authorities who have retained individuals' documentation for long periods.

76. While UNHCR's unhindered access to asylum-seekers and refugees is generally observed throughout the region, obstacles preventing access to certain

key locations, such as international airports and/or isolated border areas, remain in some countries.

2.2.3 Access to fair and efficient asylum procedures

77. Broader migration issues have impacted asylum systems in different ways, often affecting the asylum-seekers ability to access fair and efficient refugee status determination procedures. In many countries in the region, there seems to be a presumption that individuals crossing international borders in the Americas do so only for economic motivations or for reasons of personal convenience. With a marked focus on migration control by the authorities, those in need of international protection who travel within mixed migrations are often presumed to be economic migrants and, as a consequence, their access to asylum procedures is not always ensured. This situation may adversely affect the individual's right to seek asylum in cases of persecution, a concern that is compounded by the lack of adequate national mechanisms to identify refugees within mixed migratory movements in a number of countries.

78. Groups of undocumented migrants and asylum-seekers intercepted at sea or who are suspected of being assisted by smugglers have been denied access to asylum procedures. These restrictions have prevented some individuals in need of international protection from filing an asylum claim before the competent authority. In other instances, access has been made conditional upon assisting law enforcement authorities in investigating or taking further action against the smugglers. In other cases, asylum authorities have decided not to admit asylum claims submitted by persons with irregular entries, considering them *prima facie* fraudulent claims. There are also cases in which national authorities have given access only to a lesser form of protection based on what appear to be subjective considerations, including the individual's ethnic or racial background.

79. Information on the refugee protection system and certain procedural safeguards can contribute to ensuring that those in need of international protection do not go unnoticed. However, there are countries in the region that do not systematically provide individuals involved in mixed migration movements with basic information about the option of seeking protection from persecution and other human rights abuses, and about procedures, in a language they can understand. With few exceptions, such as in Canada, asylum-seekers do not routinely receive legal counselling to ensure they understand the information that is required from them by asylum processes. Apart from Argentina, Brazil and Mexico, it is also rare in Latin America to see the appointment of a guardian or adviser in the case of unaccompanied children seeking asylum.

80. A few countries in the region have devices in place to address a growing number of cases within the context of mixed migration. These devices comprise admissibility and accelerated procedures and aim to quickly decide on certain claims, especially those filed by migrants without international protection needs who attempt to use the asylum system for a migration outcome. Nevertheless, protection safeguards still need to be adopted to ensure that the implementation of such devices do not leave individuals in need of international protection without access to asylum procedures and to prevent their cases from being rejected without a proper assessment of the merits of their claims.

81. Protection concerns notably arise when information about asylum-seekers and refugees is shared between the host country and the countries of origin without sufficient protection guarantees. In some countries, asylum-seekers are routinely expected to contact their national authorities, usually their embassies in the host country, to comply with certain requirements related to personal documentation. In cases of detention of an asylum-seeker, some national authorities automatically contact the consular authorities of the country of origin without the express consent of the individual. While consular protection is a very important right in the case of migrants, this protection is not available for refugees and can place asylum-seekers and refugees at risk.⁵⁵

82. A number of countries in the region implement the return of undocumented persons through bilateral arrangements with countries of origin. Adequate safeguards to identify and exempt asylum-seekers from automatic returns under these arrangements still need to be incorporated in some countries. A similar concern arises when decisions to send a refugee or asylum-seeker to a third country (usually a previous transit country) are taken solely by immigration authorities. In such cases, failing to first grant the individual access to asylum procedures disregards his/her potential protection needs.

83. Access to asylum procedures for certain groups of individuals can also pose special challenges. Thousands of individuals, especially Colombian nationals in countries within the Andean region, have not formally sought refugee status.⁵⁶ This situation increases the vulnerability of this population as large numbers of individuals who may qualify for international protection, particularly in border areas, remain invisible.⁵⁷ There are also large numbers of Haitian nationals in various countries in the hemisphere, some of whom may need international

⁵⁵ Article 36 of the 1963 Vienna Convention on Consular Relations makes consular notification dependent on the consent of the individual, as he or she retains the right to accept or decline any form of consular assistance.

⁵⁶ See *supra* para. 22.

⁵⁷ UN High Commissioner for Refugees, *Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees*, 2005. Available at: www.acnur.org/biblioteca/pdf/3868.pdf.

protection but do not have access to fair and efficient asylum procedures. They often experience particular difficulties in accessing protection, either because they are denied access to asylum under the blanket assumption that they move for economic reasons or because the main countries where they find themselves do not have functioning asylum procedures. The lack of adequate and equitable safeguards in interception measures is another obstacle they often encounter.

84. Extra-regional asylum-seekers are another category of individuals who experience particular challenges in accessing asylum procedures. Though their numbers are relatively small, these new arrivals may represent a large share of the total number of asylum-seekers in countries which normally receive only a small number of claims throughout the year. Their arrival, especially when in groups of 25-50 or more people (comprising both refugees and people moving for other reasons), has attracted much attention in countries in Latin America and the Caribbean. Such groups sometimes face restrictions in accessing asylum procedures because authorities perceive them as increasing the pressure on asylum systems, owing to problems arising from language barriers; lack of individual documentation; recourse to smugglers; significant media coverage in the host countries; and the fact that many of these individuals wish to continue their journey to the United States of America or Canada.

2.2.4 Refugee Status Determination

85. As not all countries in this region have adequate refugee status determination mechanisms in place, this has led to the continued involvement of UNHCR in refugee status determination for persons under its mandate. This gap is particularly acute in the Caribbean region, where UNHCR continues to undertake refugee status determination under its mandate in at least 13 countries.

86. In contrast, many countries in North and Latin America have taken important steps to strengthen their national capacity to process and adjudicate asylum claims. Canada, for example, has perhaps one of the most developed and well-resourced asylum systems. For most countries, however, two major challenges are still to be addressed. Firstly, with the exception of Brazil, Canada, Colombia, and the United States of America, most countries have yet to allocate sufficient funds for asylum authorities to deal with a steady arrival of new asylum-seekers. Secondly, many States continue to lack an administrative framework to ensure the professional quality and reduce turnover of staff responsible for refugee status determination.

87. The increase in refugees arriving along with individuals who are moving for other motives has had an adverse impact on the quality of the determination of refugee status. For some asylum authorities, migration-related considerations

have at times taken precedence over an objective determination of whether or not the individuals concerned need refugee protection. This is notably the case when the asylum authority fails to analyse the refugee criteria present in a given case, dismissing the claim because of irregular entry, use of fraudulent documents, or delay in filing the petition. Another example is a summary rejection resulting from the individual's filing the asylum claim as a remedy against an expulsion order. While some of these elements may be relevant to make a determination, they should not replace a full analysis of Article 1 of the 1951 Convention.

88. Many countries in the region have also adopted more restrictive interpretations of the refugee definition. Situations involving serious threats or abuses of human rights are sometimes qualified *prima facie* as outside the scope of the refugee definition. This is particularly the case of claims founded on recently acknowledged forms of persecution by non-state actors, including domestic violence, trafficking in persons, gang-related persecution, and persecution based on sexual orientation, which are sometimes dismissed out of hand. Such decisions are frequently issued without due consideration of the merits of the asylum claim or any indication of the legal reasoning behind the rejection.⁵⁸

89. Some countries that have incorporated a regional refugee definition into their domestic legislation (see *infra* para. 123) do not systematically apply it in practice to every person seeking international protection. They seem to do so based on the assumption that the application of such broader refugee criteria is discretionary. As a result, individuals who are in need of international protection and who do not necessarily satisfy the criteria of Article 1 of the 1951 Refugee Convention, may not be identified and protected as refugees even when refugee recognition is required in these circumstances by the domestic law of the country.

90. The objective to prevent people from abusing the asylum systems has also led to a restrictive trend on the determination of the factual basis of claims. It is widely accepted that an applicant may not be able to support his statements by documentary or other proof, and that in such cases, if the applicant's account appears credible, he or she should, unless there are good reasons to the contrary, be given the benefit of the doubt.⁵⁹ However, asylum authorities sometimes require asylum-seekers to undergo an excessively formal process, in particular

⁵⁸ The Inter-American Court of Human Rights has ruled that when national authorities issue decisions affecting human rights, such decisions must be substantiated or otherwise would be considered arbitrary. I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 152. Available at: http://corteidh.or.cr/docs/casos/articulos/seriec_127_ing.pdf.

⁵⁹ UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992. Available at: www.unhcr.org/refworld/docid/3ae6b3314.html

regarding the production of evidence. Such position does not take into consideration the difficulty of proof inherent in the special situation in which asylum-seekers commonly find themselves.

91. Insufficient training on interviewing techniques and credibility assessments can also lead to restrictive practices and poor decision-making by asylum authorities. Adjudicators may at times display excessive zeal in their attempt to identify inconsistencies or contradictions in the asylum-seekers' account. If additional evidence is sparse or absent, there may be a need to rely more heavily on the testimony of the individual, and adjudicators may lack the necessary training to discern the relevant facts of the claim during an interview and relate such information to the relevant criteria of the 1951 Convention in order to arrive at a correct conclusion as to the applicant's refugee status. This is particularly true in relation to those cases involving mixed motivations. A typical example is when an asylum-seeker voices his/her interest in obtaining a livelihood in the host country *in addition to* describing specific incidents of persecution during his/her interview, and the mention of economic motivations results in the rejection of his/her claim.

92. In many countries, national authorities do not routinely research the prevailing conditions in the country of origin that allow to assess the well-foundedness of the fear and evaluate the credibility of the claim. Insufficient information on the context in the country of origin prevents adjudicators from making a fair determination of the petition, which may lead to the incorrect rejection of the case. As a result, in some instances, persons in need of international protection are not identified in a timely manner or sometimes not identified altogether.

93. In addition to the prohibition of expulsion or return of refugees, contained in Article 33 of the 1951 Refugee Convention, the American Convention and other human rights instruments also provide for *non-refoulement* obligations.⁶⁰ These provisions can be used to protect people who were not recognized under the refugee definition but who nevertheless cannot go back to their country because their life or personal freedom may be in danger. However, these complementary forms of protection still need to be fully implemented in the national legislation of most countries.⁶¹ As result, very few countries have adequate mechanisms in place to provide protection under these instruments.

⁶⁰ See Article 22(8) of the 1969 American Convention on Human Rights; Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Article 13 of the Inter-American Convention to Prevent and Punish Torture.

⁶¹ Mexico is the only country in Latin America which has regulations on this subject. Brazil, Chile, Colombia, Uruguay, Paraguay and Peru acknowledged, during the 1st Workshop on Asylum, held September 2009 under MERCOSUR Specialized Forum on Migration, the need to develop

94. For those States that have developed these kinds of protection mechanisms, coordination and cross-referral between asylum systems and these protection tools still need to be enhanced.⁶² In some countries, referral mechanisms should be put in place to ensure, for instance, that trafficked persons who need refugee protection are recognized as such, rather than being channeled to protection mechanisms outside the 1951 Refugee Convention.

2.2.5 Self-reliance and durable solutions

95. Some countries in the region recognize the right of asylum-seekers to work pending a final determination of their claims.⁶³ In countries where this is not the case, this situation hampers the self-reliance and, in some cases, even the basic subsistence of asylum-seekers. As a result, some asylum-seekers may be compelled to enter the informal economy, possibly under exploitative conditions including sexual exploitation or, in some cases, may fall into situations of destitution and feel compelled to return to their country of origin.

96. In some locations, programmes to support the self-reliance of non-nationals are in place. In Costa Rica, for example, the House of Rights (Casa de Derechos), developed by UNHCR and UNICEF in cooperation with the local government of the town of Desamparados, provides free legal counseling on job placement opportunities for migrants, asylum-seekers, refugees and local populations.

97. Even after refugee status has been determined, a refugee can experience specific problems affecting the quality of asylum s/he enjoys in the host country. In common with other non-nationals and even nationals, these can concern the exercise of socio-economic rights, such as employment, proper housing and access to public health and education facilities. As refugees, they may confront additional challenges. Despite the special protection afforded by Article 25 of the 1951 Refugee Convention (administrative assistance), for example, refugees may encounter insurmountable obstacles in their quest to validate education certificates, professional credentials or similar documentation.

and to implement complementary forms of protection in the region, in line with the objectives set forth in the Agenda for Protection.

⁶² See UN High Commissioner for Refugees, *Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection*, 7 October 2005, No. 103 (LVI) – 2005. Available online at: www.unhcr.org/refworld/docid/43576e292.html.

⁶³ These countries are: Argentina, Brazil, Canada, Chile, Nicaragua, Paraguay, Peru, the United States of America and Uruguay. However, in some of these countries, this right is suspended if the person is considered to have committed a crime or to have a previous criminal record in his/her country of origin.

98. Domestic legislation or administrative practices in a few countries in the region make the attainment of a more permanent residence incompatible with refugee status. As a result, refugees are requested to forego their distinct legal status as a prerequisite to securing a more permanent migratory status. Thus, what should be an ordinary step in the refugee's local integration process, in practice becomes a premature termination of the individual's refugee status and goes against the provisions of the 1951 Refugee Convention and its 1967 Protocol.

99. Identity documents provided to refugees by the host country certifying their refugee status and legal stay are an essential component in ensuring their effective protection against *refoulement* and their enjoyment of other human rights. While most countries throughout the hemisphere provide refugees with personal documentation free of charge or with modest fees, a few countries make this a costly process. As a result, some refugees become undocumented and thus *de facto* unprotected because they cannot afford to obtain or to renew this documentation either for themselves or members of their families.

2.3. Specific risks for other groups

2.3.1 Trafficked persons

100. Trafficking in persons involves the exploitation of human beings for a wide range of purposes, including labour exploitation, forced prostitution or other forms of sexual exploitation, removal of organs, debt servitude and other slavery-like practices. As a result, those individuals who fall victim to this crime in the region, as elsewhere, face a multitude of serious risks to their physical safety and integrity, health, and psychological well-being.

101. The legal framework for the prevention and punishment of trafficking in persons has been strengthened in the Americas alongside national measures to identify and protect victims. However, in some countries, the crime of human trafficking covers only sexual exploitation of women and children, and discounts trafficking for other purposes such as labour exploitation or enslavement. Moreover, legal frameworks do not systematically include specific provisions for trafficked persons regularizing issues such as residence permits or leave to stay. As such, national responses to trafficked persons in many countries are still not adequate to address the wide range of protection needs involved.

102. In addition, states that identify trafficked persons on their territories may inadvertently generate new risks for some trafficked persons by failing to assess their individual protection needs or by failing to consider any potential risks to the trafficking victim upon return to his/her country of origin. Return continues to be seen as the only available solution for trafficked persons in many countries

in the hemisphere. This reflects a general lack of awareness of the fact that some trafficked persons, under specific circumstances, may qualify for refugee status or other complementary forms of protection. For those in need of international protection as refugees, access to asylum procedures should be ensured.

2.3.2 Unaccompanied children outside their country of origin

103. The regional magnitude of the phenomenon of unaccompanied children participating in mixed migratory movements still needs further exploration and analysis, particularly in relation to the transit of unaccompanied children between Mexico and the USA, and Mexico and Central America. UNHCR, with the support of Save the Children Sweden, has carried out several studies in Mexico on the needs of unaccompanied or separated children arriving as part of the mixed migratory movements across the southern border. These have confirmed that the mechanisms to identify these children and refer them to the appropriate procedures have been inadequate. The studies also concluded that, while only a small percentage of these unaccompanied children may need international protection as refugees or may need other protection solutions outside their countries of origin, *all* unaccompanied children require specific protection measures to ensure their safety and well-being. These include ensuring adequate care arrangements outside detention settings, appropriate guardianship and representation mechanisms, use of the BIDs methodology for the identification of appropriate solutions, and special mechanisms for reception, reintegration and follow-up in the case of return.

104. In many countries in the region, children are placed in removal proceedings which are adversarial in nature and lack government appointed legal representatives or guardians. Furthermore, most countries have yet to implement BID procedures after they identify unaccompanied children. In the United States of America, legislation was enacted in December 2008 mandating screening of all unaccompanied children apprehended along the borders for claims to asylum and to protection against trafficking before being granted voluntary departure back to Mexico or Canada. This legislation seeks to place unaccompanied children in the non-adversarial asylum process before the Asylum Division and exempt children from expedited removal and reinstatement of removal procedures.

2.3.3 Indigenous peoples

105. UNHCR undertook a preliminary study in 2007-2008 on the international protection needs of indigenous people living in border areas of Colombia and Venezuela as well as Colombia and Ecuador. This study revealed that indigenous populations affected by forced displacement are commonly not aware of their right to seek asylum and frequently remain in indigenous communities across the

border. As a result, they often do not have access to effective protection due to their lack of knowledge, their geographic location and/or language barriers. It was also observed that the farther indigenous peoples move from their ancestral lands, the more obstacles they find for exercising their individual and collective fundamental rights, a situation that sometimes threatens their survival as a people.

106. Consultations with the displaced indigenous populations are not always effectively carried out. Thus, even when the international protection needs of these individuals are identified, protection responses are not always adapted to be implemented in a manner which is sensitive to the indigenous people's needs, including due respect to their language and traditions.

107. Indigenous peoples might also be affected by problems of statelessness, sometimes as a result of discriminatory nationality legislation or differences in nationality laws in the various States to which an indigenous group may have ties. Statelessness issues also arise because of misconceptions concerning the definition of nationality.

3. Protection responses to mixed migratory movements

108. Countries in the hemisphere have begun to discuss more frequently the growing protection challenges related to the movement of individuals and to develop specific initiatives at different levels to address them. In addition to regional or national programmes which specifically address refugee protection issues, such as the 2004 Mexico Plan of Action, there are many broader initiatives that have an important refugee protection component. However, significant challenges remain for their effective implementation at the national level.

3.1 The Mexico Plan of Action

109. In Latin America, the Mexico Plan of Action (MPA) is the most comprehensive framework to enhance refugee protection and redouble efforts to find durable solutions, and represents the implementation of the Agenda for Protection in this region.⁶⁴ This Plan suggests responses to new protection challenges, including those arising in the context of mixed movements, as well as the strengthening of eligibility commissions and regional protection networks. It also contains activities on interdisciplinary research, promotion and development of international Refugee Law.

110. The durable solutions component of the MPA is based on three pillars: *Cities of Solidarity* which aims at fostering self-sufficiency and local integration of people of concern living in urban settings; *Borders of Solidarity* which promotes the development of border areas to foster a humanitarian response for people in need of international protection, and to address basic infrastructure and community services needs; and *Solidarity Resettlement* which opens the possibility for any Latin American country to receive refugees who are in other Latin American countries of first asylum.

3.2 Regional Initiatives at the OAS⁶⁵

111. While not explicitly mentioned in the OAS Charter, the issue of international migration has increasingly been the focus of the work of certain OAS organs in recent years. As the supreme organ of the organization and main

⁶⁴ UN High Commissioner for Refugees, *Agenda for Protection*, October 2003, Third edition. Available at: www.unhcr.org/refworld/docid/4714a1bf2.html

⁶⁵ As a regional arrangement foreseen by the UN Charter, the Organization of American States was formally established with the signing of its Charter in 1948. This regional agency brings together all 35 independent states in the hemisphere for the purpose of, inter alia, strengthening the peace and security in the continent; seeking the solution of political, juridical, and economic problems that may arise among them; and promoting their economic, social, and cultural development.

political forum in the hemisphere, the OAS General Assembly has adopted a series of resolutions covering different aspects of migratory movements, including refugee protection, that are of particular relevance in this respect.⁶⁶

112. The Inter-American Commission on Human Rights has regularly studied issues related to the movement of people in the Americas, in particular the situation of refugees.⁶⁷ With the appointment of the first Special Rapporteur on Migrant Workers and Their Families in 1997, the Commission has addressed broader issues affecting non-nationals in a more detailed and systematic manner. For example, the Rapporteur has undertaken different thematic studies and conducted several country visits to monitor *in situ* the conditions of migrants and their families in the region.

113. In 2005, the OAS also adopted the “Inter-American Programme for the Promotion of the Human Rights of Migrants, Including Migrant Workers and Their Families”.⁶⁸ The Programme aims to mainstream the issue of the human rights of migrants in the work of the organs, agencies and entities of the OAS and it contains an extensive list of concrete activities to be implemented by entities of the OAS with the technical support of international agencies such as IOM and UNHCR. In addition, the Programme suggests that OAS Member States consider implementing a wide range of protection activities for migrants, asylum-seekers, refugees and groups with specific needs.

114. Another initiative is the establishment of the Special Committee on Migration Issues (CEAM, which is its acronym in Spanish) within the framework of the OAS Permanent Council. This committee works as a forum to “analyze migration issues and flows from an integral perspective, taking into account the relevant provisions of international law, especially international human rights law” (OAS General Assembly Resolution AG/RES. 2326 of 5 June 2007). In line with its Work Plan, CEAM has held regular thematic meetings and seminars.⁶⁹

⁶⁶ A list of all OAS General Assembly resolutions on asylum-seekers and refugees is available online at: www.acnur.org/secciones/index.php?viewCat=1248.

⁶⁷ For a compilation of the reports and cases decided by the Inter-American Commission on the situation of refugees in the Americas, see www.acnur.org/secciones/index.php?viewCat=21

⁶⁸ This Programme’s objective is to promote and protect the human rights of migrant through the implementation of cooperative actions and the exchange of best practices. The Programme also aims to mainstream the issue of the human rights of migrants in the work of the organs, agencies and entities of the OAS and it contains an extensive list of concrete activities to be implemented by entities of the OAS with the technical support of international agencies such as IOM and UNHCR.

⁶⁹ Of special note is the Special Forum on Migration Issues, held 17 April 2008, which provided an opportunity to discuss migration trends in the Americas and study this phenomenon from various perspectives (including human rights, economic, health, labor, social, and cultural aspects).

115. The OAS also organizes every two years a Meeting of National Authorities on Trafficking in persons as a hemispheric forum to raise awareness about this crime and to foster the exchange of good practices on victim protection.

3.3 Sub-Regional Initiatives

3.3.1 Ibero-American Conference⁷⁰

116. The XVI Ibero-American Summit, held in November, 2006 in Montevideo, Uruguay, discussed the issues of migration and development. In their final declaration, the Heads of State underscored, for example, the importance of Human Rights and Refugee Law in developing their migration policies and entry systems, the need to foster greater tolerance and respect between migrants and host communities, and the need to increase efforts to prevent, sanction, and combat human smuggling and trafficking. To follow up on the commitments made during the XVI Summit, the Heads of State also agreed to convene an Ibero-American Forum on Migration and Development to exchange best practices and coordinate actions by countries in the region.⁷¹

3.3.2 Southern Common Market⁷²

117. Migration issues are regularly discussed during the Meeting of Ministers of the Interior, and several declarations relevant for the protection of persons on the move have been adopted.⁷³ In 2003, the Ministers of the Interior created a

⁷⁰ Since 1991, countries in Latin American and the Iberian Peninsula hold annual summits at the highest diplomatic level to discuss issues of common interest in a multi-lateral forum. Today, the Ibero-American Conference brings together heads of states from 22 different countries in Latin America and Europe.

⁷¹ The forum took place 10-11 April 2008 in Cuenca, Ecuador and reached several important conclusions relating to enhancing protection of migrants, asylum-seekers, refugees, victims of human trafficking and unaccompanied minors.

⁷² Established in 1991 with the signature of the Asunción Treaty and later amended by the Ouro Preto Protocol in 1994, the Southern Common Market (known also as MERCOSUR for its Spanish acronym) has the purpose of achieving a greater economic integration among its Member States (Argentina, Brazil, Paraguay and Uruguay) and Associated States (Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela). MERCOSUR adopted agreements on the free movement of nationals from participating States within their geographic area which recently entered into force.

⁷³ The 2000 Declaration of Rio de Janeiro on the Protection of Refugees, which called on Member States to adopt a specific law on the refugee protection and to harmonize their national asylum procedures, is one example. The 2004 Declaration of Santiago on Migratory Principles, reinforces Member States' commitments to ensure the human rights of migrants and to

Specialized Forum on Migration with the objective, inter alia, to study the impact of migration movements in the MERCOSUR region and to recommend actions aimed at the harmonization of migratory legislation and policies. The Forum has held specific sessions and workshops on various issues, including trafficking in persons, the smuggling of migrants and the protection of refugees.⁷⁴

3.4 Regional Consultative Processes

3.4.1 Regional Conference on Migration (Puebla Process)⁷⁵

118. Based on its good practices and regional achievements, the Regional Conference on Migration (RCM) is considered to be one of the best examples of regional cooperation mechanisms among States on migration issues. The RCM Plan of Action includes several objectives related to the protection of individuals on the move, all of which include protection safeguards for asylum-seekers and refugees.⁷⁶ To bring these objectives to fruition, RCM Member Countries regularly carry out a wide range of initiatives, including through the work of the RCM Networks on Trafficking in Persons and Consular Protection.

119. Under the framework of the Puebla Process, the governments of Canada, Mexico and the United States of America have implemented an annual training Programme for border and immigration officials from Central America and the Dominican Republic which includes a module on refugee protection, developed by UNHCR.

120. In August 2008, the Governments of Canada and Costa Rica, with the support of UNHCR, organized a workshop on “Protection and Durable Solutions within Mixed Migratory Flows” in San José, Costa Rica. During the workshop, participants highlighted some of the challenges of providing protection within the context of mixed migratory movements, in particular for individuals outside the refugee definition. Participants further recognized the importance of the 2004

provide international protection and promote the protection of refugees. It also condemns xenophobic practices, mass or collective deportations and detention without a legal basis.

⁷⁴ During its last meeting, held 29 September – 01 October 2009, participating delegations of the Specialized Forum agreed on the need to continue holding technical sessions on the various aspects related to the protection of refugees. They also agreed to continue studying mixed migratory movements in the broader area of MERCOSUR.

⁷⁵ The Regional Conference on Migration is a consultative forum on migration which brings together 11 countries from North and Central America, and the Dominican Republic.

⁷⁶ Under the framework of the Regional Conference on Migration, protection safeguards including the right to seek asylum have been incorporated into the regional guidelines for the return of regional and extra-regional migrants, and in both the regional guidelines for the return of child victims of trafficking and the regional guidelines for the return of unaccompanied children.

Mexico Plan of Action as the regional framework to strengthen refugee protection and the search for durable solutions in the region, along with UNHCR's 10-Point Plan of Action on refugee protection and mixed migration.

3.4.2 South-American Conference on Migration⁷⁷

121. The South American Conference establishes the basis for the adoption of coordinated regional policies on issues such as trafficking in persons, the protection of migrant and refugee rights and the consequences of forced migration. Some of these Conferences, which are held annually, have highlighted the importance of the protection of refugees as part of the discussion of broader migration and human rights issues in their final declarations.⁷⁸

3.5 Other sub-regional initiatives

122. Since the year 2003, IOM and UNHCR have jointly organized, with the support of the Bureau of Population, Refugees and Migration of the United States' Department of State, a series of seminars on the issue of mixed migratory movements and protection considerations for countries in the Caribbean. This forum has reinforced cooperation between these agencies in the Caribbean and fostered dialogue and information exchange among the Caribbean states in relation to migration challenges and people with specific needs.

3.6 Protection Mechanisms Developed at the National Level

3.6.1 Protection under refugee law instruments

123. Most States in the region have ratified the 1951 Refugee Convention and/or its 1967 Protocol and adopted legislation to incorporate, or facilitate the implementation of, these international instruments at the national level.⁷⁹ By

⁷⁷ The South-American Conference on Migrations brings together 12 countries from the Southern Cone and the Andean region, and provides them with a political forum to maintain regular consultations on the issue of migration.

⁷⁸ In 2003, for instance, the Final Declaration reiterated the important role that human rights norms play in complementing the protection afforded to asylum-seekers and refugees by the 1951 Refugee Convention and its 1967 Protocol. In 2004, Member Countries noted the significance of the principle of *non-refoulement* and the need to provide training on Refugee Law to national authorities dealing directly with migration issues. Furthermore, the Final Declaration also welcomed the Mexico Plan of Action for Strengthening the International Protection of Refugees in Latin American, adopted within the framework of the celebrations of the 20th Anniversary of the 1984 Cartagena Declaration on Refugees.

⁷⁹ Canada, Chile, Costa Rica, Honduras and Mexico have included a chapter on refugee protection in their general immigration laws. The rest of the countries in the region, however, have adopted a specific legal body to regulate refugee issues separate from the immigration laws.

ratifying these international treaties, States undertake to recognize as refugees individuals who are outside their country of origin and who are unable or unwilling to return there because of a well-founded fear of persecution. Furthermore, 13 countries in Latin America have included in their domestic legislation a refugee definition that comprises individuals who have fled their country because their lives, safety or freedom have been threatened by, inter alia, generalized violence, internal conflicts, and massive violation of human rights, based on the 1984 Cartagena Declaration on Refugees.⁸⁰

124. Some countries in Latin America acknowledge that persecution may be linked to the individual's gender and/or age, and have either included gender as an additional ground to ensure refugee protection or consider the gender-sensitive interpretation of the refugee definition.⁸¹ Furthermore, some countries have recognized refugee status for those trafficked persons who come under the scope of Article 1 of the 1951 Refugee Convention.⁸² Countries such as Canada and Costa Rica have also provided refugee protection to people fleeing domestic violence and who are in need of international protection.

125. Some countries, especially the United States of America and Mexico, have recognized refugee status for some individuals who are fleeing gang-related persecution in their countries of origin, in particular in Guatemala and El Salvador.

126. Argentina, El Salvador, Mexico, Peru and Uruguay have made specific provision for asylum-seeking children, particularly those who are unaccompanied.

3.6.2 Protection complementary to refugee law instruments for certain groups

127. Some States have developed other protection mechanisms that allow them to regularize temporarily or permanently the stay of persons with specific needs, such as trafficked persons, unaccompanied children outside their country of origin, people at risk of being subjected to torture and migrant victims of criminal activity. While these are welcomed protection tools, coordination and

⁸⁰ These countries are as follows: Argentina, Belize, Bolivia, Brazil, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay. The regional refugee definition has also been included in the draft legislation currently being discussed in Colombia and Chile.

⁸¹ These countries are as follows: Argentina, Brazil, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela.

⁸² Countries such as Argentina, Canada, Costa Rica, Ecuador, Colombia and the United States of America have granted asylum to victims who fulfill the refugee definition contained in international instruments.

cross-referral between asylum systems and these protection mechanisms still need to be enhanced.

Trafficked persons

128. Most countries in the region have ratified the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and have also enacted comprehensive laws on trafficking in persons or are in the process of doing so. Furthermore, some countries in the region have adopted specific measures to provide protection to trafficked persons, mainly by forms of authorization to remain in the country or to receive specific benefits, as required.

129. In the case of the United States of America, for instance, its domestic law provides for a special non-immigrant “T” visa for trafficked persons who are able to establish that they would suffer severe hardship involving unusual or severe harm if returned to their home countries.⁸³ Canada also has a special Temporary Resident Permit (TRP) which allows trafficked persons to secure a regular immigration status for up to 180 days.⁸⁴

130. In Costa Rica, authorities recently set up an Immediate Response Team to meet the needs of trafficked persons in the context of the work of the National Coalition against Smuggling of Migrants and Trafficking in Persons. Following the approval of the law in Argentina, the Office of the National Prosecutor established a special unit to investigate cases of possible trafficking.⁸⁵ In Mexico, trafficked persons may be regularized as part of a broader protection scheme aimed at providing a legal status to victims and witnesses of criminal acts in certain cases (see *infra* para. 135).⁸⁶

131. At least eight Caribbean countries have established national counter-trafficking coalitions and have made significant strides in strengthening their

⁸³ Except in the case of children or individuals who are unable to cooperate due to physical or psychological trauma, victims of trafficking must also agree to assist federal authorities in the investigation and prosecution of human trafficking cases. Victims of trafficking are eligible for benefits similar to refugee benefits and, after three years in “T” visa status, individuals are eligible to apply for permanent residency.

⁸⁴ Once the victim receives the TRP, s/he may also have access to health-care benefits and trauma counseling, and may apply for a work permit. If necessary, this permit can be reissued at the end of the period.

⁸⁵ The Office started to coordinate actions with the National Refugee Commission in cases where smuggling and/or trafficking concerns arose in connection with asylum claims submitted by women from the Dominican Republic and asylum-seekers from Senegal.

⁸⁶ The 2007 law against trafficking in persons in Mexico also includes a provision for law enforcement officials dealing with victims of trafficking to be trained on International Refugee Law.

legal and institutional frameworks as well as in taking other practical measures (such as establishing trafficking hotlines) to combat this crime and identify and assist its victims.

132. Inter-agency cooperation agreements also aim to identify the specific needs of those people on the move and to enhance the State's capacity to provide protection to the different groups.⁸⁷ They also include mechanisms for the referral of trafficked persons with international protection needs to asylum systems.

Unaccompanied Children

133. Some countries in the Americas have adopted concrete protection responses in the case of unaccompanied children outside their country of origin who do not meet the refugee criteria. In the United States of America, for example, any unmarried alien under the age of 21 years may be eligible for lawful permanent residence under certain circumstances.⁸⁸ In Mexico, the National Migration Institute has appointed child protection officers to ensure the rights of unaccompanied minors involved in mixed migrations. These officials have been trained to identify and respond to the most urgent needs of detained children. They also routinely ask unaccompanied children about the risks they could face if sent back home and, if appropriate, facilitate the lodging of asylum claims.⁸⁹ In addition, an Inter-Institutional Roundtable on Unaccompanied

⁸⁷ For example, UNHCR and IOM have set up referral mechanisms for victims of trafficking who might be in need of international protection as refugees in Central America and the Caribbean. In other parts of the region, both international organizations along with other agencies such as UNICEF, the OAS and OHCHR participate in joint training to improve the understanding among States and their law enforcement officials about the nexus between some cases of trafficking in persons and international refugee protection. Similarly, the 2009 OAS General Assembly resolution on refugees urged "states to study the possible link between trafficking in persons and the international protection of refugees, and to encourage them to provide victims of trafficking in persons and others who cannot return to their countries of origin, in accordance with domestic legislation, some form of subsidiary protection, or international refugee protection for those who meet the requirements for refugee status under the United Nations Convention relating to the Status of Refugees of 1951 and its Protocol of 1967." See OAS AG/RES. 2511 (XXXIX-O/09) on the Protection of asylum-seekers and refugees in the Americas. Available at http://scm.oas.org/doc_public/SPANISH/HIST_09/AG04689511.doc.

⁸⁸ These conditions are as follows: (a) they are declared dependent by a juvenile court or placed by that court in the custody of a State agency; (b) they are deemed eligible for long-term foster care; (c) it has been determined that reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar bases under State law; and (d) it has been determined to be in the juveniles' best interest that they not be returned to their home countries.

⁸⁹ The Protection Officers are also responsible for providing information to children about their rights, including their right to seek asylum, and for playing an active role in the identification and proper channeling of children who may be refugees. Other protection measures include

Children and Adolescents and Migrant Women has cooperated closely to enhance training of border guards and entry officials in Mexico.

People at risk of being subjected to torture

134. Some countries in the region have implemented specific forms of protection when individuals are outside the refugee definition but nonetheless would face risks of torture or other forms of cruel and unusual punishment if returned to their country of origin. In Canada, the Immigration and Refugee Board processes all claims related to the refugee definition and the claims of people who are considered in need of protection under a single, unified procedure.⁹⁰ Mexico also provides a form of “complementary protection” to prevent the forcible return of these individuals.

Victims of Criminal Activity

135. A small number of States in the region have developed protection mechanisms for those individuals who are victims of different forms of criminality in the territory of their host countries. The United States of America has established a special non-immigrant “U” visa for victims of crimes who have suffered substantial mental or physical abuse due to certain crimes and are willing to cooperate with law enforcement authorities in the investigation or prosecution of the criminal activity. In Mexico, the situation of victims and witnesses of crimes may be regularized by the National Institute for Migration in certain cases, including those where individuals fear potential reprisals from the perpetrators upon return.

Humanitarian Relief

136. A few countries in the Americas have established different forms of relief for individuals who do not meet the refugee definition and yet cannot return to

the following: (a) in any case in which a child is a possible asylum-seeker, the Consulate of the child’s country of origin shall not be notified, but rather the child shall be channeled to the Mexican Commission for Assistance to Refugees; (b) in each case, the best interest of the child will be taken into consideration in determining whether the best solution for the child is repatriation, regularization or a determination of the child’s status as a refugee; (c) children under the age of 14 years will never be detained; and (d) the possibility of regularizing the status of foreign children in Mexico will be considered, even in cases where the child is not a refugee or asylum-seeker, if return to the country of origin could cause harm to the child.

⁹⁰ The latter set of claims refers to individuals whose removal from the country would subject them personally to a danger of torture, a risk to their lives, or a risk of cruel or unusual treatment or punishment. If a person is recognized as part of this second category, then s/he will enjoy of the same rights foreseen by refugees under the Immigration and Refugee Protection Act, including protection against *refoulement* and the right to apply for permanent residence.

their countries of origin on the basis of a wide range of humanitarian grounds. In the United States of America, Temporary Protected Status (TPS) provides aliens with relief based on generalized conditions in the country of origin for a period of 6-18 months or longer, if necessary.⁹¹ Mexico allows the regularization of certain migrants for humanitarian reasons,⁹² as do Argentina,⁹³ Brazil,⁹⁴ Honduras and Panama.

137. The United States of America also has in place the Deferred Enforced Departure (DED), which is a form of discretionary relief that is granted based on the executive branch's weighing of foreign policy, humanitarian and immigration concerns.⁹⁵

⁹¹ TPS may be granted under the following conditions: (a) an ongoing armed conflict within the foreign State that poses a serious threat to personal safety; (b) a foreign State is officially and temporarily unable to handle the return of its nationals due to an environmental disaster; or, (c) extraordinary and temporary conditions exist in the country of origin that prevent nationals from returning safely, and permitting the foreign nationals to remain temporarily is not contrary to the national interest of the United States of America.

⁹² While the National Institute for Migration has the discretion to grant a visa for humanitarian reasons or in the public interest, it is important to note, however, that this humanitarian visa does not provide protection against *refoulement*.

⁹³ The National Refugee Commission in Argentina recommended to the National Migration Office, with positive results, the grant of temporary residence to rejected asylum-seekers, when the case involves humanitarian considerations and there was no other mean to regularize the migration situation.

⁹⁴ In Brazil, cases with humanitarian needs may be referred to the National Migration Council by the National Committee on Refugees which may provide them with a permanent visa for humanitarian protection.

⁹⁵ This form of relief does not grant the individual a specific immigration status, but rather a protection, usually for a designated period of time, against enforcement actions which would result in the person's removal from the United States of America. The protection of DED is triggered when an alien is identified for deportation and thus does not require registration. It does not provide a form of legal status in the United States of America and only protects individuals against deportation while it is in effect.

Recommendations

1. Enhance cooperation among key partners

- Promote stronger partnership among national governmental institutions (such as refugee commissions, migration offices, border agencies, national human rights institutions) through the creation of intergovernmental coordination bodies, the organization of joint training and the establishment of referral mechanisms.
- Enhance inter-agency coordination, including through the establishment of a joint regional task force and the development of Standard Operating Procedure (SOPs) to respond to the protection and assistance needs of different groups of people.
- Move forward the achievements of regional migration fora by fostering the design and implement projects to address the protection challenges of mixed migration movements in the region.
- Encourage a more proactive involvement of international organizations and civil society organizations at migration fora to incorporate proper protection safeguards for refugees and persons with specific protection needs (i.e. unaccompanied children, victims of trafficking and migrant victims of sexual and physical abuse).
- Develop joint inter-agency regional trainings for border, migration and other law enforcement officials on the protection needs of refugees and other people involved in mixed movements.

2. Collect and analyse protection related data on mixed migration

- Develop standardized methodologies to gather information on the various groups of people on the move, including data disaggregated by nationality, age and gender.
- Undertake academic and inter-agency research studies with the support of civil society organizations on the size, composition and protection considerations of mixed migration movements in the Americas, giving emphasis to the situation of victims of trafficking and unaccompanied minors.
- Manage all information with the utmost care to prevent creating any risk to the individual or members of his/her family, including by sharing this information with the media, authorities or individuals in the country of origin.

3. Ensure protection while controlling borders

- Ensure that persons without status are not forcibly returned without individual interviews and an assessment of potential protection needs.
- Ensure that the application of migration control measures, including in maritime interception operations, include safeguards to identify and refer those in need of international protection to appropriate follow-up procedures, including the elaboration and distribution of clear instructions, unhindered access by UNHCR and other humanitarian agencies, and the establishment of monitoring mechanisms.
- Ensure that ship masters respect the unqualified obligation to render assistance to persons in distress at sea to save lives without discrimination. States should ensure that masters of ships are released from their obligations with minimum further deviation from the ship's intended voyage and arrange disembarkation as soon as reasonably practical.

4. Ensure reception arrangements in accordance with human rights standards

- Establish facilities with adequate sanitary and security conditions and trained personnel to address the basic material and psychosocial needs (accommodation, food, clothing, and medical services) of all arrivals. These arrangements should also provide information to individuals about their rights and options.
- Develop or update contingency plans to respond to the arrival of individuals and groups of irregular migrants, asylum-seekers and refugees in cooperation with key actors, including international organizations and members of civil society.
- Provide immediate care and assistance to persons who have been victims of crimes and abuses in travel to assist their physical, psychological and social recovery.
- Promote the development of inter-agency Standard Operating Procedures (SOPs) to enhance inter-agency coordination in addressing the protection and assistance needs of unaccompanied and separated children and victims of trafficking.
- Promote alternatives to detention and ensure that existing legislation on detention of migrants and refugees in the Americas is in line with International Human Rights and Refugee Law.

5. Establish profiling and referral mechanisms

- Develop mechanisms involving different actors to distinguish the various categories of persons involved in mixed migratory movements, and refer

them to the appropriate authorities for a formal determination of individual claims.

- Consider developing joint standard profiling questionnaires.

6. Establish differentiated mechanisms and responses for people with different needs

- Promote the accession by States not yet party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to enhance protection capacities available in the region.
- Encourage States to adopt national refugee legislation in accordance with international standards and to establish fair and efficient procedures for the determination of refugee status.
- Enhance the quality of asylum decision-making through increased human, technical and financial resources; the availability of up-to-date country of origin information; and mandatory, regular training.
- Ensure that asylum-seekers, refugees and migrants have access to adequate information, legal counsel and qualified interpreters.
- Implement differentiated protection responses tailored to the specific needs of indigenous peoples and Afro-descendants, including the assessment of their needs for international protection as refugees.
- Consider the establishment of complementary forms of protection and the granting of humanitarian visas, based on international and regional human rights treaties, for those persons in need of international protection who are not recognized as refugees.
- Undertake BIDs in conformity with the Convention on the Rights of the Child.
- Ensure the proper assessment of the needs of victims of trafficking, unaccompanied minors and victims of sexual and physical abuse, including through the refugee protection framework.
- Establish appropriate coordination and cross referral mechanisms between available protection systems and the asylum procedure.

7. Find and provide durable solutions

- Strengthen efforts to address the root causes of migration and refugee movements, in particular through economic and social development, conflict resolution, the enhancement of the protection of human rights, and the strengthening of the rule of law in countries of origin.
- Further the implementation of regularization programs in the Americas to provide more possibilities for migrants to obtain legal residence in the host country with proper documentation.

- Foster further exchanges at regional fora on successful models of enhancing protection for groups with specific needs, taking into account age, gender and diversity considerations.
- Further promote and support initiatives of the civil society which enhance the protection of refugees and migrants.
- Ensure that all girls, boys, women and men whose refugee status has been recognized have effective access to identity documents.
- Encourage the removal of obstacles preventing refugees from obtaining a permanent residence without having to forego their refugee status.
- Promote access to employment, proper housing and public services facilities (health and education) and national assistance programmes for refugees.

8. Address secondary movements

- Strengthen protection capacities of countries of first arrival and promote the adoption of regional solidarity mechanisms.
- Acknowledge the right to work for asylum-seekers as a good practice and promote its recognition by all States in the continent.
- Ensure that countries which employ the concepts of first country of asylum and safe third country comply with applicable international standards.

9. Ensure return arrangements for non-refugees and provide alternative migration options

- Facilitate the voluntary return, readmission and reintegration of irregular migrants and persons found not to be in need of international protection and ensure that their human rights and dignity are respected.
- Consider adoption by States of further regularization programs and expansion of alternatives for regular migration to avoid that the asylum system is seen as the only possibility to legalize stay.

10. Implement information and awareness strategies

- Undertake joint information campaigns by different stakeholders regarding the risks involved in irregular migratory movements.
- Sensitize host communities to the issue of mixed migration to combat discrimination and social exclusion. These campaigns should highlight the potential positive contributions that migrants and refugees may bring to the country and the protection needs of individuals taking part in mixed migrations.
- Share more information with individuals about the possibilities and benefits of regular migration, regularization programs and the human rights of

migrants and refugees, including information on the mechanisms to denounce abuses and/or any form of exploitation.

Annexes

Table 1: Estimated number and ratio of immigrants in selected countries in the Americas (2005-2010)

Country	Total Population		Immigrants		Percentage of country's population	
	2005	2010	2005	2010	2005	2010
North America	335,175	351,659	45,597.1	50,042.4	13.6	14.2
Canada	32,307	33,890	6,304.0	7,202.0	19.5	21.3
USA	302,741	317,641	39,266.5	42,813.3	13.0	13.5
Latin America and the Caribbean	555,512	588,649	6,869.4	7,480.3	1.2	1.3
Argentina	38,732	40,666	1,494.0	1,449.0	3.9	3.6
Bahamas	326	346	31.3	33.4	9.7	9.7
Barbados	253	257	26.2	28.1	10.4	10.9
Belize	282	313	40.6	46.8	14.4	15.0
Bolivia	9,182	10,031	113.9	145.8	1.2	1.5
Brazil	186,075	195,423	686.3	688.0	0.4	0.4
Chile	16,298	17,135	231.5	320.4	1.4	1.9
Colombia	43,049	46,300	109.9	110.3	0.3	0.2
Costa Rica	4,328	4,640	442.6	489.2	10.2	10.5
Cuba	11,193	11,204	15.4	15.3	0.1	0.1
Dominican Republic	9,533	10,226	393.0	434.3	4.1	4.2
Ecuador	13,063	13,775	123.6	393.6	0.9	2.9
El Salvador	6,059	6,194	35.9	40.3	0.6	0.7
Guatemala	12,710	14,377	53.4	59.5	0.4	0.4
Guyana	764	761	9.9	11.6	1.3	1.5
Haiti	9,410	10,188	30.1	35.0	0.3	0.3
Honduras	6,893	7,616	26.3	24.3	0.4	0.3
Jamaica	2,688	2,730	27.2	30.0	1.0	1.1
Mexico	105,330	110,645	604.7	725.7	0.6	0.7
Nicaragua	5,455	5,822	35.0	40.1	0.6	0.7
Panama	3,232	3,509	102.2	121.0	3.2	3.4
Paraguay	5,904	6,460	168.2	161.3	2.8	2.5
Peru	27,836	29,496	41.6	37.6	0.1	0.1
Saint Lucia	165	174	8.7	10.2	5.3	5.9
St Vincent & Grenadines	109	109	7.4	8.6	6.8	7.9
Suriname	500	524	34.0	39.5	6.8	7.5
Trinidad & Tobago	1,318	1,344	37.8	34.4	2.9	2.6
Uruguay	3,325	3,372	84.1	79.9	2.5	2.4
Venezuela	26,726	29,044	1,011.4	1,007.4	3.8	3.5

Source: United Nations, Department of Economic and Social Affairs, Population Division (2009). *Trends in International Migrant Stock: The 2008 Revision* (United Nations database, POP/DB/MIG/Stock/Rev.2008), available at: <http://esa.un.org/migration/>

Table 2: Number of refugees and asylum applications in major countries of asylum in the Americas (end 2008)

Table 2. Number of refugees and asylum applications in major countries of asylum in the Americas (end 2008)*

Country of asylum	Refugees	Unregistered refugees	Total	Asylum Applications**	Rate of recognition
North America					
Canada	173,651	-	173,651	37,514	52.7
United States of America	279,548	-	279,548	82,393	31.1***
Latin America and the Caribbean					
Argentina	2,845	-	2,845	554	20.5
Belize	277	-	277	2	..
Bolivia	664	-	664	162	69.6
Brazil	3,852	-	3,852	427	29.0
Chile	1,613	-	1,613	518	25.1
Colombia	170	-	170	88	0.0
Costa Rica	11,923	6,213	18,136	511	38.2
Cuba	525	-	525	14	33.3
Ecuador	19,098	82,300	101,398	27,413	0.3****
El Salvador	32	-	32	5	0.0
Guatemala	130	-	130	2	20.0
Haiti	3	-	3	1	100.0
Honduras	24	-	24	21	100.0
Mexico	1,055	-	1,055	49	49.0
Nicaragua	147	-	147	25	100.0
Panama	1,913	15,000	16,913	530	56.7
Paraguay	75	-	75	14	86.7
Peru	1,075	-	1,075	541	61.7
Trinidad and Tobago	33	-	33	103	37.5
Uruguay	145	-	145	37	21.4
Venezuela	1,161	200,000	201,161	9,602	47.1

* Source: UNHCR *Global Trends 2008*.

** New applications filed in 2008.

*** United States of America: Recognition rate by the US Immigration and Naturalization Service. The recognition rate of the US Executive Office of Immigration Review was 51.0.

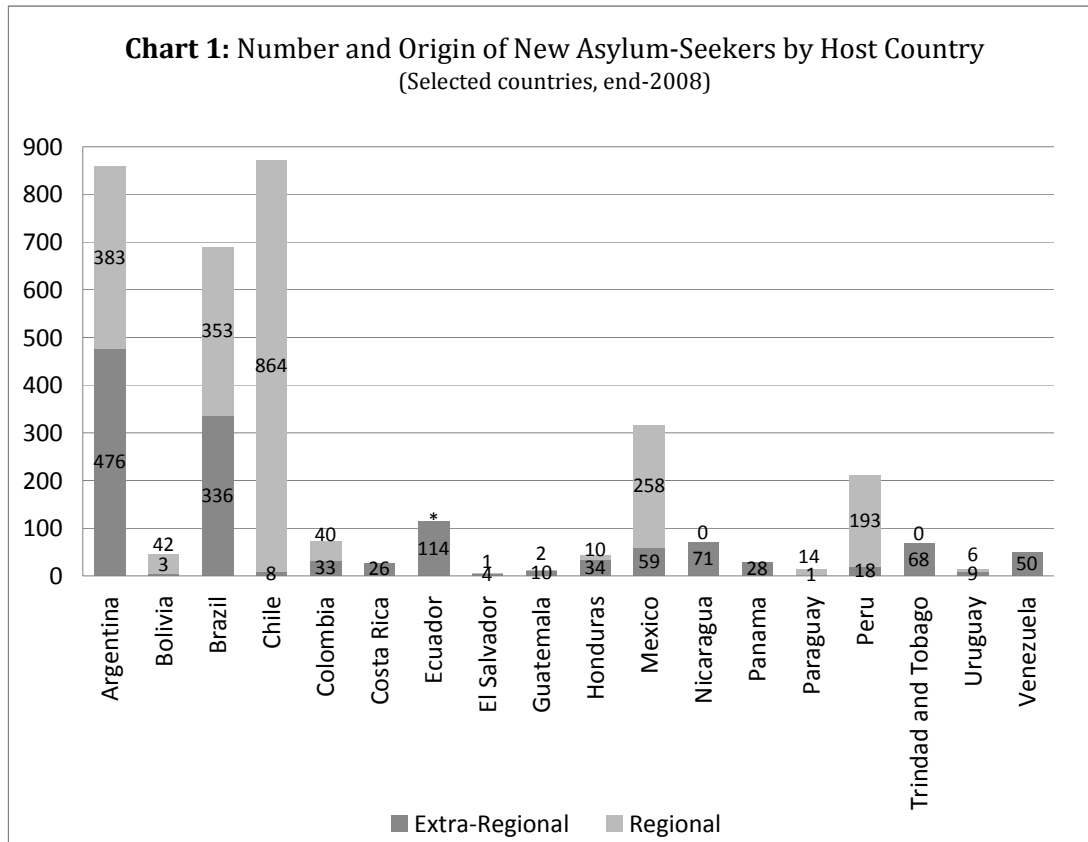
**** Ecuador: While the rate of recognition under the 1951 Convention was 0.3, the recognition rate for other protection status was approximately 40.0%.

Table 3: Number of refugees and asylum-seekers by origin (end-2008)

Table 3: Number of refugees and asylum-seekers by origin (end-2008)*				
Country of origin	Refugees	Unregistered refugees	Total	Asylum-seekers (pending cases)
North America	2,237	-	2,237	
Canada	101	-	101	61
United States of America	2,136	-	2,136	1,755
Latin America and the Caribbean	149,650	297,300	446,950	
Antigua and Barbuda	26	-	26	26
Argentina	1,047	-	1,047	143
Bahamas	15	-	15	25
Barbados	34	-	34	49
Belize	20	-	20	19
Bolivia	454	-	454	161
Brazil	1,404	-	1,404	369
Chile	994	-	994	124
Colombia	77,232	296,300	373,532	52,635
Costa Rica	354	-	354	66
Cuba	6,938	1,000	7,938	882
Dominica	56	-	56	23
Dominican Rep.	318	-	318	270
Ecuador	1,066	-	1,066	244
El Salvador	5,151	-	5,151	11,160
Grenada	312	-	312	66
Guatemala	5,934	-	5,934	10,253
Guyana	708	-	708	276
Haiti	23,066	-	23,066	12,671
Honduras	1,116	-	1,116	943
Jamaica	826	-	826	404
Mexico	6,162	-	6,162	17,443
Nicaragua	1,537	-	1,537	468
Panama	111	-	111	36
Paraguay	101	-	101	32
Peru	7,339	-	7,339	2,503
Saint Kitts and Nevis	4	-	4	8
Saint Lucia	288	-	288	336
Saint Vincent and the Grenadines	750	-	750	744
Trinidad and Tobago	231	-	231	239
Turks and Caicos Islands	1	-	1	-
Uruguay	199	-	199	51
Venezuela	5,807	-	5,807	1,526

* Source: UNHCR *Global Trends 2008*.

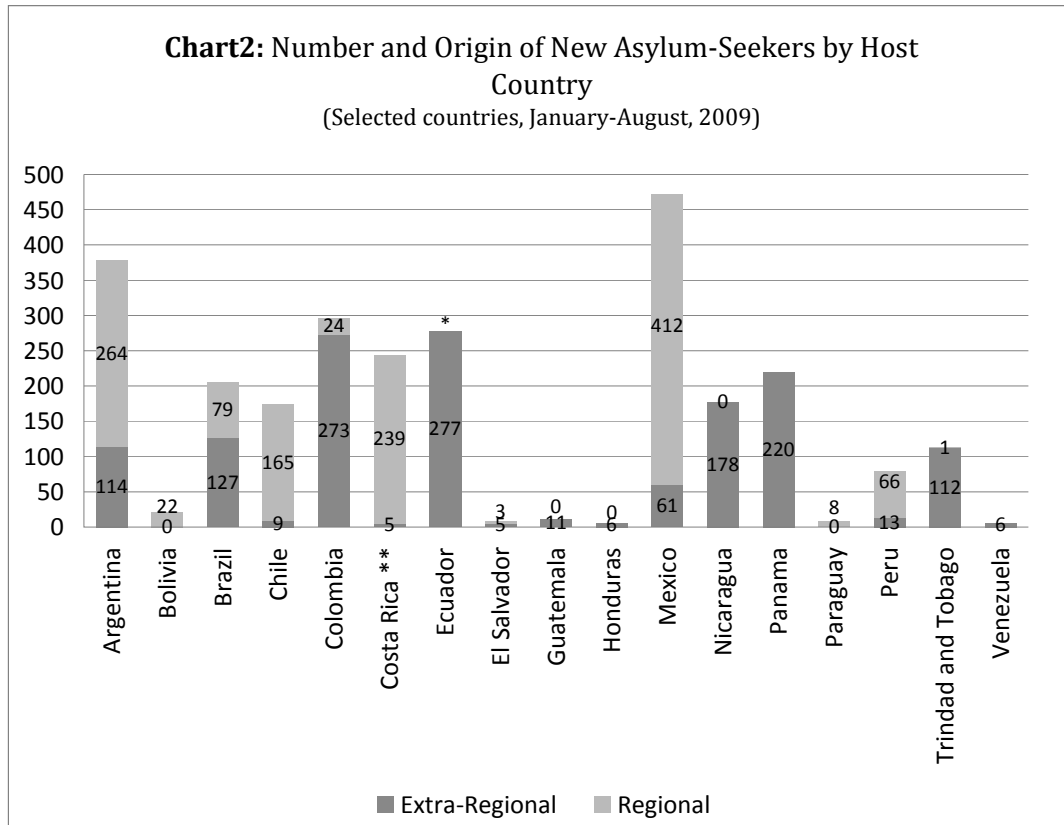
Chart 1: Number and origin of new asylum-seekers in selected countries in the Americas (end 2008)



Source: UNHCR Offices in the Americas.

*The number of new regional asylum-seekers in Ecuador for the year 2008 was 17,607.

Chart 2: Number and origin of new asylum-seekers in selected countries in the Americas (January-August, 2009)



Source: UNHCR Offices in the Americas.

*The number of new regional asylum-seekers in Ecuador for this period was 29,385.

** In the case of Costa Rica, the information covers only the period between January- and March, 2009.

Table 4: Overview of the Legal Framework for the Protection of Refugees in the Americas

Table 4: Overview of the Legal Framework for the Protection of Refugees in the Americas					
Country	Date of ratification		Implementing Legislation		National Mechanism for Refugee Status Determination
	1951 Conv	1967 Prot	Specific chapter in Immigration Law	Separate Law on Refugees	
Antigua & Barbuda	1995	1995	--	--	--
Argentina	1961	1967	--	Law N° 26.125 (2006)	National Commission on Refugees
Bahamas	1993	1993	--	--	<i>Ad hoc</i>
Barbados	--	--	--	--	--
Belize	1990	1990	--	Refugee Act (1991)	Refugee Eligibility Committee
Bolivia	1982	1982	--	Ex. Decree N°. 28.329 (2005)	National Commission on Refugees
Brazil	1960	1972	--	Law N° 9.474 (1997)	National Commission on Refugees
Canada	1969	1969	Immigration and Refugee Protection Act (2002)	--	Immigration and Refugee Board
Chile*	1972	1972	Law N° 19.476 (1996)	--	Determination Commission (Decree No. 1094)
Colombia*	1961	1980	--	Ex. Decree N° 2.450 (2002)	Minister of Foreign Affairs
Costa Rica	1978	1978	Immigration Law (2009)	--	Commission on Restricted Visas and Refugee Status
Cuba	--	--	--	--	--
Dominica	1994	1994	--	--	--
Dominican Republic	1978	1978	--	Ex. Decrees N° 1569 and 2330 (1983)	National Commission on Refugees
Ecuador*	1955	1969	--	Ex. Decree N° 3.301 (1992)	General Directorate for Refugees
El Salvador	1983	1983	--	Law N° 918 (2002)	National Commission on Refugees
Grenada	--	--	--	--	--
Guatemala	1983	1983	--	Decree N° 383 (2001)	National Commission on Refugees

* Legislation currently under review.

(Continues in following page)

Table 4: Overview of the Legal Framework for the Protection of Refugees in the Americas (Continued)

Table 4: Overview of the Legal Framework for the Protection of Refugees in the Americas					
Country	Date of ratification		Implementing Legislation		National Mechanism for Refugee Status Determination
	1951 Conv	1967 Prot	Specific chapter in Immigration Law	Separate Law on Refugees	
Guyana	--	--	--	--	--
Haiti	1984	1984	--	--	--
Honduras	1992	1992	Law N° 208 (2004)	--	General Directorate for Migration
Jamaica	1964	1980	--	--	<i>Ad hoc</i>
Mexico*	2000	2000	General Law on Population (1974)	--	<i>Ad hoc</i>
Nicaragua	1980	1980	--	Law N° 655 (2008)	National Commission on Refugees
Panama	1978	1978	--	Decree N° 23 (1998)	National Commission for the Protection of Refugees
Paraguay	1970	1970	--	Law N° 1938 (2002)	National Commission on Refugees
Peru	1964	1983	--	Law N° 27.891 (2002)	Special Commission on Refugees
St. Kitts & Nevis	2002	--	--	--	--
Saint Lucia	--	--	--	--	--
St Vincent & Grenadines	2003	2003	--	--	--
Suriname	1978	1978	--	--	--
Trinidad & Tobago	2000	2000	--	--	--
USA	--	1968	--	Refugees Act (1980)	Department of Homeland Security / Immigration Judges
Uruguay	1970	1970	--	Law N° 18.076 (2006)	Commission on Refugees
Venezuela	--	1986	--	Law on Asylum and Refugees (2001)	National Commission on Refugees

* Legislation currently under review.

Table 5: Status of ratifications of selected international treaties related to migration

Country	ICERD	ICCPR	ICESCR	CEDAW	CAT	CRC	ACHR	APESC	IACVW	IACTM
	Human Rights						Human Rights (Regional)			
Antigua & Barbuda	1988	-	-	1989	1993	1993	-	-	1998	-
Argentina	1968	1986	1986	1985	1986	1990	1984	2003	1996	1999
Bahamas	1975	2008	2008	1993	S	1991	-	-	1995	-
Barbados	1972	1973	1973	1980	-	1990	1981	-	1995	-
Belize	2001	1996	S	1990	1986	1990	-	-	1996	1997
Bolivia	1970	1982	1982	1990	1999	1990	1979	2006	1994	2003
Brazil	1968	1992	1992	1984	1989	1990	1992	1996	1995	1997
Canada	1970	1976	1976	1981	1987	1991	-	-	-	-
Chile	1971	1972	1972	1989	1988	1990	1990	S	1996	-
Colombia	1981	1969	1969	1982	1987	1991	1973	1997	1996	2000
Costa Rica	1967	1968	1968	1986	1993	1990	1970	1999	1995	2001
Cuba	1972	S	S	1980	1995	1991	-	-	-	-
Dominica	-	1993	1993	1980	-	1991	1993	-	1995	-
Dominican Republic	1983	1978	1978	1982	S	1991	1978	S	1996	-
Ecuador	1966	1969	1969	1981	1988	1991	1977	1993	1995	2002
El Salvador	1979	1979	1979	1981	1996	1990	1978	1995	1995	2005
Grenada	S	1991	1991	1990	-	1990	1978	-	2000	-
Guatemala	1983	1992	1988	1982	1990	1990	1978	2000	1995	-
Guyana	1977	1977	1977	1980	1988	1991	-	-	1996	-
Haiti	1972	1991	-	1981	-	1995	1977	S	1997	-
Honduras	2002	1997	1981	1983	1996	1990	1977	-	1995	2008
Jamaica	1971	1975	1975	1984	-	1991	1978	-	2005	-
Mexico	1975	1981	1981	1981	1986	1990	1981	1996	1998	S
Nicaragua	1978	1980	1980	1981	2005	1990	1979	S	1995	2005
Panama	1967	1977	1977	1981	1987	1990	1978	1992	1995	2000
Paraguay	2003	1992	1992	1987	1990	1990	1989	1997	1995	1997
Peru	1971	1978	1978	1982	1988	1990	1978	1995	1996	2004
St. Kitts & Nevis	2006	-	-	1985	-	1990	-	-	1995	-
Saint Lucia	1990	-	-	1982	-	1993	-	-	1995	-
St Vincent & Grenadines	1981	1981	1981	1981	2001	1993	-	-	1996	-
Suriname	1984	1976	1976	1993	-	1993	1987	1990	2002	-
Trinidad & Tobago	1973	1978	1978	1990	-	1991	1991	-	1996	-
USA	1994	1992	S	S	1994	S	S	-	-	-
Uruguay	1968	1970	1970	1981	1986	1990	1985	1995	1996	1998
Venezuela	1967	1978	1978	1983	1991	1990	1977	S	1995	S

R: Ratification (year not specified) S: Signature

ICERD: 1965 International Convention on the Elimination of Racial Discrimination; ICCPR: 1966 International Covenant on Civil and Political Rights; ICESCR: 1966 International Covenant on Economic, Social and Cultural Rights; CEDAW: 1979 Convention on the Elimination of All Forms of Discrimination against Women; CAT: 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment; CRC: 1989 Convention on the Rights of the Child; ACHR: 1969 American Convention on Human Rights; APESC: 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights; IACVW: 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; and IACTM: 1994 Inter-American Convention on International Traffic in Minors.

Table 5: Status of ratifications of selected international treaties related to migration
(Continued)

Country	PTP	PSM	VCCR	ICRMW	MEC	MWC	UNCLOS	SOLAS	SAR
	TP	SM	CR	Migrant Workers			Rescue at Sea		
Antigua & Barbuda	-	-	1988	-	1976	-	1989	R	-
Argentina	2002	2002	1967	2007	-	-	1995	R	R
Bahamas	2008	2008	1977	-	1976	-	1983	R	-
Barbados	S	S	1992	-	-	-	1993	R	-
Belize	2003	2006	2000	2001	1983	-	1993	R	-
Bolivia	2006	S	1970	2000	-	-	1995	R	-
Brazil	2004	2004	1967	-	1965	-	1988	R	-
Canada	2002	2002	1974	-	-	-	2003	R	R
Chile	2004	2004	1968	2005	-	-	1997	R	R
Colombia	2004	-	1972	1995	-	-	S	R	-
Costa Rica	2003	2003	1966	-	-	-	1992	-	-
Cuba	-	-	1965	-	1952	-	1984	R	R
Dominica	-	-	1987	-	1983	-	1991	R	R
Dominican Republic	2008	2007	1964	-	-	-	2009	R	-
Ecuador	2002	2002	1965	2002	1978	-	-	R	R
El Salvador	2004	2004	1973	2003	-	-	S	-	-
Grenada	2004	S	1992	-	1979	-	1991	R	-
Guatemala	2004	2004	1973	2003	1952	-	1997	R	-
Guyana	2004	2008	1973	S	1966	-	1993	R	-
Haiti	S	S	1978	-	-	-	1996	R	-
Honduras	2008	2008	1968	2005	-	-	1993	R	-
Jamaica	2003	2003	1976	2008	1962	-	1983	R	R
Mexico	2003	2003	1965	1999	-	-	1983	R	R
Nicaragua	2004	2006	1975	2005	-	-	2000	R	R
Panama	2004	2004	1967	-	-	-	1996	R	-
Paraguay	2004	2008	1969	2008	-	-	1996	R	-
Peru	2002	2002	1978	2005	-	-	-	R	R
St. Kitts & Nevis	2004	2004	-	-	-	-	1993	R	R
Saint Lucia	-	-	1986	-	1980	-	1985	R	R
St Vincent & Grenadines	S	S	1999	-	-	-	1993	R	-
Suriname	2007	2007	1980	-	-	-	1998	R	-
Trinidad & Tobago	2007	2007	1965	-	1963	-	1986	R	R
USA	2005	2005	1969	-	-	-	-	R	R
Uruguay	2005	2005	1970	2001	1954	-	1992	R	R
Venezuela	2002	2005	1965	-	1983	1983	-	R	R

R: Ratification (year not specified) **S:** Signature

PTP: 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; **PSM:** 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air; **VCCR:** 1963 Vienna Convention on Consular Relations; **ICRMW:** 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; **MEC:** 1949 ILO Convention concerning Migration for Employment (No. 97); **MWC:** 1975 ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143); **UNCLOS:** 1982 UN Convention on the Law of the Sea; **SOLAS:** 1974 International Convention for the Safety of Life at Sea; and **SAR:** 1979 International Convention on Maritime Search and Rescue.

Table 6: Key figures and trends on refugee protection and international migration in the Americas

Asylum	
Refugee population in the Americas	803,500 (end of 2008). This represents 7.6% of the world's refugees.
Main countries of asylum	USA (279,548 refugees) Venezuela (200,161 refugees) Canada (173,651 refugees) Ecuador (101,398 refugees) These countries host nearly 94% of all refugees and other persons in need of international protection in the region.
Main countries of origin	Colombia: Recognized refugees: 77,232 Persons in need of international protection (unregistered): 296,300 IDPs: More than 3 million Haiti: Recognized refugees: 23,066 75% are hosted by the United States of America
Main countries of resettlement	United States of America: 60,200 (2008) Canada: 10,800 (2008)
Number of countries without implementing legislation	9 (Antigua & Barbuda, Bahamas, Dominica, Haiti, Jamaica, St. Kitts & Nevis, St Vincent & Grenadines, Suriname, and Trinidad & Tobago)
Countries not party to the 1951 Convention or the 1967 Protocol in the Americas	Barbados, Cuba, Grenada, Guyana, and Saint Lucia.
Countries in Latin America that have included the regional definition based on the 1984 Cartagena Declaration on Refugees	Argentina, Belize, Bolivia, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay
Countries currently in the process of adopting refugee legislation	Mexico and Chile
Countries in Latin America that have either included gender as	Argentina, Brazil, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay,

an additional ground to ensure refugee protection, or consider the gender-sensitive interpretation of the refugee definition	Uruguay, and Venezuela
Countries have recognized refugee status to those trafficked persons who come under the scope of Article 1 of the 1951 Refugee Convention	Argentina, Canada, Costa Rica, Ecuador, Colombia and the United States of America
Number of extra-regional asylum-seekers in 2008	1,350 individuals

Migration

Number of migrants in the Americas	52.5 million (a quarter of the total number of migrants worldwide)
North America is the major pole of attraction; estimated number of migrants in the United States of America alone	38.4 million in 2005
Estimated total number of emigrants from Latin America	25 million in 2005 (representing 13% of the total number of international migrants worldwide)
Major migrant-producing countries in Latin America and the Caribbean (in 2000)	Mexico (9.2 million) and Colombia (1.4 million) in 2000
Magnitude of irregular migration, the number of unaccompanied children or trafficked persons in the Americas as a region	There are no reliable data.
Number of deaths of migrants crossing US southern border	From 241 in 1999 to 472 in 2005, with a total death toll of 2,397 victims over this period
Individuals involved in maritime incidents in the Caribbean (from January to August, 2009)	350 individuals in diverse locations off the coasts of Florida, the islands of Turks and Caicos, southeast Haiti and in waters near the British Virgin Islands. These situations resulted in 46 confirmed deaths and 118 victims missing at sea.

Table 7: Matrix on the implementation of the 10-Point Plan of Action at the regional level

Matrix on the implementation of the 10-Point Plan of Action at the regional level
Overview

The Americas hemisphere has witnessed a significant increase in international migration since the 1970s. The main destinations of these movements are the United States of America and Canada, with some migrants heading for other traditional destinations in South America and the Caribbean. Their overall number has been estimated at 52.5 million.

While most of those on the move are in search of better economic opportunities, there are also persons who may be part of broader migration movements who are primarily fleeing persecution, armed conflict, generalized violence, other human rights abuses, or a combination thereof. By comparison with overall migration figures for the hemisphere, their numbers are thought to be relatively small (800,000), and to vary greatly from one country to another. The largest groups are from Colombia and Haiti. The presence of asylum-seekers from countries outside the Americas, moving within broader migratory movements, has also been a constant feature of the last decades. Since 2005 a steady increase has been observed in some countries of migrants (and asylum-seekers among them) arriving from Africa and Asia. These extra-regional arrivals have drawn much attention, due in part to the arrival of groups using human smugglers.

The most dangerous risks for individuals on the move in the Americas are those associated with human trafficking, and the use of precarious means of transport. While mortality rates among migrants *en route* is unknown, incidents of deaths while crossing borders or at sea continue to be recorded in significant numbers. Other forms of violence and abuse also threaten migrants' safety. These can include kidnappings, theft and destruction of identify documents, robbery, assault, sexual violence, extortion, and even murder. The risks faced by unaccompanied children are especially alarming. Although reliable data are not available on these risks and their consequences, there are indications that the numbers of victims are increasing.

Refugees and asylum-seekers face additional hazards when reception facilities are inadequate to meet their specific needs, and when they are denied access to determination procedures. The consequences of expulsion or repatriation are particularly serious for this group of individuals, due to the risks of persecution or serious human rights violations upon return. There a number of institutional hurdles that refugees and asylum-seekers face, notably in countries where legal frameworks and asylum policies are deficient. Domestic legislation and administrative practice, when not adapted to international protection norms, can also bar access to vital documentation, and impede integration within host communities.

There is, however, also a wide range of initiatives taken at regional, sub-regional or national levels, aimed at addressing the specific protection needs of individual within broader migratory movements.

1. Cooperation among key partners

Objectives at the national level:

The composition of mixed movements and the different protection needs of people within these movements require differentiated expertise from various actors. For the Americas, there is a need to further *institutionalize cooperation among* partners. A key objective in the Americas under UNHCR's 2004 *Mexico Plan of Action* to Strengthen the International Protection of Refugees in Latin America has been the establishment of national protection networks composing a wide variety of actors, including national institutions for the promotion and respect of human rights, civil society organizations, and universities.

Achievements	Activities	Actors	Constraints / Main Challenges
<p>There are several examples of efforts to further institutionalize cooperation between key partners at the national level. Protection networks and/or national coalitions against human trafficking are in place in most American countries. Amongst these are the following:</p>	<p>Protection networks have resulted in a number of activities primarily related to joint training, capacity building, monitoring projects and information campaigns (see also respective chapters below).</p>		<p>Limited financial resources often restrict the level of cooperation. For many actors in the Americas, the concept of mixed movements further represents a relative novelty and awareness for this topic and the need for partnership is only slowly evolving. Inter-agency cooperation would benefit from better coordination, for example through (SOPs).</p>
<p>In <i>Brazil</i>, a national protection network has been established which as of 2009 comprises some 44 organizations as well as universities. UNHCR and universities in Brazil have further jointly initiated the Sergio Vieira de Melo chair which provides services to refugees and is a focal point for academic research and the organization of events related to protection considerations.</p>	<p>Several events have been organized by Brazilian universities and foremost the Sergio Vieira de Mello chair in border areas with a powerful impact on the dissemination and engagement of the community in international refugee protection and regional solidarity</p>	<p>UNHCR,IOM, UNODC,SEPPIR (Special Secretary for Policies on Racial Equality), several universities.</p>	<p>Long distances in Brazil increase costs and reduce the possibilities of frequent meetings and/or missions. Long distances are also an obstacle to more effective cooperation in a number of other regions of the Americas.</p>

1. Cooperation among key partners (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Mexico</i> , UNHCR supported an initiative by OHCHR to develop together with several civil society organizations, a Human Rights Program for Mexico City. The majority of the refugee population in Mexico lives in Mexico City. The main objectives of the Program include: to respect, protect, promote and guarantee the human rights of migrants, refugees, and asylum seekers who live or are in transit in Mexico City.	Launch of the “Hospitality City” program which aims, among other initiatives, at passing legislation that guarantees refugees, asylum seekers and migrants’ access to public services in Mexico City.	OHCHR, and several governmental institutions from Mexico City. UNHCR is involved in technical support and capacity building activities established in the Program.	
At the southern border of <i>Mexico</i> , a counter-trafficking network and an inter-institutional group on trafficking bring together the most relevant actors involved in migration management allowing an open dialogue and collaboration between all institutions of the three government levels, civil society and international organizations on activities related to anti trafficking.	Activities include outreach to and awareness raising within communities, lobbying for counter-trafficking legislation as well as direct assistance to victims of trafficking.	UNHCR, IOM, the National Institute for Migration, (INM), National System of Integrated Family Development (SNDIF), the Mexican Commission for Assistance to Refugees (COMAR), the National Human Rights Commission, (CNDH), the State Human Rights Commission, the Honduran, Guatemalan, Nicaraguan, Ecuadorian and Salvadorian Consulates in Chiapas (Tapachula), Fray Matías de Córdova Human Rights Center, the Municipal and State Police Departments and other NGOs working at the Southern border.	The main challenge is to coordinate activities such as trainings and workshops efficiently as both platforms have many participants. There is also an overlap between the group’s and the network’s mandate and members,. The coordination between the two fora occasionally poses another challenge although the majority of the members participates in both fora.

1. Cooperation among key partners (Continued)

Achievements	Activities	Actors	Constraints / Main Challenges
<p>Also in <i>Mexico</i>, UNHCR has closely cooperated with partners from civil society, (in particular with Fray Matías de Córdoba, A.C, Sin Fronteras and the Pastoral de Movilidad Humana) to enhance protection for asylum-seekers and refugees. In 2008, UNHCR signed a MOU with UNICEF in Mexico to reinforce their cooperation on child protection and asylum and migration issues (for more information on child protection officers see chapter on differentiated processes and procedures).</p>	<p>UNHCR has signed an agreement with Fray Matías de Córdoba, A.C for the identification and referral of asylum seekers in the southern border of Mexico. UNHCR and <i>Pastoral de Movilidad Humana</i>, have initiated a country wide consortium of shelters for undocumented migrants. UNHCR, COMAR and Sin Fronteras conduct trainings on IRL and related issues to the members of a <i>pro bono</i> lawyers association who are providing legal assistance to asylum seekers and refugees.</p>	<p>UNHCR, Fray Matías de Córdoba, A.C, Sin Fronteras, Pastoral de Movilidad Humana, UNICEF</p>	
<p>In <i>Ecuador</i>, a protection network composed of NGOs and UNHCR has been set up to enhance protection for refugees and persons in need of international protection. Furthermore, there is a well-established counter-human trafficking network, and the Municipal Human Mobility Table (MHMT).</p>		<p>National Commission for Refugees, line Ministries of Interior, Education, Defense, Tourism, Communication, and Information, Prosecutors, Ombudsman offices, Inamujer, CEDNA, and several Universities.</p>	
<p>In <i>Venezuela</i>, a joint initiative by UN agencies has enabled UNDAF to address asylum issues, particularly at the border with Colombia.</p>			

1. Cooperation among key partners (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Panama</i> , a cooperation agreement between the Ombudspersons Office and UNHCR Panama has been signed and both partners have collaborated closely in procuring effective protection and joint follow-up in individual cases with ONPAR and the National Migration Services.		Ombudsman Office and UNHCR	
<p><u>Objectives at the regional level:</u></p> <p>Given the cross-border elements and the regional character of mixed movements in the Americas, cooperation at the <i>regional level</i> is crucial to ensure comprehensive protection safeguards throughout the continent. The consultative regional migration fora are key in this respect. While there are national protection networks in many American countries (see above), one key objective in the region remains to expand such cooperation beyond national borders, on a bilateral or regional level.</p>			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>the Caribbean</i> , since 2001 UNHCR and IOM have cooperated to implement a series of five joint regional seminars on mixed movements and protection concerns. IOM has also held regular seminars focusing on migration management and anti-trafficking strategies among other issues.	Holding an annual Joint Seminar in the Caribbean.	Caribbean States and Territories, along with UNHCR and IOM	UNHCR does not have no field presence in the Caribbean and actors are generally constrained by financial resources.

1. Cooperation among key partners (Continued)

Achievements	Activities	Actors	Constraints / Main Challenges
<p>Within the Regional Conference on Migration (<i>Puebla Process</i>), member States have recognized human rights and refugee protection as key objectives within the Plan of Action of the RCM.</p>	<p>Within the <i>Puebla Process</i>, American States have passed regional guidelines for the protection of victims of human trafficking and for unaccompanied minors which incorporates the right to seek asylum and the respect of the principle of <i>non-refoulement</i>.</p>	<p>Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the USA; intl. and regional bodies with obs. status</p>	<p>Costa Rica, El Salvador and Guatemala have adopted national protocols for the return of child victims of trafficking. Guidelines still need to be fully implemented in other countries of the region.</p>
<p>Migration and protection issues have become part of the agenda of <i>MERCOSUR</i> which has established a Specialized Migration Organ.</p>	<p>The Specialized Migratory forum within <i>MERCOSUR</i> has increasingly been used to discuss protection considerations within mixed flows.</p>	<p>Argentina, Brazil, Paraguay, Uruguay, plus associated States</p>	<p><i>MERCOSUR</i> has recently started to play a more active role on migration and protection considerations.</p>
<p>Within the framework of the <i>OAS</i> and regional human rights instruments, the Inter-American Commission on Human Rights (<i>IACtHR</i>) and the Inter-American Court of Human Rights (<i>IACHR</i>) play a crucial role in the progressive advancement of the protection of refugees and others in need of protection (IDPs, stateless persons).</p>	<p>Through their resolutions and judgments, monitoring mechanisms, their reparation measures and their technical advisory function, the human rights bodies have referred to the plight of internally displaced persons, returning refugees and undocumented migrants.</p>	<p>OAS, IACtHR and IACHR</p>	<p>Some American States have not yet ratified the regional and global human instruments and/or have not yet recognized the jurisdiction of the IACHR</p>

1. Cooperation among key partners (Continued)

Achievements	Activities	Actors	Constraints / Main Challenges
<p>The <i>Regional Network of Civil Organizations on Migration (RNCOM)</i> has brought together civil society organizations to ensure coordinated and comprehensive input on regional and national migration policies at the Regional Conference on Migration (RCM or Puebla Process).</p>	<p>The RNCOM continues to lobby for protection considerations to be integrated in the Puebla Process.</p>	<p>Several civil society organizations from North America, Central America and the Dominican Republic.</p>	<p>The RNCOM has been advocating for a more formalized role within the Puebla Process. The Network itself might benefit from involving more organizations throughout the region.</p>
<p>UNHCR, IOM and the OAS in cooperation with OHCHR have jointly organized the <i>Regional Conference on Refugee Protection and International Migration in the Americas- Protection Consideration in the Context of Mixed Migration</i>, held in San José, Costa Rica in November 2009</p>	<p>More than 200 participants identified main protection challenges within mixed movements in the Americas and exchanged experiences on how to overcome some of these challenges and how to coordinate better efforts by all stakeholders. UNHCR and IOM were asked to follow-up on the Conference recommendations and will initiate a number of joint projects, involving again a number of actors at the national and regional level.</p>	<p>20 American governments, international agencies (including UNHCR, IOM, OHCHR, UNICEF, UNODC and ECLAC), regional organizations (including the OAS and its human rights bodies), academia and several civil society organizations from various countries</p>	

2. Data collection and analysis

Objectives

In the Americas as in other regions, comprehensive data collection and analysis on mixed movements both at the national and the regional level. A key objective in this regard is to utilize further existing partnerships to share data, particularly highlighting the protection considerations of mixed movements.

Achievements	Activities	Actors	Constraints / Main Challenges
<p>In <i>Argentina, Brazil and Bolivia</i>, the national Commissions for the determination of Refugee Status in cooperation with UNHCR have initiated data bases on information on the registration of asylum-seekers and refugees in order to facilitate the protection-sensitive management of cases at all stages and durable solutions. A similar database is also envisaged for <i>Venezuela</i>.</p>	<p>In <i>Bolivia</i>, the system is being systematically used for the registration of new asylum-seekers while the historical information of individual asylum cases is confidentially preserved by the system and regularly consulted by authorities involved in refugee protection. In <i>Argentina</i>, CONARE developed a new database which facilitates the collection and management of information, incorporating mayor technical improvements. By the end 2010, it should include the profiling of the refugee population residing in the country as well as the automation and delivery of inputs for the development of public policies on durable solutions (local integration strategy). In <i>Brazil</i>, an update is scheduled for 2010 to improve the accuracy and expand the database.</p>	<p>National refugee and immigration authorities, UNHCR, implementing partners such as ACAI in Costa Rica</p>	<p>Problems remain with regard to the accessibility of data, particularly as some States are not willing to share data. Overall, data collection and analysis in most countries is restricted to <i>partial</i> collection, but does not represent the whole spectrum of protection concerns within mixed movements. In other cases, there seem to be no clear criteria for the collection of data.</p>

2. Data collection and analysis (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Costa Rica</i> , UNHCR and its implementing partner ACAI have initiated a data base for refugees and asylum-seekers which is currently in its pilot phase.	Access to data has been granted to other key partners of UNHCR in Costa Rica, such as Casa de Derechos and APRODE. Training has been provided to all stakeholders involved.	UNHCR, ACAI, Casa de Derechos, APRODE	
In <i>Colombia</i> , the MFA in 2006 funded the CEMIC (Studies Centre for Colombian International Migrations) which is expected to provide more systematized data on mixed movements arriving to Colombia and potentially statistics on internal mixed movements as well. Also in <i>Colombia</i> , UNHCR and IOM have initiated a dialogue to improve data collection on mixed movements.	The UNHCR-IOM initiative is in its nascent stages, but will incorporate greater communication and information-sharing, including a focus on cases of suspected victims of human trafficking or others in need of protection.	MFA, UNHCR, IOM	Partly due to the ongoing conflict, international migration is generally not regarded as a priority issue in the government.
For the <i>Caribbean</i> , IOM published a 2005 exploratory assessment on human trafficking in the region, and in 2006 published a compilation on intra-Caribbean migration, including background data on mixed movements, in particular of refugee flows and human trafficking. IOM's Caribbean Counter-Trafficking Initiative has strengthened regional collaboration and information-sharing, built capacity to implement counter-trafficking initiatives through training, and has established 8 national counter-trafficking coalitions.		IOM, Caribbean Governments, UNHCR, Honorary Liaison Officers, NGO partners, CARICOM	

2. Data collection and analysis (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Panama</i> , there is an information gathering system for government institutions and partners.		Government (ONPAR, National Migration Service), international organizations such as UNHCR, IOM, MENAMIRE + others	
The OAS and a number of partners have initiated a regional “Continuous Reporting System on Labor Migration” (Span. acronym: SICREMI) which is thought to obtain a better picture of migration movements in the region.	The project is currently in its pilot phase with 9 participating countries which have all designated national focal points for the implementation of the data base.	OAS, OECD, ILO, IOM, ECLAC, 9 countries from the Americas	While it is too early for any definite assessment, a major challenge seems to lie in ensuring that data is collected and analyzed specifically with regard to protection issues.
For the <i>Regional Conference on Refugee Protection and International Migration in the Americas- Protection Considerations in the Context of Mixed Migration</i> , (see above), UNHCR prepared a background paper highlighting magnitude, trends and protection challenges of mixed movements in the Americas. The paper also contained a number of conclusions and recommendation based upon the data gathered.			

3. Protection-sensitive entry systems

Objectives

Ensuring protection while controlling borders is the primary responsibility of States, but various actors may be usefully integrated to ensure that all people in need of protection are identified and treated in accordance with their rights under international refugee and human rights law, including the respect of the principle of *non-refoulement*. A main objective for the Americas lies in implementing protection safeguards in practice.

To this end, *training and instruction of border officials* need to be enhanced and stakeholders need to be provided with material support to ensure protection-sensitivity at borders.

Achievements	Activities	Actors	Constraints / Main Challenges
<p>UNHCR has implemented joint training programs with governments' National Refugee Committees, Immigration and Border Officials throughout the region. Training measures include the following examples:</p>			<p>Costs of training activities are generally very high. Frequent turn-over of staff undermines sustainability of measures. In some regions (such as in <i>Brazil</i> in the Amazon region), great distances limit contact with protection network partners. The great number of entry points in the Americas overwhelms the training capacity of UNHCR and its partners. This is particularly true for the high seas where an increasing number of deaths has been reported.</p>
<p>Virtual training courses have been successfully tested in <i>Argentina</i> and will be also implemented in <i>Chile</i>.</p>	<p>An on-line virtual seminar on "International Protection and the Refugee Situation in Argentina", developed and financially supported by the Technical Secretariat of the National Refugee Commission (CONARE) and UNHCR, was implemented during 2009. CONARE proposed to extend the methodology to others groups with needs of training within the framework of MERCOSUR. UNHCR's Regional Office expects to implement a similar Course in Chile during 2010.</p>	<p>UNHCR, CONARE, National Migration Service</p>	

3. Protection-sensitive entry systems (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Ecuador</i> , UNHCR and the Ministry of Justice and Human Rights signed a MoU to train 9000 police and military officials at the northern border.		UNHCR, Ministry of Justice and Human Rights	There is generally a lack of monitoring border procedures. Security remains an issue for monitoring personnel, in particular at the borders with Columbia. Limited resources of UNHCR`s partners further impede the development of comprehensive monitoring systems.
In the <i>USA</i> , UNHCR has sought dialogue and cooperation with the Department of Homeland Security to ensure that protection safeguards in entry control are implemented.		UNHCR and US Department of Homeland Security	
In <i>Colombia</i> , UNHCR, the government and the National Secretariat of Social Ministries (SNPS) jointly developed a practical guide for officials responsible for migration control in order to facilitate the identification of asylum-seekers and refugees. UNHCR has taken several steps to improve border monitoring in <i>Colombia</i> . These include: adding UNHCR field offices in strategic areas; planning bi-national missions with UNHCR colleagues from neighboring countries; partnering with NGOs and Catholic Church representatives to provide information on border areas where UNHCR has no presence; entering into an agreement with the Ombudsman`s Office to support local Community Defenders in border areas in monitoring border procedures in areas where direct UNHCR presence is lacking.		DAS, SNPS, UNHCR	

3. Protection-sensitive entry systems (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
UNHCR and partners, including several civil society organizations, the Church, as well as some national Ombudsmen offices have monitored access to territory and asylum procedures. This includes monitoring networks in <i>Colombia, Costa Rica</i> and <i>Venezuela</i> .		UNHCR, Ombudman's Office, IOM	
International organizations and civil society in cooperation with governments and Ombudsman offices need to enhance <i>monitoring of border procedures</i> . They may also provide material <i>support and counseling services</i> , particularly in sensitive, complex or dangerous border areas (such as, for example, those in the Brazilian Amazon area or the Northern Mexican border)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Canada</i> , UNHCR, CIC and CBSA cooperate to monitor procedures at ports of entry and inland immigration offices and provide feedback to the Canadian government.			
UNHCR and CONAREs <i>in the South</i> have a constant sensitization intervention to foster civil society cooperation with local authorities in border sensitive areas, in particular in sensitive border regions such as the triple border of Argentina-Paraguay-Brazil or the Bolivian/Argentinean border.			

3. Protection-sensitive entry systems (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Costa Rica</i> UNHCR and the Ombudsman's Office in 2008 agreed to implement a joint project to monitor mixed migration movements across the border with Panama.	A person paid by UNHCR is operating from the Regional Ombudsman's office with monitoring and liaison duties at the border to Panama. She is coordinating with key institutions in the area. Bi-national training workshops on IRL (covering Costa Rica and Panama) are regularly organized. IOM will join this training program in 2010.		
In <i>Mexico</i> , UNHCR conducts capacity-building activities on International Refugee Law for immigration officials.	In 2010, UNHCR jointly with governmental institutions will conduct training for 32 INM delegations in two rounds: the first round will cover top ranking officials in all delegations, i.e., the "decision makers"; the second round is targeted at those officials who have direct daily contact with refugees and migrants at checkpoints, migration offices, and in migratory stations.	UNHCR, National Migration Institute (Instituto Nacional de Migración, INM) and the Mexican Commission for Assistance to Refugees (Comisión Mexicana de Ayuda a refugiados, COMAR).	In Mexico, migration related matters are placed under the INM which until very recently had a centralized structure, particularly for refugee protection issues. In 2010, new directives were issued assigning broader functions to the different offices of INM throughout the country. This leads to the necessity of more UNHCR capacity building activities country wide.

4. Reception arrangements

Objectives

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. For the Americas, key objectives include: improving reception arrangements in critical border areas; exploring alternatives to detention of asylum-seekers and migrants; ensuring that asylum-seekers are differentiated from criminals held in prison.

Main Constraints

The sheer quantity of border points in many regions complicates harmonization of arrangements and training of staff. Another main challenge is the lack of specialized facilities for women in many regions.

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. States do not always differentiate between detention imposed for immigration offenses and detention for criminal law offenses.

Concerns persist that the conditions in some detention facilities fall short of the minimum standards set by international human rights law.

Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Brazil</i> , the government and UNHCR and its local partners have enhanced efforts to strengthen reception arrangements in major hosting cities like São Paulo and Rio de Janeiro. In 2006, UNHCR established a permanent field presence in the Brazilian Amazon region which contributed to build a temporary reception facility in Tabatinga.	Reception arrangements have been slowly improving in that sensitive Amazon area and are well-functioning in major cities. The reception centre in Tabatinga currently has capacity for around 40 people and started functioning in November 2009. In Manaus the local government started to provide temporary accommodation to asylum seekers.	Protection Network, Implementing Partners, Brazilian Federal Police and IOM	Chronic lack of temporary shelter facilities from government instances in the Amazon area involves high costs or renders programs more expensive. There is a lack of specialized facilities for female asylum-seekers in Rio de Janeiro.

4. Reception arrangements (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Ecuador</i> , UNHCR and other partners have provided for temporary accommodation arrangements at several locations at the Northern border with Colombia.		General Directorate for Refugees, UNHCR, Human Rights NGOs, Catholic Church, Women's organizations	
In <i>Costa Rica</i> , a Manual is currently drafted for reception procedures at Immigration Directorate and detention centers which will be sensitive to cases of trafficked or smuggled persons, and asylum-seekers. It should incorporate an age, gender and diversity approach. UNHCR and partners conduct monitoring visits to detention centers on a bi-monthly basis.		Costa Rican immigration authorities, UNHCR, IOM and Ombudsman office	
In <i>Costa Rica</i> , a pre-screening process has been carried out by UNHCR-IOM and Ombudsman's Office with the leadership of Immigration authorities to assess individual needs of groups of extra-regional cases arriving to CR.	The UNHCR office in Costa Rica served as a Pilot Project to undertake a first pre-screening to determine the individual needs and protection situation of dozens of extra-continental movers coming from Ethiopia, Eritrea, Somalia, Nepal, Indonesia, etc. The pre-screening allowed to substantively reduce the administrative detention periods, as well as to provide valuable information on the nature of the flows.	UNHCR, IOM, Ombudsman Office, Immigration authorities	Given the novelty of the phenomenon for Central American States, there is still a lack of data and experience with regard to the needs of extra-continental migrants and refugees. Language barriers have further complicated adequate responses.

4. Reception arrangements (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Mexico</i> , agreements between civil society organizations and the government have been reached to provide adequate reception facilities for asylum-seekers, such as the Casa de los Amigos in Mexico City, Albergue Belén in Tapachula and Albergue del Menor Migrante in Tapachula.	<i>Albergue Belen</i> is an open reception center in the southern border of Mexico. The Center provides temporary accommodation and basic services to all migrants traveling through or arriving in Tapachula. A unique feature of the center is that it provides an alternative to the state-run detention facilities for persons with or without entry permits and travel documentation. UNHCR signed a collaboration agreement with <i>Casa de los Amigos</i> aimed at providing temporary accommodation to persons of concern in Mexico city. According to a MOU signed in 2007 by COMAR, and INM and SNDIF delegations in Chiapas State, children seeking asylum in Tapachula, Chiapas, can be exceptionally released and transferred to a child care shelter run by SNDIF.	UNHCR, Albergue Belén, Casa de los Amigos, and Sin Fronteras, COMAR, INM, SNDIF	A MOU with COMAR and SNDIF is needed to ensure care arrangements of children seeking asylum aged 0-17 countrywide. In the meantime, advocacy for alternatives to detention for children seeking asylum is carried out on a case by case basis and COMAR and SNDIF work in coordination to identify and channel the unaccompanied children to government and private child care facilities which provide adequate accommodation and ensure physical and mental children's development, their access to education, health services as well as legal advice for children seeking asylum, refugee children and those entitled to complementary protection.
In <i>Panama City</i> , migration authorities opened new facilities for reception and detention of undocumented migrants, which are regularly monitored by UNHCR. Its local partners, VIDA and the local Red Cross provide shelter and assistance to arrivals. UNHCR has collaborated with national shelter institutions for children, The Office also rehabilitated a safe house/shelter for women at risk/ victims of Gender-based violence in Puerto Obaldia, Kuna Yala. UNHCR, the Legal Center CEALP and the Ombudsman Office undertake regular joint monitoring visits to detention centers.		Panamanian National Migration Service, UNHCR, Panamanian Red Cross, VIDA, CEALP, and the Ombudsman Office	

5. Mechanisms for profiling and referral

Objectives

All persons with specific protection and/or assistance should receive counseling and should be referred to the most appropriate mechanism to address their protection and assistance needs. For the Americas, improving existing profiling and referral mechanisms is in particular needed to respond to the steady increase of extra-continental refugees and migrants to the region.

Main constraints

In the Americas, the lack of comprehensive referral mechanism for mixed movements hampers the provision of protection and assistance. Existing forms of cooperation would benefit from institutionalization. Political will from States and more flexibility from international organizations and civil society are needed to enhance cooperation and to refer cases to other institutions.

Achievements	Activities	Actors	Constraints / Main Challenges
<i>Ad-hoc</i> mechanisms for referral of asylum-seekers are in place in a number of countries such as <i>Argentina, Chile, Uruguay</i> and <i>Peru</i> .		International organizations, in particular UNHCR, UNICEF, IOM and OHCHR	
In <i>Costa Rica</i> , UNHCR, the Catholic Church and the Ombudsman Office provide joint counseling for irregular migrants.			
In <i>Ecuador</i> , UNHCR has supported the creation of information and orientation centers run by the IP HIAS where asylum-seekers, refugees, rejected cases and migrants can obtain information and counseling on integration in Ecuador. A similar information centre has been opened up in Tulcan, Carchi, funded jointly by UNHCR & COPI.		UNHCR, IPs, COPI	

5. Mechanisms for profiling and referral (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Mexico</i> , there is a questionnaire for undocumented migrants before return to find out whether they would face <i>refoulement</i> or might be otherwise in need of protection. Coordination among institutions on detention and referral of children in need of protection, including foremost refugee children, has been improved. The Interagency Roundtable has drafted a flowchart for the protection of unaccompanied minors.		State authorities, UNHCR, Interagency Roundtable	
In the <i>USA</i> , legislation passed in 2008 requires screening of unaccompanied children for access to asylum procedure and protection against trafficking before voluntary repatriation.		US Legislative	

6. Differentiated processes and procedures

Objectives

To ensure that each person is treated in accordance with its specific needs and rights, differentiated processes and procedures need to be put in place for different categories of people. These may include: 1) asylum-seekers and refugees, 2) trafficked persons, 3) unaccompanied/ separated children, 4) women in heightened risk, plus 5) procedures in place for other groups with specific needs. In the Americas, a key objective lies in unburdening the asylum-systems and simultaneously ensuring that there is refugee legislation in place and that capacities of national authorities correspond to the asylum claims received annually.

Main constraints

Few States in the Americas have not yet ratified the main international and regional refugee and human rights instruments. Yet, even where refugee legislation has been passed its implementation needs improvement. Some States in the Americas lack the resources to ensure efficient processes and procedures for asylum-seekers. The fast track procedures which a number of States have put in place require constant monitoring to ensure that protection safeguards are respected. The arrival of extra-continental refugees in particular to Central American and Caribbean countries present particular challenges with regard to translation services and secondary movements (even recognized refugees may wish to travel onward to the USA or Canada).

Achievements

Activities

Actors

Constraints / Main Challenges

Processes and procedures for refugees:

Almost all States have passed refugee legislation over the past years. Notably in this respect, in *Mexico, Colombia* and *Chile*, national authorities have invited UNHCR and partners to participate in the consultative process to draft refugee legislation.

6. Differentiated processes and procedures (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
A number of countries (such as for example <i>Canada</i> and since 2010, <i>Costa Rica</i>) have specialized departments, apart from Security or Migration Departments, in place for the protection of refugees. The asylum system in <i>Canada</i> is generally perceived as effective and provides for fast-track procedures. <i>Canada</i> has in the past provided support to the national refugee determination procedures in <i>Mexico</i> and <i>Costa Rica</i> and is currently contemplating to extend this cooperation to <i>Argentina</i> .			
In <i>Panama</i> , there is a Refugee Legal Aid Program run by a local NGO (CEALP) supported by UNHCR and the Norwegian Refugee Council (NRC).	The CEALP legal aid center provides free legal aid and representation to refugees and asylum-seekers and aims to empower civil society.	CEALP, NRC, UNHCR	
In <i>Ecuador</i> , there is an Enhanced Registration Program run by the government (and funded by UNHCR) to process Colombians in need of international protection at border areas and to grant them full refugee status within one day.	Immigration authorities, General Directorate for Refugees, UNHCR (funds and technical support)		Lack of funds and increasing number of arrivals might hamper the program

6. Differentiated processes and procedures (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
<p><u>Processes and procedures for victims of human trafficking:</u></p> <p>In <i>Costa Rica</i>, a “National Coalition Against Smuggling of migrants and Trafficking in Persons” brings together various State departments as well as IOs (including UNHCR and IOM) and several partners from civil society. (see also trafficking networks mentioned in Chapter I)</p>	<p>A joint awareness campaign on human trafficking has been initiated and guidelines have been developed for key actors to identify, assist and provide protection to victims and witnesses of human trafficking. In addition, training sessions have been conducted for border staff, a protocol has been adopted on the repatriation of trafficking child victims and an immediate response team has been established to coordinate and handle direct action for victims of trafficking.</p>	<p>Ministry of Foreign Affairs, Ministry of Health, Ministry of Interior and Public Security, Ministry of Justice, Ministry of Labor and Social Security, Ministry of Public Education, National Institute for Children, National Institute for Women, Ombudsman office; with the participation of IOM, UNHCR and civil society organizations, all with observer status.</p>	
<p><u>Processes and procedures for children, in particular unaccompanied children:</u></p> <p>In <i>Mexico</i>, an inter-institutional dialogue on unaccompanied minors brings together different State departments as well as various international agencies and civil society. Child Protection Officers have been trained to assist children, in particular unaccompanied minors and to treat them in accordance with their specific needs, for example as refugees and/or victims of human smuggling or trafficking.</p>	<p>The number of children seeking asylum and of those being recognized as refugees has increased and unaccompanied minors have been provided with improved assistance. A flowchart for the protection of unaccompanied migrant children and adolescents has been drafted jointly by key actors in the government and international organizations.</p>	<p>UNHCR, COMAR, INM, Immigration Directorates in Central America, OIM, UNICEF, OHCHR</p>	

6. Differentiated processes and procedures (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
Increased attention has been paid to the protection needs of minors and determination of the best interest for the child in other countries, including for example <i>Argentina</i> and <i>Costa Rica</i> .	In <i>Argentina</i> , unaccompanied minors are appointed a guardian which helps to identify their best interest and to assist them in all legal procedures. In <i>Costa Rica</i> , a data base has been established in which all cases of unaccompanied minors are systematically integrated and arrangements are made that unaccompanied children are assisted by trained staff from the national child institution.		
Following an initiative by Mexico, the <i>Regional Conference on Migration (Puebla Process)</i> has adopted regional guidelines for the repatriation of unaccompanied children.			

7. Durable solutions for refugees

Objectives

After refugee status has been determined and immediate protection needs addressed, refugees may need support to find a long-term and durable solution that will enable them to rebuild their lives and to realize their human rights, which they were deprived of when they fled their homes. In the Americas, key objectives in this respect are the improvement of opportunities for local integration of refugees and other persons of concern. Resettlement may be an alternative to provide protection and durable solutions for persons of concern. Due to the prevailing conditions in the countries of origin of the majority of the regional caseload, voluntary repatriation has been facilitated only for a few number of refugees in the Americas.

Achievements	Activities	Actors	Constraints / Main Challenges
Throughout the Americas, UNHCR has cooperated with governments and local partners to find durable solutions for refugees. There are several noteworthy examples in this respect			Lack of political will of some institutions to allocate government funding to local integration programs. Decentralization of public administration involves local negotiation in a high quantity of regions.
In several countries, including <i>Costa Rica and Panama</i> , UNHCR has cooperated with its local partners to intervene for a better integration of refugees, including through programs for housing, micro credits and labor insertion.	Through the provision of micro-credit loans and professional training, UNHCR and its partner in Costa Rica and Panama have assisted refugees in developing their own small business. Gender balance and the promotion of women entrepreneurship are core aspects of the programs' design.	UNHCR offices and implementing partners	Discrimination and limited knowledge of refugees' rights of both authorities and employers remain severe obstacles for better integration of refugees in Costa Rica and Panama.
In <i>Costa Rica</i> , the House of Rights of Desamparados promotes a self-reliance strategy that focuses on the provision of adequate orientation and legal aid to refugees and asylum-seekers.			

7. Durable solutions for refugees (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Panama</i> , the government in 2008 passed a law (Law 25/2008) establishing that refugees and persons granted political asylum and have held that status for 10 years or more at the time the law entered into force, may apply for permanent residency status.	Approximately 100 applicants have been made by refugees for permanent residency status on the basis of this law.	UNHCR and the Ombudspersons Office have undertaken measures to inform the public about Law 25/208. This has for example included the elaboration and distribution of a joint information brochure.	Favorable legislation passed in 2008 will expire at the end of 2010 and will need to be renewed or replaced by similar legislation.
In the <i>Caribbean</i> as well as in <i>Mexico and other countries in Latin America</i> , recognized refugees receive adequate documentation and a legal status which affords the right to work.			
In <i>Mexico</i> and in <i>Colombia</i> , non-Spanish speaking refugees are provided with Spanish language training to facilitate their integration into Mexican and Colombian societies, respectively			
The <i>US Government</i> has undertaken two circuit rides to the Caribbean region, processing refugee cases out of Bahamas, Dominican Republic, Haiti, Jamaica, and Trinidad & Tobago.			

7. Durable solutions for refugees (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In <i>Mexico</i> , in order to provide health care at a reduced cost or for free, COMAR signed a cooperation agreement with the Health Ministry for inclusion of refugees and their families under the scheme of the popular health insurance (<i>Seguro Popular</i>) that guarantees unrestricted access to health services for low income persons, or those who are not insured by other social security institution.			Despite the formal agreement for the affiliation of all refugees to the <i>Seguro Popular</i> , enrolment has been carried out at a very low pace and, therefore, free access to health services is still based on a case by case decision rather than a common practice

8. Addressing secondary movements

Objectives

The term “secondary movements” refers to the onward movement of refugees and asylum seekers who have already found protection in a first country of asylum (see ExCom Conclusion No. 58 1989). In the Americas, secondary movements mainly flow from the South to the North and mainly to the USA and Canada. Main objectives of a strategy on secondary movements include the strengthening of national capacities in first countries of asylum and the enhancement of regional solidarity mechanisms and bilateral protection strategies. It is furthermore important to include activities to combat transnational criminal networks.

Main constraints

The pull-factors towards North America are predominant in asylum seekers’ decisions. The differences, both perceived and real, in protections and opportunities offered in intended destination countries are vast. Lack of resources and administrative burdens often impede return arrangements, in particular in cases of extra-continental migrants. Family links in the North often are a predominant factor in secondary movements. A main challenge remains in analyzing the scope and root causes of secondary movements in the Americas.. With the exception of *Nicaragua* and some countries in the Southern Cone (Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay) , asylum seekers in Latin America do not have the right to work.

Achievements

Activities

Actors

Constraints / Main Challenges

Few *Ad hoc* readmission agreements have been implemented particularly among *Caribbean States* (i.e. Cuban and Haitians from Bahamas and Jamaica).

Brazil usually accepts the return of irregular movers, as it serves also as a transit country to asylum seekers trying to reach north America.

Colombia has readmitted asylum seekers and refugees previously registered and recognized in the country

Ecuador readmitted some extra-continental migrants and asylum seekers following discussion with El Salvador.

An administrative circular issued by *Mexico’s* National Institute for Migration, working closely with UNHCR, provides specific direction of the management of cases in which an asylum seeker is a secondary mover.

8. Addressing secondary movements (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
<p>The USA and Canada in 2002 adopted the <i>Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries</i> (Safe third country agreement) which entered into force on 29 December 2004. The purpose of the Agreement is, <i>inter alia</i>, to share refugee status determination responsibility, identify persons in need of protection, and avoid <i>refoulement</i>.</p>	<p>The Agreement provides for UNHCR ongoing monitoring and participation in a government review of its implementation after one year.</p>		<p>UNHCR's overall assessment has been generally positive, though recommendations for improvement have been made with a key concern regarding treatment of cases wrongly directed back from Canada to the U.S. In general UNHCR found that the Safe 3rd Agreement was being implemented according to the terms of the agreement and international refugee law.</p>

9. Return arrangements for non-refugees and alternative migration options

Objectives

Effective return policies and practices are essential for maintaining credible asylum system. Demonstrating that unauthorized entry is not a back-door to regular migration can deter irregular migration and reduce incentives for smuggling and trafficking. Sustainability of return is best guaranteed if people who have no right to stay are encouraged to return voluntarily. Some States have specific projects to encourage voluntary return. Specific protection safeguards need to be in place as regards to return of non-refugees with specific needs such as for example children. A key objective also is to strengthen regular migration alternatives for those not qualifying for refugee protection.

Main constraints

A general challenge for UNHCR consists in improving and institutionalizing cooperation with key partners, most importantly the IOM and State authorities.

Achievements	Activities	Actors	Constraints / Main Challenges
In 2006-2007 <i>UNHCR</i> Mexico in conjunction with <i>Save the Children</i> conducted a study on unaccompanied children at the Southern border of Mexico that, among other things, made recommendations for strengthening appropriate protection safeguards.			
In <i>Costa Rica</i> , UNHCR has approached IOM and immigration authorities to address of the promotion of voluntary return for those not qualifying for refugee status.			
<i>The Regional Conference on Migration</i> has adopted regional guidelines for the return of regional and extra-continental migrants which includes savings clauses related to the right to asylum and the respect of the principle of <i>non-refoulement</i>			
Regularization programs and amnesties for irregular migrants have been implemented over the past years by several Latin American countries, for example <i>Argentina</i> (Patria Grande Programme), <i>Brazil</i> , <i>Chile</i> , <i>Uruguay</i> and <i>Venezuela</i> (Identity Mission).			

10. Information strategy

Objectives

Public awareness initiatives need to be put in place to 1) warn about the dangers of irregular migration, trafficking in persons and smuggling to inform persons in need of protection and 2) to ensure that host communities are sensitized to protection considerations.

Main constraints

An overall challenge for UNHCR and partners remains in widening the focus of PI activities to include aspects related to mixed movements in general. There is still only limited cooperation between all partners to adequately inform about the exploitative practices of trans-national trafficking and smuggling networks.

Achievements	Activities	Actors	Constraints / Main Challenges
<p>In <i>Brazil</i>, leaflets and awareness raising campaign were conducted through the protection networks in 44 borders points around the country specially in sensitive areas like the Amazon. Also in <i>Brazil</i>, academia, mainly through the Sergio Vieira de Mello has proven to be a key partner for information dissemination.</p>	<p>Beneficiaries included authorities, civil society, law students, independent lawyers and media journalists.</p>	<p>Universidade Católica de Santos, Universidade de Vila Velha, Universidade Federal Fluminense, Universidade do Estado do Rio de Janeiro, Universidade Federal de Roraima, UNODC, IOM</p>	
<p>In <i>Panama</i>, UNHCR, the University of Panama and the Institute of National Studies hold annual Post-Graduate courses on International Refugee Law.</p>		<p>UNHCR, University of Panama, Institute of National Studies</p>	

10. Information strategy (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
In March 2009, IPs in <i>Belize, Guatemala, El Salvador, Honduras and Nicaragua</i> organized a three-week mission along the borders of the five countries ¹ and organized sensitization activities with migration authorities, police, the military, NGOs, schools, churches and civil society. The IPs targeted front-line immigration and border control officials in key border zones, with a view to facilitating access to asylum procedures as well as the identification of cases with protection needs. During those training measures to governmental counterparts and civil society, IPs linked IRL and national framework to the need to reinforce and operationalise the mechanisms for the identification of persons in need of international protection.		During this mission, IPs also organized visibility activities and disseminated protection materials such as posters, leaflets and the <i>Guide on the Protection of Refugees in Central America</i> published by ROMEX in 2008.	
In <i>Colombia</i> , UNHCR and SNPS partner with the Universidad Javeriana in Bogotá to train law students on International Refugee Law and procedures in a hands-on legal clinic. UNHCR Colombia also works with the MFA to provide trainings on International Refugee Law and Colombian law and procedures to immigration and other law enforcement officials, particularly in border areas, airports and other points of strategic interest.			

¹ Nicaragua (Managua), Nicaragua border with Honduras (Peñas Blancas, Ocotal, El Espino, Teotecacinte, Las Manos, La Fraternidad), Honduras (Tegucigalpa, Choluteca, Guasaule), Honduras border with El Salvador (El Amatillo, Comalapa), El Salvador (San Salvador), El Salvador border with Guatemala (Las Chinamas, Valle Nuevo, Pedro de Alvarado), Guatemala (Jutiapa, Chiquimula, El Florido, Aguacaliente, El Corinto, El Cinchado, Puerto Barrios, Livingston), Guatemala border with Belize (Melchor de Mencos, Belize (Belmopán, Belize City, Corozal),

10. Information strategy (Continued)			
Achievements	Activities	Actors	Constraints / Main Challenges
<p>In September 2009, <i>the International Conference on Human Rights, Discrimination and Racism</i> in Montevideo/ Uruguay brought together stakeholders from the continent. The final declaration called upon Caribbean and Latin-American cities belonging to UNESCO's Coalition of Cities against Racism, Discrimination and Xenophobia to promote UNHCR's new policy on refugee protection and solutions in urban areas and to develop specifically under the programs of Cities of Solidarity of the Mexico Plan of Action, public policies that protect refugees and promote their local integration.</p>	<p>UNHCR Regional initiatives) were aligned and boosted taking advantage of the ongoing regional processes, including the 2009 Conference. Following the Conference some Municipalities contacted UNHCR and expressed their interest to become "Solidarity Cities" within the Mexico Plan of Actions and to develop joint initiatives to combat discrimination and work towards the identification of durable solutions for refugees (this concerns, for example, the Municipality of Moron and Province of Chubut in Argentina).</p>		
<p>The OAS has founded a working group for the adoption of an Inter-American Convention against Racism and Forms of Discrimination and Intolerance.</p>			

List of Acronyms

CEAM	Special Committee on Migrant Issues
ECLAC	Economic Commission for Latin America and the Caribbean
ExCom	Executive Committee of the High Commissioner's Programme
IFRC	International Federation of Red Cross and Red Crescent Societies
ILO	International Labor Organization
IOM	International Organization for Migrations
MERCOSUR	Southern Common Market
MPA	Mexico Plan of Action to Strengthen Refugee Protection in Latin America
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
RCM	Regional Conference on Migration
SACM	South-American Conference on Migration
UNDESA	United Nations Department of Economic and Social Affairs
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime