



## GUIDANCE NOTE ON THE OUTFLOW OF VENEZUELAN

1. Venezuela continues to experience a significant outflow of Venezuelans to neighbouring countries, other countries in the region, and countries further afield. While individual circumstances and reasons for these movements vary, international protection considerations have become apparent for a very significant proportion of Venezuelans.<sup>1</sup> UNHCR's concern for Venezuelans outside their country of origin implicates UNHCR's mandate.<sup>2</sup> In delivering these functions, the Office of the High Commissioner has a history of over sixty years of collaborating with Governments and developing partnerships with other international agencies and non-governmental organizations.

2. Against this background, UNHCR calls on States receiving and/or already hosting Venezuelans to allow them access to their territory, and to continue to adopt appropriate and pragmatic protection-oriented responses, building on existing good practices in the region. UNHCR is ready to work with States to devise appropriate international protection arrangements in line with national and regional standards, in particular the 1951 Convention relating to the Status of Refugees and the Cartagena Declaration.<sup>3</sup> Such arrangements are guided by the principle that providing international protection is a humanitarian and non-political act. Providing international protection is consistent with the spirit of international solidarity, of which countries in the Americas region, including the Bolivarian Republic of Venezuela, have a long history.

### *Protection-oriented arrangements under national or regional frameworks*

3. Recognizing the challenges and potential delays States may face in adapting existing asylum systems to the current situation, UNHCR encourages States to consider protection-oriented arrangements to enable legal stay for Venezuelans, with appropriate safeguards. This could, for example, include various forms of international protection, including under international human rights law,<sup>4</sup> and temporary protection or stay arrangements,<sup>5</sup> or alternatively visa or labour migration arrangements that would offer access to legal residence and to a standard of

<sup>1</sup> Information available to UNHCR on the basis of border monitoring interviews conducted with Venezuelan nationals. See also the sources in footnote 9 below.

<sup>2</sup> UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, <http://www.refworld.org/docid/5268c9474.html>.

<sup>3</sup> *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws and State practice. At the time of writing, the Cartagena refugee definition has been incorporated into the national laws of Argentina, Belize (the OAU refugee definition), Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

<sup>4</sup> For example, Art. 22(8) of the 1969 American Convention on Human Rights, <http://www.refworld.org/docid/3ae6b36510.html>.

<sup>5</sup> UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>.

treatment akin to international protection.<sup>6</sup> Implementation of such arrangements would be without prejudice to the right to seek asylum, notably in expulsion or deportation proceedings or in the case of non-renewal of residence permits. In all circumstances, minimum standards would need to be guaranteed, namely:

- a) **Legality:** The requirements and procedures for obtaining such arrangements would need to be defined and articulated under national law. UNHCR calls on States to ensure that persons benefiting from such arrangements are issued with an official document recognized by all government authorities.
- b) **Accessibility:** The relevant arrangements would need to be accessible to all Venezuelans, irrespective of their date of entry into the host country. This would mean that there should be no or minimal costs associated with applying for such an arrangement, and that applications would be accepted in various locations across the territory to ensure that transportation costs are not prohibitive. Further, neither irregular entry/presence nor lack of identity documents would be viewed as a valid reason for denying access to such an arrangement.
- c) **Access to basic rights:** Protection-based arrangements would also guarantee access to basic services and fundamental rights, on an equal basis with other foreign nationals who are legally resident on the State's territory, in line with UNHCR's Guidelines on Temporary Protection or Stay Arrangements.<sup>7</sup> These rights include: 1) access to health care; 2) access to education; 3) family unity; 4) freedom of movement; 5) access to shelter, and 6) the right to work. These rights would be guaranteed on an equal and non-discriminatory basis.
- d) **Guarantees of non-return:** In view of the current situation in Venezuela, UNHCR calls on States to ensure that holders of complementary forms of protection, temporary protection or stay arrangements, or visa or labour migration arrangements will not be deported, expelled, or in any other way forced to return to Venezuela, consistent with international refugee and human rights law. This guarantee would need to be assured either in the official identity document received or through other effective means, such as clear instructions to law enforcement agencies.

#### *Access to asylum procedures*

4. The solutions outlined above are without prejudice to the right to seek asylum. Fair and efficient asylum systems provide the necessary safety net to ensure that individuals with international protection needs are recognized as such and are protected from refoulement. All decisions on asylum claims need to take into account relevant, reliable and up-to-date country of origin information.

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<sup>6</sup> Such standards include: appropriate reception arrangements; recognized and documented permission to stay; protection against arbitrary or prolonged detention; access to housing, education, health care and other basic services; freedom of movement, except as may be warranted by national security, public order or public health considerations; the registration of births, deaths and marriages; physical security, including protection against sexual and gender-based violence and exploitation; special care for separated and unaccompanied children, guided by the best interests of the child; respect for family unity and tracing, and opportunities for reunification with separated family members; particular attention and special arrangements for persons with special needs, including persons with disabilities; self-sufficiency or work opportunities; and access to UNHCR and, as appropriate, other relevant international organizations and non-governmental organizations and civil society. See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>, in particular paragraphs 13, 16-18.

<sup>7</sup> See footnote 6.

5. Where States are applying the 1951 Convention/1967 Protocol refugee definition, UNHCR supports the implementation of measures to accelerate or simplify individual case processing if the number of cases exceeds the capacity of the asylum system.

6. If a State has incorporated the broader criteria set out in the Cartagena Declaration into their national legislation, UNHCR encourages States to consider the application of this regional definition in the case of Venezuelan asylum-seekers, including as a basis for accelerated or simplified case processing.<sup>8</sup> In light of the wide range of information available on the situation in Venezuela, UNHCR considers that the broad circumstances leading to the outflow of Venezuelan nationals would fall within the spirit of the Cartagena Declaration,<sup>9</sup> with a resulting rebuttable presumption of international protection needs.

7. UNHCR offers its technical support and expertise to States seeking to improve the accessibility, fairness, and efficiency of their asylum and other international protection processes. In specific country contexts where the capacity of the asylum systems to effectively address international protection needs, is either not in place or overwhelmed, special measures are required to ensure that States adhere to their non-refoulement and other protection obligations in relation to Venezuelans.

8. UNHCR calls on States to take the required measures to combat racism, discrimination and xenophobia, not least in light of a number of incidents seriously affecting the life, security and integrity of Venezuelans. UNHCR is ready to support these efforts.

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<sup>8</sup> See footnote 3 above.

<sup>9</sup> For guidance on the interpretation of the broader criteria in the Cartagena Declaration, see: UNHCR, Guidelines on International Protection No. 12: Claims on refugee status related to situations of armed conflict and violence under 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, <http://www.refworld.org/docid/583595ff4.html>.