

# CARTAGENA +30 INITIATIVE

International protection and effective integration: recommendations of civil society for the current dimensions of asylum and statelessness in Latin America and the Caribbean

## Executive Summary

(This document is open to new contributions from organizations that agree with its recommendations)

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# Executive Summary

The 30th anniversary of the Cartagena Declaration represents an opportunity to analyze the advances and current challenges for international protection and effective integration of asylum-seekers, refugees and stateless persons in the region. The **Cartagena +30 Initiative** document is the result of an effort made by various organizations and persons under international protection from 14 of the region's countries. This document puts forward proposals for facilitating a dialogue that would allow us to pursue an international protection agenda in the region over the next 10 years (Brasilia Declaration), built on active exchange between each of the actors and confronting in a transparent fashion the current dimensions of asylum and statelessness in the region. This document is based on interviews with and reports from people and organizations who lead protection and social inclusion processes and on focus groups of people currently living under international protection in: Mexico, Guatemala, Nicaragua, Honduras, Costa Rica, El Salvador, Panama, Belize, Dominican Republic, Venezuela, Ecuador, Brazil, Uruguay and Argentina. The inputs were systematized to trace the issues that have an impact on the area of protection in the region and, on the other hand, to map out the common challenges in practice to implementing government action for international protection.

Latin America has been characterized as a pioneer in protection in the context of asylum. A review of the evolution of the context of protection granted to asylum-seekers and refugees in Latin America and the Caribbean allows us to observe a unique, progressive focus in addressing the crisis and achieving regional coordination to find consensus solutions. The Cartagena Declaration constitutes one of the milestones of this tradition. The region's normative development, together with a comprehensive and contemporary understanding of the 1951 Convention, provides us with a legal framework adequate to tackle the issues that are facing the region's humanitarian space today.

The document broaches the importance of collaboration between civil society organizations, governments and the United Nations High Commissioner for Refugees (UNHCR) aimed at providing concrete and viable strategies for integrated public policies that are consistent with the tradition of the Americas in international protection. The multidimensional and multisectorial character of forced migration and the challenges for international protection require coordination mechanisms between the various authorities involved, where there is already experience but which needs strengthening.

Among the issues that impact on the region's humanitarian space, people and organizations who have participated in this process indicate:

- ▲ **Violence, organized crime and internal displacement.** The countries of Central America's Northern Triangle (Guatemala, El Salvador and Honduras) and Mexico have experienced an increase in violence within the context of the growing power of the criminal cartels and the so-called "war on drugs". The internal armed conflict in Colombia, characterized by systematic human rights violations and widespread violence, has displaced thousands of people to other cities within the country or to other countries of the region.

- ▲ **Megaprojects.** In several countries of the region, including Guatemala, El Salvador, Colombia and others, the development of megaprojects supported by transnational companies has led to forced displacement, especially of indigenous populations.
- ▲ **Natural disasters.** Forced displacement as a consequence of natural disasters (fires, floods, earthquakes, storms) is a phenomenon that affects the region. The 2010 earthquake in Haiti destroyed more than 1 million homes and caused one of the region's worst displacement crises.
- ▲ **Femicide/Gender-based violence.** Gender-based violence constitutes a form of permanent and growing persecution in the region. Some of the region's countries have the highest rates of femicide in the world. Gender-based persecution affects women and gay, lesbian, transgender, transsexual and intersex people.
- ▲ **Unaccompanied boys, girls and adolescents.** The rise in cases of unaccompanied or separated boys, girls and adolescents is mentioned throughout the interviews conducted in the region, this being one of the anticipated protection challenges at regional level. The structural causes are the same as those which lead to forced migration of adults but the risks are increased as a result of the status as minors of those involved.
- ▲ **Human rights defenders.** Several countries in the region report threats and intimidation against civil organizations, activists and defenders of the rights of the migrant, refugee and stateless population.
- ▲ **Extra-continental mixed migratory flows.** Currently, in our region we are witnessing a growing process of extra-continental migration, that is, migrants coming from other regions in search of opportunities in the American continent for multiple reasons, many interlinked and including economic, social and political motives. In many countries the authorities do not demonstrate a capacity to attend to the extra-continental migrant and refugee population.

In its central part the document **analyzes challenges and good practices with regard to:**

1. **Access to asylum and the quality of procedures for determining refugee status,** which must be evaluated both in terms of fulfilling regional and international standards and how the procedure works in practice – it is important to note the decline in rates of granting refugee status in some countries of the region. The report highlights the commitment made by the MERCOSUR States, set out in MERCOSUR's Declaration of Principles on International Protection of Refugees, in which the States take responsibility for adopting common measures to allow the identification of persons in need of international protection in the context of the growth and complexity of mixed flows. Likewise, it notes the approval of the "Regional guidelines for the preliminary identification of vulnerable migrants" in the XVIII Vice-Ministerial Meeting of the Regional Migration Conference in June 2013.
  - (a) A common concern in the countries analyzed is the dichotomy between national security and international protection, particularly observed in the border controls (land, sea and air). This is one of the main challenges facing the region. States have a legitimate interest in the area of national security but this should include their obligation to provide international protection to persons who for various reasons require it within the framework of due process.

- (b) In practice there are big discrepancies in the application of the rights enshrined in national legislation with regard to fair and efficient procedures in the refugee status determination process and respect for the right of non-return. The challenges for provision of a fair process include: admissibility procedures, the short time period for claiming asylum, lack of advice and legal representation, inadequate interviews, limitations on the right to review or appeal, and long waits to receive responses to a claim. It is fundamental that legal authorities in the region take a more active role and strengthen the issuance of judicial tools and opinions with a human rights focus, which consolidate the paradigm shift that recognizes those subject to international protection as rights subjects.
- (c) Legal norms and government policies and practices that endorse the detention of persons for migratory reasons, often because of an irregular migratory situation, persist in the region. In the most serious cases, the power to detain and criminally penalize irregular migration exists, as in the case of Belize. In other cases, such as Mexico, Costa Rica, Guatemala, Ecuador and Honduras, the deprivation of liberty by administrative-migratory means is enabled or endorsed, and in some cases, detention for migratory reasons is practiced in a discretionary manner in police stations or other spaces that do not meet minimum accommodation conditions.
- (d) A permanent challenge for the exercise of the rights of asylum-seekers and refugees, which has a bearing on the points described above, is the availability of officials trained in matters of refuge and human rights at the border points of entry, in the different dependencies that provide public services and particularly in the bodies that adjudicate refugee status. This, without doubt, is a great challenge that has been indicated throughout the interviews and focus groups in the region. While efforts exist to provide training to officials, the challenge is to convert professional formation into a permanent, continuous and sustainable activity.

**2. Integration and creation of opportunities without discrimination for persons subject to international protection (economic, social and cultural rights).** While there are many examples of good practices in the region that are being strengthened, from the right to work for asylum-seekers to housing and access to education programmes, challenges still exist with regard to their effective exercise and the barriers imposed by bureaucratic procedures that complicate their implementation.

- (a) The documentation granted to asylum-seekers and refugees is a subject of great concern for civil society organizations and people under international protection in almost all participating countries, with the exception of Uruguay. In Uruguay, the identity document granted to refugees and asylum-seekers does not include the term refugee and is the same document received by any national or foreigner, avoiding discrimination and limitations on the exercise of their rights.
- (b) In many countries, the refugees' right to work is incorporated into legislation. However, the real challenge is the access to the labour market and conditions of employment. The first issue identified is the difference between asylum-seekers and refugees. With regard to asylum-seekers, this right is granted in Ecuador, Uruguay, Argentina, Costa Rica and Brazil. In other cases, for example in Guatemala, Panama, Mexico and the Dominican Republic, asylum-seekers are barred from working until their refugee status is recognized. During the waiting period, which can last months or even years, the person is forced to carry out informal economic activities, often falling victim to labour exploitation.

- (c) Access to the free public health system for asylum-seekers and refugees is guaranteed in almost all the countries. That is, a guarantee exists of primary care in health centers of the state network and, in many cases, there are also specific support programmes for people with serious illnesses, such as cancer, and other specific programmes for people with disabilities.
- (d) While barriers exist in some countries with regard to access, recognition of qualifications and other issues, the refugee population has access to free public education in Argentina, Brazil, Uruguay, Ecuador, Mexico, Venezuela, Panama, Guatemala, El Salvador, Costa Rica and Nicaragua, in some cases even during the process of determining eligibility for refugee status. Likewise, in Argentina, Ecuador, Uruguay and Brazil university education is guaranteed. Costa Rica also guarantees this, but the person must have his/her degree qualifications legalized in his/her country of origin or duly notarized.
- (e) Finding accessible housing in good condition and in safe neighborhoods is a challenge for asylum-seekers and refugees in the countries analyzed. Some of the difficulties experienced by the refugee population in finding decent housing in Mexico, Panama, Venezuela, Ecuador, Brazil and Costa Rica are the payment of rent in advance, excessive monthly payments and deposits due to their nationality and/or migratory status and the non-return of deposits on the threat of deportation or reporting to the migratory authorities. The refugee population sometimes chooses to live in areas that are seriously disadvantaged economically, putting their personal safety at risk.
- (f) Discrimination towards the population under international protection is a phenomenon present in most of the countries consulted. Citizens of receiving countries are unaware of the reasons that lead a person to claim asylum and associate them with criminals and those linked to political issues.
- (g) Permanent residence and naturalization are available as durable solutions in almost all the countries. However, the challenge lies in the cost of the processes, which limits their use.

3. **The situation of statelessness** is experienced in several Caribbean countries, in particular the Dominican Republic. The long tradition of prevention of statelessness is highlighted, with emphasis on the current situation in the Dominican Republic, where thousands of descendants of Haitian immigrants who had resided in the country between 1929 and 2007 have been deported, generating the most serious problem of statelessness in the Americas. It is an issue that concerns the whole region equally.

## RECOMMENDATIONS

We, the civil society organizations and the population under international protection who took part in this initiative, have prepared these recommendations on the basis of current good practices with the aim of advancing a productive discussion with our governments and UNHCR. We also hope to reach agreements to make integrated strategies for international protection viable, with concrete agreements and tripartite follow-up mechanisms that allow us to build certainties in the protection of refugees, asylum-seekers and stateless persons in the region.

1. Recognize that in situations of war and of widespread violence people may be forced to flee because of a well-founded fear of persecution for grounds established in the 1951 Convention's definition of refugee, and consequently such circumstances demand a comprehensive and contemporary understanding of the challenges for international protection facing the region.
2. Advance with efforts towards harmonization of legislation in the region in the area of asylum and statelessness to strengthen protection and integration structures. Those efforts should be based on the search for innovative humanitarian solutions to the problems and current needs of people subject to international protection, such as ease of movement between countries when conditions for integration in the country that initially granted them asylum are not found, seriously analyzing the feasibility of keeping the right to asylum (portability of refugee status) and recognizing that the subject of the rights is the person.
3. Urgently adopt migratory policies that respect human rights and are consistent with the Proclamation of Latin America and the Caribbean as a Peace Zone, endorsed by the States Members of ECLAC (January 2014). To do so it is necessary to comprehensively improve and democratize migration authorities' entry systems, creating a broad, diversified and common legal framework capable of offering responses based on the recognition of a raft of basic and non-negotiable rights that, in turn, allow an identification of people's specific protection needs, including asylum-seekers and refugees, in the context of the complex dynamics of mixed flows.
4. Recognize the importance of civil society and its role in the struggle for the rights of migrants in general, and the region's refugees, asylum-seekers and stateless persons in particular, in order to make coordinated efforts for the democratization of the assessment and decision-making processes dealing with international protection. In this sense, it is strongly recommended that tripartite follow-up mechanisms be created for the goals proposed over the next 10 years, including assessment systems with indicators that allow the degree of protection and inclusion of asylum-seekers and refugees in all political, social and cultural spheres to be evaluated.
5. Have fair and efficient procedures for determining refugee status that guarantee the incorporation of guarantees of due process, in accordance with the terms of the judgment of the Inter-American Court of Human Rights in the case of Pacheco Tineo vs Bolivia, such as legal representation and the strengthening of an independent second level of appeal, which includes judicial review.

- 6.** Implement in all countries of the region the *Quality Assurance International initiative for asylum procedures*, which aims to raise procedural standards at the various stages (reception, registration, interview, verdict and appeal), counting on the creation and homogenization of reliable official statistics in each of the countries. It is important, as civil society, to monitor that the recommendations that emanate from this process are supported and implemented by government bodies, with the help of the production of reliable and comparable official statistics in each of the countries.
- 7.** Encourage dialogue and the effective participation of claimants and refugees themselves, with the aim of taking coordinated action to strengthen and integrate them.
- 8.** Develop regional strategies to institutionally strengthen and promote strategic decentralization of the national commissions responsible for granting refugee status through systematic training of their officials on a regional scale and the exchange of experiences to fulfil regional and international refugee standards, with a view to achieving *full autonomy* for agencies or institutions responsible for migration management (whose approach is normally instrumental) and which in general are in the ambit of ministries with a heavy emphasis on *security*.
- 9.** Unrestricted respect for the principle of non-detention for migratory reasons, even as a measure of last resort, since in general terms it is a violation of human rights which in turn conditions the possibility of petitioning for asylum. As various studies have shown, people detained who could claim asylum prefer not to do so in order not to spend any more time in detention.
- 10.** Guarantee the application of the best interests of asylum-seeking, stateless or refugee boys, girls and adolescents, ensuring they have adequate treatment that is sensitive to gender and to all the factors that make their migratory experience different.
- 11.** Adopt the regional commitment to issue an identity document for refugees, asylum-seekers and stateless persons that guarantees the exercise of rights, equality of opportunities and non-discrimination, and that does not include reference to the person's status. The quality of documentation is closely linked to the success of the integration process, its low-cost accessibility and the definitive regularization of stay in the country.
- 12.** Guarantee that the population under international protection benefits from established state programmes and subsidies (health, employment, and housing) on equal terms, with the aim of guaranteeing the inclusion of the asylum-seeking, refugee and stateless population in obligatory services without discrimination. Likewise, local integration (legal, socioeconomic and cultural), naturalization, voluntary repatriation and the strategic use of resettlement should be promoted.
- 13.** Develop strategies for access to employment, professional training and support to productive enterprises (including credit) within the framework of government programmes at various levels and of private initiative, which allow integration and fight precarious employment and labour exploitation, in line with efforts already carried out by some governments in the region.
- 14.** States should assign greater human and financial resources, and guarantee that these are not reduced, for the agenda of protection and attention to asylum-seekers, refugees and stateless persons, guaranteeing that these activities are planned and carried out jointly (government, civil society and international organizations).

- 15.** Strengthen services for guidance, complaints and claims of discrimination and human rights violations, including help and compensation to victims and their families. Strengthen the coordination and role of ombudspersons and/or public defenders.
- 16.** That States which still have not done so should consider signing and/or ratifying the international instruments on statelessness, so that the American continent advances determinedly towards the eradication of this phenomenon in the next decade.