



MEMORIES
OF THE THIRTIETH
ANNIVERSARY
OF THE CARTAGENA
DECLARATION
ON REFUGEES



MEMORIES +30

CARTAGENA

“The Latin America and Caribbean region has shown a truly exceptional collaborative spirit throughout the Cartagena+30 Process, setting an example for other regions of the world. At a time when conflict, persecution and violence have driven more people from their homes than at any other time in recorded history, it is my hope that this collection of key moments of the commemorations process will serve as an inspiration to others in their efforts to protect the rights of the forcibly displaced. May these memoirs also guide future generations of citizens and decision-makers, so that one day, anniversaries can focus on celebrating the present: a present made of rights, respect and equity for all.”

António Guterres
United Nations High Commissioner for Refugees
2015



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

CONTENTS

MEMORIES OF THE THIRTIETH ANNIVERSARY
OF THE CARTAGENA DECLARATION
ON REFUGEES / 1984-2014

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PREFACE	
Marta Juárez, Director of UNHCR's Regional Bureau for the Americas	6
INTRODUCTION	
António Guterres, United Nations High Commissioner for Refugees	9
I ORIGIN AND SIGNIFICANCE OF THE "CARTAGENA+30" PROCESS FOR COMMEMORATING THE 30TH ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES OF 1984	11
INFORMATION PAPER	12
THE LONG ROAD TOWARDS THE HUMANISATION OF INTERNATIONAL LAW: A NEW DECADE OF CONSULTATIONS OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) (FROM MEXICO 2004 TO BRASILIA 2014) Professor António Cançado Trindade	18
II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS	35
MERCOSUR SUBREGIONAL CONSULTATION (BUENOS AIRES, 18 - 19 MARCH, 2014)	
• Agenda	38
• Discussion Paper	42
• Conclusions and Recommendations	62
• Position of Civil Society	72
ANDEAN SUBREGIONAL CONSULTATION (QUITO, 9 - 10 JUNE, 2014) "INTERNATIONAL PROTECTION, DURABLE SOLUTIONS, AND INTERNATIONAL COOPERATION"	
• Agenda	88
• Discussion Paper	92
• Conclusions and Recommendations	104
• Position of Civil Society	112

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Guatemalan refugees at La Hamaca, Mexico. ©UNHCR / M. VANAPPELGHEM / D. BREGNARD

MESOMERICA SUBREGIONAL CONSULTATION (MANAGUA, 10 - 11 JULY, 2014)	
"INTERNATIONAL PROTECTION CHALLENGES AND OPPORTUNITIES FOR A NEW STRATEGIC FRAMEWORK FOR REGIONAL COOPERATION"	
• Agenda	128
• Discussion Paper	132
• Conclusions and Recommendations	160
• Position of Civil Society	172
CARIBBEAN SUBREGIONAL CONSULTATION (GRAND CAYMAN, 10 - 11 SEPTEMBER, 2014)	
"MIXED MIGRATION AND THE PROTECTION OF REFUGEES AND STATELESS PERSONS"	
• Agenda	188
• Discussion Paper	192
• Conclusions and Recommendations	210
• Position of Civil Society	218
III. MINISTERIAL MEETING COMMEMORATING THE 30TH ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES (BRASILIA, 2 - 3 DECEMBER, 2014)	227
OPENING CEREMONY	
• Agenda	228
• Inaugural Address by the Minister of Foreign Affairs of the Federal Republic of Brazil, Luiz Alberto Figueiredo Machado	232
• Speech by the Minister of the Special Secretariat for Policies on Women, Eleonora Menicucci	236
• Speech by the Brazilian Minister of Justice, Eduardo Cardozo	240
• Speech by the United Nations High Commissioner for Refugees, António Guterres	244
• Speech by the Executive Secretary of the Norwegian Refugee Council, Jan Egeland	248
• Speech by the Brazilian Civil Society Representative, Cândido da Ponte Feliciano Neto	252
IV. THE PATH TO CARTAGENA	
• Civil Society's Presentation on the Cartagena+30 Consultations by the Latin American and Caribbean Civil Society Representative, Sally Valladares	258

V. ADOPTION BY ACCLAMATION OF THE BRAZIL DECLARATION AND PLAN OF ACTION	
• Speech by the National Secretary of Justice and President of Brazil's National Refugee Committee, Paulo Abrão	264
• Brazil Declaration: "A Regional Cooperation and Solidarity Framework for strengthening the international protection of Refugees, and Displaced and Stateless Persons in Latin America and the Caribbean."	270
• Brazil Plan of Action: "A Common Roadmap for Strengthening Protection and Promoting Sustainable Solutions for Refugees, and Displaced and Stateless Persons in Latin America and the Caribbean within a Framework of Cooperation and Solidarity."	278
VI. CLOSING CEREMONY	
• Words of thanks from the Director of UNHCR's Regional Bureau for the Americas, Marta Juárez	294
• Speech by the Representative of the Norwegian Refugee Council, Enrique Torella	298
• Closing Statement by the United Nations High Commissioner for Refugees, António Guterres	302
• Speech by the Assistant Secretary-General for Policy of the Ministry of Foreign Affairs of the Federal Republic of Brazil, Carlos Antonio da Rocha	306
VII. PARTICIPANTS	310
EPILOGUE	
• Carlos Maldonado, Coordinator of "Cartagena+30", UNHCR	318
VIII. APPENDICES	
• 1984 Cartagena Declaration on Refugees	325
• 1994 San Jose Declaration on Refugees and Displaced Persons	330
• 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America	336
• 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas	348



UNHCR's Quick Impact Projects (QIPs) include the funding of small business ventures, e.g. handicrafts and textile production.

These returnee women show the traditional clothes they propose to make for sale. La Esmeralda, Peten.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

PREFACE

Sometimes, the journey is just as valuable as the destination. I believe that those of us who undertook this journey, which culminated in the exemplary Brazil Declaration and Plan of Action, shared this sentiment at various points in the process. In this brief note, I wish to take note of some elements of the *Cartagena+30 Process* that, in my opinion, were fundamental to this great achievement.

Government leadership: The States' commitment was evident in all sub-regional consultations. States with a long tradition in the international protection of refugees worked together with others that have demonstrated a growing interest in refugee issues, based on the region's commitment to human rights.

Participatory process: Dynamic NGOs played a central role in the process, proposing ideas, identifying gaps, and analysing new challenges, as well as ensuring refugee participation.

The Caribbean: It has been our pleasure to witness Caribbean countries taking their places in the discussion regarding the sub-region's most relevant and specific immigration and asylum trends. The sub-regional meeting held on Grand Cayman was, without a doubt, a new beginning in our relationship with the Caribbean region, which should strengthen support and understanding from the international community, taking into account the specific circumstances of these largely island nations.

The special situation of unaccompanied minors arriving to the United States of America: Although we received solid information on the circumstances surrounding departures from the Northern Triangle of Central America, we never considered that the sub-regional meeting for Mesoamerica, held in Managua, would be an appropriate occasion to discuss this mass migration, which has so many dimensions and requires so many stakeholders to take action. Without a doubt, the *Cartagena+30 Process* demonstrated the benefits of a regional forum in responding to this emerging situation.

The regional integration forums: The sub-regional meetings highlighted contributions from important regional organizations, such as CARICOM, CELAC, MERCOSUR, OEA, SICA and UNASUR, in respect of persons' freedom of movement and universal recognition of refugees' rights.

Cutting-edge innovation: The process brought in experienced individuals who are working on the front lines of protection of refugees, and displaced and stateless persons, and who provide us with unique perspectives in finding new solutions.

Brazil and Mexico's participation: We must acknowledge Mexico's role in facilitating a responsible handover to Brazil, as well as Brazil's leadership as co-organizer of the entire *Cartagena+30 Process*, and as the host country of the Ministerial event. I sincerely hope that Brazil will continue to play this role throughout the implementation of the Plan of Action.

Finally, I want to express my gratitude to the High Commissioner, who supported this process from the very beginning, and who had absolute confidence in a part of the world where protection of the rights of refugees and displaced and stateless persons is an integral part of our calling to ensure respect for human rights, which arises from our history, and grows with our experience.

Marta Juárez

Director of UNHCR's Regional Bureau for the Americas
(August 2009 - January 2015)



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Life in a Refugee Camp.
Miskito Indians from Nicaragua wait for a food distribution at a Honduran camp during the 1980s.

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+30
CARTAGENA



INTRODUCTION

ANTÓNIO GUTERRES

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

UNHCR

Anniversaries offer an occasion to pause for reflection on the past, to celebrate the present and look forward to the future with new propositions. The 30th anniversary of the Cartagena Declaration on Refugees provided such an opportunity. I commend the participating States for having seized this occasion forcefully and creatively by adopting the landmark Brazil Declaration and Plan of Action in December 2014.

Virtually all states and territories in Latin America and the Caribbean, together with a remarkable number of civil society organizations, participated in the Cartagena+30 commemorations process. They took stock of persisting and new challenges in protecting refugees, asylum-seekers, internally displaced and stateless persons in the continent, and renewed their commitment to implementing durable solutions. Celebrating principles of cooperation and solidarity, participants agreed on areas for intervention and concrete programs to further strengthen international protection standards in the region and thus help to make a positive difference in the lives of millions of forcibly displaced and stateless people.

The Latin America and Caribbean region has shown a truly exceptional collaborative spirit throughout the Cartagena+30 Process, setting an example for other regions of the world. At a time when conflict, persecution and violence have driven more people from their homes than at any other time in recorded history, it is my hope that this collection of key moments of the commemorations process will serve as an inspiration to others in their efforts to protect the rights of the forcibly displaced. May these memoirs also guide future generations of citizens and decision-makers, so that one day, anniversaries can focus on celebrating the present: a present made of rights, respect and equity for all.

Geneva, June 2015

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010



Colombian displaced leader shows one of two things he was able to rescue when he fled his home: The ID card of his mother. Buenaventura, Colombia.

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ORIGIN AND SIGNIFICANCE OF THE “CARTAGENA+30 PROCESS” FOR COMMEMORATING THE 30TH ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES OF 1984

PREFACE | MARTA JUÁREZ

INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30” INFORMATION PAPER

SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA

SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO

BRAZIL DECLARATION

BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010



Guatemalan refugee
at La Hamaca, Mexico.
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“OUR GOAL IS TO BUILD THE NEW INNOVATIVE, PRAGMATIC AND FLEXIBLE MAINFRAME OF INTERNATIONAL COOPERATION AND SOLIDARITY WITH WHICH THE GOVERNMENTS WITH THE COLLABORATION OF UNHCR AND OTHER INTERNATIONAL ORGANIZATIONS, THE CIVIL SOCIETY AND THE INTERNATIONAL COMMUNITY WILL MEET PROTECTION CHALLENGES AND IMPLEMENT PROGRAMMES TO FACILITATE SUSTAINABLE SOLUTIONS FOR REFUGEES AND STATELESS PERSONS.”

ANTÓNIO GUTERRES
UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

INFORMATION PAPER
**30TH ANNIVERSARY
OF THE CARTAGENA
DECLARATION
ON REFUGEES**

+30
CARTAGENA

 **UNHCR**
The UN Refugee Agency

I INTRODUCTION

2014 is the year of the celebration of the 30th anniversary of the Cartagena Declaration on Refugees of 1984 (hereafter referred as the Cartagena Declaration). During the last thirty years, solidarity and regional cooperation -of which the Cartagena Declaration is an example- has proven to be effective in the solution of new and long standing situations of forced displacement in the Americas. On the year 2004, for the celebration of its 20th anniversary, twenty governments of Latin America and the Caribbean adopted the *Mexico Declaration and its Plan of Action for Strengthening the International Protection of Refugees in Latin America*, which has served as the common strategic mainframe for Governments in the region, UNHCR, civil society and the international community.

By request of UNHCR, the Brazilian Government accepted to host the Ministerial Event that will take place on December 2nd and 3rd, 2014 in Brasília and that will end the commemorative process. The Brazilian Government, along with UNHCR and the Norwegian Refugee Council, has invited Governments and the civil society of Latin America and the Caribbean to once again make use of the innovative and flexible framework that is the Cartagena Declaration to respond to the challenges of the next decade, and advance strategically in the work in favor of persons in need of international protection, including refugees, asylum seekers, displaced and stateless persons. Furthermore, this process known as *Cartagena+30* is an opportunity to renew the commitment of the region with international protection, to highlight

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MEROSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

the importance of regional instruments and their contribution to the universal asylum regime and to reaffirm the importance of the 1951 Convention Relating to the Status of Refugees in the Inter-American asylum system.

II ANTECEDENTS

The Cartagena Declaration is a non-binding regional instrument, adopted by a group of government experts of Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela at the Symposium on International Protection for the Refugees in Central America, Mexico and Panama held in Cartagena de Indias, Colombia on November, 1984. The Symposium focused on legal and humanitarian problems that Central American refugees faced in the 70's and 80's.

The importance of the Declaration as a tool of regional protection has been validated by the UN and the Organization of American States (OAS). This regional instrument is based on the generous practice of granting asylum in the Americas and endorses important principles of the International Law of Refugees. The Cartagena Declaration establishes a series of recommendations for the humanitarian treatment and durable solutions for persons in need of international protection, and is also known internationally for its recommendation to broaden the definition of “refugee” applicable to the region. It has been included in the national legislation of fourteen countries.

The relevance of the Cartagena Declaration was confirmed in 1994 for its 10th anniversary. This event led to the adoption of the San Jose Declaration on Refugees and Displaced Persons. The document analyzed the importance of the Cartagena Declaration as a tool for protection and made reference to the need to confront the situation of internally displaced persons in the region.

On the year 2004, for the celebration of its 20th anniversary, the Declaration and Mexico Plan of Action to Strengthen International Protection for Refugees in Latin America was adopted. It did not only validate the important principles of protection drafted in the preceding Declarations, but also created the first Regional Plan of Action, introducing innovative solidarity programs which have promoted protection and achieved solutions for those in need of international protection.

On 2010, representatives of eighteen countries gathered in Brasilia to celebrate the 60th anniversary of the Convention for the Refugee Status of 1951 and the 50th anniversary of the Convention on the Reduction of Statelessness of 1961. They adopted the Brasilia Declaration on Protection of Refugee and Stateless Persons in the American Continent. This event started a commemorative process in the region endorsed by the High Commissioner, which ended in December 2011 in a Ministerial meeting in Geneva. This meeting gave the opportunity to all the countries in the world to make a commitment to fight statelessness and forced displacement. The Brasilia Declaration recommended continuing the implementation of the Plan of Action of Mexico as a regional framework to respond to the challenges of the region, such as protection in the context of mixed migration movements.

On 2012, on the occasion of the first meeting of the National Committee of Refugees of the Member and Associated States of MERCOSUR, all the participant countries unanimously supported the decision to organize an event to celebrate the 30th anniversary of the Cartagena Agreement “with the goal of adopting a new Declaration and Plan of Action to tackle the new challenges on international protection of refugees in Latin America and the Caribbean in the next decade”. In this context, and with the cooperation of UNHCR, regional consultations were organized with the objective of analyzing together the current challenges and the lines of action for the protection of refugees and displaced and stateless persons.

Finally, the General Assembly of the Organization of American States (OAS) on its resolution on refugees of 2012 and the AG/RES. 2839 (XLIV-O/14) “Protection of asylum seekers and Refugees in the Americas” invites all Member States to actively participate in the commemorative process “Cartagena 30” for the identification of new challenges concerning international protection in the Continent and to participate in the Ministerial meeting on December 2014, sponsored by the government of Brazil with the purpose of adopting a new strategic framework for the response of protection needs of refugees and stateless persons on the next decade”. Their resolution AG/RES. 2826 (XLIV-O/14 “Prevention and reduction of statelessness and protection of stateless persons in the Americas”) is drafted in similar terms.

III REGIONAL CONTEXT

The Americas have a long tradition of granting asylum and protecting human rights. Protection and the legislation on refugees is generally high standard. In spite of the general strengths, the implementation of legal and institutional mainframes are still a challenge, especially for: the granting of asylum, the quality of asylum procedures, the access to sustainable livelihoods and to full benefits of asylum rights and the achievement of durable and sustainable solutions. Furthermore, the legitimate concerns of the States for their national security and the tensions sometimes posed by their obligations with international protection are still a challenge to be addressed through dialogue and regional cooperation. On the other hand, recent political processes could open the way to achieve sustainable solutions in the region for refugees and long term displaced persons in the future.

The region faces new situations with a humanitarian impact on the population, and in some cases lead to forced displacement. In the Northern Triangle of Central America: Honduras, El Salvador and Guatemala,

the acts of transnational organized crime are causing forced displacement of their people, specially affecting women, teenagers and non-accompanied minors. As in other regions of the world forced displacement patterns have shifted since the adoption of the Convention on Refugee Status of 1951. These challenges have the risk of making a bigger impact if they are not addressed through regional and international cooperation and with a humanitarian approach.

IV THE CARTAGENA+30 PROCESS

Cartagena+30 has made possible a space in which the Governments and UNHCR, together with the civil society and other international organizations can reflect on the progress made, the protection challenges the continent currently faces, the voids that may exist in the current regime of international protection and how to address them in a pragmatic, flexible and innovative way.

With this purpose, UNHCR has made available to the governments its legal and technical expertise as advisors, and also a group of Principal Experts: The Emeritus Ambassador of Mexico, Mrs. Rosario Green, the Judge of the International Court of Justice, Mr. Antônio Cançado Trindade and the Judge of the International Court of Human Rights, Mr. Diego Sayan. On its part, the Norwegian Refugee Council has facilitated the participation of more than 100 organizations of the civil society in the sub-regional consultations.

The dialogue process, which started (...) took place through four sub-regional consultations held respectively in Buenos Aires (March 18-19) for the MERCOSUR countries, Quito (June 9-10) for the Andean countries, Managua (July 10-11) for the Mesoamerican countries and Grand Cayman (September 10-11) for countries and territories of the Caribbean. These consultations have facilitated a very ample debate between government representatives of more than 30 countries of the region, observer countries, more

than 100 organizations of civil society, ombudsmen and the main international organizations with competence in the matter.

The discussions at the four sub-regional consultations have focused on subjects like: the quality of asylum systems, the complexity of mixed migration movements and the need to identify the persons who require protection, the protection of persons who flee from transnational organized crime, the concerns of the States for their national security and their humanitarian and human rights obligations, innovative initiatives for comprehensive solutions, including migratory solutions like labor mobility programmes, statelessness, displacement caused by natural disasters and the strengthening of regional and international cooperation within integration mechanisms such as CELAC, MERCOSUR, Andean Pact, SICA and CARICOM in order to foster a spirit of solidarity.

All four sub-regional consultations have adopted in each case a series of conclusions and recommendations taken as benchmarks for the drafting of the Declaration and its Plan of Action which will be subject to an additional process of consultations between all participant States of Latin America and the Caribbean (GRULAC-UNHCR) in Geneva. By the end of this last round of consultations it is expected that all Governments of Latin America and the Caribbean feel fully represented in the contents of the drafts of Brazil's Declaration and Plan of Action for its adoption by unanimity or acclamation on the final Ministerial event in Brasilia.

With the objective of reaching full consensus, the Pro-tempore presidency of GRULAC, held by Paraguay, has prepared -with the support of UNHCR, serving as Secretariat for these consultations- the following tentative schedule subject to approval on the informative meeting to be held on Friday, September 26 (10:30-12:30)

- WEDNESDAY, OCTOBER 8TH
10:00-12:00 / 14:30-17:30
- EVERY THURSDAY STARTING OCTOBER 16TH
14:30-17:30
- MONDAY, NOVEMBER 3RD
14:30-17:30

Meeting of Their Excellences Ambassadors of Latin America and the Caribbean, the National Secretary of Justice of Brazil (to be confirmed), the Director of UNHCR International Protection Division, the UNHCR Director of the Regional Office for the Americas and the three Principal Experts of the Cartagena+30 Process.

For these consultations, UNHCR has made available room MBT 04 at its headquarters in Geneva with simultaneous translation Spanish/English/Spanish.

V FINAL MINISTERIAL EVENT: BRASILIA DECEMBER 2ND AND 3RD

The Government of Brazil as host of the closing commemorative event for the 30th anniversary of the Cartagena Declaration has prepared a complete program to welcome Foreign and competent Ministers of all Latin American and Caribbean Countries, observer countries, international organizations and civil society.

It is expected that after the ample consultations, all participant countries of Latin America and the Caribbean feel that their concerns and solutions proposed by them have been accurately presented on the text of the new Declaration and Plan of Action, and therefore, the Declaration and Plan of Action be approved by unanimity.

The new Brasilia Declaration and its Plan of Action will become the new innovative, pragmatic and flexible mainframe of international cooperation and solidarity with which the Governments with the collaboration of UNHCR and other international organizations, the civil society and the international community will meet

protection challenges and implement programmes to facilitate sustainable solutions for refugees and stateless persons on the next decade (2015-2024).

The region will also reach the objective sought by the United Nations High Commissioner for Refugees, Mr. António Guterres, to establish itself once again as the leaders of the highest standards of protection and close cooperation of all countries to jointly solve in solidarity and in responsibility the humanitarian situation of refugees, displaced and stateless persons.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Voluntary repatriation of
guatemalan refugees, Coban.

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THE LONG ROAD TOWARDS
THE HUMANISATION OF INTERNATIONAL LAW:
**A NEW DECADE OF CONSULTATIONS
OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
(UNHCR)**

(FROM MEXICO 2004 TO BRASILIA 2014)

+30
CARTAGENA

PROFESSOR
ANTÔNIO AUGUSTO CANÇADO TRINDADE

Judge at the International Court of Justice; former President of the Inter-American Court of Human Rights; Professor Emeritus of International Law at the University of Brasilia; Senior Legal Expert for the 2014 UNHCR Consultations

I INTRODUCTION

A new decade has elapsed since the previous Consultations of the United Nations High Commissioner for Refugees (UNHCR) and, despite all the progress made from Cartagena/1984 to San Jose/1994 and Mexico/2004¹, new challenges have emerged between Mexico/2004 and Brasilia/2014, requiring new responses to meet the new needs for the protection of individuals, particularly those in new situations of vulnerability

¹ For a study, cf. A.A. Cançado Trindade, "Aproximaciones y Convergencias Revisitadas: Diez Años de Interacción entre el Derecho Internacional de los Derechos Humanos, el Derecho Internacional de los Refugiados, y el Derecho Internacional Humanitario (De Cartagena/1984 a San José/1994 y México/2004)" in *Report on the Twentieth Anniversary of the Cartagena Declaration on Refugees (1984-2004)*, San Jose, Costa Rica/Mexico, UNHCR, 2005, pp. 139-191.

“OUR REGION OF LATIN AMERICA AND THE CARIBBEAN HAS, TRUE TO THE BEST TRADITIONS OF ITS MOST COHERENT INTERNATIONAL LEGAL DOCTRINE, MANAGED TO SAFEGUARD THE HUMAN VALUES AND CARE OF THOSE WHO SUFFER IN SITUATIONS OF VULNERABILITY, IN A SPIRIT OF SOLIDARITY AND WITHIN THE FRAMEWORK OF THE UNIVERSAL RIGHTS OF HUMAN BEINGS.”

ANTÔNIO AUGUSTO CANÇADO TRINDADE

JUDGE AT THE INTERNATIONAL COURT OF JUSTICE

or helplessness. These situations and needs have been identified in the new UNHCR consultations throughout 2014, revealing, once again, that –as in the myth of Sisyphus– work regarding the international protection of the rights of the individual is unending. This work of modernisation– within the framework of the historical process of the humanisation of international law –which constituted the 2014 Consultation process– culminated in the Interministerial Conference in Brasilia, from 2-3 December 2014.

This task of modernisation has been condensed into three speeches I had the honour of presenting on three occasions during the 2014 UNHCR Consultations, namely: 1) at the Meeting of the Latin American and Caribbean Group (GRULAC) at the UN/UNHCR in Geneva on 3

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

November, 2014, on the relevance of the convergences between International Human Rights Law, International Refugee Law and International Humanitarian Law, in the current regional context; 2) again at the meeting of the GRULAC at the UN/UNHCR in Geneva on 14 November, 2014, on the vulnerabilities of individuals requiring protection; and 3) at the Interministerial Conference in Brasília on 2 December, 2014, a day before the Brazil Declaration and Plan of Action was adopted, on the 2014 UNHCR Consultations and their results. These three speeches are set out below, followed by my brief concluding remarks on the subject.

II THE RELEVANCE OF THE CONVERGENCES BETWEEN INTERNATIONAL HUMAN RIGHTS LAW, INTERNATIONAL REFUGEE LAW AND INTERNATIONAL HUMANITARIAN LAW, IN THE CURRENT REGIONAL CONTEXT²

I have fond memories of the previous meeting with the GRULAC, on 13 February, here at UNHCR in Geneva, which initiated the current process of the third decade of consultations since the *Cartagena Declaration on Refugees* (1984) was adopted, and which is to conclude within a month at the interministerial conference in Brasília. I am pleased to have the opportunity to attend this new meeting with the GRULAC today, the 3rd of November, 2014, once again here at UNHCR in Geneva, to share some thoughts with all those here present, namely in regard to the current Draft Declaration of Brasília, concerning the issue that has been entrusted to me, that is, the “*Relevance of the Convergences between International Human Rights Law, International Refugee Law and International Humanitarian Law in the Current Regional Context.*”

² (*) Speech presented by the author at UN/UNHCR, Geneva, in the meeting of the GRULAC, on 3rd November, 2014.

Let me begin with an important observation: the entire process of UNHCR consultations –which began with the Declaration of the first decade (1994) after the Cartagena Declaration– was accompanied by the *explicit acknowledgment* of the relevance of these convergences for ensuring the most effective protection of the rights of the individual, in the most diverse circumstances. Thus, the *San Jose Declaration on Refugees and Displaced Persons* (1994) acclaimed and explicitly highlighted, in both its preliminary considerations (10th) and its conclusions (3rd), the complementary nature and convergences between International Human Rights Law (IHRL), International Refugee Law (IRL) and International Humanitarian Law (IHL), with a view to “providing a common framework” for ensuring the effective protection of the rights of human beings.

Similarly, the *Mexico Declaration for Strengthening the International Protection of Refugees in Latin America* (2004) also expressly recognised the complementary nature of those three converging facets for securing and strengthening protection for those in need of it in light of the *pro homine* principle (6th preliminary paragraph). Bearing this in mind, I deem it necessary, for further reasons I will now explain, that the Draft of the Brasília Declaration (2014) should also contain express recognition of the relevance of the convergences between IHRL, IRL and IHL. In this sense, an additional (preliminary) paragraph could be worded as follows:

“Emphasizing the convergences and complementary nature of International Human Rights Law, International Refugee Law and International Humanitarian Law, in order to provide a common legal framework for strengthening protection –in light of the *pro homine* principle– for refugees and others in need of it, due to their vulnerable circumstances.”

Indeed, the convergences between IHRL, IRL and IHL made their mark on the three successive UNHCR consultations –those of 1994, 2004 and 2014. From the outset, it

is understood that forced transboundary displacement may result from conflicts or tension or internal strife, among other causes. The idea is to grant *humanitarian visas* to people who do not necessarily qualify as refugees. The aim is the effective implementation of the high standards of the due process of law established in the *jurisprudence constante* of the IACCTHR (subregional Mercosur meeting, 18-19.03.2014). Human mobility, as a form of protection, is characterized as “good practice”, on a par with others (such as permanent residency and naturalization) (Andean subregional meeting, 09-10.06.2014).

Attention is focused on vulnerable groups, and the different degrees of vulnerability, even in extreme circumstances, as in relation to unaccompanied children and adolescents (subregional Mesoamerica meeting, 10-11.07.2014). It is encouraging that the current Draft of the Brasília Declaration (2014) already explicitly recognises, for the purposes of adequate protection, the situation of extreme vulnerability in which individuals and groups who so desperately need protection find themselves (paragraphs 7, 16, 19, 43 and 47). The aforementioned Draft Declaration also already correctly underscores the central focus that human beings represent, and the importance of the spirit of solidarity in these UNHCR consultations.

The need to strengthen international cooperation between migrants’ countries of origin, transit and destination (Caribbean subregional meeting, 10-11.09.2014) is recognised. In all these situations, identified throughout the current UNHCR consultations –set to conclude at the next Ministerial Conference in Brasília scheduled for 2-3 December, 2014– IHRL, IRL and IHL converge to provide effective protection for those who need it, in light of their vulnerability. These three aspects are always present in meeting protection requirements. There is not, in my opinion, room for invoking an alleged *lex specialis* to invalidate its concomitant implementation, if necessary.

May I take a step further, in this respect: the three aforementioned branches of international law for the protection of the human person (namely, IHRL, IRL and IHL), converging at normative, hermeneutic and operational levels, do not exclude the possibility that other branches of international law may also converge with them as well, to the same effect. For example, the most recent Caribbean subregional meeting raised the point of the relevance of the search and rescue-at-sea and recovery operations, under the U.N. Convention on the Law of the Sea (UNCLOS) and other treaties. This was the first time during the UNHCR Consultations of the last three decades that UNCLOS and other Law of the Sea treaties were invoked, in connection with the international protection of the individual as a migrant. This, in my opinion, demonstrates the *unity of the law*, and the possibility of broader convergences for safeguarding the protection of human beings, in particular when they find themselves in circumstances of extreme vulnerability.

In effect, the problems we have faced have varied from decade to decade, but what always remains constant is the vulnerability of human beings, in continually changing and distinct circumstances. As facts seem always to precede the legal norms, we must always bear in mind the imperatives of justice. In order to abide by them, we are obliged to constantly bear in mind that IHRL, IRL and IHL go hand in hand, - at normative, hermeneutic and operational levels. The UNHCR has acknowledged this, on several occasions. And this applies to distinct phases of its work; for example, to mention but one, in the specific phase of the *determination of refugee status*, the UNHCR has constantly underscored the need to ensure access to justice encompassing the guarantees of the due process of law, as asserted and construed in the *jurisprudence constante* of the Inter-American Court of Human Rights (IACtHR) - under Articles 25 and 8, concurrently, of the American Convention on Human Rights). In order to reach a better understanding of this issue, we have to approach it in its temporal dimension.

Thus, half a decade after the *Declaration of San Jose on Refugees and Displaced Persons* (1994) was adopted, the IACtHR issued its Advisory Opinion No. 16 on the *Right to Information on Consular Assistance within the Framework of the Guarantees of the Due Process of Law* (1999), which was truly innovative, and has been exerting considerable influence on international jurisprudence, including even that of the International Court of Justice. The IACtHR proceeded to undertake the *humanisation* of Consular Law by rereading and reinterpreting Article 36 of the Vienna Convention on Consular Relations (1963), and linking the abovementioned right to information on consular assistance to the right of access to justice *lato sensu*, taking into account the guarantees of the due process of law. This included the extended convergence of the abovementioned three facets of protection for individuals with consular law itself.

The next stage took place on the eve of the adoption of the *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America* (2004), when the IACtHR issued its Advisory Opinion No. 18 on the *Legal Status and Rights of Undocumented Migrants*. This Advisory Opinion had a considerable impact not only in our region but also in other parts of the world, as I had occasion to point out in my opening lecture at the 2007 annual study session of the International Institute of Human Rights (René Cassin Institute) in Strasbourg. The IACtHR focused its analysis on the fundamental principle of equality and non-discrimination, which prohibits the invocation of any discriminatory treatment to the detriment of any person, including undocumented migrants. The IACtHR became the first contemporary international tribunal to establish that the basic principle of equality and non-discrimination now belongs to the domain of *jus cogens*.

Since the Advisory Opinions Nos. 16 and 18 of the IACtHR (above), something extraordinary happened in our region: in light of these Advisory Opinions, several

countries in our region began to update their *Consular Guides* or *Manuals*, in order to provide more effective consular assistance. Some set up *itinerant consulates*, or attended disputes in foreign courts (in order to safeguard the right to information on consular assistance); others set up new national coordination bodies for putting consular assistance and protection into practice. I take the liberty of raising the issue of this development, bearing in mind the input of, for example, the subregional meeting of Mercosur (*supra*) in the current UNHCR Consultations.

We have not, however, reached the culmination of this development; new protection needs have emerged. Along the same lines as the IACtHR's aforementioned Advisory Opinions Nos. 16 and 18 comes that of adopting Advisory Opinion No. 21 on the *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (2014). The contribution of the IACtHR's *jurisprudence constante* has been acknowledged by contemporary legal doctrine (based on Advisory Opinion No. 16): the individual, also in this context, occupies a central position in the international legal system, in the general framework of the new *jus gentium* of our times.

Les insuffisances du *corpus juris* de protection ont donné naissance à des initiatives, dans notre région, pour donner des réponses appropriées aux nouveaux besoins de protection dans des situations originellement non-prévues, comme celles de déplacements internes, des migrants sans papiers, de déracinement en général. Elles ont été prises pour faire face à l'aggravation du problème des flux migratoires forcés. Dans ce propos, la *Déclaration et le Plan d'Action du Mexique* (2004) avait réaffirmé expressément les convergences, - aux niveaux normatif, herméneutique et opérationnel, - du DIDH, le IRL et le DIH, déjà consacrées expressément dans la *Déclaration de San José du Costa Rica* (1994). Il s'agit d'une position principiste, que, à mon avis, doit

être réitérée dans la prochaine *Déclaration et le Plan de Action de Brasília* (2014).

Thus, our region is, once again, at the forefront of this current context of international protection of the rights of the individual, with the latter being understood as a subject of the law of nations (*droit des gens*). Furthermore, this region has promoted, with the provisions cited above, the *formation* of a new branch of contemporary international law: *International Migration Law*. However, the process of its formation is still in its infancy; there is still a long way to go.

There have been other recent initiatives in the same vein. For example, earlier this year, the *Declaration of the Second Summit of the Community of Latin American and Caribbean States* (CELAC) (held in Havana, Cuba, in late January 2014), called for –in language reminiscent of the IACtHR's Advisory Opinion No. 18 (2003)– the eradication of discrimination against inequalities and social exclusion, which are “violations of human rights and violations of the rule of law” (par. 1). The aforementioned Declaration of the CELAC affirmed its commitment to “continue to strengthen solid regional principles for the recognition of the rights of migrants, as well as to strengthen the coordination of regional migration policies and common positions in global and inter-regional negotiations on migration and, in particular, in shaping international debate with regard to the link between migration, development and human rights” (par. 26).

To conclude, during these UNHCR consultations we must be mindful of the fact that we come from a region –Latin America and Caribbean– at the forefront of various branches of international law. This has now been acknowledged worldwide. During the course of these UNHCR consultations –currently in their third decade– I am confident that we will remain loyal to our best international legal doctrine in order to rise to the new challenges we face today in our part of the world, within the framework of the universality of human rights.

Our practise is not state-centric; it is centred, rather, on human beings, and on the fulfilment of their basic protection needs. To this end, which corresponds to the human goals of the state, it is crucial to take into account the convergences between the three branches of the protection of the individual, namely: International Human Rights Law, International Refugee Law, and International Humanitarian Law. My recommendation to GRULAC is, thus, that the Draft Declaration of Brasília (2014) express acknowledgement in this respect (in the terms I have just proposed) –as was the case with the Declarations of San Jose (1994) and of Mexico (2004)– with a view to strengthening the protection of the individual in different and changing circumstances.

III. REFLECTIONS ON THE SITUATIONS OF VULNERABILITY OF PERSONS REQUIRING PROTECTION³

The current process of UNHCR consultations is an additional element for demonstrating that, nowadays, the strictly inter-state perspective of the international legal system has been entirely surpassed, with the general recognition of the presence therein of human beings, and their access to justice, both at the national and international levels. Human beings have been restored to the central position they now occupy in the law of nations, testifying to the practise that brings us here today, on 14 November, 2014, to this important GRULAC meeting at the United Nations/UNHCR here in Geneva, which I am attending on behalf of the team of three Legal Experts from UNHCR in its current consultations leading up to the Interministerial Conference in Brasília from 2 - 3 December, 2014.

The fact that so many individuals have, today, had recourse to international jurisdiction in claiming or defending their rights, amidst extremely adverse or

³ (Speech given by the author at the GRULAC Meeting at the UN/UNHCR, Geneva, on 14 November, 2014.

vulnerable circumstances, is a sign of the times, revealing the new paradigm of *humanised* international law, the new *jus gentium*, that is sensitive and attentive to the protection needs of the individual in any circumstance⁴. However, there are many others who continue to suffer in situations of extreme vulnerability, amidst critical and urgent protection needs.

Almost two weeks ago, at another meeting of GRULAC similar to this one, I took the liberty of underscoring the prospects of this process of the *humanisation* of international law, which have been felt in all three facets *converging* in the international protection of the rights of the individual, namely, the International Law of Human Rights, International Refugee Law and International Humanitarian Law⁵. While it is true that, in our part of the world, much progress has been made over the past three decades (1984-2014), new protection needs have also arisen.

The jurisprudence of the Inter-American Court of Human Rights (IACtHR) has been formulated, in recent years, by extending protection to undocumented migrants or the uprooted, and “street children” or the abandoned, among others affected individually or in groups or communities by different forms of marginalisation and social exclusion –victims of situations of armed conflict or the forcibly displaced, and even rela-

tives of victims of massacres⁶. However, as revealed in this year’s UNHCR Consultations in Latin America and the Caribbean (2014), over the course of the last decade (2004-2014) new situations of extremely acute vulnerability for human beings have emerged, which now require new responses for safeguarding their effective protection. Hence the considerable importance of this exercise that brings us here together at such a significant moment for all of us: the conclusion of the process of drafting the *Brasilia Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America* (2014).

In the ongoing UNHCR Consultations process, the four subregional meetings held this year (i.e., Mercosur, 18-19.03.2014; the Andean subregion, 9-10.06.2014; Mesoamerica, 10-11.07.2014; and the Caribbean, 10-11.09.2014) have allowed us to be updated and identify new challenges– which we reviewed in our previous GRULAC meeting of 11.03.2014 here in Geneva. We should remain mindful that, within a temporal dimension, the *protection of the vulnerable* has been the great legacy of the United Nations Second World Conference on Human Rights (Vienna, 1993)⁷.

However, despite all the attention that the monitoring bodies of United Nations human rights treaties have devoted to this cause, an adequate conceptualization of vulnerability is still lacking for the purposes of effective protection, even with criteria for identifying individu-

als or groups in vulnerable situations⁸. Added to this is the fact that, in certain situations, this vulnerability is set amidst the breakdown of public authority, resulting in the inability to provide a minimum of protection for these victims, within a broader context of the disintegration of the social fabric.

In this extremely troubling context, the observance of the *basic principle of equality and non-discrimination* –often cited but insufficiently studied to date– becomes particularly relevant. Discrimination is understood as an arbitrary or unjustifiable (lacking any justification whatsoever) and, therefore, inadmissible distinction. Its prohibition occurs in connection with the exercising of all the rights enshrined as inherent to human beings, on the grounds of the *fundamental principle of equality and non-discrimination*⁹. The violation of the prohibition of all forms of discrimination entails the violation of protected human rights themselves, with all its legal consequences. Insufficient attention devoted, to date, by judicial doctrine to the basic principle of equality and non-discrimination, is far from commensurate with the fundamental importance of this principle, both in theory and in legal practise.

Equality and non-discrimination have been invoked in relation to individuals and groups of individuals in vulnerable situations, or in connection with them or on their behalf, in manifold circumstances. Since the mid-nineties to the present (1994-2014), attention has focused on the challenges of conditions endured by people affected by both internal conflicts and strife, and impoverishment and chronic poverty, as well as on the migration of

undocumented persons¹⁰ (in particular unaccompanied children, and women), and on the victims of trafficking. Those victimised are subjected to sub-human living conditions, if and when they survive.

The series of United Nations World Conferences¹¹ which took place throughout the course of the nineties until the beginning of the last decade, became, significantly, a common denominator, giving cohesion to the final documents adopted by them –a denominator which was unequivocally acknowledged by the Second World Conference on Human Rights: the recognition of *the legitimacy of the concern of the international community as a whole with the living conditions of people everywhere*¹². The aforementioned global conclave sought to explore ways in which to safeguard the indivisibility of all human rights (civil, political, economic, social and cultural) *in practice*, with particular emphasis on those discriminated against or disadvantaged, vulnerable groups, the poor and the socially marginalised or excluded –in short, those most in need of protection¹³– with a view to ensuring they are provided with the conditions for a dignified life.

4 A.A. Cançado Trindade, *Évolution du Droit international au droit des gens - L'accès des particuliers à la justice internationale: le regard d'un juge*, Paris, Pédone, 2008, pp. 7-9, 17, 26-30, 57-61, 81-99, 116-117 and 145-149, and cf. pp. 3-184; A.A. Cançado Trindade, *A Humanização do IRLeito Internacional*, 1st. ed., Belo Horizonte/Brasil, Edit. Del Rey, 2006, p. 3-409 (out of stock); A.A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Ed. Ad-Hoc, 2013, pp. 7-185.

5 Cf. A.A. Cançado Trindade, *Derecho Internacional de los Derechos Humanos, Derecho Internacional de los Refugiados y Derecho Internacional Humanitario - Aproximaciones y Convergencias*, 1st. ed., Geneva, CICV, [2000], pp. 1-66 (out of stock).

6 Cf. A.A. Cançado Trindade, *State Responsibility in Cases of Massacres: Contemporary Advances in International Justice*, Utrecht, Universiteit Utrecht, 2011, pp. 1-71; A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, Chap. X, pp. 179-191; A.A. Cançado Trindade, “Die Entwicklung des interamerikanischen Systems zum Schutz der Menschenrechte”, *70 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2010) pp. 629-699.

7 Cf. A.A. Cançado Trindade, *A Proteção dos Vulneráveis como Legado da II Conferência Mundial de IRLeitos Humanos (1993-2013)*, Fortaleza, IBDH/IIDH/SLADI, 2014, pp. 13-363.

8 Cf. A.R. Chapman and B. Carbonetti, “Human Rights Protection for Vulnerable and Disadvantaged Groups: The Contribution of the U.N. Committee on Economic, Social and Cultural Rights”, *33 Human Rights Quarterly* (2001) pp. 682-732.

9 For a recent study, cf. A.A. Cançado Trindade, *El Principio Básico de Igualdad y No-Discriminación: Construcción Jurisprudencial*, 1st. ed., Santiago de Chile, Ed. Librotecnia, 2013, pp. 39-748.

10 Cf., e.g., A.A. Cançado Trindade, “Le déracinement et la protection des migrants dans le Droit international des droits de l’homme”, *19 Revue trimestrielle des droits de l’homme - Brussels* (2008) n. 74, pp. 289-328; L. Ortiz Ahlf, *Derechos Humanos de los Indocumentados*, Mexico D.F., ELD/Tirant lo Blanch, 2013, pp. 11-136.

11 World Conferences on the Environment and Development, Rio de Janeiro, 1992; on Human Rights, Vienna, 1993; on Population and Development, Cairo, 1994; on Social Development, Copenhagen, 1995; on Women’s Rights, Beijing, 1995; on Human Settlements - Habitat-II, Istanbul, 1996; and the World Conference against Racism, Durban/South Africa, 2001.

12 Cf. A.A. Cançado Trindade, *Tratado de IRLeito Internacional dos IRLeitos Humanos*, vol. I, 2nd. ed., Porto Alegre/Brasil, S.A. Fabris Ed., 2003, caps. III-VII, pp. 165-338; and cf. A.A. Cançado Trindade, “Sustainable Human Development and Conditions of Life as a Matter of Legitimate International Concern: The Legacy of the U.N. World Conferences”, in *Japan and International Law - Past, Present and Future* (Symposium of the Centennial of the Japanese Association of International Law), The Hague, Kluwer, 1999, pp. 285-309.

13 A.A. Cançado Trindade, “Nouvelles réflexions sur l’interdépendence ou l’indivisibilité de tous les droits de l’homme, une décennie après la Conférence Mondiale de Vienne”, in *El Derecho Internacional: Normas, Hechos y Valores - Liber Amicorum J.A. Pastor Ridruejo* (eds. L. Caflisch et alii), Madrid, Universidad Complutense, 2005, pp. 59-73.

This cycle of World Conferences, at the global level, coupled with three decades of UNHCR Consultations (1984-2014), at our regional level, have greatly contributed to the recognition of the *centrality* of victims in the present area of protection, including –and above all– those enduring vulnerability, in the midst of particularly *dire* circumstances. We will only be able to find *lasting solutions* through joint action motivated by human solidarity. Here, the concerted efforts of states and civil society organizations are needed –driven by a common cause– to ensure the protection of the basic rights of migrants and their families in all circumstances.

On reconnaît de nos jours that face au phénomène des migrations forcées, c'est la responsabilité the communauté internationale dans son ensemble qui est en cause, défendre pour le droit humain de vivre avec dignité, et même the survival, et des victimes réelles potentielles. L'ensemble of the question met in évidence des impératifs universel de justice sociale au niveau. An Important rôle est ainsi post dévolu aux politiques des qu'à the Entités Mobilisation of société civile pour leurs réduire améliorer souffrances et leurs conditions de vie. Avancées dans ce domaine des ne pourront accomplies être dans une atmosphère that vraie solidarité humaine. Les êtres humains ne pas être doivent simplement Prives of leurs droits in raison de leur statut ou de toute autre migratoire circonstance. Il faut la personne humaine pleasure à la place lui qui correspond correspondance, au-dessus du capital, des biens et des services.

It is somewhat significant that, during the three decades of the UNHCR Consultations in our part of the world, this is the first time our community of nations, *as a whole, encompassing Latin America as well as the Caribbean* (as in the memorable meeting in Grand Cayman Island, held last 10-11.09.2014), jointly takes on this humanitarian cause. This is in line with the long-standing contribution of our region to the most coherent doctrinal trends in modern international law, as demonstrated, successively, at the Second Hague Peace Conference (1907); in the cre-

ation (in 1907) of the first permanent international tribunal in the world: the Central American Court of Justice; in the discourse, throughout the decades, of the former International Conferences of American States, giving rise to historical conventions such as, *inter alia*, the Convention on Asylum (La Habana, 1928), the Convention on Political Asylum (Montevideo, 1933), and the Conventions on Political and Territorial Asylum (Caracas, 1954), without precedent in other regions of the world; when the American Declaration of the Rights and Duties of Man was adopted in 1948, one semester before the U.N. General Assembly adopted the Universal Declaration of Human Rights.

The right of access to justice (Article 8 of the Universal Declaration) was one of our region's most significant contributions to the Universal Declaration as a whole. And examples of the pioneering work of our countries in the field of the international protection of the rights of the individual are on the increase. The three decades of UNHCR Consultations subsequent to the Cartagena Declaration (1984), which resulted in the Declarations of San Jose (1994) and Mexico (2004), and now the Draft Declaration of Brasilia (2014), are further cases in point in the same vein. No other region in the world has achieved this; it constitutes the legal heritage of the countries and peoples of our region¹⁴.

During the entire process of this three-decade long humanitarian exercise, the right of the individual to broad-based (*lato sensu*) access to justice, both nationally and internationally, has left a significant mark. Throughout this process new responses to the new protection needs of human beings have been sought and found, namely: “Cities and Borders of Solidarity”, humanitarian visas, improved asylum procedures and the determination of

¹⁴ For a recent study, cf. A.A. Cançado Trindade, *El Derecho de Acceso a la Justicia en Su Amplia Dimensión*, 2nd. ed., Santiago de Chile, Ed. Librotecnia, 2012, pp. 79-574.

refugee status, labour mobility, voluntary repatriation and “Solidarity Resettlement”.

In regard to this year's 2014 Consultations, it is gratifying to feel responsible for the Draft Brasilia Declaration and Plan of Action. Together we have achieved the commitment of our entire region to eradicate statelessness and to strengthen the protection of vulnerable persons (including victims of non-state actors and criminal groups), in any circumstance. The current process of consultations has, for the first time, had the support of the states of the *entire* region (Latin America as well as the Caribbean), and of civil society representatives, with the highest degree of participation and commitment to follow-up.

Providence kindly reserved for us the privilege of participating in this process of the 2014 Consultations –a milestone in the professional lives of all of us– with results that are certain to benefit many vulnerable people we do not know who are desperate for this much-needed protection. At the end of the day, this is an exercise we will never forget. There could hardly be anything more rewarding than the feeling of the determination to leave behind, for future generations, a world perhaps better than that which was bequeathed us.

IV A NEW DECADE (2004-2014): THE 2014 UNHCR CONSULTATIONS AND THEIR RESULT, THE BRAZIL DECLARATION AND PLAN OF ACTION¹⁵

The UNHCR Consultations that began in February of this year and that are now culminating at this Interministerial Conference in Brasilia (2-3.12.2014), have sought to build on the lessons accumulated since the 2004 Mexico Declaration and Plan of Action were adopted, in order to identify the new humanitarian challenges we

¹⁵ Speech given by the author at the first plenary session of the Interministerial UNHCR Conference in Brasilia on 2 December, 2014.

face today and pinpoint responses to the new protection needs of the human beings affected, as individuals with rights and entitled to international protection. The 2014 Consultations, which were particularly intense, involved four subregions, namely: Mercosur (18-19.03.2014), the Andean subregion (09-10.06.2014), the Mesoamerican subregion (10-11.07.2014), and the Caribbean (10-11.09.2014). They were also accompanied by an additional consultation process within the framework of the Latin American and Caribbean Group (GRULAC), held at UNHCR in Geneva, which began on 13.02.2014, was assessed on 3.11.2014, and concluded on 14.11. 2014.

The 2014 Consultations have led to a broader dialogue in a constructive spirit, bringing together government representatives from over 30 countries in the region (Latin America and the Caribbean), in addition to observer countries, more than 150 civil society institutions, ombudspersons, and representatives of key international organisations in the field. The 2014 Consultations had the highest public participation in the last three decades –and I have had the privilege of participating in all of them as UNHCR's honorary Legal Consultant– and, for the first time, the countries of the Caribbean as a whole joined their Latin American counterparts.

The 2014 Consultations should be assessed within a historical perspective, bearing in mind the Consultations of the two previous decades: San Jose, Costa Rica in 1994, and Mexico in 2004, in order to better appreciate the extended scope of the applicable law. The evolution of the law in the present domain of safeguarding the rights of human beings, must be examined from the perspective of the new responses to the changing needs of protection; with the individual as the central focus of attention. Each Declaration, resulting from previous UNHCR Consultations, is the result of a specific historical moment. However, all of them, including the one we are ready to adopt at this Interministerial Conference in Brasilia, encompass the issue of refugees, displaced

persons and migrants in the broader context and conceptual sphere of the observance of human rights in all circumstances. From San Jose/1994 to Mexico/2004 and Brasilia/2014, the *convergence* between International Human Rights Law (IHRL), International Refugee Law (IRL) and International Humanitarian Law (IHL)¹⁶ has been acknowledged.

As I explained in my Preface to the volume of the *Report* on the Consultations that led to the Declaration of San Jose, Costa Rica in 1994, it has been understood that, instead of “subjective categorizations of people (according to the reasons that led them to leave their homes),” we began “adopting objective criteria for *protection needs*, which thus cover a considerably larger number of people (including IDPS) as vulnerable as refugees,” with no room for *vacatio legis*¹⁷. The applicable *right to protection* was thus extended and this achievement benefits all protected human beings.

Just as the Cartagena Declaration (1984) dealt with the major human drama of the armed conflicts in Central America, as well as foreseeing the worsening of the problem of internal displacement; and the San Jose Declaration (1994) included an in-depth examination into the issue of protection –also of IDPS– and also predicted the worsening problem of forced migration; and just as the Mexico Declaration (2004) made an in-depth examination into the issue of the protection of migrants (including undocumented migrants), also envisioning the exacerbation of the problem of extremely complex mixed migration flows; so the Draft Declaration we are about to adopt here in Brasilia (2014) focuses on members of groups enduring situations of extreme vulnerability, and also anticipates the heightening problem of

victims of criminal activities carried out by non-state actors.

In the spirit of finding responses to the new protection needs of members of victimised segments of the population, the current Draft Declaration (2014) explicitly recognises –for the purposes of this protection– the situation of extreme vulnerability in which these individuals and groups in desperate need of protection find themselves¹⁸. The aforementioned Draft Declaration also correctly highlights the primary responsibility of states (para. 6), the centrality of human beings (para. 8), and the importance of the spirit of solidarity, as demonstrated throughout 2014 UNHCR Consultations.

As can be seen in all these Declarations throughout three successive decades, the violation of human rights constitutes one of the causes of refugee flows and serious humanitarian crises, requiring *lasting solutions* for those victimised¹⁹, and uprooted persons who find themselves in an increasingly vulnerable situation. The law has reacted, extending adequate protection to the many uprooted²⁰. The UNHCR Consultations of the past three decades have sought, through the respective Declarations, to achieve the corresponding extension of applicable law, both *ratione materiae* and *ratione personae*.

Indeed, in my contribution as UNHCR Legal Consultant to their Consultations, which I presented to the plenary of the Conference of Mexico, and that resulted in the 2004 Declaration and Plan of Action, I took the liberty of pointing out that, based on the experience of the international community in our part of the world, it was difficult to avoid the impression that we continually go from one crisis to another, with the ensuing

disintegrating effects. On the other hand, it is also very important to point out that the reaction of the international community, moved by the human conscience, has been immediate, exercising collective thinking and with an ever broader public participation in the Consultations carried out in these three successive decades. This, I added, has helped to achieve the continuous expansion of applicable law, in order to extend protection to a growing number of people who need it, in a wide variety of circumstances²¹.

The 2014 Consultations have again acknowledged the importance of the convergence between the three branches of the protection of human beings –IHRL, IRL, and IHL– at normative, hermeneutic and operational levels. However, the 2014 Consultations, in my view, have given these convergences an even broader dimension by making reference to treaties and international instruments related to other branches of international law, namely, the law of nations (*droit des gens / jus gentium*). Allow me to mention two examples in this regard.

The most recent Caribbean subregional meeting (held in Grand Cayman, in September 2014) underscored the importance of the United Nations Convention on the Law of the Sea (1982) and the International Convention on Maritime Search and Rescue (1979) for operations concerning the protection of persons in distress at sea. This contribution has been duly recorded in the Draft Brazil Plan of Action (Chapter V) in order to address the vulnerability of people in need of protection at sea. This is the first time this occurred, expanding the framework of international protection. The convergences are expanded: here other international instruments

pertaining to the law of the sea converge with the aforementioned three aspects of international protection.

The Mesoamerica subregional meeting (held in Managua in July, 2014) stressed the situation of the heightened and extreme vulnerability of the actual or potential victims of human trafficking, such as women and unaccompanied or separated children, among others. It raised the need for the international protection of victims against transnational organized crime, also contained in the aforementioned Draft Plan of Action (Chapter IV), which it is hoped will be adopted by the Ministerial Conference in Brasilia. In effect, this is a problem that has long been a concern of UNHCR, even prior to the 2004 Consultations and over the course of the last decade.

Here, I would like to recall that, in 2002, UNHCR issued its *Guidelines on International Protection*, in the contexts of both *Gender-Related Persecution*²², and *Membership of a Particular Social Group*²³. Later, in 2006, UNHCR issued its *Guidelines on Victims of Human Trafficking and Persons at Risk of Being Trafficked*²⁴, in which, *inter alia*, after invoking the United Nations Convention against Transnational Organized Crime (Palermo, 2000) and its Additional Protocols on Human Trafficking and against the Smuggling of Migrants, recalls that the Protocol on Human Trafficking, after noting the vulnerability of the victims (Article 3), considers regulations convergent with IHRL and IRL treaties (Article 14), to ensure better protection for these persons²⁵.

Here, the aforementioned three aspects of international protection converge with other international

16 Para. 5 of the current Draft of the Brazil Declaration.

17 UNHCR, *10 Años de la Declaración de Cartagena sobre Refugiados - Memoria del Coloquio Internacional* (San Jose, Costa Rica, 5-7.12.1994), San Jose, Costa Rica, UNHCR /IIHR, 1995, pp. 14-15.

18 Paras. 5, 9, 18, 20, 40-41 and 44-45.

19 A.A. Cançado Trindade, “Closing Speech” (San Jose, 7.12.1994), in *ibid.*, pp. 431-432.

20 A.A. Cançado Trindade, “Le déracinement et la protection des migrants dans le Droit international des droits de l’homme”, 19 *Revue trimestrielle des droits de l’homme* - Brussels (2008) n. 74, pp. 289-328.

21 A.A. Cançado Trindade, “Aproximaciones y Convergencias Revisitadas: Diez Años de Interacción entre el Derecho Internacional de los Derechos Humanos, el Derecho Internacional de los Refugiados, y el Derecho Internacional Humanitario (De Cartagena/1984 a San José/1994 y México/2004)”, in *the Report on the Twentieth Anniversary of the Cartagena Declaration on Refugees (1984-2004)*, San Jose, Costa Rica/Mexico, UNHCR, 2005, pp. 147-148.

22 UNHCR, doc. HCR/GIP/02/01, of 07.05.2002, pp. 1-13.

23 UNHCR, doc. HCR/GIP/02/02, of 07.05.2002, pp. 1-6.

24 UNHCR, doc. HCR/GIP/06/07, of 07.04.2006, pp. 1-17.

25 Cf. *ibid.*, pp. 4-5, paras. 8 and 12.

instruments for controlling transnational organised crime and combatting the exploitation of humans (such as human trafficking) in particularly vulnerable situations. The dimension is broader, not only *ratione personae* and *ratione temporis* (actual or potential victims) but also *ratione materiae*, in addressing the agents –both state and non-state– of persecution. With this new approach, in 2010, UNHCR issued its *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*²⁶.

Le travail de protection, dans cet univers conceptuel plus vaste, révèle, dans ma perception, *l'unité du Droit*²⁷, comprenant domaines distincts du Droit international public contemporain en *convergence* pour sauvegarder les droits de la personne humaine dans toutes les circonstances, aux niveaux national aussi qu'international, en *interaction* dans le présent contexte de protection²⁸. Il reste clair que des avancées dans le présent domaine de protection que nous concerne dans cette Conférence de Brasília, ne pourront être accomplies que dans une atmosphère de vraie solidarité humaine. Les êtres humains ne doivent pas être privés de leurs droits simplement en raison de leur statut migratoire ou de toute autre circonstance. La personne humaine doit être placée à la place que

le correspond, certainement au-dessus du capital, des biens et des services.

The Andean subregional meeting (held in Quito in June, 2014) has contributed to the updated review of *lasting solutions* in the context of both IRL and IHRL as a whole. With respect to local integration, for example, the Draft Plan of Action, expected to be adopted at this Conference in Brasília (December, 2014), calls for the “solidarity of public services” (such as health, education, housing and employment) and intercultural integration²⁹. Furthermore, the above-mentioned Draft Plan of Action also ponders (Chapter III) that the lasting solutions already established³⁰ – namely, *voluntary repatriation*, *local integration* and *resettlement* – should be undertaken in a complementary, coordinated and joint manner in order to achieve appropriate, comprehensive and sustainable solutions for the benefit of all the affected segments of the population³¹.

In turn, the subregional Mercosur meeting (held in Buenos Aires in March, 2014) has added to this framework a proposed *labour mobility* programme, to facilitate the free movement of refugees to third countries, where they can access paid employment to achieve economic self-sufficiency – as also stated in the aforementioned Draft Plan of Action (Chapter III)³². The Draft Declaration identifies this *labour mobility* in order to promote the integration of refugees in third countries as a “regional mechanism of solidarity” (para. 52). Moreover, the same subregional meeting of Mercosur has maintained the high standards of protection embodied in the developments of “jurisprudence and

26 UNHCR / International Protection Division, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, Geneva, March, 2010, pp. 1-25.

27 Regarding the *unity of law* in the work of contemporary international tribunals, cf., recently, A.A. Cançado Trindade, “A Contribuição dos Tribunais Internacionais à Evolução do Direito Internacional Contemporâneo”, in: *O Direito Internacional e o Primado da Justiça* (eds. A.A. Cançado Trindade e A.C. Alves Pereira), Rio de Janeiro, Edit. Renovar, 2014, pp. 70-74; cf. also A.A. Cançado Trindade, - “Vers un droit international universel: la première réunion des trois Cours régionales des droits de l’homme”, in *XXXVI Course on International Organized Law given by the Inter-American Judicial Committee - 2009*, Washington D.C., Secretary General of the OAS, 2010, pp. 103-125.

28 Regarding this interaction, cf., recently, A.A. Cançado Trindade, “A Century of International Justice and Prospects for the Future”, in: A.A. Cançado Trindade e D. Spielmann, *A Century of International Justice / Rétrospective d’un siècle de justice internationale et perspectives d’avenir*, Oisterwijk, Wolf Pubs., 2013, pp. 24-25.

29 Draft Plan of Action, para. 23.

30 The current Draft Declaration addresses *lasting solutions* from the perspective of the lessons learned from the implementation of the components of the “Cities of Solidarity”, “Borders of Solidarity” and “Solidarity Resettlement”, of the 2004 Mexico Plan of Action (paras. 22-25).

31 Cf. also, in the same vein, para. 49 of the Draft Declaration.

32 Also earmarked in the current Draft Declaration of 2014 (para. 52).

doctrine” of the Inter-American Court of Human Rights (IACtHR), and the nature of the *jus cogens* principle of *non-refoulement* – as stated in the Draft Brazil Declaration (para. 12).

The final document of the 2014 UNHCR Consultations expresses the commitment to eradicate statelessness within the next decade³³. It underscores the continued need to grant *humanitarian visas*³⁴, inter alia, in the spirit of solidarity³⁵. It emphasizes the need for full compliance with the guarantees of the due process of law³⁶ and the basic principle of non-discrimination³⁷. And, finally, it recognises the need for the *assessment and monitoring* of the work undertaken³⁸. The aforementioned final document is aimed, as it could not fail to be, at persons in need of protection, considered as true *subjects* of international law and protection³⁹.

Throughout the entire process of this humanitarian exercise of three decades of Consultations in the field, the right of human beings to broad-based access to justice, at the national and international level, has made a significant mark. Together we have achieved the commitment of our entire region to eradicate statelessness and to strengthen the protection of those who suffer in situations of extreme vulnerability (including victims of non-state actors and criminal groups), under any circumstance. This is in full conformity with the pioneering nature of the valuable contributions of the countries and peoples of our region to the progressive development of contemporary international law.

33 Declaration, paras. 29-30 and 53; and Plan of Action, para. 12, and cap. VI, paras. 39-40.

34 Declaration, para. 14; Plan of Action, paras. 24 and 47.

35 Plan of Action, para. 30.

36 Declaration, paras. 13, 18 and 38.

37 Declaration, paras. 42 and 48.

38 Declaration, para. 48.

39 Declaration, paras. 41-42. For a general study of this issue, cf. A.A. Cançado Trindade, *Le Droit international pour la personne humaine*, Paris, Pédone, 2012, pp. 45-368.

To have disclosed this wider normative and conceptual universe constitutes, in my understanding, one of the achievements of the process of the UNHCR Consultations of 2014, culminating today at this Conference of Brasília that brings all of us together in relation to the Draft Brazil Declaration and Plan of Action. Throughout this entire process of Consultations we have searched for and found new responses to the new humanitarian challenges and to the new protection needs of human beings. The present Interministerial Conference in Brasília constitutes a most significant historical moment, wherein, for the first time ever, in the three decades of UNHCR Consultations of this kind, Latin America and the Caribbean congregate here, *jointly*, to face the new humanitarian challenges of our times, by adopting its final document.

O atual processo de Consultas de 2014 tem contado com o mais alto grau de participação pública nas três últimas décadas, tanto dos representantes governamentais como dos representantes da sociedade civil. Estas três décadas das Consultas do ACNUR são um exemplo único em todo o mundo. Não há outra região do mundo que tenha procedido do mesmo modo; é este um patrimônio jurídico dos países e povos de nossa região. No tocante às Consultas deste ano de 2014, é gratificante que nos possamos sentir, todos, responsáveis pelo Projeto de Declaração e Plano de Ação de Brasília, cuja aplicação se reverte em benefício de tantas personas em situações de vulnerabilidade, em busca de proteção. É importante que, a partir de agora, nos mantenhamos atentos a sua efetiva aplicação. Dificilmente poderia haver algo mais gratificante do que o sentimento do empenho na *construção* do direito das gentes (*droit des gens / jus gentium*) contemporâneo: tem este sido verdadeiramente um exercício de *construção*, para que possamos deixar às novas gerações um mundo talvez melhor do que o que encontramos.

V CONCLUDING OBSERVATIONS

The Brazil Declaration and Plan of Action were adopted by consensus and acclaim at the last plenary session of the UNHCR Ministerial Conference in Brasília on 3 December, 2014. In comparison to Cartagena/1984, San Jose/1994 and Mexico/2004, Brasília/2014 was the conference that achieved the highest degree of public participation, involving, for the first time, all the countries in the region, both in Latin America and the Caribbean. It is true that the issue has sparked interest in other parts of the world (regarding, for example, the problems of forced migration⁴⁰, human trafficking and the smuggling of migrants⁴¹, and the lack of access to justice⁴², among others), but the mobilisation of our *en-*

tire region around the general theme is unique, and has demonstrated a leading position on a worldwide scale, as I took the liberty of pointing out in my presentations⁴³ during the process of the 2014 UNHCR Consultations.

In these 2014 Consultations (cf. above), which led, on 3 December, 2014, to the adopting, in Brasília, of the Brazil Declaration and Plan of Action, numerous civil society institutions from the same region also participated –as expected, it being a humanitarian issue– along with the governments of all the countries in our region. Speaking at the Ministerial Conference in Brasília, representatives of these entities advocated a progressive interpretation of the relevant international instruments, and their harmonization with national legislation. In relation to the new causes of forced displacement, they stressed the need to ensure respect for human rights in migration policies, and to transform the national security approach into a human security approach.

The representatives of civil society organizations also referred to the contribution of the Caribbean countries in raising the issue of the need to safeguard protection on the high seas, and immediately afterwards, highlighted five others points, namely: a) the need to provide special attention to people in heightened vulnerability (such as unaccompanied children), as with, for example, victims of trafficking; b) the importance of the principles of non-discrimination and non-refoulement; c) the need to issue an identity card that is accepted at the regional level; d) ensuring the right to nationality; and e) the importance of achieving lasting solutions. Finally, these representatives stressed the importance of having *tracking and monitoring* mechanisms strengthened by a tripartite structure involving the participation of states, UNHCR and civil society (together with academia).

43 In the second and third speeches, *supra*.

40 Cf., v.g., [Various authors,] *Les migrations contraintes* (Actes du Colloque de Caen, 2012 - ed. C.-A. Chassin), Paris, Pédone, 2014, pp. 5-186; [Varios Autores,] *La protection internationale et européenne des réfugiés* (ed. A.-M. Tournepiche), Paris, Pédone, 2014, pp. 5-176; [Varios Autores,] *La société internationale face aux défis migratoires* (eds. H. Gherari y R. Mehdi), Paris, Pédone, 2012, pp. 7-217; M. Dubuy, “À propos de l’émergence d’un nouvel ordre migratoire mondial - Aspects récents”, in *L’État dans la mondialisation* (Colloque de Nancy), Paris, Pédone, 2013, pp. 345-370; M.-F. Valette, “La vulnérabilité de l’enfant au gré des migrations”, 23 *Revue trimestrielle des droits de l’homme* (2012) n. 89, pp. 103-123; [Varios Autores,] *Migrations de populations et droits de l’homme*, Bruxelles, Nemesis/Bruylant, 2011, pp. 13-260; C. Pérez González, *Migraciones Irregulares y Derecho Internacional*, Valencia, Tirant lo Blanch, 2012, pp. 21-207; S. Castles y M.J. Miller, *The Age of Migration - International Population Movements in the Modern World*, N.Y., Guilford Press, 1993, pp. 1-275; F.F. Höpfnér, *L’évolution de la notion de réfugié*, Paris, Pédone, 2014, pp. 265-454; V. Longhi, *The Immigrant War - A Global Movement against Discrimination and Exploitation*, Bologna, SEPS, 2014, pp. 1-122.

41 Cf., v.g., K. Plouffe-Malette, *Protection des victimes de traite des êtres humains - Approches internationales et européennes*, Bruxelles, Bruylant, 2013, pp. 1-184; A.G. Chueca Sancho, “Protección Internacional frente a la Trata de Personas”, in *Un Mundo sin Desarraigo: El Derecho Internacional de las Migraciones* (ed. F.M. Mariño Menéndez), Madrid, Catarata, 2006, pp. 132-197; [Various Authors,] *From Human Trafficking to Human Rights - Reframing Contemporary Slavery* (eds. A. Brysk y A. Choi-Fitzpatrick), Philadelphia, University of Pennsylvania Press, 2012, pp. 1-216; y cf., en general, J. Pierrat, *Mafias, gangs et cartels - La criminalité internationale en France*, [Paris,] Éd. Denoël, 2008, pp. 7-456; L. Corte Ibáñez y A. Giménez-Salinas Framis, *Crimen Organizado - Evolución y Claves de la Delincuencia Organizada*, Barcelona, Ariel, 2010, pp. 17-428; N. Kranattanasuit, *ASEAN and Human Trafficking - Case Studies of Cambodia, Thailand and Vietnam*, Leiden, Brill/Nijhoff, 2014, pp. 1-214.

42 Cf., v.g., J. McBride, *Access to Justice for Migrants and Asylum Seekers in Europe*, Strasbourg, Council of Europe, 2009, pp. 5-129; M. Morel, *The Right Not to Be Displaced in International Law*, Cambridge/Antwerp, Intersentia, 2014, pp. 49-310; [Various Authors,] *The Protection of Separated or Unaccompanied Minors by National Human Rights Structures* (Coloquio de Padova, octubre de 2009), Strasbourg/Padova, Council of Europe/Universidad de Padova, 2009, pp. 5-63; Y. Ktistakis, *Protecting Migrants under the European Convention on Human Rights and the European Social Charter*, Strasbourg, Council of Europe, 2013, pp. 9-119.

Shortly before the close of the Interministerial Conference in Brasília, the host state presented a brief summary of the contribution of the newly-adopted Brazil Declaration and Plan of Action. After underscoring the importance of incorporating the Caribbean countries, - noting the proximity between Latin America and the Caribbean, - it stressed the inclusion, in the exercise of modernisation, of the plight of the stateless and the relevance of the right to a nationality (already contained in the Universal Declaration of Human Rights of 1948), as well as the commitment to eradicate (and prevent) statelessness over the course of the next decade. It also stressed the importance of the protection of persons in *vulnerable* situations (in a spirit of solidarity), such as unaccompanied children and adolescents (heading north).

Indeed, the Brazil Declaration and Plan of Action of (2014) have achieved, in my view, an *aggiornamento* of the protection framework for the next decade (2014-2024) of people in situations of vulnerability in the current regional context. Its explicit recognition of the convergence between International Human Rights Law, International Refugee Law and International Humanitarian Law is significant, revealing the *unity of the law*. Also significant is the recognition of the relevance of the impact of broad-based access to justice and the nature of the *jus cogens* principle of *non-refoulement*.

In assessing the Interministerial Conference in Brasília to which we immediately proceeded (UNHCR and representatives of civil society organizations and academia) at the University of Brasília (UnB - Institute of International Relations - IREL) on the afternoon of the 3rd and the morning of the 4th of December, 2014, we focused on the planned and necessary mechanisms for following up on and monitoring the Brazil Declaration and Plan of Action. No difficulties were anticipated with respect to the fact that they should be preferably tripartite (states, UNHCR, and civil society and academia) –at least to begin with, in the Southern Cone and Central America, and also in the Andean subregion; with regard to the Caribbean, the assistance of CARICOM could, perhaps, be enlisted for coordination purposes.

Finally, in the troubled world in which we live, our region of Latin America and the Caribbean has, true to the best traditions of its most coherent international legal doctrine, managed to safeguard the human values and care of those who suffer in situations of vulnerability, in a spirit of solidarity and within the framework of the universal rights of human beings. It is a privilege to have been involved in this process of UNHCR Consultations that culminated when the Brazil Declaration and Plan of Action (2014) was adopted for the next decade, as one more step on the long road of the *humanisation* of international law.



THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

Psychosocial support project
for refugee children run
by HIAS/UNHCR.
Pampanal, Ecuador.
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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

**I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH** | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

**OPENING CEREMONY
AGENDA
SPEECHES**

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

**IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION** | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
**BRAZIL DECLARATION
BRAZIL PLAN OF ACTION**

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Loatian (Hmong) refugees
in La Pampa, Argentina.

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“ THE LATIN AMERICA AND CARIBBEAN REGION HAS SHOWN A TRULY EXCEPTIONAL COLLABORATIVE SPIRIT THROUGHOUT THE CARTAGENA+30 PROCESS, SETTING AN EXAMPLE FOR OTHER REGIONS OF THE WORLD. AT A TIME WHEN CONFLICT, PERSECUTION AND VIOLENCE HAVE DRIVEN MORE PEOPLE FROM THEIR HOMES THAN AT ANY OTHER TIME IN RECORDED HISTORY, IT IS MY HOPE THAT THIS COLLECTION OF KEY MOMENTS OF THE COMMEMORATIONS PROCESS WILL SERVE AS AN INSPIRATION TO OTHERS IN THEIR EFFORTS TO PROTECT THE RIGHTS OF THE FORCIBLY DISPLACED ”

ANTÓNIO GUTERRES

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

+30
CARTAGENA

UNHCR
The UN Refugee Agency



Mercosur

SUBREGIONAL CONSULTATION
BUENOS AIRES 18-19 MARCH, 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

TUESDAY, 18 DE MARCH

08:30	Registration
09:00	Welcome and opening remarks Ambassador Eduardo Zuain, Vice-chancellor, Ministry of Foreign Affairs, Argentina Dr. Paulo Abrão, National Secretary of Justice and President of the National Committee for Refugees, Brazil Marta Juárez, Director of UNHCR's Regional Bureau for the Americas
09:20	Introductions and approval of the final programme (Chair)
09:30	Information on the Cartagena+30 Process, methodology for the meeting, and presentation of the Technical Secretariat and Rapporteur (Carlos Maldonado, Cartagena+30 Coordinator, UNHCR)
09:45	Principal Achievements of the Mexico Plan of Action and Current Challenges (moderated by Marta Juárez, Director of UNHCR's Regional Bureau for the Americas)
	<ul style="list-style-type: none"> UNHCR Panellist: Juan Carlos Murillo, Senior Regional Legal Officer, Regional Legal Unit (15 min) Comments on the presentation (1 hour) (maximum 12 participants, 5 minutes each)
11:00	Coffee break
11:15	Elements Needed to Consolidate National Refugee Status Determination Procedures: Exchange of Good Practices and Challenges (moderated by Leonardo Franco, Regional Expert)
	<ul style="list-style-type: none"> Government panellist: Dr. Federico Agusti, Director of International and Social Affairs and President of CoNaRe (National Refugee Commission), Argentina (15 min.): Institutional Capacity Building and Good Practices in Refugee Status Determination in MERCOSUR Countries Panellist: Dra. Analia Cascone, Deputy Secretary of the Refugee Commission, Office of the Ombudsman, Argentina, (15 min.): Progress Made and Procedural and/or Legal Gaps in Legal Representation and Due Process UNHCR panellist: Davide Torzilli, Senior Regional Legal Adviser (15 min.): QAI – Quality Assurance Initiative Debate in plenary session (45 min.)
12:45	Lunch break (courtesy of the host country)

14:15	Protection Considerations in Mixed Migration Flows (moderated by Ambassador Rosario Green, Senior Expert)
	<ul style="list-style-type: none"> Government panellist: Minister Juan Ignacio Livieres, President of CONARE and Director General of Consular Affairs, Vice-ministry of Administration and Technical Affairs, Paraguay (15 min.): Security Concerns, Transnational Crime, and International Protection of Refugees in the Region Civil society panellist: Candido Feliciano da Ponte Neto, Director of Caritas – Rio de Janeiro (15 min.): Identifying Persons with other Protection Needs: Legal Gaps and Complementary Protection UNHCR panellist: Juan Carlos Murillo, Senior Regional Legal Officer (15 min.): Mechanisms for Identifying Protection and Referral Needs, and Alternatives to Administrative Detention Debate in plenary session (45 min.)
15:45	Coffee break
16:00	Protection of Refugee Women, Children, and Youth (moderated by Marta Juárez, Director of UNHCR's Regional Bureau for the Americas)
	<ul style="list-style-type: none"> Panellist: Víctor Abramovich, Executive Secretary of the MERCOSUR Human Rights Public Policy Institute (IPPDH) (15 min.): Identifying Persons in Need of Special Protection: Victims of Human Trafficking and Unaccompanied Minors UNHCR Panellist: Stefano Feliciani, Senior Protection Officer, Panama (15 min.): Age, Gender and International Protection of Refugees Comments from government attendees and debate in plenary session (1 hr.)
17:30	Close of session

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

WEDNESDAY, 19 MARCH

09:00 Conclusions and recommendations from day one (presented by the Chair), and approval by the plenary

09:30 Challenges and Initiatives to Achieve Self-Reliance and Adequate Livelihoods for Refugees in Urban Settings: From “Solidarity Cities” to Effective Local Integration (moderated by Andrés Ramírez, UNHCR Representative in Brazil)

- Government panellist: Dr. Paulo Abrão, President of the National Committee for Refugees, Brazil (15 min.): Public Policies to Promote Refugee Integration in Countries of Asylum
- Civil society panellist: Marcos Rasguido, Legal Adviser, Human Mobility Pastoral (PMH), Bolivia (15 min.): Local Initiatives to Strengthen Refugee Livelihoods Through Microcredit, Vocational Training, and Job Creation
- UNHCR panellist: Eva Demant, Regional Representative in Argentina (15 min.): New Actors in Refugee Local Integration: Support from the Private Sector
- Debate in plenary session (45 min.)

11:00 Coffee break

11:15 Challenges to Consolidating a Solidarity Resettlement Programme in Latin America (moderated by Carlos Maldonado, UNCHR Cartagena+30 Coordinator)

- Government panellist: Luis Porto, Under-secretary of Foreign Affairs, Uruguay (15 min.): Elements Needed to Consolidate the Solidarity Resettlement Programme in Latin America
- Civil society panellist: Karen Wapechowski, ASAV, Brazil (15 min.): Gaps and Challenges Identified in the Solidarity Resettlement Programme
- UNHCR panellist: José Riera, Special Adviser, Division of International Protection (15 min.): The Importance of the Solidarity Resettlement Programme as a Mechanism for Shared Responsibility in Latin America
- Debate in plenary session (45 min.)

12:45 Lunch break

14:00 Migration Alternatives with Protection Safeguards for Refugees (moderated by John Fredrikson, UNHCR Representative in Ecuador)

- Government panellist: Dr. Paulo Abrão, President of the National Committee for Refugees, Brazil (15 min.): Regional Developments and Contributions in Refugee Migration Mobility
- Academic panellist: Dr. Pablo Ceriani, Coordinator of the Migration and Asylum Programme, Human Rights Centre, National University of Lanús (UNLA) (15 min.): Protection Safeguards and Refugee Labour Migration: New Challenges in the Search for Durable Solutions
- Debate in plenary session (45 min.)

15:15 Coffee break

15:30 Prevention of Statelessness and Protection of Stateless Persons in Latin America (moderated by Eva Demant, UNHCR Regional Representative in Argentina)

- Government panellist: Dr. Patricio Rubio, Legal Adviser, Directorate General for Human Rights and Executive Secretary of CEPRE, Peru (15 min.): Prevention of Statelessness and Protection of Stateless Persons in Countries in the Region: Pending Matters
- UNHCR panellist: Juan Ignacio Mondelli, Protection Officer, Costa Rica (15 min.): The Role of MERCOSUR as a Solidarity Region in the Prevention of Statelessness and the Protection of Stateless Persons in Latin America
- Debate in plenary session (30 min.)

16:30 Coffee break

17:30 Conclusions and recommendations from day two (presented by the Chair), and approval by the plenary

18:00 Closing of the Consultation (Chair)

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Mercosur

DISCUSSION PAPER



Colombian refugee children
resettled in Brazil.
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INTRODUCTION

This document was prepared by UNHCR with the aim of informing and guiding discussions among States, international bodies, national human rights institutions, civil society organisations, and academics during the sub-regional consultation to take place in South America within the MERCOSUR framework.

This first sub-regional consultation seeks to identify the principal challenges and opportunities as they relate to international protection, as well as possible responses to these, so that deliberations among the various actors may contribute to the subsequent adoption of a regional Plan of Action for the period 2015-2024, which would provide continuity to the Mexico Plan of Action to Strengthen the International Protection of

Refugees in Latin America, adopted in 2004 (“Mexico Plan of Action”).

South America has modern legislation related to refugees, with high standards of protection which incorporate human rights guarantees based on regional instruments on this subject. Nevertheless, this is an opportune moment to build on those advances and reflect on pending matters.

Likewise, MERCOSUR has been a favourable forum in which to foster the exchange of good practices in the area of refugee protection, and an ideal forum in which to harmonise administrative practices as they are carried out in national commissions for refugees. Member and associate States have declared MERCOSUR to be a re-

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

gional space for solidarity with refugees. International protection of refugees in the region has emerged as a theme within MERCOSUR through the national bodies in charge of refugee status determination in meetings held in Fortaleza (Brazil) and Montevideo (Uruguay) in 2012 and 2013, respectively.

Consequently, deliberations [in the sub-regional consultation] should focus on those initiatives that may contribute to improving the quality of asylum systems, assistance to mixed migration movements, the renewed search for durable solutions, including freedom of movement, and regional contribution to the protection of stateless persons and the elimination of statelessness during the period 2015-2024, based on regional cooperation and solidarity.

II REGIONAL CONTEXT

Certain tendencies have been identified in MERCOSUR countries during the last decade, in the areas of forced displacement and international migration: 1) the effects of displacement in Colombia; 2) a growing number of arrivals of asylum seekers and regional refugees, primarily through trans-border movements toward Ecuador and Venezuela; 3) an increase in mixed migration movements that include both migrants and refugees from Asia and Africa; 4) Southern Cone countries are beginning to receive Colombian refugees who had been recognized in Ecuador and Costa Rica, arriving under the modality of solidarity resettlement that is extended to Palestinian refugees in Brazil and Chile; and 5) a significant increase in intra-regional migration of Haitians and Cubans.

While most countries in the region have the mechanisms and the resources needed to receive and process a limited number of claims of refugee status (hereinafter referred to as “claims”), the exponential increase in the number of asylum seekers in several countries in the continent requires additional efforts to improve the

quality of asylum systems and the efficiency of refugee status determination procedures (hereinafter referred to as “RSD”) to enable national systems to absorb this increase. To give two examples: Ecuador receives an average of 1,000 claims each month, requiring significant efforts on the part of national authorities in charge of RSD; in the last three years in Brazil, claims have doubled each year, growing from an average of 500 to nearly 4,000.

In addition, the arrival of migrants and extra-continental refugees and the increase in Cuban and Haitian migration toward South America have highlighted the importance of having other national mechanisms to identify protection needs, in addition to strengthening asylum systems or RSD. In this sense, the launching of migratory regularisation programmes and programmes issuing humanitarian visas in some countries of the region have helped take the pressure off RSD, broadening migratory regularisation options for persons displaced by climate change and natural disasters, and persons protected against refoulement who do not qualify as refugees, among others.

III NORMATIVE AND INSTITUTIONAL FRAMEWORKS FOR PROTECTING ASYLUM SEEKERS, REFUGEES, AND INTERNALLY DISPLACED PERSONS

South America has a solid normative framework for the protection of asylum seekers, refugees, and internally displaced persons. The right to seek and enjoy asylum is enshrined at a constitutional level in seven countries in the region¹ and is part of the legal system in those countries that are Party to the American Convention on Human Rights (Article 22.7 related to Article XXVII

¹ The right to asylum is enshrined at a constitutional level in 15 Latin American countries, seven of them South American, namely: Bolivia (Article 29 of the State’s Political Constitution); Brazil (Article 4 of the Constitution of 1988); Colombia (Article 36 of the Political Constitution of 1991); Ecuador (Article 41 of the Political Constitution of 2008); Paraguay (Article 43 of the 1992 Constitution of the Republic); Peru (Article 36 of the Political Constitution of 1993); and Venezuela (Article 69 of the 1999 Constitution of the Republic).

of the American Declaration of the Rights and Duties of Man). With the exception of one country, all South American countries are Party to one or both international instruments for refugee protection.² Colombia and Peru have adopted national norms on internal displacement.

Most national legislation on refugees incorporates high protection standards in accordance with inter-American human rights instruments, and includes provisions on specific protection needs with regard to gender, age, and diversity. Furthermore, the regional definition of refugee recommended by the Cartagena Declaration has been incorporated in the vast majority of countries in the region and is applied in practice in Venezuela for those persons who flee generalised violence and massive violations of human rights.

Nevertheless, it is of concern to UNHCR that some legislation in the region is inconsistent in the use of exclusion and cessation clauses within the definition of refugee established in the 1951 Convention on the Status of Refugees (“1951 Convention”) and its 1967 Protocol, in that they confuse cancellation with revocation of refugee status, and include provisions on the matter of admissibility in RSD procedures that are non-conforming to international standards. Thus the inclusion of pre-admissibility procedures, of extremely short time frames to present a claim, and the regulation of accelerated procedures against fraudulent, clearly unfounded, or abusive claims without due procedural safeguards, could contravene the right to seek and enjoy asylum, as it is considered in inter-American human rights instruments.

Most countries in the region have RSD bodies and procedures in place, which have been strengthened through State practices and increased human and financial re-

² In the Americas, only Barbados, Cuba, Granada, Guyana, and Saint Lucia are not Party to international refugee instruments.

source allocations. They are primarily collective bodies in which civil society organisations sometimes participate.³

Nevertheless, State practices vary when it comes to incorporating due process standards in RSD procedures and in the possibility of judicial review. In this sense, the recent decision of the Inter-American Court of Human Rights on the first contentious case of refugee international protection is particularly important; it referred to the application of due process standards in RSD procedures, as provided in Articles 8 and 25 of the American Convention on Human Rights.⁴

In order to consolidate national RSD procedures, South American States need to consider the following: 1) guaranteed access to RSD procedures, regardless of where claims are made and with equal access for vulnerable groups; 2) the consistent application of the definition of refugee; 3) reduced wait times in resolving claims at the first instance and at appeal; 4) increase the rate of refugee recognition, in accordance with prevailing conditions in the seeker’s country of origin; 5) duly incorporate due process standards, including the possibility of free legal representation; and 6) strengthen second instance administrative and judicial review through independent bodies, based on standards developed by the inter-American system for protecting human rights.

Toward this end, UNHCR and some Latin American States have launched an initiative to ensure the quality of the asylum system, known as QAI, Qual-

³ Such is the case of Argentina, Bolivia, Brazil, Paraguay, and Uruguay. Likewise, in Nicaragua and Panama, representatives of civil society participate in national RSD mechanisms.

⁴ In the recent decision in the Pacheco Tineo family case, the Inter-American Court of Human Rights underscored that “*given the nature of the rights that could be affected by an erroneous determination of the risk or by an unfavourable decision, due process guarantees apply, as the case may be, to those types of procedures that are normally administrative in nature. In this sense, all procedures related to determining a person’s refugee status imply an assessment of, and a decision on the possible risk to their most basic rights, such as life and personal integrity and freedom*”. Inter-American Court of Human Rights, Pacheco Tineo v. Bolivia. 25 November, 2014. Series C No. 272, paragraph 157.

ity Assurance Initiative. This initiative includes an assessment of all the stages of RSD procedures, from the asylum seeker's initial arrival, to the conclusion of the procedure with a final decision, including appeal and judicial review. The philosophy and the guiding principles of this initiative are to continually improve a country's RSD procedures, including assessing human resources and existing systems, and to introduce practices of "quality control" and "systemic thinking". The aim is to develop a "quasi-judicial approach to asylum" based on a consistent case management system; this system aims to incorporate due process guarantees established in regional human rights instruments; lead to a simpler, faster and more just processing of claims; and be adequately structured to respond to growing numbers of claims that are also increasingly complex, ensuring efficiency and consistency in decision-making and the standardisation of good practices in the region.

The pilot initiative began in 2011 with the participation of the government of Mexico, followed by Costa Rica and Panama, and more recently Brazil and Argentina. It is expected that this good regional practice in quality control can extend to other South American countries, with a view to standardising asylum systems. Furthermore, it is expected that the meetings of national commissions for refugees in MERCOSUR countries can be institutionalised through a regional forum for the exchange of good practices, for a reflection on new tendencies in forced displacement and possible responses, for the adoption of regional public policies, and for the standardisation of criteria, norms, and procedures in the matter of refugee protection in South America.

IV MIXED MIGRATION MOVEMENTS AND INTERNATIONAL REFUGEE PROTECTION

In many regions, including the Americas, migration movements are becoming more "mixed" and more com-

plex.⁵ Whether they are produced regularly or irregularly, contemporary migration movements include a variety of persons, some of whom are members of particularly vulnerable groups: asylum seekers and refugees; victims of trafficking in persons; indigent migrants; migrants and refugee victims of violence or psychological trauma during the migration process; and other persons in situations of vulnerability, such as pregnant women, children, and youth, whether they travel with their families or are unaccompanied or separated; and older adults.⁶ A relevant piece of data is that in 2013, more than half of international migrants were women.⁷

At a regional level, the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America⁸ recognised the existence of mixed migration movements⁹ that include persons who could qualify as refugees and should be identified as such. It also recognised the need to strengthen RSD mechanisms and to provide technical assistance to those countries that still lack refugee legislation. By the end of 2012, the number of refugees in the Americas

5 The current number of international migrants in the world is larger than at any time in history. In 2010, there were 214 million international migrants, and if this population continues to grow at the same pace as in the last 20 years, their number could reach 405 million by 2050. See IOM World Migration Report 2010. The Future of Migration: Building Capacity for Change. Geneva, preface.

6 See IOM. Irregular Migration and Mixed Flows: IOM's Approach. 90th Meeting, 19 October, 2009, page 1.

7 See IOM. Gender and Migration in <http://www.iom.int/cms/en/sites/iom/home/what-we-do/iom-and-gender/key-documents.html>, gender_fact_sheet_en.pdf

8 Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, Mexico City, 16 November, 2004

9 A piece of data for context: Latin American and Caribbean contribution to global migration movements currently stands at 25 million people, or more than 13%, according to estimates (see UNHCR/OAS/IOM, Regional Conference on Refugee Protection and International Migration in the Americas – Protection Considerations in the Context of Mixed Migration, 2009, page 2). With regard to the number of migrants in the region's territory, the combined numbers of migrants from the countries within the region and those from other parts of the world are estimated to have risen from 6.5 million in 2000 to 7.5 million in 2010 (see IOM, World Migration Report 2010. The Future of Migration: Building Capacity for Change. Geneva, page 157).

had reached 806,600 persons¹⁰, while another 74,213 claims were awaiting resolution.¹¹

In one scenario of mixed migration movements, it is necessary to adopt measures aimed at establishing entry systems to enable the identification of recently arrived persons in need of international protection. The only way to guarantee adequate respect for their fundamental human rights, such as life, security, integrity and liberty, is by ensuring not only access to quality asylum systems, but also to appropriate and differentiated solutions based on international refugee law and applicable human rights standards, combined with other solutions that should be pursued for other at risk groups involved in these movements.

UNHCR has posed some key areas of intervention for the protection of refugees and asylum seekers within scenarios of mixed migration movements.¹² In the case of South America, the following areas could prove especially relevant:

- a. Cooperation among key actors: affected States, government institutions, regional organisations, international organisations with relevant mandates, and civil society;
- b. The compilation, analysis, and exchange of information on the characteristics of the movements and of the groups that comprise them are crucial to developing a congruent and comprehensive strategy (conditions in countries of origin, the motivation behind the movement, means of transportation, transit routes, points of entry);
- c. The establishment of an entry system with practical protection safeguards to ensure that migratory

10 UNHCR, Global Trends 2012, page 11.

11 Ibid, Table I, Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum, end-2012, page 41.

12 See UNHCR, Refugee Protection and Mixed Migration: The Ten-Point Plan in Action, Introduction. Geneva, 2010.

control measures are not applied indiscriminately or disproportionately and that they do not lead to refoulement or rejection at the border. Border and immigration officials should be trained and should receive clear instructions on how to respond to asylum claims and how to meet the needs of separated or unaccompanied children, victims of trafficking, and other groups with specific needs;¹³

- d. Adequate reception measures are needed to ensure that basic human needs are met for persons involved in mixed movements. These reception mechanisms should enable new arrivals to be registered, and temporary documentation to be issued;
- e. Mechanisms are needed to identify protection profiles or needs, to refer cases based on adequate guidance, to provide an opportunity to determine whether the person wishes to request asylum, and to identify other options available, such as return, regularisation, and regular migration. These mechanisms would not determine refugee status. Instead, their purpose would be to obtain a clear understanding of the motive behind leaving the country and to ensure that the person's situation is handled in the most appropriate way.¹⁴ In this regard, UNHCR identifies as a good regional practice, eventually to be replicated in South America, "*regional guidelines for the preliminary identification of migrants in vulnerable conditions*", adopted in June, 2013 at the XVIII Vice-ministerial Meeting of the Regional Conference on Migration (Puebla Process);
- f. Differentiated and quality processes and procedures for RSD, which take into account the particu-

13 In this regard, Article 31.1 of the 1951 Convention clearly establishes the prohibition against penalization or sanctions for illegal entry or presence. A good practice in several States in the region: sanctions or administrative procedures for illegal entry will be suspended until the decision is taken regarding the asylum seeker's refugee status.

14 The right to seek and enjoy asylum is enshrined in Article 22.7 of the American Convention on Human Rights and in Article XXVII of the American Declaration of the Rights and Duties of Man; access to adequate procedures to exercise this right is considered in various laws throughout the continent.

- lar protection needs of asylum seekers and respect due process norms in their substantiation;
- g. Persons recognised as refugees or in need of international protection require a protection response that includes a durable solution (such as local integration, resettlement, or repatriation), the nature of which will depend on the opportunities and limitations inherent in each situation, albeit avoiding discrimination against the refugee for having that status.¹⁵ Beyond classic durable solutions, opportunities for legal migration with protection safeguards could become a complementary alternative for some refugees.¹⁶

As recommended in the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (Brasilia Declaration), and in the context of the growing phenomenon of mixed migration movements, it is crucial for MERCOSUR countries to adopt mechanisms that can identify differentiated protection or referral needs, so that asylum or refugee status determination procedures are not seen as the only alternative for regularising the migratory situation in a country.¹⁷

V STRENGTHEN AN AGE, GENDER, AND DIVERSITY APPROACH

In an effort to ensure a comprehensive age, gender, and diversity (AGD) approach in South American countries, UNHCR has posed key areas of intervention, aimed at guaranteeing equitable and differentiated protection for all persons:

- Promote an AGD approach in all activities in the region;¹⁸
- Promote effective protection, prevention, identification, and response mechanisms for victims and survivors of sexual and gender-based violence (SGV), by increasing strategic partnerships; and
- Promote the development of specific programmes from a rights-based and community-based approach, which address the needs of children, youth, women, men, Afro-descendants, indigenous persons, and gay, lesbian, bisexual, transsexual, and intersexual persons (LGBTI).

The following are concrete proposals on this subject, to be considered by governments in the region:

- Organise workshops and training courses for officials, judges, attorneys, and service providers, in order to strengthen protection mechanisms for LGBTI persons and as part of an effort to broaden understanding of an AGD approach and its strategies. UNHCR regularly organises webinars for its officers and operational partners, which could be replicated in concerned countries;
- Ensure gender sensitivity in RSD procedures, through specialised training on how to analyse persecution cases presented on the basis of the asylum seeker's sexual orientation and/or gender identity;
- Strengthen awareness of SGV in pursuing durable solutions (essential for women to get out of the cycle of violence);
- Build capacity to identify and respond to SGV at borders, including men's participation in its prevention; create partnerships for the protection of LGBTI persons, with special attention to unaccompanied minors;

¹⁵ In several States in the region, the identity document does not mention the refugee status of the bearer, in order to avoid discrimination; furthermore, legislation throughout the continent recognises the right to paid work for both asylum seekers and refugees.

¹⁶ The following are good practices in the region that open the door to durable solutions: assigning refugees a stable migratory status that eventually leads to naturalisation; avoiding the loss of refugee status when changing migratory status; avoiding the loss of previous nationality when obtaining naturalisation; facilitating refugee naturalisation through mechanisms in the law; facilitating the recognition of diplomas and certificates.

¹⁷ Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, Brasilia, 11 November, 2010.

¹⁸ UNHCR, Age, Gender and Diversity Best Practices Compilation, Bureau for the Americas, 2012. In: <http://www.refworld.org/cgi-bin/texis/vtx/rw-main?page=search&docid=50519c572&skip=0&query=good%20practices%20AGD>

- Strengthen protection and assistance for survivors or victims of SGV in the country of asylum, by linking to national institutions for protection against SGV, ensuring access to justice, and providing medical and psychological care;
- Address other protection risks that affect women and girls, such as constraints in exercising sexual and reproductive rights, poverty, and discrimination in accessing livelihoods, among others;
- Ensure access to education for displaced and refugee children;
- Redouble efforts to combat the forced recruitment of children;
- Ensure that the specific needs of older adults and persons with disabilities are addressed.

The commemorative process is a unique opportunity for the future Plan of Action to include a chapter on the specific protection needs identified from a gender, age, and diversity approach; it is also an opportunity to mainstream this approach in all the other components of the Plan.

VI PROTECTION OF REFUGEE CHILDREN AND ASYLUM SEEKERS

Any migration movement includes persons with different vulnerabilities, who deserve special and differentiated attention, and whose various conditions are not mutually exclusive. The UN Special Rapporteur on the Human Rights of Migrants has underscored the special vulnerability of children and youth in all stages of migration, particularly those who travel and flee unaccompanied¹⁹ or separated from their family²⁰. They are at risk for becoming victims of transnational organised

¹⁹ An unaccompanied child or youth migrant is a person under 18 years of age who is separated from both parents and is not under the care of any adult who, under law or custom, would be charged with the care of said child or youth.

²⁰ Separated children or youth are those under age persons who are separated from both parents or from their legal or habitual guardian, but not necessarily from other family members. This category includes children accompanied by other adults in their family.

crime (victims of human trafficking rings), for having accidents, being sexually exploited or exploited for their labour, for mistreatment, and for physical and sexual abuse.²¹

Furthermore, minors tend to suffer abuse and violence due to discriminatory and xenophobic attitudes and practices, and they face obstacles in their access to basic amenities, such as health care, education, and an adequate standard of living. Deprivation of freedom and expulsion without due process and without due consideration of their best interest are other practices that directly affect the well-being and possibly the security of minors throughout the process of migration.

One of the main challenges to greater and better protection of children and youth in migration is that “age is not usually used as a variable in the disaggregation of international migration statistics, and remains the most difficult component of demographic change to measure”.²² This lack of disaggregated information leads to ignoring the particular problems faced by children and adolescents in international migration, as their scale cannot be visualised.²³

In terms of forced displacements (within or outside State borders), nearly half of the people in the world in this situation are under age. Thus 46% of refugees in the world and 47% of internally displaced persons²⁴ in the world are children or adolescents. In 2012, approximately 21,300 asylum claims were presented by unaccompanied or separated minors in 72 countries; this was the highest number since UNHCR began track-

²¹ UN General Assembly, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante. A/HCR/11/7, 14 May, 2009.

²² Ibid, paragraph 20.

²³ Inter-American Court of Human Rights, Observations to the Advisory Opinion, Children and Adolescent Migrants, pp. 7 and 8.

²⁴ See UNHCR, Policy Development and Evaluation Services, A Global Review: UNHCR's Engagement with Displaced Youth. Geneva, 2006, p.20.

ing these data in 2006.²⁵ The arrival of unaccompanied children asylum-seekers is a growing trend in Mexico and the United States, as confirmed by good records in both countries. In South America, several years ago the Ombudsman's Office in Argentina began a programme of assistance, protection, and accompaniment of children and youth throughout RSD procedures, which is a good practice in the region.

Given the growing number of children and youth in international migration, and considering their vulnerability, the MERCOSUR Human Rights Public Policy Institute requested that the Inter-American Court of Human Rights develop an advisory opinion on migrant children, affirming the urgent need to address this problem, noting that “there is a serious and pending matter in the continent that affects the human rights of children and adolescents who migrate for economic, social, cultural, and political reasons”. In its request, the Institute highlighted some critical gaps in the protection of migrant children in the region.²⁶

The Convention on the Rights of the Child addresses the protection of refugee children in its Article 22, indicating that States should adopt specific measures to ensure that asylum procedures provide the protection children need. Some States in the region, such as Argentina, Bolivia, Colombia, Chile, Paraguay, Uruguay, and Venezuela, among others²⁷, have established legis-

lation with provisions on the subject of children asylum seekers, particularly unaccompanied children.

UNHCR has recognised that this Convention provides an integrated framework for the responsibility of State Parties regarding all children and youth under their jurisdiction, including asylum seekers and refugees.²⁸ Thus the Convention establishes a series of principles related to protection for children and youth, which are applicable in all stages of forced displacement.

In this context, UNHCR poses the following as the current principal challenges to protecting refugee children and youth in the region:²⁹

- a. The early identification after arrival, of children and youth and of their needs, as well as periodic and continual follow-up;
- b. Adequate reception measures with access to relevant government and non-governmental entities to address basic needs, such as food, clothing, shelter, education, recreation, health and psychological care, and privacy. This assistance should be provided with sensitivity to gender and age. In the case of unaccompanied and separated children, a guardian should also be assigned. The specific needs of the victims of sexual abuse and sexual exploitation, trauma, and torture should be addressed by specialists. In all cases, family unity within the territory should be allowed, especially in reception centres;
- c. The detention of asylum seekers as an inherently undesirable or last resort measure that can only be applied when it has been deemed necessary in an individual case, and only in compliance

25 See UNHCR, Global Trends 2012. Displacement: The New 21st Century Challenge, page 3.

26 MERCOSUR, Human Rights Public Policy Institute, Request for advisory opinion on migrant children presented to the Inter-American Court of Human Rights, 6 April, 2011. Among other relevant points, the following needs stand out: much stronger linkages between migratory policies and protection systems for children; effective procedures for identifying high-risk situations in mixed migration movements; decision-making based on the child's best interest; alternatives to restricting the freedom of minors, based on individualised analyses of cases; recognition of rights such as non-refoulement, the right to seek and enjoy asylum, and protection of family life.

27 Similarly, there are specific provisions for the protection of refugee children and asylum seekers in El Salvador, Guatemala, and Mexico.

28 See Amicus curiae presented by UNHCR within the framework of the request for an advisory opinion on migrant children, presented to the Inter-American Court of Human Rights by the MERCOSUR Human Rights Public Policy Institute, 17 February, 2012.

29 Ibid.

with international norms. An ethic of assistance –rather than detention– should rule all interaction with children and youth seeking asylum, and the primary aim should be to address the child's best interest. Furthermore, in the case of children accompanied by their parents, alternatives to detention should be considered, precisely to maintain family unity and to protect the child's best interest;

- d. Priority asylum procedures with the guardian's participation, when the child or youth is unaccompanied or separated, including free legal representation; these priority procedures should guarantee the child's participation, in accordance with his or her age and maturity;
- e. The identification of the most appropriate durable solution for refugee minors, with special attention to those who are unaccompanied or separated, carefully weighing various factors, based on the child's best interest.

UNHCR calls on the countries of South America to become the first region in the Americas to prohibit the detention of minors for migration reasons; this prohibition would include the administrative detention of underage asylum seekers and refugees.

VII TRAFFICKING IN PERSONS AND REFUGEE INTERNATIONAL PROTECTION

Most South American countries have adopted internal norms to combat the trafficking in persons. However, such norms do not consider specific safeguards for refugee protection. While in some countries in the region, some victims of trafficking have been duly recognised as refugees, a better understanding of the link between trafficking in persons and international refugee protection is needed, as is the establishment of mechanisms for the early detection of trafficking victims in need of international protection.

According to a report from the Department of Public Security of the Organisation of American States (OAS), in 2008 in Latin America, more than 250,000 individuals had been victims of human trafficking.³⁰ Data from the UN Office on Drugs and Crime indicate that most victims identified in the Americas between 2007 and 2010 were women, while minors represented approximately 27% of victims. At the same time, forced labour represented 44% of trafficking cases identified in the continent, and nearly half were related to sexual exploitation.³¹

Trafficking in persons is also a challenge for States, international bodies, and civil society in South America, a region of both origin and destination, primarily in Andean border areas and the tri-border region. Criminal activities such as child sex tourism foster commercial sexual exploitation, and hence trafficking in persons with sexual purposes, with women as the primary victims. Human trafficking is also manifested in forced labour in the textile, agriculture, and domestic service sectors, and in the case of minors, forcing them to transport drugs, to beg, and to enter into marriage against their will.³²

Studies on the subject indicate that victims in South American countries primarily come from within the country or from other countries in the sub-region, with many victims from South Asia and East Asia (approximately 10% of victims identified in South America). At the same time, significant numbers of victims from the Americas, particularly South America, Central Amer-

30 Report presented by Cristian Taboada in “Jornada Informativa sobre el Combate a la Trata de Personas” (informational conference on combating the trafficking in persons), held in Mexico City in 2008.

31 See United Nations Office of Drugs and Crime, Global Report on Trafficking in Persons 2012, Executive Summary, page 10.

32 For additional analysis, see IOM, Migration Overview in South America 2010.

ica, and the Caribbean, are identified in western and central Europe.³³

It is common in mixed migration movements for a person to have two or more characteristics or profiles and to have more than one protection need. Some victims or potential victims of human trafficking could easily find themselves within the refugee definition established in Article 1A (2) of the 1951 Convention.³⁴

As highlighted by UNHCR, a claim for international protection by a victim or potential victim of trafficking can arise in many different circumstances. Guidelines on International Protection No. 7 state the following:

...The victim may have been trafficked abroad, may have escaped her or his traffickers and may seek the protection of the State where she or he now is. The victim may have been trafficked within national territory, may have escaped from her or his traffickers and have fled abroad in search of international protection. The individual concerned may not have been trafficked but may fear becoming a victim of trafficking and may have fled abroad in search of international protection. In all these instances, the individual concerned must be found to

have a “well-founded fear of persecution” linked to one or more of the Convention grounds...³⁵

Along these lines, “the forcible or deceptive recruitment of women and children for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence, which may constitute persecution”.³⁶ It is precisely women, children and youth who are “particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination”.³⁷ Furthermore, in certain contexts, unaccompanied children and adolescents and separated children can be particularly vulnerable to being trafficked for the purpose of irregular adoption, for example, which can take place with or without the parents’ consent.³⁸

Among current challenges related to trafficking in persons, the following are noteworthy:

- a. Effective mechanisms for early identification and referral to the corresponding authorities;
- b. Guarantee of the right to seek and enjoy asylum for victims or potential victims of trafficking at border controls, and respect for the principle of non-refoulement;
- c. Guarantee that victims of trafficking (or at risk of being trafficked) and in need of international protection have access to efficient RSD procedures before officials who have been duly trained in handling these types of cases;

³³ See United Nations Office of Drugs and Crime, *Global Report on Trafficking in Persons 2012*, Executive Summary, page 10.

³⁴ As a good practice in this area: some legislation in the region specifically establishes that victims of trafficking in persons have the right to seek and enjoy asylum if they meet the stated criteria. This possibility is implicitly recognised in the safeguard clause of Article 14 of the Palermo Protocol, which states: “1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.” Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 2000.

³⁵ Guidelines on International Protection No. 7: The application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, paragraph 13.

³⁶ *Ibid.*, paragraph 19.

³⁷ *Ibid.*

³⁸ *Ibid.*, paragraph 20.

- d. Guarantee extensive and adequate information for the victim or potential victim of trafficking, on the risk of returning, and provide her or him with the opportunity to opt for a claim of refugee status.

Based on the Brasilia Declaration, MERCOSUR States are called upon to introduce specific protection safeguards in their internal norms, which include the above points.

VIII CHALLENGES IN DURABLE SOLUTIONS FOR REFUGEES

For many years, States in the region have focused on establishing whether a person is a refugee, and consequently, on all aspects of refugee status determination. The adoption of new refugee legislation in South America is a qualitative change as States seek to adopt public policies related to refugees, which will cover the entire cycle of forced displacement. In effect, once refugee status has been determined, and once immediate protection needs have been met, refugees need further assistance to find long-term durable solutions and to begin a new life that will enable them to break or end the cycle of forced displacement.

Traditionally, UNHCR has promoted three durable solutions for refugees: 1) local integration; 2) resettlement; and 3) voluntary repatriation. Currently these solutions are part of a comprehensive strategy based on refugee expectations and needs, as well as on the changing situation in a given region. Furthermore, given the growing connection between refugee protection and international migration, and MERCOSUR countries’ interest in facilitating the integration and free transit of their nationals, it is timely and necessary to consider other temporary or permanent alternatives that can emerge from common migration arrangements.

These types of alternatives, which could be thought of as a “fourth way” in durable solutions, could be applicable in the absence of integration options in the host country, or as a solidarity measure for sharing a host

country’s burden of a large number of refugees, thus becoming a regional mechanism for shared responsibility. The following are challenges faced by the South America sub-region in regard to each of the solutions.

LOCAL INTEGRATION³⁹

Local integration should be seen as a dynamic process in which both refugees and host societies participate, in all their individual and social circumstances. This process has three essential arenas: 1) the economic (access to an appropriate livelihood and the ability to achieve self-reliance); 2) the socio-cultural (as it relates to developing a sense of belonging, social and community participation, adequate and equal access to services, and support during the integration process); and 3) the legal (as it relates to the applicable legal framework and the enjoyment of the broadest range of rights possible in the host State, which should ideally align with obtaining naturalisation).

Local integration should be pursued from a human rights approach and from age, gender, and diversity perspectives. Its aim should be to create conditions for refugees to attain a life of dignity that is also free of violence and discrimination, and to avail themselves of the rights that are essential for their development. This process should pursue a path for refugees and their families to achieve self-reliance in accordance with their particular circumstances (taking into account whether they are urban or rural refugees, their education, skills, etc.), and should be aimed at consolidating a durable solution.

Along these lines, the 1951 Convention provides the legal framework for refugee integration in State Parties to this instrument. UNHCR has promoted that some rights be afforded from the beginning, such as docu-

³⁹ For more information, see UNHCR, *Refugee Protection and Mixed Migration: The Ten-Point Plan in Action*, op. cit., Durable Solutions, pp. 191-199.

mentation, administrative assistance, freedom of movement, the right to work, education and health care, the right to family unity, and access to justice. Taking these essential minimum rights into account, the scope and pace of integration in broader terms will partially depend on the prevailing social and economic conditions in the host society.

It is essential for the entire integration process to take into account the age, gender, ethnicity, religious beliefs, and culture of the people, in order for their integration to be as adequate as possible in their circumstances.

In the Mexico Plan of Action, States called for the strengthening of local integration processes for refugees in the region, and to take into account the reality of host communities when designing local integration projects; likewise, they called for civil society to participate in the process.

In the Plan, States resolved to establish a “Solidarity Cities” Programme for Self-sufficiency and Local Integration in a series of urban centres, seen as protection spaces in Latin America. Thus several cities and provinces, as well as some states, signed agreements to participate in this programme, primarily through municipal governments (Buenos Aires, Mendoza, Rosario, Montevideo, Maracaibo, Santiago, La Calera, among others).

At the same time, the Integrated Programme “Solidarity Borders” has sought to foster development and assistance for basic infrastructure, as well as access to basic services in border areas, approached from a territorial rather than a population perspective, particularly in the Andes region.

What follow are some of the main challenges in refugee integration, which South American countries may consider:

- a. The lack of programmes and public policies in some countries, which promote refugee integration within national anti-poverty programmes;
- b. Shorten wait times for decisions in refugee status determination;
- c. Lower the cost of personal documentation, accelerate its delivery, and improve an understanding of its validity, both in the private and public sectors;
- d. Promote access to government programmes under the same conditions as those applicable to nationals;
- e. Consider programmes that favour professional and vocational training for refugees;
- f. Promote effective access to sources of employment with the support of the private sector, fostering the company’s social responsibility;
- g. Facilitate access to education in general, and to university and technical education in particular; enable the recognition of educational attainment in the country of origin;
- h. Promote access to financial services;
- i. Promote a culture that favours multiculturalism, respect, and diversity;
- j. Ensure the adoption of normative frameworks that enable refugees to opt for permanent residency or naturalisation, in accordance with national legislation, with simple and expeditious transactions that are free or low cost.

RESETTLEMENT⁴⁰

For refugees with specific protection needs, who cannot avail themselves of another solution in either the country of origin or of asylum, resettlement should continue to be considered strategically, as it is an effective tool for both protection and for shared regional responsibility.

⁴⁰ For more information, see UNHCR, Resettlement Handbook, revised edition, 2011.

In the Mexico Plan of Action, States established the need to foster a regional resettlement programme within Latin America, called “Solidarity Resettlement”, with technical and financial cooperation from the international community to strengthen and consolidate it; this continues to be an important area of common action to be developed. To date, this regional programme has obtained financial support from UNHCR, special funds from donors, and support from solidarity projects from several traditional resettlement countries. Thus the implementation of solidarity resettlement programmes in Argentina, Brazil, and Chile, joined by Paraguay and Uruguay, has benefited some 1,200 Colombian refugees recognised as such in Ecuador and Costa Rica. The programme was also extended by Brazil and Chile to include Palestinian refugees.

Because of contemporary challenges to resettlement as an effective durable solution, it is worth noting that South American countries have considered the possibility of extending and consolidating resettlement programmes to refugees from different parts of the world, through increased contributions of national and regional resources to ensure their sustainability. In this sense, regional reflection on this topic could include the following:

- a. The need to consolidate regional resettlement opportunities for refugees from different parts of the world, including increasing quotas, a consideration of various profiles, the introduction of more flexible selection criteria, a greater number of agreements with resettlement countries, and the implementation of joint programmes;
- b. Greater impulse to promoting the combination of resettlement with other durable solutions, with increased national and regional resource contributions for their consolidation and sustainability;
- c. Stronger coordination among States for the strategic use of resettlement as a tool for both regional

- d. cooperation and for global cooperation between South America and the rest of the world;
- d. Greater cooperation among all relevant stakeholders (States, civil society organisations, private businesses, international bodies);
- e. Agreement on resettlement criteria and the identification of candidates, aimed at correct programme implementation;
- f. Emergency resettlement through centres devoted to this purpose.

VOLUNTARY REPATRIATION⁴¹

Refugees are able to make informed and voluntary decisions when repatriation is part of a comprehensive strategy of durable solutions. Consideration should also be given to the durability and sustainability of voluntary repatriation movements, primarily through assurances of non-discrimination for having been a refugee, the effective exercise and enjoyment of human rights, and the possibility of having access to a livelihood and of recovering housing and land.

Voluntary repatriation processes should guarantee the participation of the various stakeholders, including the refugees and repatriates themselves, as well as host countries and countries of origin, UNHCR, other international bodies, and civil society organisations. Cooperation agreements between stakeholders can ensure that an adequate framework is established for a sustainable, voluntary return; in the host country this includes information, documentation, and financial support, while in the country of origin it entails legal guarantees of amnesty, the restitution of assets, and socioeconomic reintegration projects.

⁴¹ For more information, see UNHCR, Refugee Protection and Mixed Migration: The Ten-Point Plan in Action, op. cit, Durable Solutions, pp. 191-199.

South American countries could consider the following challenges associated with voluntary repatriation processes:

- a. Ensure that refugees have the possibility of returning to their place of origin or to a place of residence of their choice, in conditions of safety and dignity, and reduce the chances of refugees returning to their country of origin becoming internally displaced;
- b. Ensure that refugees who voluntarily return to their country of origin are not the object of discrimination for having been refugees;
- c. The importance of national legislation recognising the marital status of refugees who voluntarily return, as well as any changes that might have taken place during the time of asylum, such as births, deaths, adoptions, marriage, divorce; similarly, ensure that documentation or registration showing marital status, issued in the country of asylum or another country, will be recognized.
- d. The importance of family unity during and after voluntary repatriation;
- e. Non-discriminatory recognition of academic and professional diplomas, certificates, and degrees attained by refugees in the country of asylum, and the recognition of the equivalency of primary and secondary education received abroad;
- f. Repatriates should have the right to benefit from existing national programmes to ensure the restitution of any housing, land, or property that may have been lost by illegal, discriminatory, or arbitrary means before or during asylum, or to receive compensation through fair and effective national restitution mechanisms;
- g. Any restitution or compensation framework should consider the situation of returning refugee women heads of households, as well as the diversity of refugees, especially where indigenous or Afro-descendant refugees are concerned, and their collective ownership of land;

- h. The importance of refugees having complete, objective, and reliable information on physical, material, and legal security issues in the country of origin, before their voluntary repatriation, and on national programmes for their legal and socio-economic reintegration;
- i. Special attention should be given to declining the repatriation of unaccompanied children or children separated from their families, until family members have been found, or until specialised and sufficient reception and assistance arrangements have been ascertained to exist in the country of origin.

SOLUTIONS BASED ON MIGRATION FRAMEWORKS⁴²

Given existing normative frameworks in MERCOSUR countries, which promote integration and free transit or freedom of movement for nationals, it is important to consider alternatives based on migration frameworks when considering the full range of possible durable solutions for refugees in the region.

As underscored by UNHCR, “these solutions may consist of options to legalise their migratory situation (regularisation), or the possibility of emigrating legally to another country”, if better prospects for local integration exist due to more favourable labour conditions or sources of employment in various sectors of the economy. Considering the economic growth seen in several South American countries, it would be interesting to consider these labour migration options for refugees as part of a series of regional mechanisms to foster shared responsibility in support of countries in the region that host more refugees.

These types of solutions can be based on national legislation, bilateral agreements, or regional frameworks,

⁴² For more information, see UNHCR, Working Group on Resettlement, Protection-sensitive Migration as a Complement to Refugee Resettlement. 25-26 January, 2011.

such as specific MERCOSUR regulations on the subject, and can emerge at any time during the individual’s life as a refugee. Thus the framework provided by refugee migration could include, *inter alia*, the following:

- a. Agreements on free regional transit;
- b. Special programmes for specific groups, based on their nationality;
- c. Labour migration programmes;
- d. Migratory amnesty that favours regular migration and access to a stable migratory status;
- e. Family reunification.

Within these arrangements, host countries could facilitate individual or group mobility, and establish appropriate mechanisms to respond to legitimate concerns regarding security (e.g., presentation of criminal record clearance in the first country of asylum). Generally speaking, in order for them to serve as effective alternative solutions for refugees and as regional mechanisms for shared responsibility, migration options should allow for a period of stable and safe residency in the host country, providing sufficient guarantees against refoulement, deportation, and expulsion, as well as guarantees for the enjoyment of an increasingly broader range of rights.

The legal status that a refugee may obtain under national migration laws in the country where he or she comes to reside should not lead to the cessation of refugee status under international law; instead, States may consider the appropriateness of maintaining refugee status previously obtained in the first country of asylum (extraterritorial recognition of refugee status).

The following are possible proposals and challenges to initiating these types of options based on migration frameworks in South American countries:

- a. Refugees should be able to enjoy security and socioeconomic opportunities that are more favour-

able to their local integration, than those in their first country of asylum;

- b. The alternative should be sustainable in financial terms and innovative in terms of solutions; it should make it possible to respond pragmatically to the concrete needs refugees may have, primarily in the social and labour arenas, as the alternative is intended to broaden opportunities;
- c. It is important for refugee status to be recognised by the third country, eliminating any need for a new determination process; cases previously recognised by the first country of asylum or under UNHCR’s mandate should be considered positively.
- d. Refugees should be ensured legal residency and identity documents that prove their refugee status; furthermore, they should enjoy all the rights afforded to refugees in national legislation;
- e. It is important that refugees benefit from arrangements provided by national or local authorities for reception and assistance, which are generally available to refugees in the host country;
- f. Refugee access to the enjoyment of economic and social rights should be equal to that of nationals;
- g. Host countries should commit to guaranteeing access to public services (e.g., elementary and secondary education, health care, job training) and housing; this may mean eliminating requirements that are linked to a given legal status (e.g., legal residency);
- h. In the case of MERCOSUR, take advantage of the benefits implicit in the framework for flexible migration policies, as well as the Agreement on Residency for Nationals, to create more and better work opportunities for refugees.

PROTECTION FOR STATELESS PERSONS, PREVENTION OF STATELESSNESS, AND MERCOSUR’S CONTRIBUTION

It is important for MERCOSUR countries to use the opportunity presented by the commemorative process to consider defining common goals that can strengthen their efforts to eradicate statelessness in the next ten

years. Unlike all other parts of the world, this goal is achievable in MERCOSUR if, in cooperation with UNHCR, challenges are identified, common goals are defined so they can be addressed, and efforts are redoubled to achieve them.

The commemorative process is a unique opportunity, as it enables consensus to be reached on a regional agenda that can be incorporated in national policies on human rights. Similarly, the inclusion of a chapter on statelessness in the future Plan of Action would constitute a decisive contribution to global efforts being made to eliminate this problem, at a time when UNHCR has launched a global campaign for its eradication. Based on a common approach to nationality as a human right, MERCOSUR could definitely become the first region in the world to be “free of statelessness”, thus leading the global movement against this scourge.

In developing principles and criteria for protection, assistance, and solutions, over the past 30 years States have primarily focused on the problems faced by asylum seekers, refugees, internally displaced persons, and repatriates. However, as evidenced in the Brasilia Declaration, the current context has enabled countries in the region to focus on the plight of stateless persons as well.⁴³ This concern is shared in the Americas, as seen by the adoption of a series of resolutions by the General Assembly of the Organization of American States (OAS), from which guidelines have emerged for the fight against statelessness in the region.⁴⁴

43 In the “Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas” (2010), Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay, and Venezuela urged countries in the Americas to consider acceding to international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and strengthening national mechanisms for comprehensive birth registration.

44 Resolutions AG/RES. 1693 (XXIX-O/99), AG/RES. 1762 (XXX-O/00), AG/RES. 1832 (XXXI-O/01), AG/RES. 1892 (XXXII-O/02), AG/RES. 1971 (XXXIII-O/03), AG/RES. 2047 (XXXIV-O/04), AG/RES. 2511 (XXXIX-O/09), AG/RES. 2599 (XL-O/10), AG/RES. 2665 (XLI-O/11), and AG/RES. 2787 (XLIII-O/13), on the subject of prevention and reduction of statelessness and the protection of stateless persons in the Americas.

Although notable advances have been made in recent years, important challenges remain in MERCOSUR countries on the matters of prevention, identification, protection, and reduction of statelessness.

PREVENTION

Generally speaking, MERCOSUR countries have adequate norms on acquiring, losing, renouncing, and denying nationality. Acquiring a nationality, for example, tends to be regulated constitutionally through a combination of *jus solis* and *jus sanguinis* criteria, which significantly reduce the possibility of statelessness in the region. Similarly, given that all the countries in the region are Party to one or more international or regional human rights treaties that recognise nationality as a human right, a balance tends to be struck between recognising the individual right to a nationality and broad State authority to establish the criteria that regulate nationality. Thus Chile has a specific constitutional guarantee to defend the right to a nationality,⁴⁵ while other countries allow for recourse to common court constitutional procedures defending essential rights.

Despite generous regulations on nationality and the existence of some safeguards for the prevention of statelessness, the possibility of statelessness in the region has not been entirely eliminated. Thus, for example, constraints to *jus solis* criteria exist without appropriate safeguards for preventing statelessness in children born within a territory. Colombia and Chile have limited the acquisition of nationality for children born in a territory, of foreigners in transit within that territory. Children born within the territory, who would otherwise be stateless, may not be able to acquire the nation-

45 Political Constitution, Article 12: A person affected by an act or resolution executed by an administrative authority, which deprives the person of Chilean nationality or refuses to recognise said nationality, may appeal, whether directly or through representation, within 30 days, to the Supreme Court, which will hear the case as a panel and in plenary. The filing of the case will suspend the effects of the action or resolution taken.

ality due to the lack of safeguards⁴⁶ or to evidentiary standards that are too strict in relation to the non-acquisition of another nationality.⁴⁷

Similarly, there have been cases of statelessness involving children of nationals, but born in another country. Brazil has a good practice in this regard: in 2007 the country reformed its constitution to resolve the issue of nationality for so-called “stateless Brasileirinhos” and prevent new cases of statelessness in the future.⁴⁸ But in countries such as Paraguay, the acquisition of nationality by children born abroad of a Paraguayan parent is subject to the child living in Paraguay permanently.⁴⁹ In Bolivia, although the constitution provides for the automatic acquisition of nationality both by children born within the territory and those born in another country but of a Bolivian parent, the legislation also establishes that the acquisition of nationality for children not registered in a Bolivian consulate before the age of

46 See Committee on the Elimination of Discrimination against Women, Final Observations on Chile, October 2012, CEDAW/C/CHL/CO/5-6, paragraph 27(b); Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Final Observations on Chile, September 2011, CMW/C/CHL/CO/1, paragraph 33; Committee on the Rights of the Child, Final Observations on Chile, April 2007, CRC/C/CHL/CO/3, paragraph 64 a).

47 Colombia, Constitutional Court, Decision T-965/08, 7 October, 2008, paragraph 3.8 (which indicates that *with the aim of avoiding statelessness, children of foreigners, born on Colombian territory, whose nationality is not recognised by any other State, will be Colombian, and the parents will not be required to show proof of address; however, in order to prove that no other State recognises the child's nationality, a declaration to that effect will be required from the diplomatic or consular mission of the State of the parents' nationality*. Obtaining said documentation may prove impossible for stateless parents, for example.

48 Until 1994, children born abroad of a Brazilian parent could acquire Brazilian nationality as long as the birth was registered in a Brazilian consular office. In 1994, as a result of a constitutional reform (1994), Brazilian nationality began to be granted to children born abroad of a Brazilian parent, only when the child returned to reside in Brazil and requested Brazilian nationality. It is estimated that some 3 million Brazilians lived abroad at the time the constitutional reform was approved in 1994. Similarly, it is estimated that between 1994 and 1997, some 200,000 children of Brazilian nationals become stateless as a result of this reform, because of having been born in a country where nationality was acquired on the basis of *jus sanguinis* criteria.

49 Article 146.3 of the constitution (1992).

18, will be subject to naturalisation proceedings that must be carried out within Bolivia.⁵⁰

Some countries have gaps in their national legislation. The paradigmatic case is that of abandoned children, as most legislation fails to address the issue of their nationality, and thus this varies according to administrative practices. Similarly, there are certain gaps between international standards and national legislation. Thus, in some countries it is possible for a person to renounce the nationality of the country of origin without prior consideration of whether the person has acquired or is sure to acquire another nationality. Finally, there are grounds for claiming gender-based discrimination in conferring nationality.⁵¹

Within this framework, the non-accession to international treaties becomes a crucial part of the issue. Although several countries in MERCOSUR are now Party to statelessness conventions, not all have acceded equally. Bolivia, Brazil, Ecuador, Paraguay, and Uruguay, for example, are Parties to the 1961 Convention on the Reduction of Statelessness (1961 Convention). Similarly, the Colombian Congress approved this convention, and the Constitutional Court declared it executable in September of 2013, with only the recording of the accession document pending. In Argentina, the Senate voted in favour of preliminary approval for the bill establishing accession to the 1961 Convention. In Peru, Congress is evaluating accession to the 1961 Conven-

50 According to UNHCR guidelines, responsibility to grant nationality to children who would otherwise be stateless is not engaged where a child is born in a State's territory and is stateless, but could acquire a nationality by registration with the State of nationality of a parent, or a similar procedure, such as declaration or exercise of a right of option. For UNHCR it is acceptable for Contracting States not to grant nationality to children in these circumstances only if the child concerned can acquire the nationality of a parent immediately after birth and the State of nationality of the parent does not have any discretion to refuse the grant of nationality (Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 2012, paragraphs 24-25).

51 Suriname, Law on Nationality and Residence, State Ordinance of 24 November, 1975 (most recent modification 1983), Articles 3 and 4.

tion. Chile, Guyana, Suriname, and Venezuela are not yet Party to the convention.

Another issue of concern in the prevention of statelessness is universal birth registration. While non-registration does not imply statelessness, registration tends to be essential to acquiring a nationality.⁵² In the Americas, 1.3 million births go unregistered each year, and 6.5 million children have no birth certificate. While the rate of non-registration of children between the ages of one and five has fallen from 18% to 7%, 11% of children under 5 in rural areas are still not registered.⁵³ In certain circumstances, persons whose birth has not been registered could be at risk for statelessness because of the difficulties they may face in proving their link to a State.⁵⁴ For this reason, at GRULAC's initiative (Latin American and Caribbean Group), in 2013 UNHCR's Executive Committee approved a "Conclusion on Civil Registration", in which States are encouraged to take the legal and practical means necessary to overcome the difficulties involved with carrying out civil registrations, and to do so with the collaboration and support of UNHCR.⁵⁵

52 Birth registration proves where a person was born, which is crucial when nationality is acquired under *jus soli*. Similarly, registration documents who the parents are, which is essential for acquiring nationality under *jus sanguinis* criteria.

53 Parliamentary Workshop on the Right to Identity and Protection: Promoting Universal Birth Registration in Latin America and the Caribbean, regional meeting at the Peruvian Congress, organised by the Inter-parliamentary Union and UNICEF, Lima, Peru, 7-8 June, 2013.

54 For example, the following categories of persons could be at risk for statelessness due to not registering their birth: 1) migrant persons who cannot prove the nationality of the country of origin when, for example, one generation is born outside that country; this is a growing risk for subsequent generations; 2) persons who live in border areas where not registering the birth can lead to confusion about whether the person is a national of one country or the other; 3) nomadic or semi-nomadic populations whose territories cross national borders; 4) minorities and persons with links to other States or perceived links to other States.

55 UNHCR Executive Committee Conclusion No. 111 (LXIV) on civil registration (A/AC.96/1132), of 2013. Furthermore, UNHCR was urged, "with the consent of and in full cooperation with the Governments concerned...to facilitate civil registration, in particular birth registration, through for example collecting and sharing good practices, holding technical workshops, capacity building activities, and providing information and advice to concerned persons..."

IDENTIFICATION AND PROTECTION

Among MERCOSUR countries, Argentina, Bolivia, Brazil, Ecuador, Peru, and Uruguay, are already State Parties to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention). Meanwhile, it is expected that Colombia will soon register the accession instrument. In Paraguay, the Senate approved accession to the 1954 Convention, leaving Chile, Guyana, Suriname, and Venezuela to become States Parties.

As in the case of refugees, it is important to develop national protection standards for stateless persons. Nevertheless, countries in the region lack national norms to regulate protection comprehensively. Within this framework, it is crucial to establish statelessness determination procedures in order for the small number of stateless persons in the region to be identified in a timely manner and to be adequately protected. Such procedures make it possible to enforce international obligations in countries that are Party to the 1954 Convention. Similarly, identification prevents protection risks, such as the following: non-registration of births or the refusal to issue birth certificates; lack of documentation (and therefore difficulties in being recognised as a person before the law and in civil acts such as contracting marriage); expulsion from the country; the refusal to permit stateless persons living in one country to return to it from another country; migratory or administrative detention; gender-based discrimination; trafficking in persons and sexual violence; limited or nonexistent access to education and health care; lack of access to the labour force; difficulties in entering into contracts, obtaining a license, opening a bank account, etc.

MERCOSUR countries still lack procedures to determine statelessness. Thus it is very positive that Brazil, Ecuador, and Uruguay expect to establish such procedures in their future normative frameworks. Peru has committed to adopting a comprehensive law to regulate the

matter. Similarly, it is noteworthy that Argentina has already regulated migratory and documentation aspects of statelessness (for example, residency criteria, travel documents, etc.), and Bolivia has delegated the National Commission for Refugees (CONARE) the necessary authority to conduct said determination. Regional experience suggests that the delegation of authority to national commissions for refugees, duly fortified with resources and structures, could be the most economical, fastest, and simplest way to have a body that will identify, protect, and support the search for durable solutions for stateless persons.

REDUCTION

It is essential to facilitate the naturalisation of the small number of stateless persons in order to eliminate statelessness. Nevertheless, the legislation of MERCOSUR countries currently does not grant stateless persons any ease in processing applications for naturalisation. The same requirements and procedures as those applicable to other foreign nationals are applied to stateless persons, with no positive distinctions that would enable granting more favourable treatment to the latter, as indicated in Article 32 of the 1954 Convention. Considering the difficulties faced by stateless persons, who generally only have access to administrative assistance from the authorities of the country that recognises

their statelessness, it is crucial to facilitate naturalisation throughout MERCOSUR.

The acquisition or confirmation of a nationality is the culmination of protection activities carried out in favour of stateless persons or at risk of becoming stateless, so that it is imperative to focus on both its prevention and its reduction. In recent years, countries such as Argentina, Bolivia, Brazil, and Peru have sheltered migrants, sometimes unaccompanied or separated children, who lack personal and travel documentation and claim the nationality of a country in which they were never registered. Efforts to confirm the nationality with the country of origin can be challenging, especially where there are structural deficiencies in the registration system of said country.

For the stateless person, the recovery of lost nationality, whether by voluntary renunciation or arbitrary withdrawal, is a solution to a problem. Some legislation, such as that of Colombia and Peru, have addressed the problem, so that their provisions could be replicated as best practices for those South American countries in which the problem persists.

UNHCR
Regional Bureau for the Americas

Mercosur

CONCLUSIONS AND RECOMMENDATIONS



Palestinians resettled refugees from Ruweished Camp, Jordan, in the local mosque on the day of their arrival.

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I. INTRODUCTION

The first sub-regional consultation of the commemorative process of the 30th Anniversary of the 1984 Cartagena Declaration on Refugees (“Cartagena Declaration”) was held in the city of Buenos Aires, Argentina, under the auspices of MERCOSUR, on 18 and 19 March 2014.

During the two-day discussion, the consultation addressed key challenges in the field of international protection for the South American region, based on the achievements and progress made in the implementation of the 2004 Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America (“Mexico Plan of Action”) during the last decade and the new situations that prevail in

the region (for more information see the Agenda of the consultation in Annex). Pragmatic and innovative actions were recommended to address the major challenges identified in order to strengthen international protection and achieve durable solutions in the next ten years.

All participants approved MERCOSUR document prepared by the Rapporteurship, which served as the basis for the preparation of this document, along with the notes provided by the Technical Secretariat, the presentations of the panelists and other documentation provided for the consultation. Participants and other stakeholders can access the documentation through the website of the MERCOSUR process: www.acnur.org/cartagena30.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

The following conclusions and recommendations, agreed upon by the participants, will contribute to the formulation and subsequent adoption of a regional Plan of Action for the period 2015-2024.

INTERNATIONAL PROTECTION

II INSTITUTIONAL AND LEGAL FRAMEWORKS FOR THE PROTECTION OF ASYLUM-SEEKERS, REFUGEES AND INTERNALLY DISPLACED PERSONS

South America has a solid normative framework for the protection of asylum seekers, refugees and internally displaced persons. The majority of the national legislations on refugees incorporates high standards of protection consistent with the Inter-American human rights instruments and includes provisions on the specific protection needs based on gender, age and diversity. In addition, the regional refugee definition recommended by the Cartagena Declaration has been incorporated in the vast majority of countries in the region. Most of the countries also have refugee status determination institutions and procedures. However, there are still areas that can advance further in the development of national legislation, as well as in the application in the States' practice of due process guarantees and institutional development.

As part of the discussions, the participants recommended to:

1. Consolidate the space for discussion on policy and exchange of best practices in the field of international protection of refugees among participating States in the MERCOSUR context, through the meetings of CONARES' Presidents or equivalent of the States parties of MERCOSUR and associated States, in order to harmonize standards, procedures and public policies.

2. Consolidate the national refugee status determination systems, through the effective application of the high standards of due process established by both the Inter-American system of Human Rights and national legislations, in all refugee status determination procedures, including accelerated or differentiated procedures. In particular:

- Ensure effective access to the procedures for the determination of refugee status, especially at borders, airports and ports, while respecting the principle of MERCOSUR;
- Provide free legal representation to asylum-seekers and refugees and suitable interpreters or translators;
- Respect the right of asylum-seekers to obtain a duly reasoned and motivated decision about their case within an appropriate time;
- Establish instances of independent administrative appeal and judicial review.

3. Strengthen institutional capacities to support quality asylum systems through quality management mechanisms, such as the MERCOSUR (QAI), identifying the necessary additional human and financial resources and the implementation of regional training programs under the South-South cooperation perspective, such as the Regional Course on International Refugee Law and the Introduction to the International System of Refugee Protection's Course within MERCOSUR and its associated States.
4. Improve inter-agency coordination, also with the civil society and other stakeholders, and increase bilateral and regional cooperation for the consolidation of national asylum systems.
5. Disseminate guidelines and instructions for the interpretation and application of the extended refugee definition included in the Cartagena Declaration, in order to facilitate the work of refugee status determination for those countries that have incorporated the regional definition as part of their domestic legislation.

6. Contribute to the development of a progressive interpretation of the refugee definition to respond to the protection needs of displaced persons who are victims of new forms of violence in the region.
7. Promote the evaluation of the establishment of protection mechanisms within the framework of immigration or asylum legislation in order to respond, amongst others, to cross-border displacement due to climate change and natural disasters. This latter phenomenon is increasingly recognized as one of the challenges for the next decade that requires attention and study.
8. Analyze and implement practical formulas that allow to set a balance between the States' legitimate security concerns and the protection needs of refugee and asylum-seekers, including the application of the exclusion clauses, the cancellation and revocation of refugee status in accordance with the 1951 Convention and international doctrine.
9. Promote the extraterritorial recognition of refugee status for MERCOSUR purposes, and the use of existing regional frameworks, such as the Agreement on Residency for MERCOSUR nationals, in order to facilitate the residence of refugees, who are also nationals of MERCOSUR, and consider the application of these immigration benefits for other refugees in the region.

III MIXED MIGRATORY MOVEMENTS AND INTERNATIONAL PROTECTION OF REFUGEES AND OTHER PERSONS IN NEED OF PROTECTION

Migratory movements in South America are mainly characterized by intra-regional movements and include "mixed" movements, some very complex and comprising a variety of people, many of whom belong to particularly vulnerable groups. The Declaration and the Mexico Plan of Action recognized the existence of mixed migratory movements, within which there are people who may qualify as refugees and must be identified as such. They also recognized the

need to strengthen the mechanisms for refugee status determination and the technical assistance to those countries that still do not have refugee legislation. The 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas ("the Brasilia Declaration") reaffirmed the importance for countries to adopt mechanisms for the identification of differentiated protection needs, and for referrals or channeling.

In this regard, participants in the sub-regional consultation recommended to:

10. Develop comprehensive and flexible migration policies that offer greater alternatives to facilitate legal migration, including regularization programs, and thus help to reduce the pressure on asylum systems and the number of claims manifestly unfounded or fraudulent.
11. Develop protocols to identify the different protection needs of persons who are part of mixed migratory movements, including those with international protection needs, and establish procedures to refer or channel cases to the competent national bodies, paying special attention to asylum-seekers and refugees, victims of trafficking and unaccompanied or separated children.
12. Abide by the standards of the Inter-American Court of Human Rights that prohibit the administrative detention of asylum-seekers and refugees.
13. Ensure, through education, training and research, a deeper understanding by the various State institutions of the complex dynamics of mixed migratory movements and the need for protection of persons involved in these movements, thus improving the effective implementation of the protocols.
14. Increase international and regional cooperation with the participation of civil society to deal with mixed migratory movements.

15. Promote accession and/or ratification, as appropriate, to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the Conventions on Statelessness.
16. Ensure the effective implementation of the Palermo Protocols to prevent, suppress and punish trafficking in persons and the smuggling of migrants by land, sea and air.

IV BORDER PROTECTION

Border areas are both transit and destination zones for persons involved in migratory movements, including those in search of international protection. In some cases, countries' borders and points of entry can be complex, isolated areas, with precarious socio-economic conditions or little presence of State institutions. In these situations, obstacles may arise when trying to access refugee status determination procedures, as well as identification or protection mechanisms; scarce resources for specialized and differential treatment; and to limited development possibilities for people in need of protection.

In this regard, participants recommended to:

17. Strengthen the development of policies for the refugee population and the host communities in border areas, as well as for refugees at ports and airports, evaluating the borders of solidarity programme of the Mexico Plan of Action, aimed at its consolidation and define additional actions to be included in the future Plan of Action, to be adopted in Brasília, so that border areas can be seen as integration spaces.
18. Guarantee access to refugee status determination procedures and competent institutions by means of adequate identification or referral mechanisms at border areas, reinforcing the presence of the CONARES or other bodies duly trained to receive

and channel requests for asylum and identify persons with protection needs.

19. Analyze and implement practical formulas that allow to set a balance between States' legitimate security concerns, especially in border areas, and a rights-based approach to ensure the identification of international protection needs, access to territory and adequate attention to differentiated protection needs.

II THE DIFFERENTIATED APPROACH BASED ON AGE, GENDER AND DIVERSITY

V STRENGTHEN THE INCORPORATION OF THE DIFFERENTIATED APPROACH BASED ON AGE, GENDER AND DIVERSITY

The region is at the forefront in ensuring the incorporation of a comprehensive and differentiated approach of age, gender and diversity (EGD) both in its normative and legal framework as well as in the implementation of public policies. It is important to continue moving forward in the attention to the population under this approach to ensure a fair and differentiated protection to all persons in need. Among the existing challenges are the effective protection, prevention, identification and response mechanisms to victims and survivors of sexual and gender violence, and the development of specific programmes, under a rights and a community-based approach, that take into account the needs of children, adolescents, women, men, Afro-descendants, indigenous, and lesbian, gay, bisexuals, transgender and intersex persons (LGBTI).

In this regard, the participants recommended to:

20. Reinforce the differentiated approach of age, gender and diversity in the protection of and assistance to the refugee population and other persons in need of international protection, both in the refugee status determination procedure, and

in the decisions relating to family reunification requests. Continue to strengthen its cross-cutting application through the allocation of more human and financial resources, a better inter-institutional coordination and greater efforts in educating and training officials.

21. Update national refugee legislation in the MERCOSUR countries that have not yet done so, to include provisions on specific protection needs based on age, gender and diversity.
22. Develop and implement differentiated procedures to respond to the different protection needs, in particular for victims of trafficking, separated or unaccompanied children, or victims of physical or sexual and gender-based violence.
23. Consider replicating in other countries the good practice developed in Argentina of a "Protocol for the protection, assistance and search for durable solutions for unaccompanied children or children seeking asylum".
24. Adopt regulations and internal procedures in line with the international obligations of States according to international human rights law and, thus adapt internal legislations to the progressive development of the interpretation of the Convention of Belém do Pará on the Prevention, Punishment and Eradication of Violence Against Women, the Convention on the Rights of the Child, as well as the normative advances in the combat against trafficking in persons.

III SOLUTIONS

VI CHALLENGES IN DURABLE SOLUTIONS FOR THE BENEFIT OF REFUGEES

The search for durable and sustainable solutions is an integral part of the wider refugee protection strategy nowadays. The Mexico Plan of Action has been innovative by including solutions' programmes that created

a regional framework for all stakeholders. The region presents new situations of displacement and instances of protracted refugee situations that require greater attention, cooperation and solidarity to support the receiving States and free refugees from forced dependency. Along with the traditionally promoted durable solutions (voluntary repatriation, local integration and resettlement), it is appropriate to consider other temporary or permanent alternatives offered by the common migration schemes in the South American region. These alternatives may be applicable in the absence of options for the local integration of refugees in the host country or as a measure of solidarity to share the burden of large numbers of refugees on a recipient country, thus becoming a regional mechanism of responsibility sharing.

In this regard and in general terms, the participants recommended to:

25. Assess the components of cities of solidarity, borders of solidarity and solidarity resettlement of the Mexico Plan of Action, and set priorities, identify lessons learned and suggest possible alternatives in the future Plan of Action, including the facilitation of voluntary repatriation, naturalization and migratory options for refugees.

VII PROMOTION OF LOCAL INTEGRATION

While voluntary repatriation is usually the most preferable solution for refugees, under current conditions the solution that represents the major challenges but also the greater aspiration for a majority of refugees, is local integration. In this regard, participants recommended to:

26. Adopt public policies that promote the local integration of refugees, highlighting the role that corresponds to the State, with the support of UNHCR and civil society, stressing the important role of local municipal authorities and the private sector.

27. Promote in a more active manner the participation of the refugees themselves and their host communities, both through public and private institutions. In this regard, consider replicating the good practice of CONARE in Bolivia, which carries out participatory assessments each year.
28. Strengthen the involvement of the CONARES in the definition and mobilization of public policies for the integration of refugees, beyond its traditional role in refugee status determination, assigning them more financial and human resources for local integration. The Venezuelan experience was considered a good practice through the National Coordination of Public Policies for the Refugee Population, which has enabled greater inclusion and assistance in social, health, education, economic and employment areas.
29. Multiply efforts to guarantee the effective access to economic, social and cultural rights, by eliminating obstacles to their exercise, in order to promote the local integration of refugees (legal, socio-economic and cultural).
30. Consider formulating national integration plans that include refugees, with the participation of national, provincial and municipal authorities, following Brazil's good practice.
31. Recognize the importance of the cities of solidarity programme as a useful tool to promote local integration and decentralization, and to transform agreements into concrete programmes, sensitize the authorities on international protection, deepen political commitment, strengthen the participation of civil society and incorporate the gathering of socio-demographic and labor data of the refugee population.
32. Promote sensitizing campaigns on the value of and respect for differences, intercultural approach and access to rights, as well as fostering hospitality and non-discrimination policies to strengthen local integration.
33. Provide more options to those refugees who wish to opt for naturalization.

VIII STRATEGIC USE OF RESETTLEMENT

Although some countries in the region previously initiated small resettlement programmes, it was the Mexico Plan of Action that strategically launched the regional solidarity resettlement programme. Despite the complexities and challenges associated with its implementation, this programme has been a valuable solidarity initiative that deserves an analysis of its implementation and results to date. In this regard, participants recommended to:

34. Recognize the value of the regional solidarity resettlement programme as a concrete example of responsibility sharing and evaluate its continuity and/or expansion, according to the possibilities and experiences in the respective countries, in terms of quotas, the inclusion of extra-regional refugees and more State resources in its financing.
35. Urge countries in the region to discuss the possibility of joining the regional resettlement programme, and encourage traditional resettlement countries to continue resettling refugees from the region, mainly in those Latin American countries that continue to receive a high number of refugees.
36. Re-evaluate the design of their solidarity resettlement programmes for those countries that deem it appropriate, including profiles, the scope of support and development of local integration processes, considering its adaptation to the regional specific realities.
37. Consider carrying out awareness campaigns addressed to the host population for the purpose of facilitating the integration of refugees and promoting greater cooperation from local officials and support from the civil society.
38. Take into account the States, UNHCR, civil society and the resettled refugees themselves in the evaluation of the regional solidarity resettlement programmes, so that resettlement becomes a sustainable durable solution.
39. Reduce the gaps between the assistance provided to spontaneously-arrived refugees and those resettled.

IX OTHER SOLUTIONS OR ALTERNATIVES BASED ON REGIONAL MIGRATION FRAMEWORKS

South America and MERCOSUR have advanced significantly both at the normative and political level towards the goal of creating a common space for all citizens of the countries that comprise the region. This framework enables to foresee innovative perspectives within the field of solutions for refugees that are worth developing and analyzing to be consolidated as an instrument of solutions, solidarity and responsibility sharing in the near future. Additionally, this “other solution” could become a useful contribution from Latin America to other regions of the world with similar regional regulations. In this regard, participants recommended the following:

40. Encourage the development of possible alternative solutions based on MERCOSUR's migration frameworks.
41. Include protection safeguards so that refugees can benefit from these regional migration frameworks, including: the extraterritorial recognition of refugee status for the purposes of complying with the principle of MERCOSUR, confidentiality, access to the issuance of both identity and travel documents, family unity, as well as those related to the validity of the refugee status. To this end, it will be necessary to specify the obligations of the country of asylum and those of the host country of the refugee who will opt to benefit from these options or migration alternatives.
42. Use existing regional processes that encourage responsibility sharing and solidarity, aimed at the construction of the concept of a regional citizenship as a legal framework for establishing migration options that may benefit refugees from the region as well as those from other parts of the world.

IV STATELESSNESS

X. PROTECTION OF STATELESS PERSONS AND THE PREVENTION AND REDUCTION OF STATELESSNESS

South America, like no other region of the world, can join efforts to eradicate statelessness in the next ten years. Although recently there have been remarkable advances, important challenges remain for the MERCOSUR countries in the field of prevention, identification, protection and reduction of statelessness. In general, countries enjoy appropriate norms for the acquisition, loss, renunciation and deprivation of nationality. Despite the generous regulations on nationality and the existence of some safeguards for prevention, the occurrence of cases of statelessness has not been entirely eliminated. In this context, accession to international treaties is a central issue, as well as the universal birth registration to prevent cases of statelessness. The development of national protection standards, the establishment of stateless status determination procedures and the assistance for the naturalization of the small number of stateless people are key actions to protect stateless persons and eradicate statelessness.

Consequently, with regards to the prevention and reduction of statelessness, the participants recommended to:

43. Promote the eradication of statelessness, in line with the overall goal of eradication encouraged by UNHCR. It is recommended to include a chapter on statelessness in the future Plan of Action, which could be divided into three pillars (prevention, protection and reduction), the identification of statelessness being a guiding principle of the pillars.
44. Encourage States that have not yet done so to consider accession and/or ratification, as appropriate, to the international conventions on statelessness.
45. Review and adapt national legislation to international standards, as required, to eliminate the

possibility of cases of statelessness to occur, recognizing that the generous combination of the principles of MERCOSUR and MERCOSUR is not sufficient for this purpose.

46. Improve systems of birth registration and those for issuing identity documents.
47. Adopt appropriate measures, as necessary, to confirm the nationality of persons with undetermined citizenship, or restore nationality to those who have lost it as a result of an act of renunciation or deprivation incompatible with the norms of international human rights law or those relating to the prevention of statelessness.

In regards to the protection of stateless persons, the participants recommended to:

48. Adopt regulatory frameworks that ensure the recognition, respect and guarantee of the human rights of stateless persons.
49. Establish procedures for stateless status determination, considering attributing competence to the current authorities responsible for refugee status determination.
50. Consider directly applying the Convention relating to the Status of Stateless Persons of 1954, to ensure the protection and determine stateless status, while comprehensive policy frameworks are adopted.
51. Facilitate access to naturalization for stateless persons.
52. Request UNHCR to continue providing learning opportunities, such as training courses on statelessness and to disseminate guidelines and regulations that provide guidance to States.

Buenos Aires, 19 March 2014.



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA

SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO

BRAZIL DECLARATION

BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

Mercosur

CIVIL SOCIETY POSITION PAPER



A Colombian refugee woman
in a market in Sao Paulo, Brazil.
©UNHCR / L. F. GODINHO

We, the civil society organizations from this region are pleased that our proposals to strengthen the right to asylum in our region are reaching the States and UNHCR in the framework of the commemoration of the 30 years of the Cartagena Declaration and in compliance with the monitoring of the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, adopted in 2004. Our organisations are interested in continuing with these tri-party mechanisms for observation and monitoring that involve participation from civil society, academia, UNHCR and the States and recognise the central role of these partnerships in promoting the rights of people in need of international protection.

In addition, we believe this is an opportunity to approach, in an integrated manner, migration in our region, with the clear conviction that all improvement of the general conditions in which people migrate has a direct impact on the possibility of offering better and timelier assistance to those with specific protection needs. In this spirit we urge the States to continue to make progress in their co-responsibility and in the conformation of a region united for the defence of human rights, reaffirming the full validity of the Cartagena Declaration. This could be an historic opportunity for the Cartagena Declaration to become a binding instrument and to strengthen the regulatory regional framework for asylum.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

We note the commitment assumed by the MERCOSUR countries, as highlighted in the *Declaration of MERCOSUR's Principles on International Protection for Refugees* that adopts common measures to allow for the identification of people that are in need of international protection in the migration context. In addition, we would like to highlight that in various countries from the region, the international protection systems have improved to include important changes and innovations in the last few years. These are evident in new national legislation in accordance with legal guarantees and due process established at regional and international levels. In addition, there are exemplary programs focused on guaranteeing access to rights for people in need of international protection, which include the right to work for asylum seekers as well as the rights to housing and to access education programmes. Finally, it is important to note that various countries from the region have implemented the Solidarity Resettlement Programme as a strategy that supports international co-responsibility in relation to people in need of international protection.

Beyond this progress, the region is still facing challenges that should be responsibly analysed by the States in order to address the new socio-political problems that impact the region. It is particularly pertinent to mention the continual and systematic violation of human rights caused by internal armed conflict, the impact of organised crime and drug dealing with their multiple types and forms of aggression-, economic mega projects and climate change.

Finally, we urge the States to ratify all of the international instruments in the area of Human Rights and International Refugee Law, including the Conventions on Statelessness.

I DEMOCRATIZATION OF BORDERS AND PORTS OF ENTRY

The border zones and ports of entry in the region are complex scenarios that States haven't addressed correctly. This has caused precarious conditions that affect the population in need of international protection, as well as the population that is already settled in border regions. It is necessary that the States modify their security approach to these territories and amplify their social presence in such a way that it is possible to develop sustainable and long-lasting integration actions, as well as to provide appropriate assistance to people in need of international protection and migrants.

In this context, it is necessary to review restrictive entry measures, the absence of appropriate information available at ports of entry, the precarious resources allocated to the identification, guidance and protection of people in need of international protection and the absence of specialised, differential, appropriate and timely treatment for cases that require international protection which result in a lack of compliance with due process.

RECOMMENDATIONS:

HUMAN RIGHTS

- Adopt guided migration policies that are based in a human rights approach and are consistent with the *Declaration of Latin America and the Caribbean as a Zone of Peace*, signed by the CELAC Member States (January 2014). For this reason it is necessary to improve and democratise the migration entry system in an integrated manner, creating a broad, diverse and common legal framework that is capable of responding, based on the recognition of a variety of basic rights. At the same time this system would allow for an identification of specific protection needs for people, including people asylum seekers, as a response to the complex dynamics of migration flows.

REGIONAL INTEGRATION

- Implement accessible and simple procedures, both for migratory processes as well as for applications from asylum seekers that are based on human rights criteria and are not conditional depending on a person's original nationality. While it is important to highlight the regional willingness to eventually create the MERCOSUR Citizenship Statute, the Andean Migratory Statute and the Single Centro-American Visa for the CA4 countries, these integration processes should ensure standards for basic human rights - based on the legal principle of equality - for the treatment of all migratory phenomena and for all people in a situation of international mobility. This will favour the construction of an inclusive and plural citizenship while respecting the principle of diversity.
- Establish a regional integration instrument that contemplates the free circulation of refugees and stateless people between the different countries and that adopts the principle of rights portability, with the person considered a subject of rights. It is also important to project these integration efforts towards the harmonisation of legislation in migratory terms in general, and in terms of asylum-seekers and stateless people in particular, in a way that respects all of the guarantees.

ENSURE PROTECTION AT THE BORDER AND PORTS OF ENTRY

- The democratisation of borders and ports of entry can't be based on the utilitarian, instrument and security-focused paradigm that currently dominates migration management. It is essential to guarantee the protection of the people's rights including the right to non-return, with specific and appropriate measures implemented at the border points. The borders should be international spaces that are managed through co-responsibility and integration, in accordance with the obligations assumed by the States in the area of international protection, which should be independent from the degree of control that they can legitimately exercise over their borders.

- Implement regional strategies that institutionally strengthen the group of national entities that are responsible for refugee status determination, insisting that these should be civil, social and humanitarian processes.
- Create a standardised and harmonised protocol, at the regional level, that is capable of detecting and acting in regards to complex situations in which different violations occur (victims of human trafficking, unaccompanied minors, victims of drug-trafficking networks, gender-based violence, domestic violence, mental health conditions and other types of violations). This protocol should contemplate the creation of a unified migration system, respecting the principle of confidentiality and the protection of people, which allows them to contemplate the actual state of the situations in which people migrate in the region in order to develop regional strategies.
- Strengthen coordinated actions between civil society, academic centres, UNHCR and the States to improve the inclusion of a rights-based perspective in decision-making processes and for the treatment of the distinct protection needs of migrants in border areas. Contemplate the creation of specialist groups (in human rights, social assistance, training in the areas of gender and childhood, human trafficking, people smuggling, etc.) that can help meet the most immediate protection needs of vulnerable groups in border areas.
- The States should provide appropriate human and financial resources in order to ensure the protection of people in need of international protection in border zones.
- Eliminate detention and any form of holding a person against their will due to migration reasons, given that in general terms, this is a violation of human rights that affects an individual's application for refugee status. As has been demonstrated in different studies, people that are detained and are eligible to apply for refugee status

prefer not to do it in order not to spend any more time in detention.

- Ensure that border staff receives appropriate training to detect and manage potential cases that require international protection. For this recommendation, it is necessary that CONARES have an administrative coverage of integrated actions in all national territories (permanent or itinerant) in terms of the guarantees already described, ensuring their presence in the borders and different ports of entry.
- In order to tackle the generalised violence that exists in some countries, human rights and litigation mechanisms should be enabled to facilitate access to justice and reparation for the damage caused to individuals and families. States are responsible for the integrated protection of all people in their territory, independent of their migration status.
- A mechanism of observance and monitoring of civil society organizations and academia is proposed, recognising these groups' role in the defence of the rights of migrants and their right to participation, as well as in monitoring the implementation of governments' public policies in this area.

GENERAL PRINCIPLES

DIGNIFIED TREATMENT:

- It is the criteria through which all procedures should be developed upon entering national territory and with the provision of protection and the guarantee of human dignity as the guiding principle.

ACCESS TO INFORMATION:

- Information should be available for people who try to enter national territory, as well as staff with the capacity to resolve communication barriers (languages, sign language, cultural dialects).

GENDER BALANCE:

- States should guarantee the criteria of gender balance at the ports of entry and during all procedures, in such a way that they could respond to the needs of people in a human mobility situation in interviews.

HUMANITARIAN AND SOCIAL CHARACTER:

- The procedure should be social and humanitarian due to it being a protection action.

ASSISTANCE FOR CHILDREN AND ADOLESCENTS:

- When the procedure includes a child or adolescent as an applicant or member of the family group, professionals with specialised training in childhood should be involved.

NO-DETENTION DURING THE PROCESS:

- Asylum seekers can't be detained during the procedure. Refugees whose status is being considered for cancellation, reversal or termination can't be detained either.

NO-RETURN GUARANTEE:

- States should ensure the implementation of the no-return principle, which is defined in the 1951 Refugee Convention, the Convention against Torture and in other instruments.

RIGHT TO ASYLUM:

- Protect and guarantee the right to asylum at ports of entry and within the national territory. Procedures relating to pre-admissibility and time limits on seeking asylum should be eliminated. Abbreviated procedures should be established that always respect due process, particularly in the cases of mass exoduses.

CONFIDENTIALITY:

- Protection and guarantee of the principle of confidentiality, in particular the prohibition of gathering information through diplomatic and consular representation by the country of origin, as well as the elimination of the requirement of producing documents from the country of origin that people in need of international protection do not possess or have access to.

CULTURAL AND ETHNIC DIVERSITY

- Duly informed consideration of cultural and ethnic diversity, with special consideration of the needs of members of indigenous communities that travel between border zones.

ENTRY AND ACCESS TO PROCEDURES IN BORDERS AND PORTS OF ENTRY

PORTS OF ENTRY:

- Ports of entry should be safe places for people.

STATES FROM WHICH THEY ARE REJECTED:

- Re-entry should be permitted for a reasonable period of time for those people that leave a State and are rejected upon trying to enter another.

DIFFERENTIATED RECEPTION PROTOCOL:

- A public protocol should be developed and implemented to determine the entry of foreigners and people in need of international protection.

PROCEDURE FOR REFUGEE STATUS DETERMINATION: INCLUSION AND EXCLUSION CRITERIA

LEGAL DEFINITION:

- Inclusion of the definition from the Refugees Convention, the 1967 Protocol and the application of the broadened definition of refugees established in the Cartagena Declaration.

COMPOSITION OF THE ELIGIBILITY COMMISSIONS:

- The Eligibility Commissions should have a tri-party structure with the presence of representatives from State institutions, civil society and UNHCR.

GUARANTEE DUE PROCESS IN THE PROCEDURE

REASONABLE TIMELINE:

- The procedure for the refugee status determination should be undertaken and decided upon within a reasonable timeline. There shouldn't be any unjustified delays.

COMPETENCY, INDEPENDENCE AND IMPARTIALITY:

- The people that form the eligibility commissions, as well as Eligibility Officers, should be competent, independent and impartial and use an interdisciplinary approach.

IN DUBIO PRO REFUGEE:

- The *in dubio pro refugee* principle should be applied when analysing the testimony and information provided by the refugees.

FREE LEGAL ASSISTANCE:

- Free legal assistance should be guaranteed from the beginning to the end of the procedure.

THE RIGHT TO AN INTERPRETER AND INTERCULTURAL MEDIATOR:

- The right to an interpreter and intercultural mediator should be guaranteed.

II PROCEDURES FOR THE REFUGEE STATUS DETERMINATION

The right to asylum isn't guaranteed and protected in an integrated and sufficient manner in the region. The definitions of refugee status included in the legislation don't always include the definitions from the 1951 Refugee Convention, the 1967 Protocol, the Cartagena Declaration and the *sûr place* concept for refugees. The procedures for determining an individual's refugee status, as well as for the cancellation, reversal and termination of said status demonstrate significant gaps in terms of guaranteeing due process.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

THE RIGHT TO INFORMATION AND TO ADDRESS DOUBTS IN RELATION TO THE STATUS THAT IS GRANTED:

- Applicants should be informed about the reasons of doubt that exist regarding their status as refugees, so that they can contribute through information and arguments. The possibility of addressing doubts should be guaranteed within the procedure.

THE RIGHT TO CONTRIBUTE EVIDENCE:

- A sufficient timeline should be granted for the applicant to contribute evidence related to their refugee status determination and to include information regarding psychosocial assistance that they are receiving.

DUE CONSIDERATION OF PERSECUTION DUE TO GENDER-BASED REASONS:

- Guarantee that the gender category is duly included in the definition of refugee eligibility, understanding that this can be a reason for persecution or an issue due to a person's social group.

PROGRESSIVE INTERPRETATION:

- Adopt a progressive interpretation of the definition of refugee: including new profiles and contexts of persecution in the framework of the Refugees Convention and of generalised violence, foreign aggression, internal conflicts, mass violations of human rights or other circumstances that have seriously disturbed public order in compliance with the Cartagena Declaration. It is also necessary to include the concept of *sûr place* in the refugee's definition.

ALWAYS ASSUME GOOD FAITH IN THE REFUGEES' TESTIMONY:

- Understand that there is an expected level of errors, inconsistencies and contradictions in the accounts given by refugees, and for that reason, these should not be determining factors for denying recognition of their refugee status. The possibility of criminal prosecution for giving these testimonies needs to be eliminated.

ELIMINATE THE REQUIREMENT TO DEMAND CONSISTENCY IN THE ACCOUNTS GIVEN BY MULTIPLE FAMILY MEMBERS:

- Understand that inconsistencies can be the result of social and cultural patterns and efforts to protect family members.

MOTIVATION OF DECISIONS:

All administrative and legal decisions regarding the refugee status determination, its cancelation, reversal or termination, should include due motivation that involves an analysis based on the components involved in the granting of refugee status.

RIGHT TO ADMINISTRATIVE AND LEGAL APPEALS:

In the case of having their appeal rejected, applicants should be guaranteed a second administrative appeal before a higher authority than the one that made the decision, as well as the right to a legal appeal.

FAMILY REUNIFICATION:

Family reunification should be guaranteed during the procedure to determine refugee status.

RIGHT TO DOCUMENTATION:

Documentation should be provided to asylum seekers as of the commencement of the procedure in order to allow them to work and effectively access their rights.

DECISIONS RELATED TO CANCELLATION, REVERSAL AND TERMINATION OF STATUS AND OTHER ACTIONS (EXPULSION, EXTINCTION)

States should apply the guarantees of due process and the definitions of the 1951 Refugees Convention when making decisions related to the cancellation, reversal and termination of refugee status.

III STATELESSNESS

RIGHT TO A NATIONALITY:

- The right to a nationality should be protected and guaranteed for all people that are born in and are under the jurisdiction of a State.

DEFINITION OF NATIONALITY:

- The definitions of nationality shouldn't include indeterminate and arbitrary concepts.

NON-RETROACTIVITY:

- The right to nationality is not retroactive. A legislative or constitutional definition and a legal interpretation can't reverse the nationality of someone that received this nationality despite changes in current legislation.

PROTECTION AGAINST STATELESSNESS:

- Legislation, public policies and measures should be adopted to avoid statelessness.

IV LOCAL INTEGRATION

Among the countries from the region, there is an unequal development in the recognition of guarantees and rights to integration. In all cases this constitutes a gap between the formal recognition of rights and the effective guarantee of these rights, as well as a lack of knowledge and lack of coordination between government entities that are responsible for issues related to integration. These factors have a negative impact and generate obstacles for the exercising of the asylum seekers and refugees' rights, making their situation of vulnerability more compelling. In this context, in the majority of the countries of the region there are no government programs that provide assistance to refugees or asylum seekers, delegating the provision of this assistance to civil society organizations.

The States should move from a position of solidarity to a position of guaranteeing rights. Integration policies are indispensable for making the right to asylum and migration effective as well as to guarantee the right to remain in a place and not to be obliged to move.

GENERAL RECOMMENDATIONS:

- The States from the region should assume the commitment of fully guaranteeing standards for accessing rights that are established through the ratification and adoption of international instruments. States should always respect the principle of progressiveness in terms of social policy as well as the inclusion of migrants and the population in need of international protection in these policies.
- The States should detail in the legislation that refers to the treatment of international protection and migration their responsibilities for integration as well as for the provision of protection and humanitarian aid. In addition, local integration policies should contemplate the singularity and specific nature of the needs of refugees and asylum seekers, taking into account the criteria of age, gender and diversity.
- The effective application of integration policies requires hosting States to allocate sufficient resources for their implementation.
- The design, implementation and monitoring of public policies for integration should involve the effective participation of refugee, asylum seekers and migrant population as well as civil society organizations.
- People in need of international protection maintain their rights to truth, justice and integrated reparation, which should be guaranteed by their countries of origin. The States should allow reparation processes in the hosting countries without this affecting an individual's protection status, understanding that this will positively benefit integration opportunities for this population.

- It is necessary to implement actions so that the States elevate and harmonize protection standards and integration conditions based on a human rights perspective.
- It is necessary to guarantee the appropriate and timely implementation of mechanisms that ensure integration. The exchange and systematisation of good practices implemented in the region is suggested.
- Public policies should attend to unavoidable questions that concern integrated assistance for health, including mental health, unrestricted access to all levels of education, dignified housing, employment training and access to dignified work, independent of their migratory condition.
- The States should generate inter-ministerial entities that are capable of constructing and implementing integrated policies that address the multiplicity of variables involved in guaranteeing the rights of these population groups. This recommendation should include the principle of facilitating the participation of civil society organizations and the affected populations in these processes.
- It is necessary that the States modify their security approach for border territories and increase their social presence in such a way that it is possible to develop sustainable and long-lasting integration actions, as well as to provide appropriate assistance to people that are in transit.

PARTICULAR RECOMMENDATIONS:

DOCUMENTATION:

- It is necessary that there are mechanisms that permit the delivery of documentation at short notice and from the beginning of the procedure of refugee status determination. The format should be the same as for the rest of the population and shouldn't indicate the refugee or asylum seeker status.

RESIDENCY DEADLINES:

- Refugees should access permanent residencies as part of long-lasting solutions and as an indispensable element for complete social integration. In addition the right to naturalization and/or nationalization should be guaranteed for those who request it.

LANGUAGE:

- The teaching of the language of the hosting country supports integration processes and therefore should be a responsibility of the State. It is recommended to include this component in a broad integration policy.

WORK:

- It is imperative that all of the countries in the region guarantee the right to work for asylum seekers.

ACCESS TO SOCIAL PROGRAMS:

- Access to social programs has been impeded by requirements that demand a particular type of application and or a minimum period in which legal proceedings have to start. It is indispensable to eradicate these types of requirements that limit the effective exercising of rights with the same level of equality as nationals.

DISCRIMINATION:

- We demand that authorities avoid discriminatory and/or xenophobic actions by public officials and we also propose that training policies are developed, along with public campaigns that promote the topics of hospitality, reception and awareness raising campaigns in the society in general. These programs will have the goal of preventing discrimination and xenophobia.

FAMILY REUNIFICATION:

- We urge the relevant authorities to facilitate the processes of family unity while respecting the culture, cosmovision, life stories, sexual diversity and religion of people affected.

V RESETTLEMENT

In the current worldwide context, each day there are more people in need of resettlement and the available spaces in resettlement programs are not sufficient. In addition, the solidarity resettlement programs are financed in large part by the international community through UNHCR, with limited contributions from the States, while their implementation is solely the responsibility of civil society.

RECOMMENDATIONS:

It is necessary that new States from the region develop and establish resettlement programs and also increase the current coverage of these programs. In addition we request that an evaluation is made of extending the resettlement program to new nationalities, including those from other continents. Specific programs with a differential approach should be designed for this purpose along with the allocation of appropriate resources.

- The effective involvement of the State is necessary for the allocation of economic and human resources in all types of migration and asylum-related situations.
- It is imperative that evaluations and assessments are made with the participation of the States, UNHCR, civil society and the resettled refugees, with the goal of being able to redesign programs so that they can achieve long-lasting solutions.
- It is necessary that the States contribute economic and human resources to provide assistance to refugees for their local integration in order to minimize the existing disparity between refugees and resettled refugees.
- Appropriate and sufficient information should be provided to refugees regarding the resettlement process, conditions in the hosting countries as well as reasons for rejection, establishing clear and transparent procedures.

VI PROTECTION OF CHILDREN, ADOLESCENTS AND WOMEN

Despite the ratification of international legal instruments for human rights, the States from the region continue to violate standards in relation to the protection of refugees and asylum seekers, especially children, adolescents and women.

In relation to unaccompanied children and adolescents and those who have been separated from their parents, it is important to highlight that in the majority of countries there are no special procedures for the refugees status determination, nor have special measures been adopted to provide them with assistance. In addition it is also notable that staff is not adequately trained in the provision of differentiated assistance depending on a person's background or needs.

In terms of providing assistance to females, assistance and protection policies for people in need of international protection are based on a patriarchal approach, which represents the risk of ignoring possible situations of violence within the family unit. In a dynamic in which the representation of the family is usually assumed by the adult male, and only the masculine version of events is evaluated, there are multiple risks. These include a lack of awareness of internal power relationships and domestic violence and weaknesses in the integrated assistance provided for the different needs of family members.

It is important to take into account that women, children and adolescents are those that make up the majority of victims of sex crimes, sexual and labour exploitation, femicide and sexual blackmail when

they request services from institutions. This situation is worsened at the border areas and ports of entry in which the risk of being a victim increases. Health care is also not guaranteed, especially sexual, reproductive and mental health care.

It is important to note that there are patterns of discrimination against the LGTBI population perpetrated by staff, which reflect prejudices that impede the recognition of their condition as refugees. There is also no recognition of their particular needs and their risk of being victims of sexual violence. In the areas of human trafficking, sexual and labour exploitation and people smuggling there is a general lack of knowledge of these crimes among the population, and especially among the staff responsible for providing assistance and protection to refugees and asylum seekers.

GENERAL RECOMMENDATIONS:

- As a principle of the public duty of the States in the region, the assistance and protection of refugees and asylum seekers should be guaranteed through the institutional coordination, co-responsibility of governments and public spending.
- The principle of non-detention should be included in all of the cases of asylum seekers, with a special consideration for the protection of female victims of the armed conflict and generalised violence, pregnant women, children and adolescents.
- In the border zones, the States should reinforce their institutional presence with staff trained in providing differential assistance, offering efficient information as well as required services.
- In border zones, it is proposed that interdisciplinary committees are established with participation from civil society organizations to provide integrated assistance to children, adolescents and females as part of the implementation of assistance and protection policies. The

States are called upon to prioritise public expenses in these zones to prevent crimes such as human trafficking, people smuggling, sexual and labour exploitation and support the sexual and reproductive health of women and children.

CHILDREN AND ADOLESCENTS

- Under the principle of the superior interest of the child, the States from the region are obliged to review their asylum seeker policies with the goal of guaranteeing the eradication of any policy of exclusion and expulsion from the territory and acts of discrimination. The States are also obliged to overcome obstacles in order to guarantee the rights of children, including: their right to a name; right to a nationality; right to be issued with legal documents that facilitate their access to other rights; and the right to applying for refugee status for children and adolescents that have been separated from their parents or are unaccompanied.
- Involve the institutions responsible at both national and international levels to address situations with children and adolescents in order to guarantee their integrated protection from the first moment of contact.
- Establish protocols on how to act in relation to unaccompanied minors and those separated from their parents that establishes clear standards and procedures on how to act, as well as guaranteeing inter-institutional coordination.
- Differentiate the treatment of children from the treatment of adolescents to determine differentiated assistance policies dependent on age: poor adolescents, workers, victims, etc. The objective should be to differentiate between these groups to promote the empowerment of adolescents and not to deprive them of any freedom's rights.
- Strengthen the decentralisation process of the national integrated protection system for children and adoles-

cents to ensure the exercising, protection and guaranteeing of this population's rights.

WOMEN

- The States are obliged to design tools and to train staff in differential approach and in the identification of demographic instances that generate discrimination: ethnic and indigenous populations, people with disabilities, sexually diverse identities, victims of conflict, victims of mega projects, etc.
- Guarantee the principle of no-return for victims or potential victims of crimes such as human trafficking, people smuggling and sexual exploitation through procedures that ensure an evaluation of the risks of return and facilitate access to procedures for applying for refugee status.
- Guarantee health care access and assistance in all of its specific areas, with a particular emphasis on sexual and reproductive health for female refugees and asylum seekers, avoiding discrimination against this population by health workers.
- Consider the possibility of providing refugee status for women accused of the international kidnapping of minors who have left their countries of origin with their children without authorisation from the fathers in situations in which the fathers are the persecuting agents.

Buenos Aires, 14 May 2014.

This position statement document is the result of a consultation process, facilitated by the Norwegian Refugee Council (NRC), carried out in 10 countries in the Wider MERCOSUR Region: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela. This process culminated with a regional meeting that took place in Buenos Aires on the 13th and 14th of March 2014, in which 22 civil society organisations, representing the civil society organisations from their respective countries, agreed on a regional position in the framework of the Cartagena+30 commemoration.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Dianey and Miguel stand before the two paintings she made. The “blue” painting shows the city of her dreams, a place in which she was happy with her family and friends and where she would watch her children grow up. The “orange” painting shows the city of her return, a place of peace to which she yearns to go back. Santiago de Chile. Chile.

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THE CIVIL SOCIETY ORGANISATIONS THAT WERE PRESENT IN THE REGIONAL EVENT WERE:

ARGENTINA

Centro de Estudios Legales y Sociales – CELS
 Centro de DDHH de la Univ.Nac.de Lanús – UNLA
 Comisión de Apoyo a Refugiados y Migrantes – CAREF

BRAZIL

Caritas Sao Paulo
 Instituto de Migraciones y DDHH – IMDH

BOLIVIA

Pastoral de Movilidad Humana – PMH

COLOMBIA

Project Council Services – PCS Colombia
 Servicio Jesuita para Refugiados- Colombia
 Corporación Humanas

CHILE

Ciudadano Global – SJM Chile
 Clínica de Migrantes y Refugiados de la Universidad Diego Portales

ECUADOR

Asylum Access Ecuador – AAE
 Fundación Esperanza (Ec)
 Servicio Jesuita para Refugiados – SJR Ecuador

PARAGUAY

Comité de Iglesias para Ayudas en Emergencias – CIPAE

PERU

Comisión Andina de Juristas
 Servicio Jesuita para Migrantes SJM-Peru

URUGUAY

Servicio Ecueménico para la Dignidad Humana – SEDHU

VENEZUELA

Centro de DDHH Universidad Católica Andrés Bello
 HIAS Venezuela
 Caritas Venezuela

LIST OF ORGANIZATIONS THAT REPRESENTED THE CIVIL SOCIETY IN THE NATIONAL MEETINGS

ARGENTINA

Amnistía Internacional- AI
 Clínica Jurídica de Migrantes y Refugiados de la Univ. Nacional del Litoral- UNL
 Clínica de Migraciones y Derechos Humanos del Obispado de Neuquén
 Fundación de la Comisión Católica para las Migraciones- FCCAM
 Fundación Huésped
 HIAS – Regional Latinoamérica
 Grupo de investigaciones sobre migraciones africanas-
 Facultad de Ciencias Naturales y Museo-UNLP/CONICET.

BRAZIL

Caritas Arquidiocesana do Rio de Janeiro
 Associação Antonio Vieira
 Centro de Defesa dos DDHH de Guarulhos

BOLIVIA

Servicio Jesuita de Migraciones –SJM
 Asociación de Refugiados Peruanos- ARPEBOL
 Instituto de Terapia e Investigación Contra la Tortura –ITEI
 Universidad Salesiana de Bolivia.
 Mesa Técnica de Migraciones

COLOMBIA

CODHES
 Universidad Nacional
 Pastoral Social
 CESCAMI
 Misión Escalabriniana- Colombia

CHILE

Vicaría de la Pastoral Social y de los Trabajadores
 Instituto Católico de Migraciones
 Programa Prisma
 Universidad Alberto Hurtado
 Universidad Cardenal Silva Henríquez
 Corporación Humanas
 Fundación Iguales
 Instituto de Ciencias Políticas, Universidad Católica

ECUADOR

Misión Escalabriniana – Ecuador
 Fundación Ambiente y Sociedad (FAS)
 Fundación Nuestros Jóvenes
 HIAS Ecuador
 GIZ

PERU

Comisión Católica Peruana de Migraciones
 Instituto de Democracia y DDHH (IDEHPUCP) de la Pontificia Universidad Católica de Peru
 Encuentros (Conferencia Episcopal)
 Pastoral de Movilidad Humana (Conferencia Episcopal)

VENEZUELA

Cruz Roja Venezolana
 Servicio Jesuita a Refugiados
 RET
 Universidad Católica del Táchira
 Centro de Estudios Fronterizos Univ. Los Andes
 UNIANDES
 CISV

PREFACE | MARTA JUÁREZ

INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”

INFORMATION PAPER

SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA

SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO

BRAZIL DECLARATION

BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010



Participatory assessment mission.
Putumayo, Colombia.

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INTERNATIONAL
PROTECTION,
LASTING SOLUTIONS
AND INTERNATIONAL
COOPERATION

+30
CARTAGENA



Andean Countries

SUBREGIONAL CONSULTATION

QUITO 9-10 JUNE 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

AGENDA

MONDAY, 9 JUNE

08:30	Registration
09:00	Official Inauguration Mr. Ricardo Patiño (economist), Chancellor, Ministry of Foreign Affairs and Human Mobility, Ecuador Dr. Paulo Aarão Pires, Junior, National Secretary of Justice and President of the National Committee for Refugees, Brazil Mrs. Marta Juárez, Director of UNHCR's Regional Bureau for the Americas
09:45	Sub-regional Consultation Presided over by María Landázuri, Vice-Minister of Human Mobility, Ecuador <ul style="list-style-type: none"> Information on the Cartagena+30 Process, methodology for the meeting, presentation of experts, and presentation of the Technical Secretariat and Rapporteur, Carlos Maldonado, Cartagena+30 Coordinator, UNHCR (15 min) Presentation of the results of the MERCOSUR sub-regional meeting, 18 and 19 March, 2014 in Buenos Aires, Federico Augusti, government of Argentina (30 min)
10:30	Regional Perspective on Integration within the Framework of Durable Solutions Moderated by Ambassador Rosario Green, Senior Expert <ul style="list-style-type: none"> UNHCR panellist: Solutions under UNHCR's Mandate and the Latin American Experience (15 min) Government of Ecuador panellist/Vice-minister of Human Mobility: Ecuador's Migratory Policy and the Concept of Human Mobility as an Integrator of Various Forms of Protection and Solutions from a Local Integration Perspective (15 min) Government of Colombia panellist: Public Policy and a Synergy of Solutions (15 min) Government of Venezuela panellist: Refugee Integration and Possible Solutions (15 min)
11:30	Coffee break
11:45	Debate in Two Working Groups <ul style="list-style-type: none"> Local Integration: The Role of Local Government (moderated by a representative of the government of Nicaragua) Synergy between Voluntary Repatriation and Local Integration (moderated by a representative of the government of Mexico)

12:45	Plenary Reports from working groups (10 minutes each). Additional comments from the floor and summary by the Chair
13:45	Lunch break
15:00	Challenges to Resettlement as an Expression of International Solidarity moderated by a representative of the government of Peru <ul style="list-style-type: none"> Panellist 1: Resettlement under UNHCR's Mandate: Origins of the Solidarity Resettlement Programme and its Evolution, UNHCR (15 min) Panellist 2: Ecuador as a First Country of Asylum (15 min) Panellist 3: Brazil's Experience and a View to the Future (15 min) Panellist 4: Chile's Experience and a View to the Future (15 min)
16:00	Debate in Two Working Groups <ul style="list-style-type: none"> The importance of Latin America as a Solidarity Resettlement Region (moderated by a representative of the government of Norway) Challenges to Consolidating a Latin American Solidarity Resettlement Programme (moderated by a representative of the government of Uruguay)
16:45	Coffee break
17:00	Plenary Reports from working groups (15 minutes each). Additional comments from the floor and summary by the Chair
18:00	Close of session
19:30	Ecuadorian cultural evening

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

TUESDAY, 10 JUNE

09:00	Conclusions and recommendations from day one presented by the Chair, and approval by the plenary
09:15	Challenges in Forced Displacement and Solutions from a Perspective of Civil Society and Refugees moderated by the Ecuador Ombudsman's Office
	<ul style="list-style-type: none"> • Panellist 1: Refugee Women's Experience (15 min) • Panellist 2: Refugee Youth Experience (15 min) • Panellist 3: Civil Society Vision (15 min)
10:00	Coffee break
10:30	International Protection and Migration Alternatives within Regional and National Legal Frameworks moderated by Senior Expert Diego García Sayán
	<ul style="list-style-type: none"> • Panellist 1: Government of Ecuador (15 min) • Panellist 2: Government of Bolivia (15 min) • Panellist 3: Government of Argentina (15 min) • Panellist 4: Government of Brazil (15 min)
11:30	Debate in Two Working Groups
	<ul style="list-style-type: none"> • Migration Alternatives as a Fourth Solution (moderated by a representative of the government of Ecuador) • Migration Alternatives and Protection Guarantees (moderated by a representative of UNHCR)

12:30	Plenary Reports from working groups (15 minutes each). Additional comments from the floor and summary by the Chair
13:30	Lunch break
15:30	Conclusions and recommendations from day two presented by the Chair, and approval by the plenary
17:30	Closing session of Sub-regional Consultation (Chair)

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Andean Countries



ANDEAN SUBREGIONAL CONSULTATION (QUITO, 9 - 10 JUNE, 2014)

INTERNATIONAL PROTECTION,
DURABLE SOLUTIONS,
AND INTERNATIONAL COOPERATION

I INTRODUCTION

This document was prepared by UNHCR with the aim of informing and guiding discussions among States, international bodies, national human rights institutions, civil society organisations, and academics during the Andean sub-regional consultation to take place in Quito, Ecuador on 9-10 June, 2014.

The purpose of the consultation is to identify the main challenges and opportunities in the area of durable solutions for refugees, including their contribution to the society of their host country, as well as possible responses and actions in the areas of legislation, public policy, and state practices. The deliberations among the various actors and the conclusions and recommendations that emerge from the debates will be important

inputs for drafting and adopting a continental Plan of Action for the period 2015-2024, which will provide continuity to the Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America, adopted in 2004.

II REGIONAL CONTEXT

Since the adoption of the Mexico Plan of Action in 2004, there has been a significant increase in the number of persons needing international protection in Andean countries. In 2004 there were 42,402 persons in this situation, of whom 10,125 had been recognised as refugees; by 2012 that number had increased eight-fold (to 345,611 persons in need of protection), with six times as many recognised refugees (61,198) as in 2004.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Of these, the vast majority is concentrated in Ecuador and Venezuela.

Persons in need of international protection have primarily tended to stay in the country where they request protection. The very small number of voluntary repatriations until now confirms this tendency. Thus some countries of the region have reached what UNHCR calls protracted refugee situations. The need to redouble efforts and find new alternatives in the search for durable solutions, particularly to support States that host large numbers of refugees, was underlined in the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas. This calls for an in-depth analysis to take place during the thematic consultation, in order to devise durable solutions and increased international cooperation and solidarity to support host States and refugees, so that the latter may reach self-reliance and thus contribute more broadly to their new communities.

The implications and new challenges implied by these two tendencies –increases in the number of persons needing protection and increases in protracted refugee situations– should be analysed within the framework of public policy and norms, as well as with a view to adapting structures, administrative processes, and budgets in response to this regional reality. Likewise, a new approach to the search for durable solutions for persons in need of international protection should be framed within broader public policies of social inclusion, non-discrimination, cultural diversity, the effective exercise of rights, and an integrated approach to security.

The Mexico Declaration and Plan of Action recognised the existence of mixed migration movements that may include refugees who should be identified as such. The Andean region also has intra-regional and “mixed” migration movements composed of a variety of people, some of whom are members of groups

that are particularly vulnerable. On many occasions, perceived abuses of refugee status determination procedures by regional and extra-regional migrants are due to the fact that they have no legal alternative for formalising their migratory situation or for addressing their differentiated protection needs. Unlike ten years ago, it is now possible within regional integration policies, both within MERCOSUR and the Andean Pact, to develop and implement comprehensive and flexible migratory policies, including legalisation programmes, to include alternatives for facilitating regular migration, and thus help take pressure off asylum systems.

With regard to legislative and institutional developments on the subject of asylum, the region generally has a strong normative framework for protecting asylum seekers and refugees. Several national legislations on refugees incorporate high protection standards in accordance with inter-American human rights instruments, and include provisions on specific protection needs based on gender, age, and diversity. Furthermore, the regional definition of refugee recommended by the Cartagena Declaration has been incorporated by several countries in the region. All countries also have refugee status determination bodies and procedures in place for providing protection and durable solutions for refugees.

Nevertheless, there are still opportunities to continue to advance in developing national legislation and State practices regarding due process and institutional development. To give a few examples: some laws in the region relating to refugees are inconsistent in the use of *exclusion* and *cessation of refugee status* from the 1951 Convention on the Status of Refugees and its 1967 Protocol. Some legislation persists in confusing *cancellation* and *revocation* of refugee status. Furthermore, some national norms include provisions regarding admissibility in refugee status determination, which do not conform to international standards.

In order to consolidate national refugee status determination procedures, guarantee access to the same, and strengthen due process standards, UNHCR has supported the implementation in some Latin American countries, of an initiative to enhance the management of asylum systems; this is known as QAI, Quality Assurance Initiative. Within the framework of the Plan of Action to be adopted, UNHCR would be very pleased if Andean countries would consider joining this initiative, in order to advance toward a harmonisation of legislation, procedures, and practices in the region; this is part of a long-range goal outlined in the recent sub-regional consultation with MERCOSUR members and associates, held last March in Buenos Aires.

It is equally important to advance toward a comprehensive and differentiated age, gender, and diversity (AGD) approach in providing assistance, in order to guarantee equitable and differentiated protection of all persons in need. Among existing challenges are the following: *effective protection; prevention, identification, and response mechanisms for victims and survivors of sexual and gender-based violence; and the development of specific programmes from a rights-based and community-based approach, which consider the needs of children, youth, women, men, Afro-descendants, indigenous persons, and lesbian, gay, bisexual, transsexual, and intersexual (LGBTI) persons.*

III CHALLENGES TO ACHIEVING DURABLE SOLUTIONS FOR REFUGEES

Through its statute, UNHCR was mandated to provide international protection and to “seek permanent solutions to the refugee problem”. Traditionally UNHCR has exercised this international mandate through voluntary repatriation, local integration, and resettlement. The 1951 Convention confirms this function and underscores the need for cooperation among State parties in the search for solutions. Member States of UNHCR’s Executive Committee have gone further in affirming that the ultimate goal of international pro-

tection and of UNHCR’s mandate is the search for durable solutions.

International protection and refugee status are by definition extraordinary measures and are temporary by nature, given that under normal circumstances, persons are afforded national protection. Thus UNHCR’s mandate has the high priority and urgent goal of ensuring international protection in the absence of effective national protection; the mandate also has the medium- and long-term goal of restoring national protection.

The importance or priority given to each of the three classical durable solutions has evolved over time. In the past, the three solutions were often implemented in isolation, without synergy or strategic or operational relationships between them. More recently, the protracted nature of many refugee situations, the lack of sustainability in many voluntary repatriation movements, the small number of refugees who has access to resettlement and local integration, and the impact of globalisation on human mobility, combined with a recognition of the connection between refugee social systems and those of other mobility regimens, have led States and UNHCR to begin to develop *comprehensive approaches* to solutions, inviting other actors with relevant experience and knowledge to join in the conceptualisation and implementation of said solutions.

This new approach recognises the importance of refugee mechanisms for survival and mobility, the interdependence of several solutions, and the connection between human rights and development. The comprehensive approach also recognises that solutions will be more readily achieved through a broad vision that considers the roots and consequences of displacement in all its scope (for example, conflict, poverty, discrimination, marginalisation, and exclusion, in both countries of origin and of asylum), as well as the patterns of mobility among refugees and asylum seekers. Furthermore, the comprehensive approach underscores

the need to strengthen cooperation among all relevant parties in order to optimise capacities and generate resources to reach durable solutions that will lead to the end goal: that persons hitherto refugees may enjoy effective national protection, whether in their country of origin or of reception.

Under this new approach, the dynamics of the various solutions require that the most appropriate solution and the most opportune timeframe be established for each situation. In some scenarios, various solutions may be implemented sequentially, while in others they may occur simultaneously. Furthermore, national strategies should be incorporated into regional strategic frameworks, ensuring synergy with regional plans for prevention, protection, and solutions, thus responding in a coherent and overarching way to the needs of refugees and repatriates, as well as internally displaced persons in countries with repatriation movements.

In 2004, the Mexico Plan of Action broke new ground by including programmes for solutions within a regional framework for all stakeholders. In considering the next Plan of Action, it would be wise to assess the Mexico Plan of Action components of solidarity cities, solidarity borders, and solidarity resettlement. Furthermore, lessons learnt should be identified, as should other possible alternatives for formulating comprehensive strategies toward durable solutions, including voluntary repatriation, naturalisation, local integration, resettlement, and labour migration for refugees through migration alternatives. In fact, some countries in the region have already developed and are beginning to implement some comprehensive solutions strategies.

In the current context of new protracted refugee situations and traditional durable solutions, it would be advantageous to promote other temporary or permanent alternatives emerging from common migration schemes in the region. Refugee mobility among coun-

tries enables them to gain access to paid work, learning opportunities, and remittances for their families, bringing them closer to self-reliance, self-esteem, and greater preparedness for obtaining national protection. Furthermore, labour migration among countries in a region is a very effective show of solidarity and cooperation with countries hosting large numbers of refugees.

Below are specific opportunities and challenges in Andean countries, which complement those identified for the broader MERCOSUR region.

A VOLUNTARY REPATRIATION

Refugees are able to make informed and voluntary decisions when repatriation is part of a comprehensive strategy of durable solutions. The durability and sustainability of refugee voluntary repatriation movements depend, in large part, on the guarantee of non-discrimination for having been a refugee, on the effective exercise and enjoyment of human rights in all their scope, and on the possibility of benefiting from legal and socioeconomic reintegration programmes, including access to a livelihood and to recovering housing or land from which refugees been unduly dispossessed.

In international and regional practice, voluntary repatriation processes have been developed and implemented with the participation of refugees, repatriates, the governments of countries of origin and of asylum, UNHCR, other agencies primarily involved in longer-term development projects, and civil society organisations.

Tripartite commissions and tripartite cooperation agreements between countries of asylum, of origin, and UNHCR, have served as baseline instruments that have proven to be very useful for establishing a common framework and a platform for dialogue and discussion from which to address fundamental aspects of voluntary and sustainable repatriation in conditions of safety and dignity.

With a view to the next ten years within the *Cartagena+30 Process*, UNHCR encourages governments to conduct detailed analyses of current and future opportunities that the regional context offers to carrying out meaningful voluntary repatriation movements, as long as objectively favourable conditions exist for them to take place.

These objectively favourable conditions are generally based on substantive changes taking place in countries of origin, including strengthening the rule of law and the applicability and respect for human rights, or a solution to the conflict or to the insecurity that gave rise to refugee flight. But in addition to these fundamental changes, voluntary repatriation processes are built through dialogue, mutual trust among all the parties –including the refugees themselves– and an agreement on the measures that will guarantee and enable voluntary repatriation to take place in conditions of safety and dignity.

Within the framework of tripartite mechanisms, UNHCR offers governments in the region its extensive experience in facilitating dialogue. In order to create the conditions needed to foster planned voluntary repatriation movements, UNHCR recommends the formal establishment of a tripartite agreement as soon as possible.

The following are generally considered measures or guarantees that often appear in tripartite agreements and communications to repatriation candidates:

- a. Guarantees that refugees may return to their place of origin or to a place of residence of their choice, in conditions of safety which prevent or largely reduce the need for future forced displacement;
- b. Organised visits to places of origin or choice by refugee representatives, in order to ascertain prevailing conditions there;

- c. Recognition of the marital status of repatriates, of changes that may have taken place in the country of asylum (births, deaths, adoptions, marriage, divorce, etc.), and of the documentation or registration that prove them, issued by competent authorities in the country of asylum or another country;
- d. Issuing national documentation that may have been lost or destroyed during refugee flight;
- e. Respect and protection of family unity during voluntary repatriation and afterward. In any case, the repatriation of unaccompanied or separated minors should be avoided, unless family members have been sought and found, or unless specialised and effective arrangements for reception and assistance are proven to exist in the country of origin, if the child is confirmed to be an orphan with no other responsible family members;
- f. Validation of academic and professional diplomas, certificates, and degrees obtained by repatriates in countries of asylum, and the recognition of the equivalence of primary and secondary education studied abroad;
- g. The right of repatriates to benefit from national restitution programmes for housing, land, and property, which they may have lost by illegal, discriminatory, or arbitrary means before or during asylum; or to receive compensation through fair and effective national restitution mechanisms;
- h. That any restitution or compensation framework consider the situation of returning refugee women heads of households, as well as the diversity of refugees, especially where indigenous or Afro-descendant refugees are concerned, and their collective ownership of land;
- i. Provide refugees with complete, objective, and reliable information on the prevailing situation in the country and region of origin or choice, regarding physical, material, and legal security, before their voluntary repatriation, and regarding national programmes for their legal and socioeconomic reintegration;

The discussion at the sub-regional meeting may take into consideration the following challenges:

1. In the next ten years, during which the future plan of action will have effect, what projections can be considered with regard to voluntary repatriation movements in the region?
2. Within the regional context, what would be the best way to implement the various solutions –sequentially or concurrently– and what measures would need to be considered to avoid unwanted consequences, such as artificial “pull factors” when local integration programmes take place concurrently with voluntary repatriation processes, or even prior to voluntary repatriation?
3. What legal and socioeconomic programmes and what compensation or restitution programmes for housing and land exist to benefit refugees who opt for voluntary repatriation?

B RESETTLEMENT AS AN EXPRESSION OF INTERNATIONAL COOPERATION AND SOLIDARITY

For refugees with specific protection needs, consideration should continue to be given to the strategic use of resettlement as an effective tool for protection and international cooperation. Resettlement of refugees from Andean countries takes two forms: to Latin American countries through Solidarity Resettlement established in the Mexico Plan of Action; and to traditional countries of resettlement.

The value of Solidarity Resettlement and the need to extend and consolidate it have been recognised by States participating in the MERCOSUR consultation meeting. Several countries in the region have responded to the call from the High Commissioner and are developing resettlement programmes for Syrian refugees, for example. At the same time, the High Commissioner has underscored Latin America’s strategic value as a UNHCR partner that exemplifies hospitality and solidarity as well as high protection standards,

and on several occasions, has requested through the Latin American and Caribbean Group (GRULAC), that the region take a greater leadership role in international humanitarian forums. The consolidation of a Latin American Solidarity Resettlement Programme could be an important step toward this new leadership, as an expression of solidarity and international cooperation.

The current regional consultation serves as an opportunity to start a discussion between Solidarity Resettlement countries and countries of asylum, in order to address common challenges.

At the same time, resettlement to countries outside of Latin America is fundamental, both from a numbers perspective and as a tangible manifestation of the international community’s cooperation with countries in the region that host the most refugees. Of all persons resettled from Ecuador, 15% has been through Solidarity Resettlement, while the remaining 85% has been to countries outside Latin America. Of all resettled persons, the majority (51%) has been resettled to countries in North America (Canada and the United States), while 34% has been to New Zealand and to European countries. In total, 10% of the recognised refugee population in Ecuador has been resettled to a third country.

It is of utmost importance that countries in Latin America assess whether to continue, broaden, or join the Solidarity Resettlement Programme, as the case may be, by increasing their contribution of national and regional resources to guarantee its sustainability. Furthermore, it is crucial for traditional countries of resettlement to continue to offer quotas for refugees in the region, primarily those in situations of urgent protection.

The discussion in the sub-regional meeting could take into account the following challenges:

1. How can the Latin American Solidarity Resettlement programme be revitalised? Is it feasible to increase the number of participating countries, whether as of resettled refugees or through financial contributions to a common fund?
2. What mechanism could be established to strengthen coordination among countries in the region, aimed at the strategic use of resettlement as a protection and regional cooperation tool, and as a tool deployed in response to global humanitarian crises?
3. A recurrent issue among Solidarity Resettlement countries is that of financial resources. During the early stages of these programmes, UNHCR’s traditional donors were sensitive to the need to collaborate financially; however, it is expected that host countries will gradually assume the financial obligations involved. In recognising that solidarity resettlement countries have gradually been taking on the costs of integrating resettled refugees, the more relevant question today is how many countries in the region are willing to take on this challenge by increasing local financial contributions?
4. In this context, is it better to continue with specific gestures from some countries in response to an international crisis, or is it more strategic and relevant to maintain a regional, predictable, and consistent response through a Regional Solidarity Resettlement Programme? In the case of the latter, how can additional, regional financial resources be channelled to this end?

C LOCAL INTEGRATION

In the Mexico Plan of Action, States called for a strengthening of refugee local integration processes in the region. States further noted that when designing local integration projects, due consideration should be given to the reality in host communities, and to mechanisms aimed at ensuring the participation of civil society. The Plan of Action resolved to establish the Self-reliance and Integration Programme of *Solidarity*

Cities, aimed at integrating refugees in a series of urban centres viewed as protection spaces in Latin America. At the same time, and particularly in the Andean region, the Comprehensive Programme of *Solidarity Borders* has sought to foster development in border areas, to address basic infrastructure needs, and to provide access to basic services in those areas, all from a territorial rather than a population approach.

Local integration is a dynamic process in which both refugees and the host society participate, in all their individual and social circumstances. This process has three essential arenas: 1) the economic, that is, the ability to ensure that an appropriate livelihood and self-reliance can be achieved; 2) the socio-cultural that has to do with developing a process of social and community participation; and 3) the normative or legal, as it involves the applicable legal framework, the enjoyment of the broadest range of rights held in the host State, having adequate and equal access to basic services and to the possibility of obtaining permanent residency and naturalisation.

Integration should be pursued from a human rights-based approach, as well as with an age, gender, and diversity focus. It should aim to create the conditions needed for refugees to enjoy a life of dignity, free of violence and discrimination, as well as essential rights for personal development and the ability to contribute to the development of the host society. This process should progressively promote self-reliance in refugees and their families, in accordance with their specific circumstances, and should be directed at consolidating a durable solution.

Following this logic, the 1951 Convention and its 1967 Protocol provide a legal framework for refugee integration in State Parties to these instruments. UNHCR has posited that certain rights be ensured on the basis of the effective enjoyment of the right to asylum, including documentation, administrative assistance, freedom

of mobility, the right to work, education and health care, the right to family unity, and access to justice. Taking into account these minimum essentials, the scope and pace of integration in broader terms will depend in part on the social and economic conditions in the host society.

Local integration of persons in need of international protection fundamentally requires congruence between the international legal framework and constitutional, legislative, and administrative frameworks in order for refugees to effectively enjoy rights and fulfil obligations. The same congruence is required between the various normative arenas that should concur so that persons in need of international protection can integrate.

Both the increase in the number of persons in need of international protection and their protracted stay in countries of asylum require the design and implementation of public policies to enable local integration, and that these include the refugees and host communities themselves; persons in need of international protection should also be included in national development plans and in those designed to eradicate poverty. At the same time, a key for effective local integration is fostering a culture that favours multiculturalism, respect, tolerance, and diversity through campaigns on the value of, and respect for differences, intercultural exchange, and access to rights, as well as through hospitality and non-discrimination policies.

More specifically, in order for refugees to achieve self-reliance, they must have opportunities to generate income, whether through formal or informal employment, or through self-employment. Toward this end, it is necessary to foster social and economic initiatives that support refugee stability and their access to livelihoods and to public health and education services. While refugee integration in the formal sector is preferable so that they may attain adequate social security,

many in Andean countries will probably join the informal sector. In order to mitigate the possible negative effects of informal employment, efforts should be coordinated so that persons in need of international protection have access to social security structures, to mechanisms for the prevention of, and response to exploitation in labour, to mechanisms for the resolution of controversies as foreseen in labour laws, and to effective access to courts of justice. Furthermore, in order to gain access to livelihoods that provide for dignified living conditions, refugees should have access to professional or vocational training so that they may have better opportunities for employment. It is crucial for local governments or administrations, civil society, and the private sector to participate in all these efforts.

The discussion in the sub-regional meeting may take into account the following challenges:

1. To what degree do public policies and programmes in Andean countries promote refugee integration in national development and anti-poverty plans?
2. How can congruence be reached among the various applicable legal frameworks, including the constitutional framework, in order to foster effective local integration?
3. Do refugees have access to government programmes related to basic services such as education, health care, housing, and work, among others? And how can these rights be exercised, specifically?
4. How can access to personal documentation be enhanced, and how can costs be significantly reduced? This includes documentation needed to obtain permanent residency and naturalisation, expediting their delivery and renewal, and improving public and private sector understanding of their validity.
5. What strategies can be developed and implemented to improve refugee access to formal employment and job training, as well as their inclusion

in social responsibility programmes in public and private entities?

6. What public policies can lead to strategies in favour of multiculturalism, respect, tolerance, diversity, and non-discrimination?
7. What other extraordinary measures are States in the region willing to take in order to achieve refugee local integration?
8. How can a regional fund be established to promote local integration with support from the international community, as an expression of regional solidarity and international cooperation, aimed at supporting countries in the region that host larger numbers of refugees?

D INTERNATIONAL PROTECTION AND MIGRATION ALTERNATIVES WITHIN NATIONAL AND REGIONAL NORMATIVE FRAMEWORKS

In addition to voluntary repatriation, resettlement, and local integration, certain norms in countries of asylum and certain regional accords offer migration alternatives for refugees in the region; these are norms and accords that promote integration, freedom of movement, and labour mobility among Andean and MERCOSUR countries. Thus a refugee can opt for a more favourable legal status in the country of asylum without losing the guarantee against refoulement; likewise, refugees may choose to emigrate to another country in the region where they have stronger prospects of local integration, better possibilities of employment, or sources of work in various sectors of the economy.

Considering the economic growth experienced by several countries in the region, it would be interesting to consider options for refugee regularisation and for labour mobility as part of a series of regional mechanisms to foster cooperation and solidarity with countries in the region that host more refugees.

These alternatives could meet three objectives: (a) to enable refugee movement, whether individually or in groups, from a country where they have protection to

another with better integration prospects; (b) to allow local integration in the country of asylum but under better conditions than those derived from refugee status; and (c) to enable people in need of international protection who have not yet received it, to obtain legal status that would enable them to remain and to integrate locally, even without the protection afforded by refugee status.

Within the context of the first objective above, consideration should be given to the fact that some countries in the region have stated their intent to advance gradually toward greater levels of regional integration, particularly with regard to freedom of movement, for example, through the concept of *South American citizenship*. The legal status that a refugee could obtain in the country of residence and under national laws regarding foreign nationals or migration, should not lead to the loss of the guarantee against refoulement. Toward this end, and as recommended at the MERCOSUR sub-regional consultation, States should consider *extraterritorial recognition of refugee status* previously recognised in the first country of asylum, or other measures that maintain respect for the principle of non-refoulement.

The second objective above comes into play where integration is more feasible with a legal status other than that of refugee. In this case, a different legal status should guarantee either national protection afforded by the host country (through naturalisation, for example), or respect for the principle of non-refoulement.

The third objective above would be applicable in cases in which new norms are favourable to formalising the situation of persons who are without legal status in the country where they seek asylum and have no possibility of returning to their country of origin. The possibility of obtaining a migratory status that would enable such persons to integrate locally is clearly a desirable alternative to remaining in migratory irregularity; it creates legal certainty for the beneficiaries and greater security for host States.

These types of solutions can be based on national legislation, bilateral agreements, or regional frameworks, such as specific MERCOSUR regulations on the subject, and can emerge at any time during the individual's life as a refugee. The MERCOSUR case is an opportunity to benefit from a flexible migratory policy framework and from the Agreement on Residency for MERCOSUR Nationals, in order to create better and more work opportunities for refugees.

Thus frameworks that afford refugees migration options could include, *inter alia*: (a) agreements on freedom of movement in the region; (b) special programmes for specific groups, based on their nationality; (c) labour mobility programmes; (d) migratory amnesty or legalisation programmes that favour regular migration and access to a stable migratory status; and (e) family reunification.

In order for these migration alternatives to produce the desired effects, refugees should find security conditions and socioeconomic opportunities that are more favourable to their local integration than those found in their first country of asylum. To that end, it would help for refugees to have equal access to economic and social rights as nationals. Furthermore, host countries should commit to guaranteeing access to basic public services (education, health care, and social security). Crucially, the key to the relevance of these alternatives lies in the opportunities they create for obtaining work, at least in the first two objectives above.

Discussion during the sub-regional meeting could take into account the following challenges:

- a. How can current migration agreements and norms (such as residency permits in MERCOSUR, Agreement CAN 545, national norms, and bilateral agreements) become opportunities to legalise the migratory status of persons needing international protection, who, for one reason or another, have not availed themselves of refugee status determination procedures, or have not been recognised as refugees?
- b. How can States enable refugees to gain security and socioeconomic opportunities that are more favourable to their local integration, than those in their first country of asylum?
- c. Do normative frameworks in potential host countries guarantee access to basic public services, such as education, employment, and health care, among others, without linking requirements to a specific legal status, such as permanent residency?
- d. Would refugees who opt for labour mobility programmes have the chance to return to the first country of asylum, maintaining their status as refugees? Would refugees have the chance to leave their family in the first country of asylum?
- e. How can refugees be guaranteed equal treatment to that of nationals in access to economic and labour rights?
- f. What protection safeguards would be needed for refugees recognised in one country of asylum, who opt for a labour solution in another country in the region?

UNHCR
Regional Bureau for the Americas

The Tule indigenous group, who live on the Arquia reservation, located in the municipality of Unguia, in Colombia's Choco region, have only recently been able to return to their land, and the presence of armed groups along with environmental degradation means that they are at risk for a second displacement. The Tule culture is based on a strong relationship with the land and so losing it essentially means losing their culture. Pupils attending school. Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
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IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

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VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Andean Countries



A Colombian refugee woman holds her grand-daughter at a house they rent near the Colombian border.

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CONCLUSIONS AND RECOMMENDATIONS

INTERNATIONAL PROTECTION, LASTING SOLUTIONS AND INTERNATIONAL COOPERATION

I INTRODUCTION

The second sub-regional consultation of the commemorative process of the 30th Anniversary of the Cartagena Declaration was carried out in the city of Quito, Ecuador, on 9 and 10 June 2014.

The sub-regional consultation for Andean countries, “*International protection, durable solutions and international cooperation*”, was organized by the Government of Ecuador and UNHCR, and featured the participation of Bolivia, Colombia, Ecuador, Peru and the Bolivarian Republic of Venezuela, together with Argentina, Brazil, Chile, Nicaragua and Uruguay. The delegation of Costa Rica also attended in its capacity as *pro tempore* Presidency of CELAC, and Mexico, as a former host of the commemorative process. Canada, Sweden and the Eu-

ropean Union also participated as observer countries along with the following international organizations: OHCHR, ICRC, Inter-American Court of Human Rights, UNDP and UNICEF. The Norwegian Refugee Council and representatives of civil society organizations from the Andean region, as well as representatives of women and young refugees, also attended.

Foreign Minister Ricardo Patiño highlighted in the opening session that “Today, we build real regional integration through hope and effort throughout our continent, firmly anchored in democracy as a way of bringing citizens together and shielding people against the scourge of authoritarianism and State crimes. Today, Latin America is a region where peace and an effective guarantee of rights are the norm and not the excep-

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

tion.” He also stated that “Despite the achievements made since the inception of the Cartagena Declaration, both at State level, and through the coordinated efforts of countries and agencies in the region, we continue to have an obligation to strengthen the protection of refugees and internally displaced persons, to provide them with fair and durable solutions, which safeguard their will, dignity and security.”

The Director of UNHCR’s Bureau for the Americas, Mrs. Marta Juárez, stated that the *Cartagena+30 Process* is a unique opportunity to discuss the challenges of international protection of refugees, displaced and stateless persons, and that the sub-regional consultation would focus on the issue of durable solutions for the next 10 years, taking into account new developments and scenarios. She also stressed how important was to have input from both refugee women and young refugees in this Andean sub-regional consultation.

The Colombian Deputy Minister of Foreign Affairs, Ambassador Carlos Arturo Morales, also noted the importance of international cooperation and solidarity for the international protection of refugees, thanking the countries of the region for the support provided to Colombian refugees, and in particular the Government of Ecuador for the positive inclusion of its citizens in its country, and indicated that the Colombian Government is advancing in the implementation of a voluntary repatriation plan for the refugee population.

The representative of the Government of Brazil, Mr. Virginius Franca, expressed the interest of his Government in sharing good practices in the protection of refugees and stateless persons, solidarity resettlement, and the national asylum and refugee protection system, which may be used as reference to other countries. He stressed that at the 20th anniversary of the Cartagena Declaration it was possible to generate answers based on regional solidarity. Today, he said, *Cartagena+30* is an opportunity to consolidate the achievements made and the

opportunity to eradicate statelessness in the near future. He mentioned that Brazil has promoted a great social dialogue and consultation with refugees, which may be a reference for other countries in the region.

Afterwards, the advances of the commemorative process across the continent were presented and the delegates shared the main conclusions and recommendations of the first sub-regional consultation held in Buenos Aires, Argentina, on 18 and 19 March 2014. This clear and concrete summary provided the context to the Quito consultation sessions. One of the thematic issues discussed in Argentina was the search for durable solutions, which is the main theme for an in depth discussion in the present Andean sub-regional consultation.

The following conclusions and recommendations, agreed upon by participants, will contribute to the formulation and subsequent adoption of a regional Plan of Action for the period 2015-2024.

THEME 1 REGIONAL PERSPECTIVE ON INTEGRATION IN THE CONTEXT OF DURABLE SOLUTIONS

As part of the presentations and discussions in relation to the local integration of refugees in the region and other durable solutions, the participants recommended to:

1. Have regulatory and institutional frameworks that ensure the international protection and local integration of refugees.
2. Coordinate joint actions among public actors, host communities and refugees when developing public policies. In this regard, the experiences of Brazil and Ecuador in the formulation of public policies for the local integration of refugees, elaborated with the wide participation of refugees, were highlighted as good regional practices.

3. Secure the coordination of the institutions responsible for local integration in order to improve refugees’ effective access to “solidarity public services” and learn from established best practices on access to rights in some countries in the region.
4. Create opportunities for dialogue and cooperation in the framework of the principle of international solidarity for the formulation of other durable solutions, such as social and economic integration and for refugees to exercise their rights under the same conditions as nationals of the country where they live.
5. Build policies and a regional legal framework that respond to the challenges faced by bi-national families regarding the international protection of refugees, local integration and voluntary repatriation.
6. Design policies and programmes to promote the intercultural integration of refugees and host communities at a local level, giving priority to raising awareness within society, authorities and the media about the positive contribution of refugees to host communities.
7. Coordinate efforts to achieve a regional harmonization of refugee status determination procedures based on States sovereignty, transparency and the good practices in the international protection of refugees in Latin America.
8. Strengthen regional cooperation mechanisms in the field of international protection, local integration of refugees and protection of victims of trafficking and smuggling of migrants.
9. Develop a firm commitment of the South American region to eradicate statelessness within the timeframe of the future Declaration and Plan of Action (2015-2024).
10. Reinforce international cooperation in the search for durable solutions in the region, prioritizing tripartite mechanisms for voluntary repatriation and new initiatives for the local integration of refugees, taking into consideration the new migratory opportunities provided by the South American region.

11. Underline as good practice, the concept of human mobility used in Ecuador’s migration policy, as a way to combine various forms of protection and solutions –in particular with regards to local integration– which should guarantee coherence between the constitutional provisions, domestic legislation, national planning and institutional practices.
12. Highlight the experience of the Colombian Government of adopting public policies to respond to forced displacement, both through the creation of the bi-national commission with Ecuador, and particularly through the adoption of the Victims and Land Restitution Law, which will also benefit victims living abroad. Recognize that those initiatives are important achievements towards reaching durable solutions in a country of origin of refugees and displaced persons.
13. Emphasize that much has been achieved regionally in the development of legal frameworks that recognise equal rights for foreigners and nationals, but that we should aspire to effective equality.
14. Promote local integration of refugees through the following actions:
 - Raise awareness within host communities and authorities,
 - Highlight the relevance of personal documentation, its cost-free and expeditious issuance and renewal, without mention or reference to the person’s refugee status,
 - Promote the involvement of refugees and civil society organizations in public decision-making,
 - Strengthen access to work and all public services: health, education and employment.
15. Take note of the proposal brought forward by two delegations to consider using the term “return” to refer to voluntary repatriation, because the concept of “return” has a more positive connotation among communities. The Mexican delegation indicated that the international community uses the term “voluntary repatriation” since the adoption of the

Statute of UNHCR in 1950, while the concept of “return” is used in migration processes. UNHCR clarified that the term “voluntary repatriation” is used in international refugee law since the creation of the Agency by the General Assembly of the United Nations, while “return” refers to one of the solutions for the internally displaced and the term is often used in migratory contexts as a synonym for deportation.

16. Highlight the importance that refugees decision to opt for voluntary repatriation be free, individual and informed and be taken under conditions of safety and dignity, as part of a comprehensive strategy of durable solutions.
17. Stress that voluntary repatriation to the country of origin and local integration in the country of asylum are not excluding durable solutions for refugees, they complement within a comprehensive strategy of durable solutions.
18. Highlight Mexico’s experience in the area of voluntary repatriation as a good regional practice through the establishment of a quadripartite commission to facilitate coordination between the countries of origin and asylum, UNHCR and the refugees’ representatives themselves.
19. Emphasize that to ensure the voluntary nature of repatriation is necessary to have objective and updated country of origin information, verified with other sources of the civil society.
20. Avoid discrimination and prevent social disintegration through activities with local governments and direct work with host communities.
21. Highlight the positive contribution that refugees can bring to their countries of origin, by the experience and knowledge acquired in the country that has granted them protection, by becoming promoters of local development and contributing to host communities.
22. Promote refugees’ naturalization as part of a comprehensive durable solutions strategy.

THEME 2 RESETTLEMENT CHALLENGES AS AN EXPRESSION OF INTERNATIONAL SOLIDARITY

On resettlement as an expression of international solidarity States recommended to:

23. Aim for the resettlement programme to be strengthened within the region as an effective tool of protection and responsibility sharing.
24. Encourage the promotion of resettlement, together with other durable solutions, with the contribution of national and regional resources for its consolidation and sustainability. Regarding the proposal for the establishment of a regional fund with the support of the international community, it was highlighted the need to count with sufficient information on its form, composition, administration, in order to consider its suitability on the basis of a structured model.
25. Improve the resettlement procedure between countries, taking into account the evaluation of the existing programmes in the region, as recommended in the previous consultation held in Buenos Aires in March 2014, and through a greater discussion and coordination in order to prevent returns and new movements, and promote a better integration of the refugees in the new country.
26. Based on the shared experience of Brazil and Chile in the field of solidarity resettlement, develop public policies build upon research and the particular needs of resettled refugees, highlighting the importance of training host communities on an effective and full integration.
27. Reinforce the principle of the extraterritorial recognition of refugee status for the purpose of *non-refoulement* and assess the impact of the regional legal framework regarding the movement of refugees, who are nationals of countries of the region.
28. Strengthen cooperation and the exchange of regional information in the context of mixed migra-

tory movements, to prevent trafficking in persons and migrant smuggling, to protect these persons while preserving the refugee status for those in need of international protection.

29. Invite other countries in the region to join the solidarity resettlement programme under the principle of responsibility sharing in order to provide refugees with a durable solution and harmonize regional actions and responses, considering that our region offers the best conditions for a peaceful and sustainable integration.

THEME 3 CHALLENGES RELATED TO FORCED DISPLACEMENT AND SOLUTIONS FROM THE PERSPECTIVE OF REFUGEES AND THE CIVIL SOCIETY

Participating States highlighted the participation and the significant contribution of young refugees and refugee women, as well as the civil society organizations, and agreed to strongly support efforts aimed at a long-sought and lasting peace in the region. In addition, States underlined the need to consider the dual vulnerability of young refugees, particularly for young mothers, and to foster greater respect for their workers’ rights.

The young and refugee women made the following recommendations to ensure effective refugee integration:

30. Develop public policies that facilitate the incorporation of young refugees in educational systems within their own communities without discrimination, and for the educational systems to be flexible enough to ensure that young people can continue supporting their families through income-generating activities.
31. Establish adequate and effective mechanisms for the recognition and homologation of diplomas, based on existing regional frameworks.
32. Include refugees in social programmes to facilitate access to work and work protection, as well as to programmes to eradicate or fight poverty.

33. Issue and renew in a timely and prompt manner refugee’s personal documentation to promote local integration and the effective exercise of their rights.
34. Encourage livelihoods or income-generating projects, as well as vocational and professional training programmes that consider the different protection needs of women, boys, girls and adolescent refugees.

Civil society organizations made the following recommendations on durable solutions:

35. Recognize that local integration requires the participation of the refugee population, civil society and host communities.
36. Review the vulnerability criteria established for the resettlement of refugee population in need of this durable solution.
37. Highlight the challenges of a new protection agenda in the Americas, related to the disproportionate impact of internal displacement on women, children, Afro-descendants, indigenous peoples and LGBTI persons.
38. Recognize that migration alternatives may be an option for people who have not had access to international protection, while always preserving the right to seek international protection as refugees. This requires reliable information about existing alternative options in the country, including information on refugee status determination procedures.
39. Continue promoting the borders of solidarity programme, guaranteeing the respect of human rights in border areas, including the judicialization of rights, increasing the presence of State institutions in these areas, the respect of due process guarantees in refugee status determination procedures, strengthening CONARE’s technical and financial capacities in border areas, and highlighting awareness on the invisibility of the trafficking in persons and smuggling of migrant and their need for a differentiated attention.

40. Include in the new Plan of Action mechanisms of accompaniment and follow-up with the participation of the civil society, in addition to the States and UNHCR.

THEME 4

INTERNATIONAL PROTECTION AND MIGRATION ALTERNATIVES WITHIN NATIONAL AND REGIONAL LEGAL FRAMEWORKS

As part of a comprehensive strategy of durable solutions which includes other alternatives, States discussed the possibility of a fourth solution in South America so that refugees and asylum-seekers may benefit from existing migratory options within national and regional legal frameworks.

States noted the need to deepen the appropriate frameworks to facilitate human mobility, for example within the MERCOSUR and the Andean Community. In this context, it was stressed that the growing phenomenon of south-south and intraregional migration has components of trans-border migration, labour migration, and movement of refugees and displaced persons.

States highlighted the significant progress made in the regional legal frameworks that increasingly influence migration and refugee laws, which is leading to a paradigm shift in the region. Therefore, it was noted that the right to migrate is now part of the dialogue within the region, and that at the regional level a person's specific circumstances are ceasing to be the decisive issue to qualify for residency in another country, whilst nationality is becoming the main factor.

States noted that the difference in the rights and obligations between migrants and refugees—both population mostly originating from countries in the region—is ever decreasing and limited in many cases to the principle of *non-refoulement* of refugees.

In order to promote migration alternatives in the region, States indicated the need to define the protection

safeguards through a regional framework that guarantees the extraterritorial recognition of refugee status and the unrestricted respect for the principle of *non-refoulement*.

The Ecuadorean delegation proposed to re-think the refugee concept enshrined in the 1951 Convention and the Cartagena Declaration to include emerging situations of human mobility, as well as the importance of removing obstacles to access to refugee status determination procedures. Additionally, they recommended improving and harmonizing admissibility procedures, not only from the State's perspective but also from that of people in situation of human mobility, and the need to advance towards policies aimed at receiving persons in situation of human mobility. The Ecuadorean delegation also noted the desirability of having legislation for the protection of migrants abroad, to facilitate a return that guarantees their full reintegration to the country, as well as the admission of populations affected by climate change, all from the perspective of human mobility as an integrating concept.

The participating States recommended:

41. Consider the option of distinguishing, within the legal framework, the status or juridical condition of refugee from the migratory category assigned to refugees for their residence in the countries of the region, as is already done in different Latin American countries, by ensuring their stay in the territory.
42. Encourage local integration of refugees through the change of their migratory status to permanent residence, without losing their refugee status, as well as ensure the right to naturalization to those who wish to do so, through streamlined and accessible procedures, taking into consideration the practices already in place in various Latin American countries.

43. Consider adopting alternative complementary mechanisms of humanitarian protection to guarantee that those who have crossed an international border for reasons not included in the 1951 Convention, and who require international protection for different motives, may also access such protection, considering, for example, the experience of Brazil to receive Haitian nationals since 2010 and issuing them humanitarian visas. Regarding this issue, it was noted that humanitarian visas are regulated in different Latin American countries and represent an important protection tools for these situations.

Quito, 10 June 2014.

Andean Countries



Refugees celebrated their right to diversity during World Refugee Day in Guayaquil, Ecuador.

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CIVIL SOCIETY POSITION PAPER

INTERNATIONAL PROTECTION, LASTING SOLUTIONS AND INTERNATIONAL COOPERATION

Quito, 6th of June 2014

The civil society organizations from the Andean region welcome the invitation from the States to honour the Cartagena Declaration in its 30th anniversary, a regional mechanism that facilitated the protection of victims of Central American conflicts. Currently this Declaration continues to be fully applicable and valid for the events that affect our region, and it is a timely moment to apply it to the emerging needs of protection that arise from new situations of violence and forced migration flows.

Invoking the position of international solidarity assumed by the Cartagena Declaration, as well as the Mexico Plan of Action that followed it, we appreci-

ate our participation in this space in which we celebrate that our proposals reach the States and UNHCR with the goals of strengthening the right to asylum in our region and of broadening the possibilities of protection for forced migrants and internally displaced persons, supported through coordinated regional actions that guarantee integrated assistance for victims.

There are many challenges that we are facing and will face in the next ten years, and it is for this reason that we should contemplate regional protection mechanisms for asylum seekers, refugees, internally displaced persons and forced migrants in the framework of contemporary migration trends that broaden citizenship, strengthening the guarantee of rights.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

We acknowledge the important progress that has been achieved in the area of protection in the Andean region during the last few years and we urge the States to continue to promote and strengthen the broader definition of refugee included in the Cartagena Declaration, as well as all of the international instruments in the area of Human Rights, International Humanitarian Law and International Refugee Law, including Conventions on Statelessness.

I DURABLE SOLUTIONS

A LOCAL INTEGRATION

In the Andean region it is necessary that the States implement effective and timely actions that guarantee the right of the refugee population to local integration. The relevant public entities don't always develop coordinated policies, plans and programs that favour the integration of refugees.

We highlight concerns regarding integration for asylum seekers that face difficulties in accessing their rights due to delays in recognising their status.

In the majority of the countries in the region, the lack of participation and involvement in the construction of public policies that guarantee effective local integration among refugee population, civil society and local government is extremely common.

RECOMMENDATIONS

1. Strengthen the public entities that are responsible for providing services to refugees, developing local and national inter-sectorial actions that work to achieve the integration of refugees. These actions should take into account differentiated criteria of age, gender and diversity in order to ensure the upholding of standards in relation to accessing their

fundamental rights (work, education, health, housing, among others) and be timely and effective to achieve local integration.

2. Guarantee integrated health care, including mental health services, unrestricted access to all levels of education, language courses in the host country, access to dignified housing, training for employment, access to dignified work and to financial services, regardless of an individual's migratory condition, achieved through targeted plans, programs and services.
3. Ensure the ratification and adoption of international instruments and always respect the principle of progressiveness in terms of social policy, as well as guaranteeing the inclusion of the population in need of international protection and vulnerable migrants.
4. Provide appropriate documentation from the beginning of the procedure. The format should be the same as for the rest of the population and should not mention refugee or asylum seeker on it.
5. Guarantee the right to work for asylum seekers in all of the countries in the region.
6. Guarantee that refugees can access permanent residency. Also ensure the right to citizenship for those who desire it through flexible and accessible procedures.
7. Facilitate family unity processes, respecting culture, cosmovision, life stories and sexual and religious diversity of the affected people.
8. Allocate sufficient and adequate budgets for the implementation of public policies for local integration.
9. Reinforce actions that encourage intercultural dialogue in order to minimize discriminatory attitudes towards the population in need of protection and migrants.

THE SPECIFIC PROBLEM OF INTERNAL DISPLACEMENT

Situations of internal forced displacement are observed in different countries from the Andean region and are due to different causes: armed conflict, generalized

violence, socio-political violence, megaprojects, natural disasters, national and transnational organized crime and gender-based violence. Associated with these causes are phenomena such as human trafficking, migrant smuggling, the recruitment of children, adolescents and young people for criminal purposes, social and territorial control exercised by armed actors and groups and hired murderers, among other violent situations that force people from their places of origin and oblige them to seek international protection.

The country in the region that has the highest number of people that have been internally forcibly displaced is Colombia. More than five million people have been forced to abandon their homes and many of these are not yet living in situations in which they can overcome their vulnerability. Subsequently, internal forced displacement in Colombia continues to be one of the events with the greatest impact on the humanitarian crisis faced by the country. It is an emblematic case in the region that can be taken into account as an example of all of the challenges that must be addressed in the new protection agenda in the Americas.

Internal forced displacement affects in a differentiated manner people based on their gender, ethnicity, race and age. This is related to the causes that generate displacement, the discrimination that victims have traditionally suffered and the traditional roles assumed by families, communities, organizations and work environments.

The internal Colombian legislation has made progress towards the recognition, attention, assistance and reparation by the State of the victims of the armed conflict, including the victims of forced displacement. But neither this recognition nor the negotiation process between the Colombian Government and the FARC guerrilla group have been able to prevent the continuous increase in the number of internally displaced people in Colombia. This trend responds to

new actors, flows and scenarios where there is a lack of protection, that is shared in some cases by other countries from the region: 1) the groups that have inherited paramilitary structures or drug-trafficking groups are managed by criminal networks and exercise pressure on populations while having a local, national and transnational presence; 2) the urbanization of the armed conflict or the presence of violent actors that can coerce populations in the cities and generate intra-urban displacement; 3) anthropogenic causes (mega projects and extraction of natural resources, etc.); 4) increase in the human trafficking and migrant smuggling with different goals (sexual or labour exploitation) in border areas.

All of these factors impede the real local integration of the internally displaced population.

RECOMMENDATIONS

1. Recognise the new actors that generate internal forced displacements in the region.
2. Recognise that some causes of forced displacement have greater effects on women, children and adolescents, rural and ethnic populations and LGBTI people. Assistance and reparation policies should take into account these particularities and attack the causes that generate displacement.
3. Incorporate and make effective, in legal regulations from the States, standards for the provision of assistance and reparations to victims of internal forced displacement that take into consideration the Guiding Principles on Internal Displacement, the framework of durable solutions from UNHCR, the principles of reparations from the International Criminal Court and the recognition of a differential approach to gender, ethnicity and age by the Colombian Constitutional Court. For this reason, UNHCR can be developed as a dynamic leader of the process to consolidate standards through advocacy, monitoring, evaluation and facilitation of communication between the actors involved

(victims, community-based organizations, civil society organizations and State institutions).

4. Share experiences and good practices relating to protection, assistance and reparation of internally displaced people by national governments with international recognised protection standards.
5. Design and execute policies that fulfil the social, economic and cultural rights of host communities as a vehicle to guarantee the special protection of the internally displaced people that arrive to these communities.

B RESETTLEMENT

In the current worldwide context, each day there are more people in need of resettlement and the places available are insufficient. In addition, the solidarity resettlement programs are financed in large part by the international community through UNHCR with a limited contribution from the States of the region.

A reduced number of refugees have access to resettlement and there are challenges in identifying the cases that are eligible for these programs, given that many don't comply with the established vulnerability criteria. There is also a lack of information exchange and coordination regarding resettlement processes and local integration of families that are resettled in the third settlement country.

RECOMMENDATIONS

1. Review the eligibility criteria, in terms of vulnerability, that determine the participation of refugees in resettlement programs and their acceptance in the third settlement country.
2. Provide adequate information to the population regarding resettlement programs and acceptance in the third host country.
3. Guarantee that joining the resettlement program doesn't result in the loss of an individual's right to appeal again for protection from the first host country.

4. Guarantee the integrity of the family unit in the resettlement programs, independent of the nationality or migratory status of family members, which involves an unconventional approach to the concept of family.
5. Promote access to rights and local integration in the first refuge country as an initial response, in such a way that resettlement isn't perceived as the only long-term solution.
6. Guarantee a flow of information exchange between the first host country, the third host country and the organizations involved in the resettlement process to achieve an effective monitoring of the integration process of the person in their final destination.
7. Achieve a better commitment from the States in the region in complying with the agreements from the Resettlement Solidarity Programme included in the Mexico Action Plan through the conformation of a common fund that guarantees continuity and broadening of the programme, increasing the current available places for refugees both within and outside of the region.

C REPATRIATION AND VOLUNTARY RETURN

Currently in the region there are no minimum, indispensable protection and safety minimum standards for the implementation of possible repatriation processes or the return of victims that seek protection. It is necessary to carefully evaluate any program or related measure involving returns and repatriations.

RECOMMENDATIONS

1. Guarantee that a possible return/repatriation is based within an informed, voluntary, safe, dignified, accompanied and assisted process and sustained in an information synthesis of a range of sources (international organizations, civil society, press, previous visits, etc.) regarding the security conditions and the possibilities of reinsertion in the country of origin.

2. Don't force repatriation through the immediate termination of refugee status, considering that a successful result for the end of the armed confrontation between the Colombian government and the FARC guerrilla won't necessarily guarantee an end to violence.
3. Use contrasting sources of information for the evaluation of risks associated with returning based on security and living conditions. This procedure doesn't only consider refugee situations as the cause of armed conflicts but also forced migrations associated with human trafficking, migrant smuggling, victims of generalized violence or other situations of violence or displacement caused by megaprojects.
4. Accompany voluntary repatriation processes through tri-party commissions (States, civil society, UNHCR) in such a way that data on the situation of the country of origin is exchanged and discussed at a trans-national level in a neutral manner. This mechanism will mean that decisions related to people in need of international protection are taken in an informed and voluntary manner. These processes should be projected through mechanisms that monitor the situations of those who have been repatriated to guarantee their rights.

D ALTERNATIVE MIGRATION WITH PROTECTION SAFEGUARDS

The existence of migration alternatives that comply with protection safeguards, both at the national level as well as at the regional level, could constitute a pragmatic solution for people in need of international protection that haven't been able to access the procedure or are recognised as refugees, especially those that have been displaced by new causes of violence. However, these alternatives shouldn't decrease awareness of the need for international protection and the right to seek asylum, nor represent a step backwards in relation to international protection standards and access to respective procedures.

RECOMMENDATIONS

1. Provide, through authorities located in the ports of entry, reliable, neutral and complete information about the existing migration alternatives in the country, as well as access to refugee procedures.
2. Guarantee effective access to existing alternative migration laws. Adapt the costs, requirements and procedures according to the real capacities/profiles of the populations that migrate to the region. There should not be a requirement of having a regular migration status in order to access a migration alternative.
3. Contemplate, both at national level as well as a regional one, migration alternatives for people in need of international protection, complying with protection safeguards (no-return, no criminal or financial sanctions) considering the new causes of forced migration and guaranteeing unrestricted access to rights and services.
4. Incorporate the principle of extra-territoriality of the Convention into regional integration instruments, with the goal of achieving adherence to the principles of no-return, no-sanctions and ensuring the integrity of family units throughout these processes.
5. Guarantee the continuity of a person's refugee status and the international protection that this entails, independent of the migratory status alternative that the person chooses in the host country.

VICTIMS' LAW

The Victims' Law in Colombia constitutes an important progress in terms of recognition of the armed conflict in the country and of the humanitarian consequences suffered by the civilian population. Even if this doesn't constitute a durable solution in itself, it is relevant in this framework.

This initiative of transitional justice is designed as an institutional mechanism of reparation, both for the people affected that have remained in Colombian ter-

ritory, as well as for those who have left the country seeking international protection.

However, given that the armed confrontation hasn't ceased, there are still situations of violence that threaten reparation processes, particularly in the land restitution process. There are also concerns about specific elements within the law, such as for example the declaration that status as a vulnerable person ends once ten years have passed since the displacement occurred. There is a sub-registration in this process due to the distrust that victims have of public institutions, limitations in the format for making declarations that don't allow for the identification of urban migration flows and mass expulsions, as well as problems in the assessment process which doesn't recognise victims from other situations of violence.

The processes that victims should follow to access mechanisms of assistance and reparations are slow and in many cases difficult to access. The humanitarian assistance that is available is extremely limited and doesn't provide the minimum necessary circumstances to survive in dignified conditions. The monetary amount of the compensation offered is very small. Access to rights such as health, housing and nutrition are precarious. There is a sharing of responsibility between the national government and territorial governments, which imposes unsustainable workloads on both territorial entities and public ministries. There is also a lack of communication between the symbolic memory mechanisms and administrative entities and there are no guarantees of non-repetition of victimization in most areas of the country. Furthermore, the law has become paternalistic, given that it doesn't have the capacity to facilitate reparations as the conflict continues to produce victims.

Finally, the way in which the land restitution process has been conceived, restricts access for the majority of dispossessed and displaced victims. The criteria of

macro-focusing and micro-focusing by those responsible for dividing land that will be returned in restitution processes, strongly reduce the possibility that legal processes are used to determine the land restitution.

To summarise, the Victims' Law has generated valid expectations with regards to assistance and reparations, however the problems in its implementation have generated delays and obstacles that don't satisfy expectations, which has produced a revictimization.

RECOMMENDATIONS

1. Maintain the backing of the peace process developed between the FARC guerrilla and the Colombian State in La Havana, Cuba and guarantee that the rights, needs and proposals of the internally displaced and refugee populations in the region are taken into account in these negotiations.
2. Recognise that the agreements that arise from this negotiation peace process, even though they represent significant progress in the road towards peace, will not necessarily imply a significant and immediate reduction to the violations of human rights in the country. On the contrary, it is necessary to be prepared for the acceleration of other elements of the conflict. It is imperative that high protection standards are maintained for those who are forcibly displaced and seek international protection during an eventual scenario of post-conflict agreements.
3. Urge the States from the region to declare that they recognise the Victims' Law as a reparation mechanism and not a protection mechanism.
4. The Colombian State should share appropriate, timely and relevant information with the host countries regarding the reparations process for the Victims' Law, its limits and scope.
5. Facilitate, between host countries, access to assistance services and the integrated reparation process, which includes compensation, restitution, meeting of needs, rehabilitation and guarantees of

non-repetition, as well as the right to truth and justice as defined in the Victims' Law.

6. Generate in the Colombian consulates appropriate mechanisms for non-revictimization, such as privacy, confidentiality, legal and psychosocial accompaniment, as well as ensuring that victims can choose the gender of their interviewer through the adoption of a differential approach. In particular, we request that awareness raising and training processes are implemented for the public officials that are responsible for attending to this population.

II PROTECTION GAPS

A BORDERS

The border zones and ports of entry from the region are complex scenarios that haven't been attended correctly by the States. This has led to the creation of precarious conditions that affect people in need of international protection, as well as the population that have settled in border zones.

Many of the border zones have become trafficking routes for drugs, weapons and people and have been affected by delinquency and crime, generating contemporary forms of violence caused by the presence of illegal groups and actors. The situation is complex, given that these are the same routes in which there are mixed migration flows, as well as a large number of people in need of international protection. The presence of institutions in the border areas is weak, with a focus on security while there is insufficient assistance to guarantee and protect human rights.

The application of security and migration policies by authorities at border points and the lack of knowledge and non-provision of information regarding international protection and/or the possibility of applying for

refugee status represent a risk to the people in need of international protection present in these areas. In some cases refugees and asylum seekers report rejection, unjust treatment and extortion, carried out by security and migration authorities.

In some countries, legislative discussions have begun regarding laws relating to human mobility and border zones. This highlights the need to strengthen proposals to develop sustainable and long-lasting integration actions, as well as to provide adequate assistance to people in need of international protection and migrants.

Civil society considers important to continue with the impetus and strengthening of 'solidarity borders' in which a human rights approach is applied. This implies an understanding of a country's own border dynamics, the provision of special assistance to vulnerable groups, using a differential approach, and integrated access to rights, both for the mobilized population as well as for the local population.

RECOMMENDATIONS

1. Guarantee the protection of human rights in the border territories. Enable mechanisms for the investigation and prosecution of violations of human rights to guarantee justice and reparation for the damage caused to people in the border zones. The States are responsible for the integrated protection of all people in their territory, independent of their migratory status.
2. Increase the presence of institutions and relevant authorities in the border zones with a greater emphasis on rural and remote zones to guarantee access to rights and basic services.
3. Incorporate protection safeguards in internal legislation related to border security for people in need of international protection and outline the specific competencies of security, protection, social services and migration authorities, among others, that are involved in border processes and territories.

4. Ensure the application of differentiated processes of reception and assistance for people in need of international protection, observing the principles of no-return, no-detention, no-punishment and family unity. This also includes no-detention, no-deportation and no-expulsions related to migration¹.
5. Strengthen the border presence of consular institutions and public authorities of the host country with the goal of providing the necessary administrative facilities to access protection, migration and civil procedures, without generating risks of further mobilization or return to the country of origin.
6. Generate bi-national initiatives to clarify the situation in cases of double birth registration, in which the *pro-homine* principle of interpretation is considered, without generating administrative, financial or penal consequences for people that are in this situation. Guarantee that people in need of international protection with double birth records aren't impeded from continuing with the procedure of applying for refugee status.
7. Consolidate bi-national committees located at borders that involve governmental institutions, regional and international organizations with relevant mandates and civil society representatives. These committees, through the monitoring and analysis of territories and border dynamics, could generate early warning systems, identify population groups that are especially vulnerable and support the de-

velopment of border plans and programs. It is recommended that the State assume leadership and coordination of this space through Ombudsman's Offices and that their initiatives have a binding authority.

B DUE PROCESS

It is important to guarantee and protect, in an integrated and effective manner, the right to apply for refugee status in the region. The national legislation relating to this area doesn't always include the broadened definition contained within the Cartagena Declaration and the *sûr place* concept as it relates to refugees. The existing procedures for the determination of refugee status present gaps in terms of guaranteeing due process. As a result of this, a number of people seeking international protection don't have their status as refugees recognised, and remain in the host country with an irregular status, which seriously affects their possibilities of local integration.

RECOMMENDATIONS

1. Incorporate and apply the broadened definition of refugees from the Cartagena Declaration, as well as the *sûr place* definition of refugees in the refugee status determination.
2. Revoke possible deadlines for the presentation of the application for refugee status determination.
3. Guarantee, through duly motivated decisions, the right to legal defence for those applying for refugee status. Apply, through the allocation of resources, the same deadlines as ordinary administrative legal proceedings.
4. Apply the principle of good faith in the presentation of evidence.
5. Strengthen the technical and financial capacities of the CONARES or their equivalent so that the procedure for refugee status determination can be expedited.
6. Guarantee appropriate training for public officials regarding the refugee status determination, espe-

cially those present in ports of entry and border controls, with the goal that they can transmit quality information about the procedure.

7. Guarantee that the CONARES or equivalent entities maintain administrative coverage in a permanent manner in the zones where there is the highest flow of people in need of international protection and provide mobile assistance in zones where there are relevant situations.
8. The commissions for the refugee status determination should have a tri-party structure with the participation of public officials, members of civil society and UNHCR. The people that form the eligibility commissions, as well as their officers, should be competent, independent and impartial and come from a number of different disciplines.
9. Determine in the legal framework of the criteria used to review applications for refugee status determination. Guarantee due notification and the opportunity to appeal if a person's refugee status is cancelled.
10. In the legal framework covering the refugee status determination procedures, specifically define what are "reasons of national security or public order" that would require the expulsion of a refugee or asylum seeker to their country of origin in accordance with Article 32 of the 1951 Convention. Guarantee respect, the right to be listened to, the right to appeal, as well as the right to have time to apply for legal entry to another country.
11. Guarantee, in the case that there is no permission to leave the country of origin by the father/mother, access of children and adolescents to the refugee status determination procedure, without this affecting the investigation by competent authorities of the reasons why they haven't been able to obtain this permission.

C HUMAN TRAFFICKING

Among the diverse migration movements that are produced in the region, there are cases of human traffick-

ing and sexual exploitation that mainly affect children, adolescents and women. These situations can lead to a need for international protection when: a) these people are refugees or asylum seekers and, for a range of reasons, are in human trafficking situations; b) they are victims of trafficking and as a result are in need of international protection.

In the region there are deficiencies in terms of policies, institutional frameworks, legislation and sufficient resources to combat the trade and trafficking of people. While the legal framework for refugees doesn't contain a specific mention of the victims of human trafficking, it could be broadened to include them, in accordance with the interpretative guidelines offered by UNHCR. There is less information about the people that are the objects of trafficking and as a result the response is very weak.

The invisibility of the problem of human trafficking, together with the lack of knowledge among staff that attend to victims about the possibility for them to seek asylum implies that victims don't have access to the refugee status determination procedure.

RECOMMENDATIONS

1. Incorporate in national and regional public policies, as well as in policies related to cross-border security: a) the strengthening of programs and services that provide differentiated and specialized assistance to the victims of human trafficking; b) guarantee their right to seek asylum, establishing minimum criteria and standards.
2. Guarantee the principle of no-return for victims or potential victims of crimes such as human trafficking through procedures that ensure an evaluation of the risks associated with return and access to refugee status procedures.
3. Ensure that staff responsible for refugee status determination procedures refers suspected victims of human trafficking to protection specialists and assistance mechanisms.

¹ The Inter-American Court of Human Rights has stated that while the States can begin actions when a person does not comply with a national law in the area of migration, the States should respect the human rights of the people without any form of discrimination, taking into account that "*in the framework of international law certain limits to the application of migration policy have been developed that impose, in procedures of expulsion or deportation of foreigners, a strict following of the guarantees of due process, legal protection and respect for human dignity, with independence on the legal or migratory status of the migrant*". Inter-American Court of Human Rights (CIDH) – Case of the Pacheco Tineo Family vs. The Plurinational State of Bolivia. OEA, 2013, Available at: http://www.corteidh.or.cr/docs/casos/articulos/resumen_272_esp.pdf.

Colombian refugee living
in a shantytown in Ureña,
near San Cristobal.
Táchira, Venezuela.
©UNHCR / B. HEGER



4. Include the victims of human trafficking that are in need of international protection as priority cases for resettlement.
5. Promote an investigation implemented by the United Nations System and the States regarding the phenomenon of human trafficking and migrant smuggling in the region, with the goal of generating guidelines for their protection.

The Brasilia Action Plan should include goals, responsibilities, timelines and monitoring mechanisms. It is recommended that a tri-party monitoring mechanism (governments, UNHCR, and civil society) be established to facilitate the monitoring of the commitments that have been assumed.

Quito, 6 June 2014.

This position statement document from the civil society organizations in the Andean Region is the result of a process of consultations, facilitated by NRC – Norwegian Refugee Council, carried out in 5 countries from the Andean Region: Bolivia, Colombia, Ecuador, Peru and Venezuela. This process culminated with a regional meeting that took place in Quito on the 5th and 6th of June 2014 in which 15 civil society organizations gathered to represent the civil society organizations from their respective countries. During this meeting the representatives reached a consensus regarding their region's position in the framework of the commemoration of Cartagena+30.

THE CIVIL SOCIETY ORGANIZATIONS THAT WERE PRESENT IN THE REGIONAL EVENT WERE:

BOLIVIA

Pastoral de Movilidad Humana – PMH

COLOMBIA

Servicio Jesuita a Refugiados– Colombia
Corporación Humanas
CODHES
Universidad Javeriana
Iniciativa de Mujeres por la Paz –IMP

ECUADOR

Asylum Access Ecuador – AAE
Fundación Esperanza (Ec)
Servicio Jesuita a Refugiados – SJR (Ec)
Fundación Ambiente y Sociedad – FAS
Misión Escalabriniiana

PERU

Comisión Andina de Juristas

VENEZUELA

Servicio Jesuita a Refugiados – SJR Ven
Universidad Católica del Táchira
RET – Venezuela

LIST OF ORGANIZATIONS THAT REPRESENTED THE CIVIL SOCIETY IN THE NATIONAL MEETINGS:

BOLIVIA:

Servicio Jesuita de Migraciones –SJM
Asociación de Refugiados Peruanos– ARPEBOL
Instituto de Terapia e Investigación Contra la Tortura
Universidad Salesiana de Bolivia
Mesa Técnica de Migraciones

COLOMBIA:

Universidad Nacional de Colombia
Comisión Colombiana de Juristas– CCJ
Project Counselling Services –PCS
Instituto Pensar
Plataforma Multiagencial DIAL

ECUADOR:

Federación de Mujeres de Sucumbíos
CODHES–Ecuador
HIAS Ecuador
RET Ecuador
PRODEM–GIZ

PERU

Comisión Católica Peruana de Migraciones
Instituto de Democracia y DDHH (IDEHPUCP) de la Pontificia Universidad Católica de Perú
Encuentros (Conferencia Episcopal)
Pastoral de Movilidad Humana (Conferencia Episcopal)

VENEZUELA:

Centro DDHH Univ. Católica Andrés Bello
HIAS – Venezuela

PREFACE | MARTA JUÁREZ

INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30” INFORMATION PAPER

SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA

SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO

BRAZIL DECLARATION

BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

Refugee child living in a border shantytown in the Venezuelan border with Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

**I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH** | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

**OPENING CEREMONY
AGENDA
SPEECHES**

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
**BRAZIL DECLARATION
BRAZIL PLAN OF ACTION**

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

The Kuna indigenous people have suffered for years the dispossession of their lands, compounded by the activities of illegal armed groups.

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INTERNATIONAL PROTECTION CHALLENGES AND OPPORTUNITIES FOR A NEW STRATEGIC FRAMEWORK FOR REGIONAL COOPERATION

+30
CARTAGENA

Mesoamerica

 **UNHCR**
The UN Refugee Agency

 Gobierno de Reconciliación
y Unidad Nacional
El Pueblo, Paralelante!



SUBREGIONAL CONSULTATION

MANAGUA 10-11 JULY 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

THURSDAY, JULY 10TH

INTERNATIONAL PROTECTION CHALLENGES

- 08.30 Registration
- 09.00 Opening remarks
Ms. Janet Lim, Assistant High Commissioner for Operations, UNHCR
Mr. Werner Vargas, Executive Director, SICA
H.E. Mr. Orlando Gómez, Vice-Minister of Foreign Affairs, Nicaragua
- 09.30 Information on the process of Cartagena+30 Mr. Carlos Maldonado, UNHCR Cartagena+30 Coordinator
Methodology for the meeting: Presidency
Civil Society's participation process: Mr. Enrique Torrella, Coordinator, Norwegian Refugee Council, Panama

PROGRESS AND CHALLENGES OF PROTECTION IN MESOAMERICA

- 09.45 Main achievements of the Mexico Plan of Action and current challenges
Chaired by Ambassador Rosario Green, Principal Expert
- UNHCR panellist (15 min.): Mr. Juan Carlos Murillo, Senior Regional Legal Officer, Regional Legal Unit, UNHCR
Progress and Challenges of the Mexico Plan of Action
 - Government panellist (15 min.): Ministry of Foreign Affairs of Mexico
Critical Analysis of the Mexico Plan of Action from the perspective of States in the Mesoamerican region
 - Civil society panellist (15 min.): Mr. Enrique Torrella, Coordinator, Norwegian Refugee Council, Panama
Critical analysis of the Mexico Plan of Action from the perspective of civil society
 - Debate in plenary (30 min.)
- 11.00 Coffee Break

NEW TRENDS OF FORCED DISPLACEMENT IN MESOAMERICA AND PROTECTION CHALLENGES

- 11.15 Background: New trends of forced displacement in Mesoamerica
Mr. José Samaniego, Deputy Representative, Regional Representation for Central America, Cuba and Mexico, UNHCR
- Protection challenges due to the new trends of forced displacement caused by transnational organized crime and other forms of violence in Mesoamerica
Chaired by Ms. Virginie André, Head for Central America and Mexico, European Commission Humanitarian Aid and Civil Protection, ECHO
- Government panellist (15 min.): Ms. Yolanda del Carmen Perez Molina, Under Secretary for Social Inclusion, Ministry for Development and Social Inclusion, Honduras
States' challenges due to the new trends of forced displacement for reasons related to transnational organized crime and other forms of violence
 - Government panellist (15 min.): Ms. Liduvina Magarín, Vice Minister for Salvadorian Nationals Abroad, Ministry of Foreign Affairs, El Salvador
Dynamics of violence and protection of individuals at high risk
 - SICA panellist (15 min.): Mr. Werner Vargas, Executive Director, SICA
Regional protection platform to address challenges posed by violence
 - Panellist academia (15 min.): Dr. David Cantor, Director of the Refugee Law Initiative, University of London
Organized crime and the dynamics of forced migration in Latin America: a perspective from the academia
 - Debate in Plenary (45 min.)

- 13.15 Lunch Break
- 14.30 International protection considerations in the treatment of mixed migratory movements in the region
Chaired by Ms. Águeda Marín, Regional Specialist, Combat to Trafficking in Persons and Voluntary Assisted Return, OIM
- Civil society panellist (15 min.): Mr. José Antonio Guevara, Executive Director of the Mexican Commission for the Defence and Promotion of Human Rights
Changes in the dynamics of regional migration
 - Expert panellist (15 min.): Pbro. Juan Luis Carbajal, Pastoral of Human Mobility, Guatemala
Protection in the new migration dynamics
 - Government panellist (15 min.): Dr. Martha Rodríguez, Director of Consular Services, Ministry of Foreign Affairs, Nicaragua
Shared responsibility for the management of migration movements: good regional practices
 - Debate in Plenary (45 min.)
- 16.00 Coffee Break
- 16.15 Special protection needs due to new trends of forced displacement in the region: unaccompanied children and adolescents
Chaired by Dr. Elizabeth Ferris, Senior Fellow and Co-Director, Brookings Institution
- Panellist academia (15 min.): Dr. Mauricio Gaborit, Head, Department of Psychology, Universidad Centroamericana "José Simeón Cañas", El Salvador
Considerations for a comprehensive response to the specific protection needs of boys, girls and adolescents
 - Government panellist (15 min.): Mr. José Arturo Rodríguez, Director of Migratory Affairs, Ministry of Foreign Affairs, Guatemala
Regional Initiatives for the identification and protection of non-accompanied boys, girls and adolescents
 - Government panellist (15 min.): Dr. Elva Cárdenas, General Director of Child Protection, Family Development System (DIF), Mexico
Identification and protection mechanisms for unaccompanied children and adolescents: the experience of Mexico
 - Civil society panellist (15 min.): Ms. Kristyn Peck, Deputy Director, Children Service, United States Conference of Catholic Bishops
The protection needs of Central American boys, girls and adolescent in the United States of America
 - Debate in Plenary (45 min.)
- 18.00 Closure
- 18.00 Cocktail hosted by SICA and the Government of Nicaragua

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

FRIDAY, JULY 11TH

INTERNATIONAL PROTECTION CHALLENGES

09.00 Presentation of conclusions and recommendations of first day (Chairperson) and approval in plenary session

MESOAMERICA AS A REGIONAL PROTECTION SPACE

09.30 Background: Mesoamerica as a regional protection space
Mr. Juan Carlos Murillo, Senior Regional Legal Officer, Regional Legal Unit, UNHCR

Effective access to and strengthening of national refugee status determination procedures and exchange of good practices
Chaired by Mr. Rick Jackson, Expert, UNHCR

- Panellist Inter-American Court of Human Rights (15 min.): Ms. Romina I. Sijniensky, Lawyer Coordinator, Inter-American Court of Human Rights
Refugee status determination procedures and minimum guarantees of due process of law in the Inter-American System
- Civil society panellist (15 min.): Ms. Gloria Maklouf, Director, Association of International Consultants and Advisors, Costa Rica
Challenges to the access to refugee status determination procedures, legal representation and due process
- Government panellist (15 min.): Ms. Cinthia Pérez Trejo, Area Director, Mexican Commission for the Support of Refugees (COMAR)
Institutional strengthening and good practices in the determination of refugee status in countries of the Mesoamerican region
- Debate in plenary (45 min.)

11.15 Coffee Break

11.30 Comprehensive strategy for durable solutions with an emphasis on local integration
Chaired by Mr. Enrique Torrella, Coordinator, Norwegian Refugee Council, Panama

- Governments panellist (15 min.): Ms. Kathya Rodríguez Araica, Director General, General Direction of Migration, Costa Rica
Local Integration as public policy
- Expert panellist (15 min.): Mr. Alfredo Castillero Hoyos, Independent expert
Regulatory framework to promote refugees' integration in countries of asylum through change of immigration status and naturalization
- Civil society panellist (15 min.): Ms. Diana Martínez, Sin Fronteras, Mexico
Latin American initiatives to strengthen refugees' livelihoods through microcredit, vocational training and employment
- Debate in Plenary (45 min.)

13.00 Lunch Break

14.00 Developments in the prevention of statelessness and the protection of stateless persons in Mesoamerica
Chaired by Mr. Diego García Sayan, Principal Expert

- UNHCR panellist (15 min.): Mr. Juan Ignacio Mondelli, Protection Officer, Regional Legal Unit, UNHCR
Contribution of Mesoamerica in the prevention and protection of stateless persons in Latin America (60th Anniversary of the 1954 Convention Relating to the Status of Stateless Persons)
- Government panellist (15 min.): Ms. Ana Cecilia Oliva Balcarcel, General Director of Migrant Protection, National Institute of Migration, Mexico
Prevention and protection of stateless persons in countries of the region and statelessness status determination procedures
- Debate in plenary (45 min.)

15.15 Coffee Break

15.30 Climate change, natural disasters and cross-border displacements
Chaired by Dr. Elizabeth Ferris, Senior Fellow and Co-Director, Brookings Institution

- Governments panellist (15 min.): Ms. Kathya Rodríguez Araica, General Director of the General Direction of Migration and Alien Status of Costa Rica
Nansen Initiative and its relevance to the Mesoamerican region
- Civil society panellist (15 min.): Mr. Atle Solberg, Head, Secretariat of the Nansen Initiative
- Conclusions of the sub-regional consultation on natural disasters and cross-border displacement in Central America: emerging needs, new responses
- Debate in Plenary (30 min.)

16.30 Coffee Break

17.00 Conclusions and recommendations of the second day (Chairperson) and approval in plenary session

18.00 Closure
Ms. Marta Juárez, Director of the Regional Bureau for the Americas, UNHCR
Mr. Werner Vargas, Executive Director, SICA
H.E. Mr. Orlando Gómez, Vice Minister of Foreign Affairs, Nicaragua

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Mesoamerica

DISCUSSION PAPER

INTERNATIONAL PROTECTION CHALLENGES AND OPPORTUNITIES FOR A NEW STRATEGIC FRAMEWORK FOR REGIONAL COOPERATION

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

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SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Salvadorian refugee
at Ciudad Romero, Panama.

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I. INTRODUCTION

1. This document has been prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR)¹ in order to inform and guide the discussions among the States, regional and international organizations, national institutions for the promotion and protection of human rights, civil society organizations and the Academia during the sub-regional meeting of Mesoamerica organized under the auspices of the Government of Nicaragua

and the Central American Integration System (hereinafter, SICA from its Spanish acronym).

2. This sub-regional consultation –the third after the meetings in Buenos Aires (MERCOSUR) and Quito (Andean region)– aims to identify the main challenges and opportunities in the field of international protection, in order to adopt a regional Action Plan for the period of 2015-2024 in the final Ministerial event in Brasilia in early December of this year. This regional plan, designed with input from all the actors, will follow up to the Mexico Plan of Action to Strengthen the Protection of Refugees in Latin America, adopted in 2004 (hereinafter Mexico Plan of Action or MPA).

¹ The Nansen Initiative Secretariat prepared the section concerning the population movements generated by climate change and natural disasters.

3. The protection of refugees and displaced persons is part of the history of the Mesoamerican region². During the last decades, the States in the region have been strengthening the protection mechanisms for asylum-seekers, refugees and stateless persons. On the other hand, the issue of refugees is also part of the Action Plan of the Regional Conference on Migration (hereinafter CRM or Puebla Process). In parallel, with the momentum of the Regional Conference on the Protection of Refugees and International Migration in the Americas³, specific protection mechanisms in the framework of mixed migratory movements have been incorporated.
4. In recent years, new dynamics of displacement have been found in Mesoamerica. The “Triangle of Northern Central America” (or TNAC in Spanish) –composed of El Salvador, Guatemala and Honduras– has one of the highest rates of violence in the world because of the actions of transnational organized crime and other situations of violence⁴. Although the most visible impact of the violence is the homicide rate, there are other indicators that show the serious humanitarian consequences like the number of wounded, the recruitment and murder of children (boys and girls) and adolescents, extortion, kidnappings, the problems of access to health and education, increasing sexual and gender-based violence, as well as the high social and economic cost and the forced displacement of people, both inside the countries and across borders.
5. Due to the magnitude and complexity of this new regional dynamics, an international and regional

cooperation is being promoted to better understand the problem of displacement and to establish mechanisms of response and protection. The Collaboration Agreement recently signed between SICA and UNHCR provides a new framework for regional cooperation and coordination in the field of protection of refugees and displaced persons⁵. Other important initiatives are being carried out for the protection of internally displaced by violence⁶ as well as for refugees and other groups with specific needs⁷.

6. Therefore, ten years after the Mexico Declaration and Plan of Action, twenty years after the San José Declaration and thirty of the Cartagena Declaration, the great challenge for Mesoamerica is to consolidate a space for protection while facing the challenges that new forms de violence and displacement originate. We hope that the deliberations in this event will result in proposals and specific initiatives that allow to outlining a strategy de protection, regional and concerted for the next decade.

II NEW TRENDS OF FORCED DISPLACEMENT IN CENTRAL AMERICA AND PROTECTION CHALLENGES

A NEW TRENDS OF FORCED DISPLACEMENT IN MESOAMERICA

7. Traditionally, Mesoamerica has been characterized by being a region of origin, transit and destination of different types de migrations. With the refugee camps closing in the 1990s, the number of refugees

2 Principles and Criteria for the Protection and Assistance for Refugees, Returnees and displaced Central Americans in Latin America. International Conference on Central American Refugees (CIREFCA), Guatemala City, 1989.

3 Regional Conference on the Protection of Refugees and International Migration in the Americas, Protection Considerations in the Context of Mixed Migration, OAS, IOM and UNHCR, 19-20 November 2009.

4 UNODC, Global Study on Homicide 2013, <http://www.unodc.org/gsh/en/data.html>, 2013.

5 Collaboration Agreement between the General Secretariat of the Central American Integration System and the United Nations High Commissioner for Refugees, San Salvador, 7 April 2014.

6 Honduras, Executive Decree PCM-053-2013, 26 November 2013, which creates the “Inter-agency Commission for the protection of persons displaced by violence”.

7 Regional Conference on Migration (CRM), Seminar on Unaccompanied Children and Adolescent Migrants, Antigua, Guatemala, 27 - 28 August 2013.

and applicants for refugee status dropped drastically. However, this trend changed in the middle of the previous decade with the arrival of migrants and refugees from South America (Colombia) and the Caribbean (Cuba), as well as from other continents (Asia and Africa). Within these mixed migratory movements, most people pass through the region towards the United States of America, although some have requested and obtained international protection in countries of Mesoamerica as refugees or under other forms of complementary protection.

8. Since 2009, new dynamics of displacement in Mesoamerica have been observed. It is fundamentally people from TNAC countries departing de their homelands as a result of activities of the transnational organized crime and other situations of violence.
9. This is a relatively recent phenomenon and there are few specific indicators available on the real magnitude of the displacement and its characteristics, particularly with regards to the displacement to the countryside of the TNAC countries. So far, the working hypothesis is that internal displacement coexists with cross-border movements of persons in need of international protection.
10. From statistical data and the results of quantitative and qualitative studies, an initial approach to the problem of displacement can be made.
11. With regards to cross-border movements, at the end of 2013 there were more than 18,500 refugees from the TNAC⁸. This trend is accentuated with the increased number of asylum claims, which went from 6,900 in 2009 to nearly 15,700 in 2013⁹. Currently, three out of every four applicants seek international protection in the United States of Ameri-

8 UNHCR, Global Trends 2013 (Preliminary Data).

9 Ibid.

ca¹⁰; however, each time there are more applicants of the TNAC in Mexico, Costa Rica, Nicaragua and other neighbouring countries.¹¹

12. On the other hand, there is evidence showing that these numbers only represent a small portion of the displaced population that requires protection. In fact, recent statistical research¹² shows that insecurity is an important factor in the decision to migrate internally and/or to other countries in search of international protection. Most people crossing the borders does it in an irregular manner, and after being arrested, they are deported and must return to situations of vulnerability and victimization, thus initiating a new cycle of displacement and helplessness. As a reference, the official deportation figures of people from the TNAC, from the United States of America and Mexico, increased from 127,000 in 2011 to more than 186,000 in 2013¹³.
13. In Mexico, the Documentation Network of the Organizations Advocating for Migrants (*Red de Documentación de las Organizaciones Defensoras de los Migrantes*) reveals that violence has become the second leading cause of migration in the TNAC with rates that vary from 3% in Guatemala, to 6% in Honduras and 12% in El Salvador¹⁴. In addition, studies on the “protection needs of returnees,” show that a section of those deported arriving in El Salvador (5.2 - 5.6% of the total number of de-

10 Ibid.

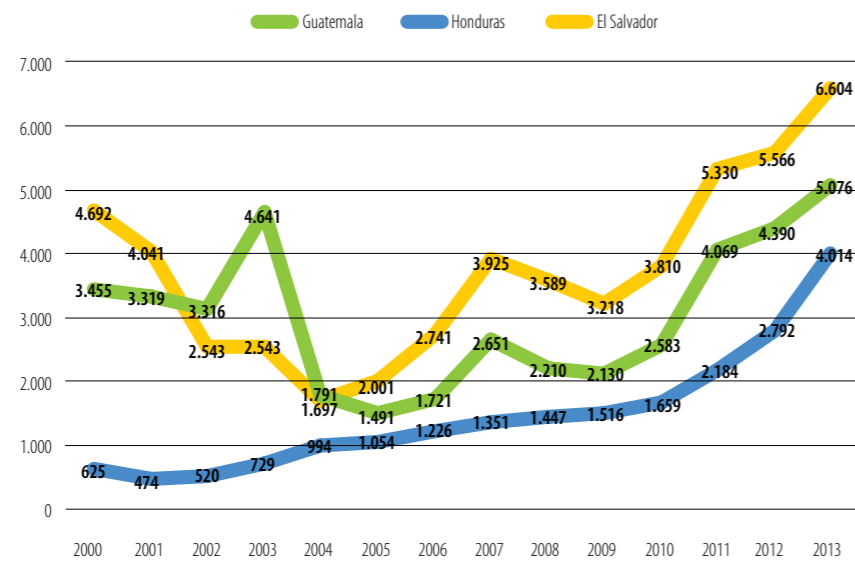
11 UNHCR Global Trends, 2005 - 2013.

12 Hiskey, Malone, Orces (2-14), *Violence and Migration in Central America*, Americas Barometer Insights, Number 101.

13 Data of the General Board of Immigration and Aliens of El Salvador, the General Board of Immigration of Guatemala, and the Centre of Assistance to Returning Migrants of Honduras.

14 Fifty per cent of the 9,313 migrants registered in seven shelters in Mexico were from Honduras. In terms of the factors of migration, violence-related causes represent 3% in Guatemala, 6% in Honduras and 12% in El Salvador. *Red de Documentación de las Organizaciones Defensoras de Migrantes en su paso por México*, Narrativas de la Transmigración centroamericana en su paso por México, 2013.

EVOLUTION OF THE ASYLUM APPLICATIONS (BY YEAR) FROM THE NORTHERN TRIANGLE COUNTRIES OF CENTRAL AMERICA (NTCA) YEARS 2000-2013



portees)¹⁵, Guatemala (2-3 %)¹⁶ and Honduras (5.4 %)¹⁷ migrated mainly for reasons of insecurity and/or threats.

14. Regarding the dynamics of internal displacement in the countries of the TNAC, there is very little statistical information. Several opinion surveys capture the phenomenon of migration motivated by threats and other security problems of both El Salvador¹⁸ and at the regional level¹⁹. A more specific

study was carried out in Honduras²⁰ from the analysis of secondary sources of information. In this preliminary phase of research, a clear correlation between violence and migration was established and it was possible to identify certain trends of forced displacement. This research also concluded that for the analysis of internal displacement in the countries of the region, a specific gathering of primary information is required to evaluate its magnitude and characteristics.

B PROTECTION CHALLENGES DUE TO THE NEW TRENDS OF FORCED DISPLACEMENT IN MESOAMERICA

15. Due to the nature of contemporary displacement –in which movements within the countryside alternate with migrations to other countries in the region and large deportations’ programmes from Mexico and United States of America– it is necessary to observe what is the current protection response in the TNAC countries, as well as the recent developments in international protection of refugees.

20. Among the sources of information, the Permanent Households Survey of Multiple Purposes (EPHPM), conducted by the Statistics National Institute from 2008 to 2013. López (2014), Analysis of Existing Sources of Information on Migration and Violence in Honduras, 2014.

16. Regarding the protection of internally displaced persons, all the institutions created for the protection of displaced or returnee persons during the conflict of the last century fulfilled their mandate and ceased to exist²¹. At a regional level, displacement has not been part of SICA’s²² integration agenda. Currently, even though countries have laws and programmes for the protection of victims and witnesses²³, as well as mechanisms of protection for persons in a condition of vulnerability²⁴, there is no mention of the prevention of displacement and/or to the protection of internally displaced persons in the existing regulatory frameworks.
17. However, at the end of last year, the Government of Honduras took an important step by establishing by Executive Decree²⁵, the “Inter-Agency Commission for the Protection of Displaced Persons by Violence”, whose members were sworn in April 2014 by the President of the Republic. The main objective of the Commission is to analyse the current trends of displacement in order to identify protection gaps and promote public policies for the protection of displaced persons, focusing on the most vulnerable population affected by the activities of the transnational organized crime and other situations of violence.
18. Regarding the international protection of refugees, in the last decade, the States have focused on the development of the regulatory and institutional framework for protection. All countries of the Me-

soamerican region have national bodies for refugee status determination and are parties to the international instruments on refugees. Equally, the majority has included the regional refugee definition recommended by the Cartagena Declaration.

19. At a more specific level, there has been progress in the legal and contextual analysis of the phenomenon related to new situations of violence. In 2010, UNHCR issued a “Note of Guidance on Refugee Claims Relating to Victims of Organized Gangs”²⁶ which presents a typology of gangs’ victims and provides elements for a legal analysis in light of the 1951 Convention relating to the Status of Refugees.
20. Additionally, in 2013, UNHCR produced a series of documents on Country of Origin Information, with analysis from public information sources of the Human Rights situation, and profiles with protection risks. The first studies began in Guatemala²⁷, El Salvador²⁸ and Honduras²⁹. To complement this information, further investigations have been carried out in order to have more quantitative and qualitative elements regarding the context and trends of displacement in the TNAC. These studies provide important information as to areas of ori-

15 Analysis of statistics of the General Board of Statistics of El Salvador and interviews to deportees (n=67). Gaborit, UCA-IOM, *Diagnosis on Characterization of the Salvadoran Population Returnee with Protection Needs, Preliminary Report* (2014).

16 Analysis of statistics of the returnee population, General Board of Immigration of Guatemala and registries (n= 3,443) of Guatemala’s Houses of Migrants (PMH). González Deras, *Characteristics of the la Guatemalan Returnee Population with Protection Needs*, Preliminary Report (2014).

17 Analysis of statistics of the returnee population, General Board of Immigration of Guatemala and registries (n= 3,443) of Guatemala’s Houses of Migrants (PMH). González Deras, *Characteristics of the la Guatemalan Returnee Population with Protection Needs*, Preliminary Report (2014).

18 In El Salvador, based on a representative sample of 1,268 persons, 2.1% of persons interviewed stated that they had changed their place of residence due to threats. A third of these persons changed the place of residence twice or more during the year. IUDOP, Survey of Evaluation, Year 2012, *Consulta de Opinión*, UCA San Salvador, 2012.

19 When asked about the need for changing neighbourhood due to fear of crime, the population interviewed in the TNAC countries were as follows: El Salvador (16%), Honduras (15%), and Guatemala (9.9%). Regional Human Development Report 2013-2014, Citizen Security with a Human Face, Evidence and Proposals for Latin America, UNDP Latin America Projects of Public Opinion (LAPOP), Vanderbilt University.

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21 In Guatemala, this is the case of the National Commission to Assist Returnees, Refugees and Displaced (CEAR).

22 The priority objectives of the Central America Security Strategy are: the fight against crime, violence prevention, rehabilitation, prison security, and capacity building. Humanitarian concerns are only tangentially mentioned in regional security and climate change issues. SICA General Secretariat, *Security Strategy in Central America*, June 2011.

23 Laws and programmes of Protection for Victims and Witnesses in Guatemala, Honduras, and El Salvador.

24 Such is the case of legislation on trafficking in persons in Honduras and Guatemala, as well as the existence of Coalitions against trafficking at regional and national level.

25 Honduras, Executive Decree PCM-053-2013, November 2013.

26 UNHCR, *Guidance Note on Refugee Claims relating to Victims of Organized Gangs*, 31 March 2010, available at: <http://www.refworld.org/docid/4b-f4e2232.html> [last accessed on 5 May 2014].

27 Worby, Paula. Guatemala Background Paper, UNHCR, Country of Origin Information Series: Guatemala, 2013.

28 Study in progress: “Analysis of Context – Human Rights and the Situation of Specific Groups in El Salvador”, PDDH El Salvador, 2014.

29 Study in progress: “Analysis of Context – Human Rights and the Situation of Specific Groups in Honduras”, CIPRODEH, 2014.

gin, migration routes, higher risk profiles and protection needs³⁰.

21. While it is still premature to confirm the impact of these initiatives, we can see that there is a better understanding of the problems and a greater recognition of the specific protection needs of persons applying for refugee status. This is reflected in an increase in the rates of recognition of applicants from the TNAC, both at the level of the Mesoamerican region, and in industrialized countries. While in 2006, the rate of the refugee claim recognition was 13%; the regional average in 2013 is 30%³¹. In addition, in 2013, complementary protection was granted to 80 Central Americans—mostly Hondurans and Salvadorians—, and humanitarian visas were granted to unaccompanied boys and girls and teenagers (hereinafter NNA), victims of trafficking and others in condition of vulnerability.
22. In this context, as mentioned in paragraph 5, the recently signed *Collaboration Agreement* between SICA and UNHCR provides a new framework for coordination and regional cooperation in the area of protection of refugees and displaced persons³². This *Agreement* offers new opportunities to incorporate the issue of displacement in the regional agenda. Both organizations pledged to take actions to gather information and promote policies and

programmes that benefit refugee and displaced populations.³³

23. At the same time, National Committees of Mesoamerican Refugees have been created to carry out analysis of regional dynamics and the exchange of good practices³⁴. The first two meetings focused on the issue of the displacement caused by the violence and on the analysis of the specific protection needs. Other important initiatives are also being carried out for the protection of internally displaced persons by violence,³⁵ as well as for the protection of migrant children and adolescents.³⁶
24. There are great challenges within the framework of these efforts in the area of protection due to the magnitude and complexity of the new displacement dynamics in the region.
25. Above all, there is a significant gap in information and analysis of the new trends of displacement caused by the transnational organized crime and other situations of violence.
26. Regarding the cross-border movement, there are concrete indicators on how the number of applications for recognition of refugee and refugee status has evolved. However, this information only seems to capture a small part of the real magnitude of the problem. The lack of quantitative studies is even more noticeable in the area of internal displacement. Only in Honduras a specific analysis

on violence and migration has been carried out. However, one of the main conclusions is to note the limitations of this type of analysis that originate from secondary sources, which only allow for the identification of broad, general trends. In order to achieve a complete analysis it is necessary to obtain primary information in specific areas—those of departure, expulsion and those of receiving—to assess the magnitude and characteristics of the displacement. These specific studies would also help to identify the needs of protection of displaced persons and would provide inputs to define concrete prevention measures, protection and assistance for this population. Also, this lack of information contributes to the limited visibility of the phenomenon and limits the ability to design programmatic responses.

27. As mentioned above, the displacement caused by violence is very complex and requires a differential approach as well as continuous monitoring.
28. In the current context of violence, there has been a change of the traditional profiles of people who need protection or who are at risk of forced displacement and there is an increasing number of registered cases of defenders of human rights, journalists and officials of the judicial system, transport workers, small and medium-sized entrepreneurs, as well as LGBTI persons, those of rural origin such as peasants and indigenous leaders³⁷ among persons of Central American origin.
29. For these categories there is a need for an analysis adjustment to determine what are the main protection needs, as well as those existing and effective protection mechanisms in the different States. This analysis of the potential protection gaps began with a series of papers on *Country of Origin Information*³⁸. However, there is a need for

mechanisms that allow updating this information on a regular basis. Both, academic institutions and observers specialized in human rights and violence could assume this function.³⁹

30. Another major challenge is to increase the response capacity to protect, assist and promote solutions for internally displaced persons.
31. There are no specific protection and assistance mechanisms regarding the internally displaced. There are only *ad hoc* on-going information and reference systems for people through “*networks*” in which public institutions, civil society organizations, and international organizations collaborate. These networks are particularly active in El Salvador and Honduras. However, for a large number of displaced persons or at risk of displacement there are no effective and immediate protection options in the countryside. Therefore, when requested, they are advised about the international protection mechanisms they can apply to when they leave the country.
32. Generally, most displaced people prefer to remain anonymous and do not request protection from the authorities of the country of transit or destination, due to lack of information about their rights and fear of being arrested and removed to their country of origin.⁴⁰ On the other hand, for those who apply for refugee status, the procedures are long and, in many countries, the institutional capacity for processing cases is limited. As evidence, the number of pending refugee status applications continues to increase. At the end of 2013, 6,366 pending applications were registered in about 20 countries, which represent an increase of 65% compared to figures for December 2012.⁴¹ These delays may be related

30 In 2012, CIDEHUM made a first regional approach on forced displacement and protection needs in Central America (*Forced Displacement and Protection Needs generated by new forms of Violence and Crime in Central America*) at the request of UNHCR. Currently, in the framework of a cooperation project between ECHO and UNHCR several analyses are under preparation to identify the protection needs of migrants from the three countries of TNAC (ECHO, Humanitarian Implementation Plan (HIP), Central America and Mexico, March 2013). Studies of the TNAC deported population (González Deras and Silva de Souza (Op cit p. 3)) and research on the situation of unaccompanied NNA in Mexico (UNHCR Office in Mexico (Op cit p. 3)) and the United States of America (UNHCR Regional Office in Washington D.C. (Op cit, p. 3)) provide important information regarding areas of origin, migratory routes, heightened risk profiles and protection needs.

31 UNHCR, Global Trends 2000 - 2013. Preliminary Results for 2013.

32 Collaboration Agreement between the General Secretariat of the Central American Integration System and the United Nations High Commissioner for Refugees, San Salvador, 7 April 2014.

33 In this context, several training activities have been conducted in the region with governments and civil society to analyse new trends of displacement and protection needs in Central America. These events facilitated the exchange of experiences with experts from Mexico and Colombia and organizations specialized on protection and migration issues. In those workshops participated international agencies (IOM, UNICEF, ECHO) and centres specialised in migration and displacement (UCA, of El Salvador; UNAH, of Honduras, and the Brookings Institution, of the United States of America). An overview of training activities carried out in November 2013 and March 2014 is available in Spanish at: http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Boletines_Regionales/Boletin_Regional_Octubre-Diciembre_2013.

34 Ibid.

35 Ibid.

36 Honduras, Executive Decree PCM-053-2013, 26 November 2013, which created the Inter-agency Commission for the protection of persons displaced by violence.

37 Worby, Paula. Op cit

38 UNHCR, Americas: Country of Origin Series, 2013.

39 It is the case of the University Institute on Democracy, Peace and Security (IUDPAS) in Honduras, which monitors indicators of violence and human rights in Honduras.

40 González Deras, Op cit.

41 In 2012 there were 3,845 pending claims of TNAC nationals: UNHCR, Global trends 2013 (Preliminary data).

to the sharp increase in the number of applications and their complexity.

33. Moreover, the lack of livelihood options, and in some cases, a stay in detention centres during the procedure, can also contribute to a significant number of claimants who prefer to abandon their application and continue their journey. In 2013, approximately 7,000 applications from TNCA nationals were closed because the applicants were absent, amongst other causes⁴².
34. Another relevant aspect is the limited institutional capacity to provide assistance to people in need of international protection in some Mesoamerican countries. Government agencies primarily have the role and responsibility of analyse and determine cases, as well as inter-agency liaison, but they run few assistance programmes. Therefore, much of the material support provided to these people rests with networks of shelters established in Mexico and, to a lesser extent, in Guatemala and Honduras. Together with national agencies,⁴³ which are supported by the international community, these civil society organizations provide limited support in the area of legal and psychosocial advice, as well as temporary accommodation and material assistance to the most vulnerable cases.
35. Finally, it is important to remember the circular or cyclical nature of displacement, which is perpetuated by the absence of effective mechanisms of protection and the implementation of migration management measures, such as deportations and removals. As shown by studies of deported population, few migrants have access to international protection mechanisms and the vast majority of the deportees manifest their intention to migrate again as soon as they arrive to their country of origin. This leads to a circular displacement in which the

person faces multiple risks and problems of protection and infringement of rights (abuses, extortion, robbery, arbitrary detention, etc.).⁴⁴

36. Countries of origin also face multiple challenges with the return of deportees persecuted by the transnational organized crime. States are not always capable to guarantee the protection required against these threats.

C PROTECTION CONSIDERATIONS IN THE CONTEXT OF MIXED MIGRATION IN MESOAMERICA

37. Mesoamerica has special characteristics in terms of international migration, both for its geographical location and the humanitarian challenges faced. With the United States of America as the main country of destination, globally, the immigration corridor across the region has become the most important in the world quantitatively⁴⁵.
38. The migratory movements across the region have an impact in four dimensions: origin, destination or asylum, transit and return. This generates a continuous movement of populations caused by multiple factors. These movements are characterized by being “mixed” and complex⁴⁶. As it has been emphasized in several studies, regular and irregular migratory movements in the region include a variety of people, some of them belonging to particularly vulnerable groups: asylum-seekers and refugees; victims of trafficking; stranded migrants; migrants and refugees subjected to violence and psychological trauma during the migration process or with a disability, and other people in vulnerable situations such as older adults, pregnant women,

girls, children and adolescents travelling with their families or unaccompanied or separated from their families.⁴⁷

39. A relevant fact at international level: in 2013 more than 50% of international migrants were women.⁴⁸ Within the framework of this same trend, over the last years the profiles of the people who make up the migratory movement in Mesoamerica have also changed⁴⁹. Thus, it is increasingly more common to find young women (20-30 years of age), adolescents, children and family groups with an average of three or four members, sometimes traveling accompanied by the mother only. This change in migrants’ profiles merits consideration on the causes of migration and, based on this, establish regional cooperation schemes to tailor the protection and prevention mechanisms to the current four main aspects of migration in Mesoamerica.
40. The existence of mixed migratory movements⁵⁰ was recognized in the Mexico Declaration and Plan of Action, which recommended the identification of people who could qualify as refugees, as well as to strengthen the determination of refugee status’ mechanisms and offered technical advice on refugee’s legislation. By the end of 2012, there

were 806,600 refugees⁵¹ in the Americas and there were 74,213 requests pending resolution⁵².

41. Today, ten years after the Mexico Declaration and Plan of Action, the Mesoamerican regional context faces new challenges. The prevailing trend has been to link this migration to an economic motivation, which leads to the invisibility of forced migrations and displacements arising from situations of violence, disruption of public order, and natural disasters, among others. The movement of people in need of international protection to countries within the region has transcended the traditional forms of persecution linked to the armed conflict in Colombia or refugees from other continents (still current and with its own protection challenges). As analysed in the previous section, the new paradigm of mobility in the region recognizes the increase of protection claims of Central American nationals due to the actions of organized crime, with a tendency to increase. In addition, Mexico and the United States of America are not the only destinations of this movement, but also Costa Rica, Nicaragua and other neighbouring countries in the region.
42. Another relevant aspect to emphasize in the migration within Mesoamerica is the protection of trafficking victims. As it is well known, the American hemisphere, and Mesoamerica as such, has served as corridor for drug trafficking to the North of the continent, and of smuggling of arms to the South. This has expanded and promoted the growth of trafficking in persons, also under the logic and structures of transnational organized crime. According to a report of the Department of Interior Security of the Organization of American States

42 UNHCR, Global Trends 2013 (Preliminary data).

43 *Pastoral de Movilidad Humana* and NGOs specialised in Human Rights issues.

44 Documentation Network of Organizations Advocating for Migrants, Op cit.

45 IOM, *The World Migration Report 2013: Migrant Well-being and Development*, Geneva, page 62.

46 Currently, the number of international migrants in the world is higher than ever in history. In 2010, there were 214 million of international migrants. If this population continues to increase at the same rate as in the last 20 years, they could reach 405 million worldwide in 2050. See IOM, *World Migration Report 2000. The Future of Migration: Building capacities for change*. Preface.

47 See IOM, *Irregular Migration and Mixed Flows: IOM's Approach*. Ninety-eight meeting, MC/INF/297, 19 October 2009, page 1.

48 See IOM, *Gender and Migration*. Available at: <http://www.iom.int/jahia/developing-migrationpolicy/migration-gender/gender-migration/lang/es>.

49 See, for example, the situation in Mexico’s Southeast border, specifically in the border State of Tabasco, where according to the Mexican Migration authorities, in the first quarter of 2014 the migratory flow entering Tabasco was comprised of 59% men and 41% women and NNA. In 2013 men represented 72% and women and children 28%.

50 The total contribution of Latin America and the Caribbean to the global migratory movements nowadays amount to some 25 million people, equivalent to more than 13%, according to estimations (See UNHCR/OAS/IOM, Regional Conference on Refugee Protection and International Migration in the Americas, Protection Considerations in the context of Mixed Migration, 2009, page 2). In 2010, migrants residing in Latin America and the Caribbean increased from 6.5 million (in 2000) to 7.5 million, adding migrants from the countries of the region to migrants from the rest of the world. See IOM, *The World Migrations Report 2010. The Future of Migration: Building capacities for change*. Geneva, 2010, page 157.

51 UNHCR, Global Trends 2012, Op. cit, III. Refugee population, page 11.

52 Ibid, Table 1. Refugees, asylum-seekers, internally displaced, returnees (refugees and internally displaced), stateless persons and other persons of concern to UNHCR by country and by territory of asylum by the end of 2012, page 41.

(hereinafter OAS), in Latin America more than 250,000 individuals had been trafficked in 2008⁵³.

43. Data from the United Nations Office on Drugs and Crime shows that most of the victims identified in the 2007-2010 period were women, while children accounted for approximately 27% of those trafficking victims. On the other hand, forced labour accounted for 44% of trafficking cases registered in the continent and nearly 50% of the cases were related to sexual exploitation.⁵⁴ Also in recent years, in the border areas of Mexico and the United States of America, organized crime has taken to kidnapping of migrants as a new way of financing their activities,⁵⁵ and even for their exploitation in trafficking networks. Most of the victims are undocumented migrants from Mexico, Guatemala, El Salvador, and Honduras⁵⁶.
44. Although human trafficking is not a new phenomenon in the region, Governments have committed to combating this calamity with increasingly decisive agreements, which is reflected in regional policies and national efforts to prevent trafficking, protect the victims and improve the capacity of the security agencies and the institutions responsible for the administration of justice, investigation and prosecution of those responsible.⁵⁷
45. With this in mind, and in a context of mixed movements, it is essential to understand that a person can fulfil two or more profiles and have more than one protection need. Thus, some victims or potential victims of human trafficking may easily

require international protection as refugees⁵⁸, as it has been highlighted by UNHCR.⁵⁹

46. On the other hand, the United Nations Special Rapporteur on the human rights of migrants highlighted the particular vulnerability of children and adolescents in all stages of the migration process, especially those who travel or flee unaccompanied⁶⁰ or separated⁶¹ from their families⁶² as a challenge that requires urgent responses. Given the humanitarian impact the mobility of children and adolescents is having on current Mesoamerican stage, the definition of a common Mesoamerican agenda to address the protection of this population should be fundamental to promote a regional joint effort, as featured in the following section.
47. There are already important regional initiatives that can serve as a positive reference in the definition of a regional agenda to address the needs of those who travel within mixed migratory movements and are in need of international protection. An important breakthrough was the adoption of the *Regional Guidelines for the preliminary identification of vulnerable migrant populations* adopted in June 2013 in the XVIII Vice-Ministerial Meeting of the Regional Conference on Migration (CRM

58 As good practice, some legislation in the region specifically establishes that victims of trafficking are entitled to seek and receive asylum if they meet the corresponding conditions. This possibility is implicitly recognised in the safeguard clause of article 14 of the Palermo Protocol to Prevent, Suppress and Punish trafficking in persons, specially women and children, supplementing the United Nations Convention against Transnational Organized Crime (Protocol of Palermo). 2000.

59 As UNHCR has remarked, a claim for international protection submitted by a victim or a potential victim of trafficking can arise in many different circumstances. See *Guidelines on International Protection* N° 7. *The application of article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, par. 13.

60 An unaccompanied child or adolescent migrant is a person under 18 years of age who is separated from both parents and is not under the care of any adult who, by law or custom, is responsible.

61 A separated child or adolescent is a person separated from both parents or legal or customary guardians, but not necessarily from other relatives. This category includes boys and girls accompanied by other adults in their family.

62 Report of the Special Rapporteur on the human rights of migrants, Mr Jorge Bustamante, A/HRC/11/7, 14 May 2009.

or Puebla Process)⁶³ that originated from the momentum brought by the Regional Conference on Refugee Protection and International Migration in the Americas.⁶⁴ The *guidelines* are a basic guide for joint actions in order to identify persons in need of protection within regional migratory movements (including refugees and asylum-seekers), guarantee their immediate assistance, and their referral to specialized care systems in the country.⁶⁵

48. It is important to emphasize the initiative implemented in Mexico by various agencies of the United Nations system, among them, UNHCR, UNDP and IOM, through the Joint Programme of Migrants in Transit, financed by the United Nations Trust Fund for Human Security. This programme seeks to improve migrants' safety in transit in the States of Chiapas, Oaxaca and Tabasco, in the South of Mexico, supporting the federal and State Governments, improving the capacity response of civil society organizations and the participation of local communities.⁶⁶
49. The introduction of a *human security* approach,⁶⁷ replacing the traditional public security approach,

63 Regional Conference on Migration (CRM), *Regional Guidelines for the Preliminary Identification of Profiles and Referral of Vulnerable Migrant Populations*, 2013.

64 Regional Conference on Refugee Protection and International Migration in the Americas – Protection Considerations in the Context of Mixed Migration, UNHCR/OAS/IOM, 19-20 November 2009.

65 As a good practice, in Costa Rica is noteworthy the creation and the work carried out by the Special Migratory Situations Team (ESME) for the application, identification y priority treatment of vulnerable persons identified in the country. Also, in Mexico in April 2013, UNHCR and representatives of the State of Chiapas signed an agreement in order to jointly assist asylum-seekers entering Mexico within the Central American migratory movements.

66 For more information and access to available tools, see: <http://www.acnur.org/t3/donde-trabaja/america/mexico/la-proteccion-de-las-personas-refugiadas-y-la-seguridad-humana/>.

67 The definition of human security extends the notion of national security to give primacy to the human person, their lives and freedom, and also implies the establishment of appropriate protection structures to respond to threats that individuals and groups face. Under this approach, the structures must ensure institutional protection frameworks instead of *ad-hoc* measures; be sensitive and not rigid; be preventive rather than reactive. See Alkire, Sabina, *A conceptual framework for Human Security*, Working Paper 2, Center for Research of Inequality, Human Security and Ethnicity (CRISE), University of Oxford 2003.

could prove essential in the consolidation of an agenda of international protection in Mesoamerica to respond to the contemporary needs.⁶⁸

50. Another development to be highlighted is the incorporation of complementary protection schemes for people who do not qualify as refugees and could be at risk of losing their lives or suffer torture or inhuman, cruel or degrading treatment should they be returned to their country of origin.⁶⁹ Some countries in the region have also established humanitarian visas for people who are not refugees but need international protection under other human rights instruments.⁷⁰
51. In an effort to raise a joint action strategy, UNHCR has pointed out in the document "*Refugee protection and mixed migration: The 10-point Action Plan*" some key areas of intervention for the protection of refugees and asylum-seekers travelling in migratory movements of mixed nature, which continues to represent a major regional challenge:
- The cooperation of concerned stakeholders: the States involved, governmental institutions, regional organizations, international organizations with relevant mandates, and civil society.
 - Collection, analysis and exchange of information on the characteristics of the movements.
 - The creation of a reception system that establishes practical safeguards of protection, adequate

68 Human security promotes empowerment of the person to consolidate opportunities and protection schemes that enable the development of his/her skills, maintain their dignity and a life free of fears and needs. Given the preventive and institutional character of the human security, the freedoms of the person and life assurance are results of the harmonization of political, economic, social, cultural and natural environments, instead of the execution of a series of reactive administrative procedures.

69 Is the case, for example, of Mexico and Nicaragua.

70 Such is the case of Mexico, Honduras, Nicaragua, Costa Rica, and Panama, for example.

mechanisms, identification of profiles and reference cases⁷¹.

- The establishment of a reception system that establishes practical safeguards of protection, adequate mechanisms, identification of profiles and reference cases.
- Information campaigns in countries of origin, transit and destination on the rights of persons and the risks on the migratory routes.
- Differentiated quality processes and procedures for the determination of refugee status, that take into account the particular protection needs of claimants and observe the rules of due process in its proceedings;
- Persons recognized as refugees or in need of international protection require a protection response that includes a durable solution (such as local integration, resettlement or voluntary repatriation). The nature of the response will depend on the opportunities and inherent limitations of each situation, without any kind of discrimination towards the refugee for having this condition.⁷² This aspect will be further analysed later on.

D SPECIFIC PROTECTION NEEDS AND NEW TRENDS OF FORCED DISPLACEMENT IN THE REGION: THE CASE OF CHILDREN AND ADOLESCENTS

52. Since the adoption of the Mexico Declaration and Plan of Action, the States in the region began to address the situation of children and adolescents travelling in mixed migratory movements with a protection approach, stressing the need to adopt

differentiated measures for this group, taking into account their gender and age. At the same time, the Plan of Action called for authorities to adopt sensitive receiving systems for protection as well as differentiated procedures, and processes that would enable them to respond to refugee claims, meeting at the same time the needs of unaccompanied children, victims of trafficking and other groups with specific needs.

53. Ten years after the approval of the Mexico Plan of Action, the pattern of displacement of boys, girls and adolescents in the Mesoamerica has changed significantly. As mentioned in previous sections, in recent years the threats, extortion, assaults or attacks on their life, their freedom or their integrity, coupled with the prevalence of poverty and high social exclusion, have exposed children and adolescents to alarming levels of violence and criminality registered in different regions of Central America, and particularly vulnerable to forced recruitment by transnational organized crime, especially the *maras* and gangs.
54. Because of this and the difficulties encountered by State security bodies to ensure their protection, as well as lack of protection from their own families, children and adolescents have been forced to move to other cities and communities within their countries in search for security, or even to cross international borders with their parents, with other family members or without any company, primarily to the United States of America and increasingly to Mexico. The displacement has been increasing each year and has intensified in the last three years.⁷³

71 In this regard, article 31.1 of the 1951 Convention relating to the Status of Refugees clearly states the prohibition of penalties or sanctions for illegal entry or presence. As good practice of several States in the region: criminal or administrative procedures for illegal entry will be suspended until the claimant's status is determined.

72 In several States of the region the identification document does not mention the refugee status of its owner, to prevent discrimination; some legislation in the Americas also recognise both the refugees and asylum-seekers' right to work. For more information and access to available tools, see: <http://www.acnur.org/t3/donde-trabaja/america/mexico/la-proteccion-de-las-personas-refugiadas-y-la-seguridad-humana/>.

73 Consistently with data from Mexico, the USA has registered a significant rebound in the arrival of unaccompanied adolescents, girls and boys since 2011, coming from El Salvador, Guatemala, Honduras, and Mexico. The situation is clearly reflected in the number of detentions: 4,059 in 2011; 10,443 in 2012, and 21,537 in 2013, more than double. In this regard, the Department of Homeland Security estimated that this flow could reach 60,000 or more unaccompanied migrants boys, girls and adolescents by the end of 2014.

55. One of the main challenges that hinder a better protection of children and adolescents in this scenario, as stated by the Special Rapporteur on the human rights of migrants, is that "age is not a common variable of disaggregated statistical data on international migration, which remains as the most difficult component of population change to measure"⁷⁴. This lack of disaggregated information makes the particular problems faced by children and adolescents in the context of international migration to be left aside, due to the lack of visibility of its magnitude.⁷⁵ However, an analysis of official information and some studies on the subject can provide some clues about the situation of this population in the Mesoamerican migration scenario.
56. In this regard, it stands out the 137% increase in the number of events of boys and girls alone or with families, detected in Mexico and repatriated between 2011 and 2013. According to the National Institute of Migration (INM) in Mexico, in the past seven years there have been nearly 30,000 deportations of unaccompanied children and teenagers to their countries of origin. Only in 2013 the INM reported 5,477 deportations of persons under 18 years of age travelling unaccompanied in Mexico, which represents the highest number of unac-

companied boys and girls detected and deported to their countries of origin.⁷⁶

57. A recent investigation at the end of 2013 in Mexico, supported by UNHCR, highlights that 36% of children and adolescents interviewed, identified issues associated with forms of violence as indicators of international protection needs. During the last five years, 30,000 children and adolescents detected in Mexico, mostly coming from the TNAC have pointed out violence as the main reason for migrating (50%). The largest group of children and adolescents (50%) come from Honduras, and 45% on average stated to have migrated because of the violence. In other words, almost half of the Honduran children and adolescents interviewed could have had need of access to the procedure for the recognition of refugee status and international protection in Mexico.⁷⁷ Although other factors intervene significantly—as family reunification and the economic situation—violence was also identified as an important reason to migrate in the case of El Salvador (30%) and Guatemala (20%).
58. Likewise, the study "*Children on the Run* (2013)" published by the Regional Office of UNHCR in Washington D.C., collects the individual perception of children from these three Central American countries and Mexico coming to the United States of America. The answers show the complexity of the phenomenon where there is a multiplicity

74 See: Report of the Special Rapporteur on the human rights of migrants, Mr Jorge Bustamante. Op. cit.

75 In Mesoamerica, there is limited information on the profile of girls, boys and adolescents disaggregated by gender and age; trends and access to child protection systems; access to the right to seek and receive asylum (even to eligibility procedures to determine refugee status); the mechanisms used to travel; the abuses and specific risks during the entire cycle of displacement; the causes and individual grounds to migrate; etc. Likewise, there are few analyses of the information about the whereabouts and living conditions of those recognised as refugees, or who have been granted other forms of complementary protection. In some countries the cases of boys, girls and adolescents are not accounted for separately from adults. In general, statistics are only disaggregated by sex.

76 In 2008, UNHCR published in Mexico the findings of the research "*International protection of unaccompanied or separated boys and girls in the Southern border of Mexico*." The research established the reasons of the foreign children's journey through Mexican territory. The report highlighted the urgent need to improve the mechanisms to identify and refer the separated or unaccompanied children requiring international protection, and pointed out that only 13% of the interviewed children had arguments to justify a more in-depth evaluation of a possible international protection need. The findings of such research significantly contrast with the most recent findings supported by UNHCR in Mexico at the end of 2013, which state a multiplicity of causes for the migration of unaccompanied or separated Central American boys, girls and adolescents.

77 UNHCR Office in Mexico, *Causes originating the migration of unaccompanied or separated boys and girls from Central America to Mexico and their protection in Mexico*, 2014 (Preliminary report).

of causes justifying the exit of children and adolescents from their places of origin. The main findings were conclusive: 58% of the total number of children interviewed had been forced to migrate, which indicated the potential or actual need for international protection.⁷⁸

59. In the United States of America, the number of non accompanied children and adolescents (NNA) from Central America and Mexico has increased from an average of 6,000 per year in 2010 to more than 24,000 in 2013, with an estimated 60,000 NNA for 2014. Currently, the highest percentage of NNA comes from the three TNAC countries (51%).⁷⁹
60. This specific population is in a highly vulnerable situation during the different stages of displacement, from the departure, transit and arrival to the recipient country. Children and adolescents are at risk of being victims of transnational organized crime (victims of smuggling and human trafficking networks), of suffering accidents, of being subjected to sexual or labour exploitation, being mistreated or suffering physical and sexual abuse. They can also suffer abuse and violence by discriminatory and xenophobic attitudes and practices, and encounter obstacles and difficulties in their access to basic rights such as health, education and an adequate standard of living. In many cases, even if they are able to enter the country of destination violating immigration rules, they could be deprived of their liberty and subject to deportation without due process, with-

out taking into account the determination of their best interests.⁸⁰

61. Article 22 of the Convention on the Rights of the Child (hereinafter CRC) deals with the protection of refugee children, noting that States should take appropriate measures that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall receive appropriate protection and humanitarian assistance. Some of the major contemporary challenges for the protection of children, girls and adolescents with needs of international protection in the Mesoamerican region to be highlighted are:
- The non-restrict respect of the best interests of the child, as the primary consideration in all actions that affect children and adolescents, including refugees and asylum-seekers.
 - The eradication of discrimination on grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, economic position, physical impairments, birth or any other condition of the child or adolescent, or because of the status, activities, expressed opinions or beliefs of their parents, guardians or relatives.
 - Respect for their inherent right to life, survival and development, to the maximum extent possible.
 - Respect for the right to express their opinion freely, and “properly consider” their opinions, depending on their age and maturity.
 - Early identification of children and adolescents and their needs, as soon as possible after their arrival, with a regular and continuous monitoring. In this sense, individual, thorough and prompt registration of children can be useful for the States, for UNHCR and other agencies and competent partners

78 According to the research, the methodology was developed to project in the same proportion the conclusions regarding the number of unaccompanied boys, girls and adolescents in the same age range of those four countries.

79 UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection*, 13 March 2014, available at: <http://www.refworld.org/docid/532180c24.html> [accessed 14 April 2014].

80 See the Special Rapporteur Report on the human rights of migrants, Mr Jorge Bustamante. Op. cit.

in the task of identifying those exposed to heightened risk.⁸¹

- Have adequate reception measures, meaning the appropriate access of children and adolescents to government entities and civil society organizations, when they need assistance to fulfil their basic needs, like food, clothing, accommodation, health, education, recreational activities, medical and psychological care, as well as respect for their privacy.
- The immediate assignment of a tutor to unaccompanied and separated minors.
- Take into account the specific needs of victims of abuse and sexual exploitation, torture and trauma, as well as other vulnerable groups, provide them with the required professional treatment and allow the unity of the family present in the territory, especially in the reception centres.
- Apply the detention of asylum applicants, a measure inherently undesirable and as a last resort, only when it has been determined that it is necessary in an individual case, and where international standards are met. An ethic of care –and not detention– should govern all interactions with children and adolescents requesting the recognition of refugee status and the primary consideration must be to best serve the best interests of the child.
- Establish appropriate and sensitive asylum procedures where priority is given to their cases, to ensure a legal representative and the participation of a guardian in the case of the unaccompanied and separated, taking into account their age, gen-

81 In Mexico, for example, the Child Protection Officers (OPIs) are responsible for implementing the mechanisms of identification and referral of children with international protection needs. There are efforts to regionalize and export this experience and its effective implementation to other countries of the region. Furthermore, in Guatemala recently was created the Commission for the Comprehensive Care of Migrant Children and Adolescents that is aimed at “coordinate, evaluate, promote, and follow up the fulfilment of institutional or inter-agency strategies, plans and programmes related to migrant childhood and adolescence, to provide them protection, assistance and care.” In Costa Rica, there is a Tripartite Commission comprised of the Board of Immigration and Aliens, the National Child Welfare and the Ministry of Labour, in order to coordinate actions aimed to protect migrant children. UNHCR participates as an observer.

III MESOAMERICA, A SPACE FOR REGIONAL PROTECTION

A MEXICO PLAN OF ACTION AS REGIONAL STRATEGIC FRAMEWORK

62. Mesoamerica is a pioneer region in the adoption of regional approaches for the protection of uprooted people since the adoption of the “1984 Cartagena Declaration on Refugees”,⁸² the commitments on refugees of the “Contadora Act for Peace and Cooperation in Central America”⁸³, the “Peace Accords and CIREFCA process”⁸⁴, up to the “1994 San Jose Declaration on Refugees and Displaced Persons”⁸⁵, and the adoption of Mexico’s Declaration and Plan of Action. Often in this region the pragmatism of non-binding instruments (soft law) have been chosen to innovate and advance international refugee law.

82 1984 Cartagena Declaration on Refugees: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=45dc19084&query=1984%20Cartagena%20Declaration>.

83 1986: Contadora Act for Peace and Co-operation in Central America, in Spanish at: http://www.sela.org/Acta_de_Contadora_para_la_Paz_y_la_Cooperacion_en_Centroamerica.pdf.

84 International Conference on Refugees in Central America (CIREFCA): https://www.oas.org/dil/esp/cirefca_89-9_esp.pdf.

85 1994 San José Declaration on Refugees and Displaced Persons: <http://www.refworld.org/docid/4a54bc3fd.html>.

63. Within this context, the Mexico Plan of Action (MPA) of 2004⁸⁶ has become a regional strategic framework for providing protection to refugees and for seeking durable solutions, through specific programmes (borders of solidarity, cities of solidarity and solidarity resettlement). Likewise, the MPA has preserved an internal humanitarian space, based on the recognition that the region continues to provide protection to refugees, mostly refugees from Latin America. The MPA has also been a platform to promote south-south cooperation amongst the countries of the continent on the basis of regional solidarity cooperation, highlighting the role of Latin America in the protection of its own refugees.
64. The advances in refugee protection date back to the consecration of the right to seek asylum at a constitutional level in 15 Latin American countries, including eight of Mesoamerica and the Caribbean,⁸⁷ and more recently to the existence of a procedural framework and national bodies responsible for the determination of refugee status; some of them include civil society organizations.⁸⁸ As a major advance in the regional agenda, most of the Mesoamerican countries have recognized in their legislation that persecution may be related to gender, age and diversity, and have established specific provisions on gender persecution and refugee children (both accompanied and unaccompanied). The refugee protection is high on the agenda of the Inter-American system, whose case law has set the standards that must be regionally respected. Also the SICA and national agencies for the promotion

and protection of human rights in most countries in the region have included refugee protection within their competence.⁸⁹

65. State practice also accounts for the recognition of differentiated protection needs of persons because of their diversity (African descent groups, indigenous peoples and LGBTI groups). The understanding that trafficking victims may have international protection needs, as refugees, has also been improved.
66. Once refugee status has been determined and the immediate protection needs have been met, refugees also need support to find durable solutions and to undertake a sustainable living project that allows them to break or end the cycle of forced displacement. Traditionally UNHCR has promoted three durable solutions for refugees: 1) local integration, 2) resettlement, and 3) voluntary repatriation.
67. The Mexico Plan of Action emphasized the need to promote durable solutions through three strategic programmes: “Borders of Solidarity,” “Cities of Solidarity,” and “Solidarity Resettlement.” These programmes emphasize the integration in countries of asylum and recommend resettlement, as a strategic tool for cases with specific protection needs.
68. In regard to Mesoamerica, Mexico City and the municipality of Desamparados in San José, Costa Rica, became part of the programme of “cities of solidarity” developing specific activities to facilitate refugees’ access to livelihoods through micro-credit mechanisms, vocational and professional training as well as ensuring access to health services and education.
69. “Borders of Solidarity” was implemented mainly in Panama and Costa Rica. In the case of Pana-

ma, this programme mainly benefited populations in El Darien area, trying to address some of the basic needs of people, in infrastructure, sanitation and access to basic health services and education, and supporting both people with international protection needs and local population. In the case of Costa Rica, together with the Ombudsman, the programme facilitated border monitoring in the South in order to identify and care for Colombians in need of international protection.

70. Resettlement has also been an important protection strategy in the case of Costa Rica, Ecuador and, to a lesser extent, in Panama. The strategic use of resettlement as a durable solution has been used for special needs cases of legal and physical protection, survivors of torture, medical cases and people without local integration prospects in countries like Costa Rica and Panama. Costa Rica and Ecuador were selected as beneficiaries of the “Solidarity Resettlement” programme and both countries, along with Venezuela, are the main countries of asylum of Colombian refugees. However, this durable solution has benefited only very few refugees because of the characteristics of the profiles and the specific requirements of the resettlement countries.
71. Currently it has only facilitated the voluntary repatriation of a very small number of individual cases. However, considering the current peace negotiations in Colombia, this solution may gain relevance in the case of Panama and Costa Rica where major groups of Colombian refugees reside.
72. Overall, the Mexico Plan of Action has made significant progress in protection and solutions issues in Mesoamerica. However, there are still some important challenges for strengthening the policy and institutional framework in two key aspects that should underpin efforts to consolidate Mesoamerica as a genuine area of regional protection.

B EFFECTIVE ACCESS AND STRENGTHENING OF NATIONAL PROCEDURES FOR THE DETERMINATION OF REFUGEE STATUS

73. Besides being incorporated into most of the Constitutions of the Mesoamerican States, the right to seek and enjoy asylum is part of the American legal system⁹⁰.
74. For UNHCR and the Inter-American System of Human Rights, the right to seek and receive asylum, is primarily addressed by respecting the principle of *non-refoulement* and ensuring effective access to the eligibility procedures of each national jurisdiction with adequate guarantees of due process (i.e. the right to defence, to have legal representation, the right to receive a reasoned resolution, appeal, etc.). It is, therefore, through an effective process or channelling and referral of an application of refugee status to the appropriate national institution –with appropriate and applicable guarantees– that the right to seek and receive asylum in the region is guaranteed and becomes effective.
75. Most of the laws in the region adopt administrative procedures for determining refugee status, either through interagency committees or national agencies created for that function. Some of these instances involve civil society organisations, which is a major regional advance in this field.
76. Among the actions taken to strengthen the procedures for determining refugee status it is important to highlight the Quality Assurance Initiative (QAI) for quality management and strengthening of eligibility procedures in the region. The first agency to implement the initiative was the Mexican Commission for Aid to Refugees (COMAR), and

⁸⁶ Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America: <http://www.refworld.org/docid/424bf6914.html>.

⁸⁷ The right to seek asylum is regulated in Mesoamerica and the Caribbean in the following countries: Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Dominican Republic, which regulated the right of asylum for the duration of the Mexico Plan of Action of 2004.

⁸⁸ Such is the case of Nicaragua and Panama.

⁸⁹ Letters of Understanding have been signed with the national bodies for the promotion and protection of human rights in Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama.

⁹⁰ In Mesoamerica, all countries have acceded to the American Convention on Human Rights, which includes in its Article 22.7 the right to seek and be granted asylum among the protected rights by the Inter-American Human Rights System (http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm). It is worth noting that all the countries acknowledge the Inter-American Court of Human Rights jurisdiction, and also are parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

later joined in the authorities of Costa Rica, Panama, Argentina, and Brazil. The initiative seeks to strengthen methodological tools with the authorities to increase the degree of compliance of the minimum guarantees of due process in eligibility procedures, promoting a *quasi*-judicial system.

77. Another important development has been the establishment of the Administrative Immigration Tribunal in Costa Rica (administrative body of technical nature that hears appeals in the procedures for refugee status determination), as well as the technical expertise of the Refugee Unit of the Directorate General of Immigration and Aliens, a good regional practice that facilitates the gradual incorporation of the minimum guarantees of due process in the context of eligibility procedures.
78. Despite significant regional developments, some of the rules or practices adopted are not entirely consistent with the provisions of the 1951 Convention relating to the Status of Refugees (“1951 Convention”) and its 1967 Protocol. Important challenges still prevail, such as:
- The need for special mechanisms for early identification of persons in need of international protection and referral procedures for refugee status determination.
 - The existence of screening procedures that hinder effective access to the procedures for refugee status determination.
 - Excessively short deadlines for filing applications.⁹¹
 - Accelerated procedures without adequate procedural safeguards for applications deemed as fraudulent or manifestly unfounded or abusive.

- Difficulties in ensuring the operation of the national authorities responsible for determining refugee status in countries where the Technical Secretariats do not have sufficient human and financial resources, or where a small number of applications for recognition of refugee status is presented each year. The challenge is how to ensure the effective functioning of these procedures to a limited number of applications and the frequent changes in the composition of the members of the Technical Secretariats and the governments’ commissions.
- The lack of legal representation and advice for people seeking international protection hinders the effective access to refugee status determination procedures.⁹²
- A better understanding of the issues related to age, gender and diversity through the procedures for determining refugee status.
- There is a perception that mixed migration (extra-continental and Central American) uses national mechanisms for determining refugee status to avoid migration controls or to try to regularize the migratory situation in a country. In fact, there is a need to implement national mechanisms to identify the different protection needs of persons involved in such movements and to channel or reference these persons to the relevant procedures (i.e. trafficked, NNA, victims of physical or sexual violence, strand-

⁹² Considering that violence caused by criminal actors is still affecting in particular and differentiated ways women and children, Nicaragua decided to extend more favourable treatment and prioritize the decision-making on refugee status relating to non-accompanied children and adolescent asylum-seekers, as well as women victims of violence and persecution carried out by criminal non-state actors. This prioritization of applications filed by persons with special protection needs is a good practice which incorporates UNHCR recommendations for the adoption of differentiated and sensitive procedures to considerations of age and gender of applicants, ensuring effective access to inclusive eligibility procedures.

⁹¹ In this context, it is important to highlight as a good practice in the region’s national legislations those of Guatemala, Honduras, and Nicaragua, which do not establish a deadline for the submission of asylum applications. While the Mexican legislation on international protection of refugees determined that the application must be submitted within a period of thirty days, it is important to consider the opportunity that an applicant has in Mexico to present justifications for any breach of such provision.

ed migrants, humanitarian visas, regularization schemes, etc.).⁹³

79. Another important regional challenge is to ensure that national institutions responsible for determining refugee status and defining public policies for their protection and durable solutions have a permanent Mesoamerican forum dedicated to dialogue, cooperation and exchange of good practices between peers from different countries. It is, therefore, extremely important that these national institutions, with the help and support of UNHCR, make the effort to keep this forum beyond the two regional meetings that have been held in the recent past (2012 in El Salvador and 2013 in Nicaragua).

C COMPREHENSIVE DURABLE SOLUTIONS STRATEGY, WITH EMPHASIS ON LOCAL INTEGRATION

80. With the exception of Costa Rica, Mexico and Panama, the vast majority of countries in the region provide protection to a small number of refugees immersed within mixed migratory movements across the region. In this context, although good practices for local integration can be recorded, the traditional emphasis of States has been to determine refugee status.
81. In terms of local integration, among regional best practices, we can highlight the exemption or decreased rate for refugees in issuing individual personal documentation⁹⁴ and recognition of the right to family reunification in the case of Guatemala, Nicaragua and El Salvador.

⁹³ The development and implementation of the “regional guidelines for the preliminary identification of profiles and referral mechanisms of vulnerable migrant populations” adopted in June 2013 during the XVIII Meeting of Vice-ministers of the Regional Conference on Migration (Puebla Process) is necessary in this context, as mentioned earlier.

⁹⁴ In El Salvador the process to obtain ID and its replacement also are exempt. In Nicaragua temporary residence of refugees is free of charge and they pay only 50% of the cost of the rate for permanent residence. In Costa Rica the immigration category change and the deposit of guarantees are exempt from taxes. Refugee children are exempt from payment of refugee documentation.

82. Another important development is that the right of access to paid work is guaranteed once the refugee condition is recognized. As in most South American countries, this right also extends to asylum-seekers in Costa Rica and Nicaragua, which is a good regional practice.

83. In most countries of the region, refugees have the opportunity to become permanent residents through the change of migratory status and access to naturalization. In this regard, it is considered good practice that Mexico grant recognized refugees permanent residence directly, and that Panama has adopted domestic legislation⁹⁵ to promote the change of migratory status of longstanding refugees, beneficiaries of temporary humanitarian protection and refugees with at least three years of residence in Panama after the recognition of their status. To facilitate the naturalization of refugees, it is necessary to promote a waiver of the procedures they cannot meet because of their particular vulnerability and significantly reduce the cost of the procedure.
84. In terms of public policy, in the case of Costa Rica, with the enactment of the General Law on Immigration No 8764 in 2010, the government took an important step in promoting the integration of migrants and refugees. This legal framework is a milestone, as it sets a new paradigm transcending the approach of regulating migratory movements, a clear promotion of integration, declaring for the

⁹⁵ Law 81 of 2011 (regularization of persons with temporary humanitarian protection, or PTH since 1998) and Law 74 of 2013 establish the requirements for refugees to have access to permanent residence. Local integration is promoted with permanent residence status as well as effective access to rights conducive to naturalization, for those refugees wishing so and meet the criteria established in the Political Constitution.

first time migration as of public interest for the development of the country.⁹⁶

85. Another regional good practice to promote local integration is to strengthening partnerships with the private sector to facilitate the search for employment opportunities for refugees and other persons of concern to UNHCR, through the promotion of programmes of Corporate Social Responsibility (CSR). Likewise, the incorporation of refugees to micro-credit schemes and micro-finance⁹⁷ is a favourable tool to promote their integration in countries of asylum. Some experiences in Costa Rica⁹⁸ and

Mexico⁹⁹ could serve as a platform for a coordinated regional action in the search for durable solutions for refugees.

86. Despite these important developments, the Mesoamerican region still lacks comprehensive strategies to promote the legal, economic and cultural integration of refugees. Among the main challenges we highlight the following:

- As an axis of local action, it is necessary to advance in the definition and adoption of public policies for refugees that go beyond the determination of refugee status and redouble efforts to find durable solutions through comprehensive strategies that address local integration, in socioeconomic, legal (change migratory status and naturalization) and cultural terms, as well as voluntary repatriation and the strategic use of resettlement.
- Effective access to sources of employment and decent housing remain the two main restrictions to the refugee population, as well as for the less favoured sectors of host societies. In general, countries do not have specific care programmes for the refugee population and their inclusion in national programmes to combat poverty has had various limitations.
- It is important that personal refugee documentation from many countries of the region do not explicitly refer to refugee status, in order to avoid discrimination and to promote access to basic services and, in particular, to sources of employment.

96 This regulation has also been reflected in institutional changes, since the Directorate of Integration and Human Development was created within the Office of Migration and has become a central partner of UNHCR in different lobbying tasks to facilitate the integration of refugees. In addition, the General Law on Immigration and Aliens N° 8764, sets the Migration Social Fund generated by taxes paid by any foreigner for migratory processes. With this same approach aiming to integration, in December 2013 entered into force by Executive Decree 38099-G the first comprehensive Public Policy on Migration 2013-2023, which incorporates important strategic axis of action for the integration of refugees, in terms of the process of recognition of the refugee status, equal access to the labour market, recognition of studies completed in the country of origin, and access to health and education services, among others.

97 Also in Costa Rica is noteworthy the Micro-credits Programme of APRODE, implementing partner of UNHCR, which provides and facilitates loans for creating self-employment and small business, among others.

98 Several initiatives have been launched in this country such as the programme "Living the Integration", which promotes innovative practices of Corporate Social Responsibility, a public-private partnership amongst UNHCR, Business Association for Development (AED), the General Directorate of Migration and Aliens and ACAI, UNHCR's implementing partner. This programme promotes the inclusion of refugees into the labour market, and thereby their integration into Costa Rican society. Another important development is the Model of Graduation, a pilot project implemented by UNHCR in Egypt, Ecuador and Costa Rica through the identification/selection of candidates (the most vulnerable but with high motivation and potential of success) to complete their training, family and social monitoring and support for inclusion in the labour market and the pursuit of self-sufficiency. In Costa Rica those steps are carried out simultaneously to the Programme of job opportunities implemented by ACAI, which manages a data base of persons of concern looking for job and companies offering vacancies, facilitates interviews, placement of jobs, training and personalized follow-up.

99 In Mexico, several activities are addressed to refugee women focused mainly on self-management, participation and self-sufficiency, including Spanish learning programmes. Guidelines are provided to start the job search, to initiate, continue, and validate studies in Mexico, with the help of a network called "Abriendo Puertas" (Opening Doors) which includes churches, several types of groups, co-operatives, professionals and companies willing to provide services and job opportunities to the refugee population. Refugees have been included as a population category "in situation of vulnerability" in the programme "Inclusive Company", dependent of the Secretariat of Labour in the city of Tapachula, state of Chiapas, which keeps a job notice board. The Secretariat shares the information and, with the support of the civil association *Fray Matías de Córdoba*, coaches refugees to prepare Resumes and job interviews.

- Time must be reduced to issue requests resolutions of applications for recognition of refugee status, so that asylum-seekers should not remain in uncertainty for long periods.
- In some cases, the high cost of individual personal documents make it difficult to receive adequate international protection for either the issuance or renewal of refugee card, or to start the application for migratory change status to permanent residence, or naturalization. In many cases, the high costs of these procedures have become a serious obstacle for refugees to renew their personal identification documents or opt for a process of naturalization.
- There are still challenges for the recognition of personal identification documents of refugees by the public institutions in the country.
- Difficulties persist to access the labour market and this leads to economic instability, coupled with the lack of knowledge of labour rights by refugees. In some countries even the document of refugees is not accepted or recognized by employers as a valid personal identification document, which further hinders access to work.
- Limited access to educational opportunities and difficulties for the recognition of academic qualifications is a challenge for local integration. It is extremely important to facilitate and promote the educational development of refugees and their families to facilitate their local integration and personal development.
- There are significant difficulties in accessing banking services: the non-recognition of ID of refugees in most banking institutions complicates the opening of bank accounts and access to credit. Not having bank accounts, in turn, makes it more difficult to be hired because refugees cannot receive wages through bank transfers, payment method used by many employers.
- Discrimination is a fact, as well as the need for psychosocial support for people who have fled their home country because of violence or persecution.

There is great ignorance and / or misperceptions about the situation of refugees and their needs.

- It is necessary to consider quicker and cheaper procedures, including exemption from requirements, to facilitate the process of naturalization of refugees who may aspire to that benefit, in accordance with current applicable legislation.¹⁰⁰
- It is important to consider a greater involvement of the private sector in the generation of employment opportunities for refugees.

D PREVENTION OF STATELESSNESS AND PROTECTION OF STATELESS PERSONS IN MESOAMERICA

87. Thanks to generous legislations on nationality in most countries, the humanitarian dimension of the problem of statelessness has been reduced in the region, although not completely eliminated. In view of this, the Mesoamerican countries could, even with limited resources, eradicate statelessness in the next ten years by supporting the inclusion of a chapter on statelessness in the future Brazil Plan of Action (2015-2024),¹⁰¹ as did participating countries of the MERCOSUR sub-regional consultation.
88. The adoption of this chapter would allow: 1) to define a regional agenda that identifies the challenges, actions and goals relating to statelessness, which could be reflected in national policies on human rights; 2) to strengthen the impact of existing initiatives on prevention, identification, protection and reduction; 3) to deepen the commitment of the countries of the region to the global goal of eradication of statelessness driven by UNHCR.

100 In this sense, it is noteworthy the agreement signed between UNHCR and the Costa Rican Electoral Supreme Tribunal (TSE) to facilitate the naturalization of refugees.

101 Summary Conclusions, Sub-regional MERCOSUR Consultations; the celebration of the 30th Anniversary of the Cartagena Declaration on Refugees "Cartagena+30", Buenos Aires, 18 - 19 March, 2014.

89. Since the regional refugee instruments did not address the problem of statelessness,¹⁰² the region lacks a strategic framework to boost its efforts against this scourge. However, the guidelines of the Brasilia Declaration on the Protection of Refugees and Stateless Persons (2010)¹⁰³ and the resolutions on statelessness of the General Assembly of the Organization of American States (OAS)¹⁰⁴ could guide the development of this chapter, which would address the following challenges:

PREVENTION OF STATELESSNESS

90. Accession to the 1961 Convention on the Reduction of Statelessness, is a central hub to prevent and reduce statelessness in the region. Costa Rica (1977), Guatemala (2001), Honduras (2012), Nicaragua (2013) and Panama (2011) are now States Parties, while Belize, El Salvador and Mexico still are not.¹⁰⁵

91. Countries often do a proper balance between the human right to a nationality and their broad powers to regulate it.¹⁰⁶ The political constitutions, which combine the criteria of *jus soli* and *jus sanguinis*, and

the generous nationality laws significantly reduce the possibility of statelessness in the region. However, this possibility has not been completely removed.

92. For example, in El Salvador¹⁰⁷ and Mexico¹⁰⁸ the nationality acquired by naturalization may be lost for 5 years of residence in a foreign country, which would be contrary to international law if it applies equally to people who have another nationality and those who could become stateless.¹⁰⁹ Also, some jurisdictions have regulatory gaps and not clearly resolve the issue of the nationality of foundlings, which depend of variables administrative practices or judicial decisions. On the other hand, some countries allow the renunciation of nationality without any security that the person has acquired or will acquire in fact, another nationality.

93. Another aspect regarding prevention refers to universal birth registration. Although the lack of birth registration does not imply that the person is a stateless person, the record is often essential to demonstrate the acquisition of nationality. In the Americas there are 1.3 million of unregistered births each year and 6.5 million children without birth certificates. Although the level of lack of birth registration among children from 1-5 years of age has decreased from 18% to 7%, 11% of boys and girls under 5 years of age in rural areas are not yet registered.¹¹⁰

94. Under certain circumstances, people whose birth is not registered may be at risk of statelessness as a result of the difficulties they might face to show their ties with a State.¹¹¹ For this reason, at the initiative of GRULAC, in 2013 the UNHCR Executive Committee adopted a “Conclusion on civil registration” in which States are encouraged to apply, in collaboration and with the support of UNHCR, the legal and practical measures necessary to overcome difficulties to make entries in the civil registry.¹¹² In the framework of the OAS, the Inter-American Program for Universal Civil Registry and the “Right to Identity” was also designed for this purpose.¹¹³

IDENTIFICATION AND PROTECTION OF STATELESS PERSONS

95. Accession to the 1954 Convention relating to the Status of Stateless Persons is equally important to eradicate statelessness. Belize (2006), Costa Rica (1977), Guatemala (2000), Honduras (2012), Mexico (2000), Nicaragua (2013), and Panama (2011) are now States Parties. Although not yet State party, El Salvador has signed the 1954 Convention and has moved towards ratification. In 2014 Mexico approved the lifting of reservations to Article 31 of the 1954 Convention and Article 32 of the 1951 Convention relating to the Status of Refugees, relating to the expulsion of stateless persons and refu-

gees.¹¹⁴ In the same spirit, Mexico could consider lifting reservations to articles 17 and 32 of the 1954 Convention.¹¹⁵

96. As with refugees, the development of regulatory frameworks is important for the protection of stateless persons. However, most countries lack regulations that comprehensively address the issue. It is positive that Costa Rica,¹¹⁶ Honduras,¹¹⁷ and Mexico¹¹⁸ have regulated migration and of personal documentation issues. Similarly, Costa Rica and Panama have made progress in developing draft presidential decrees, based on the draft Model Law prepared by UNHCR.¹¹⁹

97. Also, unlike other countries, Costa Rica, Honduras and Mexico have procedures to determine statelessness, which are decisive to ensure that the reduced number of stateless people in the region is properly identified and protected, preventing protection risks such as indefinite immigration detention, deportation and refusal to allow the return from abroad. To that end, the allocation of competence to the National Commissions for Refugees could be the cheapest and easiest way for a technical body, equipped with a minimum of resources and structure, to identify, protect and support the search for a solution to stateless persons. This may

102 The 1984 Cartagena Declaration on Refugees, the San José Declaration on Refugees and Internally Displaced Persons (1994) and the Mexico Declaration and Plan of Action to strengthen the Protection of Refugees in Latin America (2004) focused primarily on the assistance and protection needs of asylum-seekers, refugees, displaced persons and returnees.

103 In the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2010), Costa Rica, El Salvador, Guatemala, Mexico, Nicaragua, Panama, and Dominican Republic urged the countries of the Americas to “consider acceding to the international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and strengthening national mechanisms for comprehensive birth.” (<http://www.unhcr.org/4ec12c4f9.pdf>).

104 Resolutions AG/RES. 1693 (XXIX-O/99), AG/RES. 1762 (XXX-O/00), AG/RES. 1832 (XXXI-O/01), AG/RES. 1892 (XXXII-O/02), AG/RES. 1971 (XXXIII-O/03), AG/RES. 2047 (XXXIV-O/04), AG/RES. 2511 (XXXIX-O/09), AG/RES. 2599 (XL-O/10), and AG/RES. 2665 (XLI-O/11), AG/RES. 2787 (XLIII-O/13) on Prevention and reduction of statelessness and protection of stateless persons in the Americas.

105 In 2013, El Salvador organized, with support from UNHCR, a government workshop to discuss several legal issues relating to accession.

106 All countries are Parties to the UN Convention on the Rights of the Child, which in Article 7 recognizes the child’s right to a nationality. With the exception of Belize, all countries are Parties to the American Convention on Human Rights, which recognizes the right of every person to a nationality, to obtain the nationality of the State in whose territory he/she was born if not entitled to another, and not to be arbitrarily deprived of such nationality (Article 20).

107 According to article 94.1 of the Political Constitution (1983) the status of naturalized Salvadorans is lost by residing more than two consecutive years in the country of origin, or by absence from the territory for more than five consecutive years, except in case of permission granted in accordance to law.

108 Article 37, paragraph B, Political Constitution of Mexico, Article 27 of the Law of Nationality (1998) (last amendment published on 23/04/2012, *Diario Oficial de la Federación*). According to Article 37.B).II, Mexican nationality by naturalization is lost by residing for five consecutive years abroad.

109 According to article 7.4 of the 1961 Convention, a naturalized person may lose his/her nationality on account of residence abroad for a period specified by the law of the contracting State. However, the term should not be less than seven consecutive years, and operates if the person fails to declare to the appropriate authority his/her intention to retain her nationality.

110 *Parliamentarian Workshop on the right to identity and protection: promotion of the universal birth registration in Latin America and the Caribbean*, regional meeting in the Congress of the Republic of Peru organized by the Inter-Parliamentary Union and UNICEF, Lima, 7 - 8 June 2013.

111 For instance, the following categories of persons may be at risk of statelessness due to the non-registration of their birth: 1) migrants who can not demonstrate the nationality of the country of origin; 2) individuals living in border areas, where the non-registration of birth can lead to confusion whether the person is national of one country or another; 3) nomadic or semi nomadic populations whose territories cross national borders; etc.

112 *Conclusion on civil registration*, Report of the 64th session of the Executive Committee of the High Commissioner’s Programme, A/AC.96/1132, 2013, at: <http://www.unhcr.org/525bae9.pdf>.

113 Resolution AG/RES. 2362 (XXXVIII-O/08), Inter-American Program for Universal Civil Registry and the “Right to Identity”, General Assembly (OAS), 3 June 2008. Currently, the Program for Universalization of the Civil Identity in the Americas (PUICA) supports the OAS State Members in the eradication of underreporting to ensure the recognition of the right to civil identity and the fulfilment of the objectives set out in that resolution.

114 Decree of 6 February 2014, which approves the withdrawal of the reservation expressed to article 31 of the Convention relating to the Status of Stateless Persons (20/03/2014, *Diario Oficial de la Federación*).

115 At the time of accession, Mexico stated that it is not obliged to guarantee stateless persons more facilities for their naturalisation or obtaining paid employment than those who, in general, granted to foreigners. Mexico is the only State party that maintains a reservation on article 32. As regards article 17, although Italy considered it a mere recommendation and Philippines expressly reserved it, none of the remaining 77 States parties noted.

116 Law 8.764 (2009), General Law on Migration and Aliens of Costa Rica; Decree 37.112-G (2012), Regulations on Aliens.

117 Decree 208 (2003), Law on Migration and Aliens of Honduras; Regulation of Migration and Aliens Act (2004).

118 Mexico’s Law on Migration (2011) (as per amendment published 07/06/2013, *Diario Oficial de la Federación*); (2012) Regulation of Law on Migration.

119 During the *Ministerial Intergovernmental Event on Refugees and Stateless Persons*, held in Geneva in December 2011, Costa Rica agreed to “adopt a procedure for the determination of statelessness.” Also, Panama committed to “ensure the protection of stateless persons in its territory.”

require the strengthening of Commissions and Technical Secretariats.

REDUCTION OF STATELESSNESS

98. According to Article 32 of the 1954 Convention, States shall as far as possible facilitate the naturalization of stateless persons, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings. In the region, however, the legislation does not recognize facilities. Thus, stateless persons must comply generally with the same requirements for foreigners who have a nationality. Since the solution of statelessness is linked to the acquisition or reacquisition of nationality, such facilities are key to eradicating the problem. It would therefore be important for countries to grant certain facilities, introducing regulatory changes, as needed.¹²⁰

99. Increasingly, the region is witnessing migratory movements of people, including children and teenagers who are unaccompanied or separated, lacking identity or travel documents. A small number of these people were not properly registered at birth, nor after, and can not prove their ties with their country of origin.

100. The confirmation of nationality through the late registration of births and the granting of personal documents is important for those people who, in a migratory or trans-boundary context, are at high risk of becoming stateless. Efforts to confirm the nationality, however, can be a challenge when the country faces structural deficiencies in its registration system, or lacks communication mechanisms or bi-national projects to respond to the problem.

¹²⁰ The type of facilities may vary from country to country. Depending on the requirements for foreigners, in general, could consist of the reduction of the period of stay in the country, the exemption from payment of fees or examination of knowledge of language or history of the country, among others.

101. Similarly, in America the legal standards are not uniform with regard to the restoration or reacquisition of a nationality. From the perspective of prevention and reduction of statelessness, nationality laws prohibiting deprivation of nationality are positive, do not accept the resignation without appropriate safeguards, or state that nationality is not lost by naturalization in another country, eliminating the possibility of statelessness in cases of persons who acquired or seek to acquire the nationality of the country to which they migrated. Likewise, there are laws that regulate aspects of reacquisition of nationality.

102. Therefore, the regulatory systems of these countries that have regulated the issue properly, should be highlighted as good practice and guide the nationality laws and policies of those countries where the issue of recovery of nationality is still pending.¹²¹

E THE NANSEN INITIATIVE AND THE CROSS-BORDER DISPLACEMENT IN THE CONTEXT OF CLIMATE CHANGES AND NATURAL DISASTERS: OPPORTUNITIES AND CHALLENGES OF PROTECTION IN MESOAMERICA¹²²

BACKGROUND OF THE NANSEN INITIATIVE

103. Each year, millions of people are forcibly displaced worldwide due to natural disasters. Central America and Mesoamerica in general as a region do not escape this growing reality as they are exposed to a wide variety of natural disasters, including floods,

¹²¹ The UN Human Rights Council called upon States to “ensure the access of persons arbitrarily deprived of their nationality to effective remedies, including, but not limited to, the restoration of nationality,” *Resolutions N° 20/5, Human Rights and arbitrary deprivation of nationality, Human Rights Council, A/HRC/RES/20/5*, 16 July 2012, at 12. Similarly, the UN Secretary-General has stated “the States must ensure that there is an effective remedy when it is concluded that the decision concerning nationality is illegal or arbitrary. Among other solutions, this resource should include the possibility of restoring the nationality.” *Human Rights and arbitrary deprivation of nationality, Report of the Secretary-General, A/HRC/25/28*, 19 December 2013, par. 34.

¹²² Section prepared by Atle Solberg, Head of the “Nansen Initiative” Secretariat, at the request of the States participating in the Sub-regional meeting. It does not represent UNHCR official position on the specific subject.

hurricanes, droughts, tsunamis, earthquakes, volcanic eruptions, and landslides, each of which have the potential to generate population movements. Undoubtedly, the region has also begun to face the negative impacts of climate change, including rising sea level. To date, as in other regions of the world, most of the displacement in Mesoamerica is internal followed by abrupt disaster, and people usually return to their homes soon after the disaster. In light of the projected growth in population, continued environmental degradation and an anticipated increase in the frequency and / or intensity of disasters, the likelihood of an increase in the displacement in Mesoamerica, including the borders is anticipated.

104. However, as stated in a broad and general way, unlike refugees, there is no regime of international or regional protection that specifically addresses cross-border movement in the context of disasters. Nor have steps been taken to systematically attend regular or irregular migrants, either trapped in disaster situations, or who cannot return in safety and dignity to a country devastated by a disaster. Although human rights law establishes “an indirect right to be admitted or remain where expulsion of the person to the country of origin would amount to inhuman treatment”,¹²³ this would not address all situations of displacement. Finally, although the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides some protection for migrant workers, does not give them the right of admission and continued stay in the country.¹²⁴

¹²³ Kälin and Schrepfer (2012) at 35. See also chapter three: McAdam, *Climate Change, forced migration and international law* (2012).

¹²⁴ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (adopted by General Assembly resolution 45/158 of 18 December 1990, entered into force on 1 July 2003), 1 UNTS 93.

105. In this context, the objective of the *Nansen Initiative*¹²⁵ is to achieve consensus on a “protection agenda” to address the needs of displaced persons across borders in the context of disasters, including those caused by the effects of climate change.

106. The Nansen Initiative process began with a series of regional consultations (Pacific, Central America, the Horn of Africa, Southeast and South Asia) that try to gain a better understanding of the dynamics of displacement in each region, identifying the protection and assistance problems, and highlighting good practices and policies. By sharing experiences from a wide range of stakeholders, including States, international organizations, affected populations and civil society, the foundations for the global intergovernmental meeting of the 2015 Nansen Initiative protection agenda shall be established.

THE NANSEN INITIATIVE AND THE CENTRAL AMERICA REGIONAL CONSULTATION

107. More than 100 participants from the countries of Central America, Mexico, Colombia, Haiti and the Dominican Republic, representatives of the Nansen Initiative, as well as representatives of regional and international organizations, civil society and research institutions met in San José, Costa Rica, on 2-4 December 2013 for the second of the Nansen Initiative’s Regional Consultation on “*Disasters and cross-border displacements in Central America: Emerging needs, new responses.*”¹²⁶

¹²⁵ The governments of Norway and Switzerland fund the Nansen Initiative, with additional financial support from the European Commission. A steering group, which at the time of writing this document consisted of nine State Members, governs it: Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, Norway, Philippines and Switzerland. An Advisory Committee reports on the process through the expertise provided by representatives of the international organizations dealing with migration and displacement issues, climate change and development researchers, committees of experts and NGOs. The envoy of the Presidency represents the Nansen Initiative throughout the process, providing strategic guidance and inputs. Finally, the secretariat of the Nansen Initiative, based in Geneva, supports the process with strategy, research and additional management capacity.

¹²⁶ Please, see the conclusions of the Regional Consultation of Central America, available at: <http://www.nanseninitiative.org/>

108. During the Regional Consultation, participants recognized the extreme importance for the region of trans-boundary movement in the context of disasters. They recognized that while most of those displaced by the disaster remain in their home countries under the protection of national legislation, there is a legal gap with regard to the protection of displaced persons across borders.

109. Although several countries in Central America and North America have admitted and have provided various forms of protection for victims fleeing disasters such as granting them temporary protected status, subsidiary protection or humanitarian visas, experience has shown that such agreements are generally developed as *ad hoc* responses to extraordinary emergency situations, determined case by case and often unilaterally implemented, unlike a more coordinated regional response.¹²⁷

110. In addition, the mechanisms do not necessarily address all the specific protection needs of migrants residing or in transit through a country when disaster strikes, and the challenges that faces a person who is not a citizen and / or is an undocumented person for access to protection and assistance of the State. In addition, some temporary protection mechanisms have been used for long periods, leaving the people with temporary arrangements for a long time, while others have been ended abruptly, leaving people at risk of premature return.

111. Seeking to address these protection gaps, participants in the Regional Consultation identified several processes such as the Central American Commission of Migration Directors (OCAM), the Regional Conference on Migration (RCM) and the Cartagena+30 Process, as appropriate forum for continuing a regional dialogue on how to comprehensively address the protection needs of displaced persons across borders in the context of disasters and the adverse impact of climate change.

112. Regarding temporary protection mechanisms in disaster situations, the following actions are recommended:

- Promote and harmonize the use of humanitarian visas for the admission of persons displaced by disasters.
- Develop criteria to identify eligible persons to receive humanitarian visas.
- Explore possibilities to ensure that the beneficiaries of humanitarian visas have access to comprehensive and durable solutions when their visas expire.
- Consider measures to protect all migrants when their home countries face emergencies caused by disasters.
- Develop regionally applicable guidelines.

3. TOPICS FOR FURTHER DISCUSSION IN THE CONTEXT OF THE CARTAGENA+30

113. The 1984 Cartagena Declaration and the subsequent monitoring mechanisms such as the San Jose Declaration (1994) and the Mexico Plan of Action (2004) are important examples of innovative action, solidarity, and international cooperation in a search to better protect displaced people. At that time, those initiatives sought to find pragmatic solutions to emerging and contemporary protection concerns of displaced persons, mainly for those whose needs were not adequately covered by international and national laws, such as IDPS.

114. Therefore, the *Nansen Initiative* is of immediate and direct importance to the Cartagena +30 Process, because it also addresses an emerging issue of forced displacement, how to reduce the protection gap for people displaced across borders in the context of disasters, where national, regional and international responses for protection and assistance are insufficient. The Cartagena+30 Process has generated a significant body of experience and knowledge from which States can build and contribute as appropriate, while discuss adequate measures to address this new and emerging challenge on displacement.

ACNUR/UNHCR
Regional Bureau for the Americas.



¹²⁷ For example, after the 2010 earthquake in Haiti, the Dominican Republic adopted a humanitarian multiple entry visa for a year, allowing caregivers of the most severely injured, accompanied by relatives, crossing legally round-trip the border in search of medical attention. The Government of Mexico established a humanitarian programme of immigration from May to February 2010, which allowed residents in Mexico travel to Haiti to bring back their relatives and also sent three boats during the period of March to June 2010 to rescue a total of 511 Haitians. All received visas for non-immigrants for one year, issued by "humanitarian reasons or public interest," which were subsequently extended until the end of 2011. It should be noted that the Government of Canada and in particular the province of Québec, mainly streamlined and expanded existing mechanisms for immigration processing. Québec also applied humanitarian reasons to facilitate the immigration of a small number of people in "especially serious" conditions.

Mesoamerica

CONCLUSIONS AND RECOMMENDATIONS



Guatemalan refugees.
La Gloria settlement,
Chiapas State.
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I INTRODUCTION

The third sub-regional consultation of the commemorative process of the 30th Anniversary of the 1984 Cartagena Declaration on Refugees (“Cartagena Declaration”) was held in the city of Managua, Nicaragua, on 10 and 11 July 2014.

The Governments of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama attended the sub-regional consultation, organized by the Government of Nicaragua and UNHCR and sponsored by SICA. Representatives of the Governments of Brazil, Cuba, Spain, the United States of America and the European Union attended as observers. The following international organizations were also present: UNFPA, OCHA, WFP, UNDP, UNICEF, IOM, SICA, ECHO, ICRC,

IFRC, the Inter-American Court of Human Rights, the Central American Court of Justice and the Technical Secretariat of the Regional Conference on Migration (CRM). Also participated in this event the Offices of the Ombudsman of El Salvador, Guatemala and Nicaragua, the National Commissioner for human rights in Honduras, the Norwegian Refugee Council, and representatives of civil society organizations from the Mesoamerican region, including the Academia.

The Deputy Minister for Foreign Affairs of Nicaragua, Mr. Orlando Gómez; the UNHCR Assistant High Commissioner for Operations, Ms. Janet Lim, and the Executive Director of SICA, Mr. Werner Vargas, inaugurated the event. In their opening remarks they referred to the long journey made by Central America

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

from the Cartagena Declaration to date, highlighting the important contribution of the Mesoamerican region to the development of International Refugee Law, and the new challenges facing the region. They highlighted the forced displacement generated by violence of transnational criminal groups that is causing thousands of men, women and unaccompanied minors to flee. They also reiterated the willingness and need to strengthen regional cooperation and joint work among all Governments, SICA, UNHCR and other international organizations and civil society.

During the two days consultation, participants discussed the new trends of regional migration, including forced displacement generated by transnational organized crime. Recognizing Mesoamerica as a regional protection space, they also addressed the challenges of international protection of refugees and stateless persons, as well as the possible protection responses to cross-border movements generated by climate change.

The sub-regional consultation approved a document prepared by the Rapporteurship, which, together with the notes of the Technical Secretariat, the presentations of the panelists and the reference documentation shared with the participants, has served as the basis for the preparation of this document that summarizes the main conclusions and recommendations. The background paper of this sub-regional consultation can be found on the website of the *Cartagena+30* process: www.acnur.org/cartagena30.

The following conclusions and recommendations of the Mesoamerican sub-regional consultation will serve as an input for the formulation and adoption of a Declaration and a regional Plan of Action for the period 2015-2024.

PROTECTION PROGRESS AND CHALLENGES IN MESOAMERICA

As part of the discussion on the achievements and progress made in the implementation of the Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America in 2004 (“Mexico Plan of Action”), it was reiterated the important contribution made by the Mesoamerican region through the implementation of pragmatic and innovative responses to address the international protection needs and the new challenges posed by forced displacement of people in need of protection. Following this line of action, participants were called to make practical proposals on this consultation, always keeping in mind the human person as the main focus of attention.

The first panel addressed the changes in the global context that have influenced the increase in people in need of international protection. It was highlighted that despite the advances in the development of specific legal frameworks and the strengthening of the existing ones, in the ten years since the adoption of the Mexico Plan of Action there are new challenges to attend to. Among them: the forced displacement generated by transnational organized crime and its impact on the most vulnerable groups, such as women, unaccompanied children and adolescents. To address this new regional challenge, it was recommended to follow the principles of responsibility sharing and regional solidarity, highlighting the importance of applying a differentiated protection approach and the need for synergies and close cooperation between State authorities, civil society and international organizations.

It was recommended that the new Plan of Action, to be adopted in Brazil, should have a shared regional vision, more financial resources, tripartite follow-up mechanisms, the active participation of government authorities, UNHCR and other relevant international bodies, and the civil society, a proper balance between humanitarian needs and legitimate security considerations to prevent abuses of the asylum system, provide for the

exchange of experiences among the CONARES within the institutional framework of SICA, and the establishment of linkages with other regional *fora*, such as the RCM and MERCOSUR.

II NEW TRENDS OF FORCED DISPLACEMENT IN MESOAMERICA AND PROTECTION CHALLENGES

The sub-regional consultation highlighted the plural causality of regional migration, which involves different factors, such as economic considerations and family reunification, as well as increasing violence and insecurity. These last two causes mainly correspond to the action of transnational organized crime.

The Governments of El Salvador and Honduras reported on their national policy and institutional frameworks to respond to forced displacement and shared their experiences in the context of their implementation.

It was confirmed that the actions of transnational organized crime in Mesoamerica generate in some instances forced displacement, which is characterized by its atomization and invisibility. The delegation of Brazil recommended not to generalize this phenomenon for the whole continent, suggesting that the particular circumstances observed in the Mesoamerican region should be noted, and referred to in the geographical framework in which evolves. The delegation of Brazil also expressed its willingness to consider cases of refugees affected by this situation as possible beneficiaries of the solidarity resettlement programme.

Due to the new trends of forced displacement within the region, the sub-regional consultation found an increase in the number of refugee applications, as well as an increase in the recognition of this condition in several countries of the continent. It was also highlighted

with concern, an increase in the number of pending applications for refugee status in various countries.

The sub-regional consultation made the following recommendations to address this phenomenon within a framework of close regional cooperation:

1. Highlight the fact that displacement caused by organized crime in Mesoamerica is a complex problem that must be addressed with a focus on human rights, responsibility sharing and solidarity. Regardless of whether people move within their countries or across international borders and recognize that, in the latter case, it can lead to the recognition of refugee status.
2. Confront the causes generating forced displacement in the region with the cooperation of States, civil society and international organizations, within a framework of responsibility sharing.
3. Develop an early warning system for forced displacement within SICA.
4. In the framework of the cooperation agreement signed between SICA and UNHCR, consider the creation of an Observatory of human rights for the migrant population subjected to forced displacement, with the active participation of civil society and Academia and the support and supervision of the Human Rights Ombudsmen at regional level. The aim would be to implement a common system of collection and analysis of quantitative and qualitative information on the phenomenon, which will facilitate the formulation of public policies and regional coordination and cooperation.
5. Develop a comprehensive regional policy to respond to forced displacement and provide assistance to victims with the support of international cooperation, without prejudice to the adoption of immediate national responses.
6. Prepare a harmonized protocol for registration to measure the levels of forced displacement and information for the displaced population.

7. Strengthen the work of existing networks of States, international organizations and civil society to address the issue of forced displacement, focusing on border monitoring, with the participation of national institutions for the promotion and protection of human rights.
8. Consider the establishment of a regional humanitarian evacuation mechanism to third countries, defining the criteria for their beneficiaries and the modalities of cooperation.
9. Strengthen national judicial systems and other national protection mechanisms, such as victims and witnesses protection programs.
10. Influence the authorities of the host countries of migrants or people who need asylum or international protection as refugees and a regional visa, in order to ease and streamline response mechanisms to applications originated by situations of violence.
11. Take into account UNHCR's guidance notes for asylum applications filed by victims of gangs or *maras*.
12. Promote a permanent regional forum of refugee commissions for the exchange of good practices within the framework of SICA and find its connection with the Regional Conference on Migration (RCM), the Central American Court of Justice and other similar forums in Latin America.
13. Include the networks of civil society within SICA's Consultative Committee framework.

III INTERNATIONAL PROTECTION CONSIDERATIONS IN THE TREATMENT OF MIXED MOVEMENTS IN THE REGION

The sub-regional consultation reiterated the need to recognize the changes within the dynamics of the regional migration, where mixed migratory movements, including economic migrants as well as people fleeing violence and insecurity, are mainly affecting children, adolescents and women.

However, it was found that the response to migratory movements continues to emphasize security and not the protection needs of the people. It was mentioned that, in order to preserve the institution of asylum and ensure the protection of refugees, it is necessary that States have different mechanisms to identify needs and provide protection to those who require it, including among others migratory options.

Within the recommendations formulated by the sub-regional consultation to address mixed migration movements, the following are highlighted:

1. Promote the national implementation of the *Regional guidelines for the preliminary identification of profiles, and referral mechanisms of migrant populations in conditions of vulnerability*, bearing in mind the differentiated protection responses.
2. Reiterate the commitment of States to ensure access to asylum procedures and to apply the refugee definitions recognized in their internal regulations.
3. Strengthen differentiated and quality procedures for refugee status determination, which take into account the particular protection needs and respect for due process guarantees.
4. In border areas, promote a better understanding of the right to seek international protection and of migration officials on the national mechanisms for refugee status determination, with the aim to ensure that protection safeguards are in place, such as: *non-refoulement, non-penalization*, for irregular entry, the right to seek and receive asylum and non-discrimination.
5. Recognize the important assistance and protection work that civil society conduct in the shelters for migrants and promote the cooperation of UNHCR and other international organizations to strengthen and increase these networks of shelters, especially in border and transit areas, and encourage better care for migrants, asylum-seekers and refugees.

6. Seek alternatives to administrative detention and eliminate such measure for asylum-seekers and refugees.
7. Proscribe the administrative detention of migrant, asylum-seekers, refugee children and adolescents.
8. Recognize the importance of the regulation of complementary protection and humanitarian visas by States based on their internal laws, considering a possible harmonization of criteria within the Central American Commission of Migration Directors (OCAM), and without prejudice to the protection which owe to be granted to whoever requires international protection as a refugee.
9. Conduct information campaigns in countries of origin, transit and destination on the rights of persons and the risks of the migratory routes.

IV SPECIFIC PROTECTION NEEDS DUE TO THE NEW TRENDS OF FORCED DISPLACEMENT IN THE REGION: UNACCOMPANIED CHILDREN AND ADOLESCENTS

The regional consultation emphasized the humanitarian crisis caused by the increase in the presence of unaccompanied children and adolescents in the regional migration, among them, victims of forced displacement due to violence and insecurity. They also reiterated that any consideration in this matter should be governed by the principle of the best interest of the child, considering children as subjects of rights, where the logic that prevails is one of care and protection.

The importance of incorporating specific provisions on the basis of gender, age and diversity in the normative frameworks was emphasized, as well as the need to strengthen preventive actions, aimed at promoting family and community links, institutional strengthening and operating procedures by which protection is provided to groups in situations of vulnerability.

Based on the identified challenges, the sub-regional consultation made the following recommendations:

1. Highlight the interest within the RCM to create a comprehensive regional mechanism (*ad hoc* working group) to meet the protection needs of children, adolescents, migrants and refugees, and to complement the *“Regional guidelines for the preliminary identification of profiles and referral mechanisms of migrant populations in conditions of vulnerability,”* the *“Regional guidelines for the care of unaccompanied migrant children, and adolescents in case of repatriation,”* and the *“Regional guidelines for special protection in cases of repatriation of children and adolescent victims of human trafficking.”*
2. Redouble efforts and cooperation of all concerned institutions to develop and implement national assistance mechanisms with the highest protection standards, including an approach to age, gender, diversity and the best interests of the child, and to include the areas of prevention, protection and solutions.
3. Respond to the humanitarian crisis of unaccompanied children and adolescents, bearing in mind the experience shared by Guatemala, through improvements in detection and preliminary assessment at the U.S.-Mexico border, strengthening of the training of border officials to identify protection needs and the implementation of community alternatives to administrative detention; all this on the basis of the best interest of the child.
4. Address the fundamental causes of this irregular regional migration, through the strengthening of national and regional systems for the protection of children and adolescents; the implementation of mechanisms for the identification, protection and durable solutions; the strengthening of consular protection; the improvement of the reception conditions and of the procedures to determine the best interest of the child and to access the asylum

systems for those who are in need of international protection as refugees.

5. Provide more human and financial resources to national institutions responsible for the protection of children and adolescents, as well as to the commissions for the determination of refugee status to promote they act in accordance with the high standards of human rights prevailing in Latin America.
6. Improve the implementation of preventive measures in the communities of origin, bearing in mind the vulnerability factors of minors, ensuring access to education and working to decrease school dropout rates, as well as gaining a better knowledge of the phenomenon of internal forced displacement (primary prevention).
7. Strengthen monitoring by human rights institutions and relevant State bodies, in collaboration with civil society and international organizations, on the situation of returned or deported children and adolescents and those reunited with their families, for the purpose of improving their safety, security and their general care, thus avoiding when possible, their re-victimization and a new cycle of forced displacement.

MESOAMERICA AS A SPACE FOR REGIONAL PROTECTION

The sub-regional consultation underlined the importance of maintaining and strengthening Mesoamerica as a space of protection for refugees, stateless and other persons in need of international protection. As part of the discussions on the effective access and strengthening of national refugee status determination procedures, comprehensive strategies for durable solutions, progress in the actions of prevention of statelessness and protection of stateless persons, and the impact of climate change and natural disasters on cross-border displacement, the participants highlighted regional good practices and the existing gaps to be addressed in the Brazil Plan of Action, the applicable standards in Mesoamerica and the better use of the regional forums for their dissemination and promotion.

V EFFECTIVE ACCESS AND STRENGTHENING OF NATIONAL REFUGEE STATUS DETERMINATION PROCEDURES AND EXCHANGE OF GOOD PRACTICES

The sub-regional consultation discussed different modalities to strengthen national procedures for refugee status determination, such as the quality assurance initiative (known as QAI), implemented in Mexico, Costa Rica and Panama; the support to the Technical Secretariats; bilateral cooperation or South-South twinning programs. The work of the civil society was recognized in the provision of advice and legal representation of asylum-seekers and refugees, and their participation as members of some of the national commissions for refugees (as it is the case of Nicaragua) was noted. The importance of including international refugee law in the training programmes of civil servants, as it is done in Guatemala for the national police officers, was also stressed.

Participants highlighted the importance of adopting a progressive interpretation of the refugee definition of the 1951 Convention and its 1967 Protocol, and of incorporating and implementing in national legislations, in those countries which have not done so, the expanded regional definition recommended by the Cartagena Declaration. With regards to the regional refugee definition, it was recognized that it is necessary to provide guidelines to States and civil society organizations for its correct application.

The standards developed by the Inter-American Court of Human Rights on the principle of *non-refoulement*, the scope and content of the right of asylum and its links with the international protection of refugees, as well as the incorporation of the standards of due process guarantees in the refugee status determination procedures were also shared with participants.

As part of the due process guarantees developed by the Inter-American Court of Human Rights, to be respected in all refugee status determination proce-

dures, the following were highlighted: 1) the exercise of the right to seek and receive asylum, which presupposes that the applicant will be heard in a predetermined and objective procedure; 2) the right to legal representation and advice; (3) the right to be informed about the procedure; 4) the right to contact UNHCR; 5) the right to be heard, and thus the need for an individual interview of the applicant; 6) the State obligation to adopt a reasoned and objective decision, within the time limits established by law and by an authority competent and duly identified; 7) the obligation to respect the principle of confidentiality of the applicant and the application; and 8) the entitlement of the applicant to be notified of the decision to be adopted, including a remedy with suspended effect (appeal or review) until the competent authority adopts a final decision.

Additionally, in the case of children and adolescent asylum-seekers and refugees, the Court indicated that the guarantees provided for in article 19 of the American Convention on Human Rights have to be applied and, in particular, the right to participate, to be heard and the best interest of the child.

To respond to the main challenges posed by the strengthening of refugee status determination procedures in the region, the sub-regional consultation made the following recommendations:

1. Strengthen national commissions for the determination of refugee status.
2. Ensure respect for due process guarantees and access to justice, including free legal representation and the use of interpreters when required.
3. Consider the possibility that no time limit is established in order to submit an asylum request.
4. Establish and respect reasonable time limits to resolve asylum claims and consider, as a good practice, the introduction of positive administrative silence, as is done in Nicaragua.

5. Incorporate due process standards developed by the Inter-American Court of Human Rights, including the need to adopt reasoned decisions, and the application of the principle of good faith and the benefit of the doubt.
6. Consider assistance and legal representation services through agreements with public and private universities, other instances of civil societies and lawyers' bar associations to carry out professional practices.
7. Eliminate pre-admissibility procedures in those countries where they exist.
8. Consider the benefits of replicating in other countries of the Mesoamerican region the methodology of the quality assurance initiative (QAI) that has been implemented in Mexico, Costa Rica and Panama.
9. Move towards a regional harmonization of procedures, rules and standards on the protection of refugees.
10. Generate and strengthen mechanisms and protection networks of civil society organizations at a regional level in order to exchange best practices, share information, contribute to the representation of cases and ensure respect for human rights standards for the protection of refugees.

VI COMPREHENSIVE STRATEGY FOR DURABLE SOLUTIONS EMPHASIZING LOCAL INTEGRATION

Different initiatives to promote refugees local integration were shared, such as the need for public policies that promote this durable solution (i.e. Living the Integration programme in Costa Rica); the active participation of the public and private sectors in generating employment for refugees (i.e. in Costa Rica, through the corporate social responsibility); access to productive projects and technical training, for both refugees and beneficiaries of complementary protection (i.e. in

Mexico); specific agreements to guarantee access to university education for refugees through grants (i.e. Cuba and Brazil); the promotion of the change of migratory status of refugees from temporary residents to permanent residents, as well as programmes of regularization of migrants (i.e., Panama), and the facilitation of naturalization through fast, accessible and low-cost processes.

The sub-regional consultation underlined the importance that these initiatives be adopted in consultation with the refugee population, considering the special vulnerability of children, adolescents and women.

In terms of local integration, the most important challenges are effective access to sources of employment and the validation of diplomas obtained abroad. It was also mentioned the importance of awareness-raising campaigns that promote diversity and equality between nationals and foreigners, and of the existence of migratory regularization programmes to respond to the needs of other migrants and thus safeguard the integrity of the asylum system and refugee protection.

In terms of durable solutions with an emphasis on local integration, the participants to the sub-regional consultation recommended the following:

1. Reiterate the importance of public policies that promote local integration of refugees and migrants in host countries.
2. Seek synergies with the public and private sectors and international cooperation for the implementation of public policies.
3. Facilitate the local integration and access to livelihoods opportunities of asylum-seekers and refugees in the region, through the granting of work permits to asylum-seekers, as it is done in different Latin American countries.

4. Omit any reference to the legal status as asylum-seekers and refugees in their personal documentation.
5. Implement vocational and professional training programs for refugees.
6. Promote microcredit schemes and seed capital, projects for livelihood, grants and State social programs for refugees.
7. Facilitate refugee access to bank credits.
8. Promote the recognition of refugees' personal documentation and travel documents by the national banking system.
9. Facilitate access to housing, health and education for asylum-seekers and refugees.
10. Promote the issuance of fast and free documentation to asylum-seekers and refugees.

VII PROGRESS IN THE PREVENTION OF STATELESSNESS AND PROTECTION OF STATELESS PERSONS IN MESOAMERICA

The sub-regional consultation took note that there are between 10 and 12 million stateless people worldwide, and the Mesoamerican region is no exception to this problem, as long as there are still situations that give rise to this humanitarian problem. It was noted with satisfaction that, in recent years, various countries in the region have acceded to the 1954 Convention Relating to the Status of Stateless Persons ("1954 Convention") and the 1961 Convention on the Reduction of Statelessness ("1961 Convention"). Several countries shared their progress in this regard. On the issue of protection of stateless persons, Mexico shared its experience in the establishment of a stateless status determination procedure, granting permanent residency and providing access to naturalization, which constitutes good practice for the region.

Participants were reminded that the great challenge in the region is the eradication of statelessness, as it is a

problem that affects children in particular, for which it must be carry out measures of prevention, protection and resolution of existing cases. In this regard, there is still the need to regulate stateless status determination procedures and the harmonization of domestic legislation of States to prevent statelessness. The regulation of *ius sanguinis* and *ius solis* does not resolve all the situations that may give rise to statelessness in the Americas.

For the purposes of eradicating statelessness, it is recommended to focus on prevention, protection and resolution. In relation to prevention, it was recommended the accession to the 1961 Convention, as a central instrument to prevent statelessness. It was also recommended reviewing and, if necessary, adapting nationality legislations to address vacuums and gaps. It was also stressed the need to improve civil registration systems in order to ensure the immediate birth registration and documentation.

In relation to the protection of stateless persons, it was recommended the accession to the 1954 Convention and the adoption of legal frameworks, including the establishment of national mechanisms for stateless status determination.

Regarding the resolution of existing cases, it was recommended adopting measures aimed at the restoration of nationality of those persons who were deprived of it, or had renounced or lost it without acquiring another nationality. Likewise, it was stressed that persons recognized as stateless should have facilities for their naturalization, and that those persons whose nationality is undetermined have their nationality confirmed.

Representatives of the civil society also recommended providing documentation to prevent statelessness, developing protocols to deal with situations of movements across border; that recognized stateless persons be granted permanent residence; to incorporate the

standards developed by the Inter-American Court of Human Rights in the area of nationality, as well as combating racism, xenophobia and discrimination that may affect stateless persons or persons at risk of statelessness. In addition, civil society urged States to participate actively in UNHCR's campaign to eradicate statelessness in the next 10 years.

VIII CLIMATE CHANGE, NATURAL DISASTERS AND CROSS-BORDER MOVEMENT

In the last segment of the consultation the *Nansen Initiative* was presented as a consultative global process led by States, which seeks to offer a response to the existing legal vacuum in order to provide protection to persons who are displaced as a result of climate change and natural disasters, since they cannot be recognized as refugees under international law. The main conclusions of the Government consultation, which took place in December 2013, in San José, Costa Rica, within the scope of this *Initiative*, were also shared.

In Latin America, there are examples of cross-border movement caused by natural disasters or climate change and practical responses taken by the States to provide protection. Thus, within the scope of the RCM, States recommended developing guidelines for granting temporary protection or humanitarian visas to people affected by cross-border movement, for which a regional workshop will be held. The humanitarian visas granted by the Government of Brazil to people of Haitian nationality who arrived to its territory was recognized as a good regional practice.

It was highlighted that different countries from the region have shown solidarity with people who have been forced to move as a result of natural disasters, and that there are various efforts displayed by countries in the prevention and risk analysis, mainly by

civil protection authorities. The delegation of Mexico mentioned that during the regional consultation of the *Nansen Initiative*, held in San José, Costa Rica, there was wide agreement that it is not necessary to create new legal instruments to assist persons displaced across borders due to climate change and natural disasters, and that it was agreed to strengthen existing cooperation schemes in the areas of prevention, coordination and mitigation.

Finally, the participants expressed their gratitude to the Government and the people of Nicaragua for the warm welcome and their willingness to co-sponsor this sub-regional consultation.

Managua, 11 July 2014.



The Kuna population have suffered the loss of their land, exacerbated by the activities of illegal armed groups. The elderly are the ones who keep their traditions such as the use of traditional medicine.

Arquíu.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Mesoamerica

CIVIL SOCIETY POSITION PAPER



Voluntary repatriation of guatemalan refugees. Beginning of the journey from Mexico to Guatemala.
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We, the civil society organizations of Mesoamerica are celebrating and embracing the invitation of the States and UNHCR in the framework of the commemoration of the 30 years of the Cartagena Declaration. We appreciate the opportunity to share our proposals in order to strengthen the protection system in our region, which is currently very nowadays due to new challenges caused by the different situations of violence and the subsequent humanitarian impact on the population of some of our countries.

This is why the Cartagena Declaration, and the Mexico Plan of Action adopted in 2004, are not just still applicable and valid, but represent indispensable tools to protect people affected by the violence that occurs in our region.

During the last few weeks the humanitarian situation of non-accompanied minors at the U.S. border is being discussed, but what about our women suffering all kinds of abuse and violence, or our young people being recruited against their will, or the citizens that feel threatened and deprived of their most basic rights? All of these groups deserve integrated protection both within their own territories as well as outside their territories, when they cross their borders seeking asylum.

It is in our organizations' interest to contribute with actions to achieve the effective protection of the people, and this is why we are interested in continuing with these tri-party mechanisms of observation and monitoring that involve participation from civil society, academia, UNHCR and the States. These mechanisms recognize the

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

central role of these partnerships in fulfilling the rights of people in need of international protection.

Taking into account the important advances made in the area of protection in recent years, new and important challenges still exist for the region: forced displacement –internal and cross-border– caused by transnational organised crime and other situations of violence, the violation of human rights, circular cycles of a lack of protection –in the place of origin, transit, and the destination, and displacements caused by natural disasters and climate change.

Finally, we urge the states to carry out a progressive application of the 1951 Refugee Convention, the effective implementation of the Cartagena Declaration, as well as all of the international instruments in the areas of Human Rights, Humanitarian Law and the International Refugee Law, including Conventions on Statelessness. In addition, the Guiding Principles on Internal Displacement and other instruments of protection should also be included, which should be reflected practically in the Action Plan of Brazil 2015-2024.

A FORCED DISPLACEMENT RELATED TO TRANSNATIONAL ORGANIZED CRIME AND OTHER SITUATIONS OF VIOLENCE

Since 2009, new dynamics of displacement have occurred in Mesoamerica, mainly in the countries located in the northern triangle of Central America (NTCA), where people are forced to leave their place of origin due to the consequences of transnational organized crime activities (TOC) and other situations of violence (OSV¹).

Due to an increase of the violence rates, the absence of the State services, the lack of access to the justice sys-

tem and impunity there is widespread fear among the population, which provokes internal forced displacement and sometimes leads to affected people seeking international protection.

Being an invisible phenomenon, it is difficult for the States to recognise the phenomenon of internal displacement because there are no institutions or normative frameworks responsible for preventing it and/or to provide protection and assistance using a differentiated approach for distinct populations.

The people being forcibly displaced, whether at an internal or transnational level, in which there has been an increase of non-accompanied women, children and adolescents, are facing a series of vulnerabilities during their displacement cycle: in their departure, during transit and upon arrival, and in some cases on their return (whether it is voluntary or forced). Particular assistance needs to be placed on the lack of an integrated public policy for the people that are systematically deported back to their country of origin; unfortunately, stigmatization and penalization for these people still exists, reducing their opportunities to be reinserted into society.

To conclude, it is important to note that host States don't always value the causes and dimensions of the forced displacement phenomenon, and by not guaranteeing their protection they expose these people to situations where their freedom or lives are at risk.

PROPOSALS

1. Urge States from the region to acknowledge the phenomenon of forced displacement (internal or transnational) in the region caused by TOC and OSV in order to guarantee scenarios of prevention, assistance and protection with a rights-based approach.
2. Strengthen regional dialogue spaces such as the Central American Integration System (SICA), the Central American Parliament (PARLACEN), the Regional Conference for Migration (RCM), the Region-

al Parliament Committee on Migration (COPAREM), and the Central American Court of Justice, in coordination with civil society organizations and international organizations to guarantee fulfilment of the rights of the people that are forcibly displaced. These entities from the region should consider including a specific chapter on the prevention, assistance and protection of forcibly displaced people that involves the responsibility of all of the States.

3. Generate a national and regional information and statistical records system, reporting on forced displacement in Mesoamerica, which allows for an understanding of the causes, and identifies profiles and needs of victims and considers the experience of the civil society in the documentation and assistance provided to these cases.
4. Establish legal frameworks, public policies and protocols about the phenomenon of internal displacement, which allows for the development of prevention, protection and assistance programs for victims. All branches of government should have an active role in the design and effective application of the mentioned programs to protect the displaced population. The role of local government can be developed by incorporating the topic of internal displacement in their public policies.
5. Strengthen national justice systems to guarantee access and avoid impunity, with effective judicial processes able to provide protection and guarantee rights. Likewise, it is necessary to offer guarantees of protection to those that operate the justice system so they can carry out their duties, as well as providing the same guarantees to victims and witnesses.
6. Incorporate into the Ombudsman's Offices (or the equivalent) from the region the topic of forced displacement in order to contribute to the strengthening of citizen protection, governance and the rule of law.
7. Allocate resources in training of migration officers agents in protection and human rights, focused on

forced displacement caused by the phenomena of COT and OSV.

8. Implement strategies and programs for the reception of people that have been deported from other countries and returnees in order to avoid circular forced displacement caused by the absence of assistance, protection and reintegration mechanisms in their communities.
9. We call upon the international community to recognize the phenomenon of forced displacement and its humanitarian impact on the region, and to allocate resources for the prevention, assistance and protection of the victims.

B SPECIFIC PROTECTION NEEDS OF CHILDREN AND ADOLESCENTS

During the last few years, children and adolescents from the NTCA and Mexico are being exposed to forced recruitment, extortion, threats and other types of aggression resulting in an alarming increase of children and adolescents that are forced to displace within their countries and even cross borders in the company of their parents, with other family members or alone.

Unfortunately most of them are deported, alone or with family members, to their countries or origin, where they are again exposed to violence and a lack of protection. In 2014 it is expected that there will be an estimated 60.000 unaccompanied minors in the USA from Central America and Mexico².

Children and adolescents are especially vulnerable and during different stages of the displacement they run the risk of becoming victims of human trafficking, sexual or labour exploitation, suffering accidents or physical and sexual abuse. During their travel and arrival

¹ The term Other Situations of Violence (OSV) is used to define civil disorder, disturbances, State-based repression, post-electoral violence, gang violence and demonstrations. These are situations in which authorities often use extensive military or police force to maintain or restore law and order. While these aren't classified as armed conflict, the humanitarian consequence can be as serious as those that arise from conflict (ICRC, 2011).

² UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection, March 13th of 2014

they also face difficulties in accessing basic services that guarantee minimum protection standards.

Upon their arrival to the transit or destination countries, many of these children and adolescents are detained in migratory shelters, where there are no minimum requirements so that they are accommodated in a dignified manner and have access to their basic rights. In addition, there are no alternatives for detention for this population³, not even for those applying for refugee status. This factor influences the decision made regarding their applications, given that the waiting time is very long and these places don't meet the minimum standards. There are no clear assistance or coordination protocols within the different State institutions responsible for attending to this vulnerable population.

The legal frameworks for migration and asylum in some countries of the region specifically refer to these groups and identify their particular protection needs and the principle of the superior interest of the child; however, in practice actions that contradict these laws and principles are common, and there are no operative mechanisms so that this population can fully access and exercise their rights.

PROPOSALS

1. Urge governments to review the application and harmonization of the Convention on the Rights of the Child within their legislation relating to migration and international protection, including an absolute compliance with the principle of the superior interest of the child.
2. Develop and implement public policies and protocols in the area of childhood, especially for unaccompanied and/or separated children and adolescents, victims of human trafficking and migrants

smuggling that require international protection, involving competent authorities and respecting the superior interest of the child and the principle of family reunification. Ensure that a differential approach in the provision of assistance is applied with this population.

3. Provide alternatives to the detention of children and adolescents, guaranteeing their protection, respect for their rights and the provision of legal, psychosocial and health assistance, and also ensuring permanent communication with their parents or family when it is requested.
4. Ensure the correct detection and reference of unaccompanied children and adolescents in need of international protection. Guarantee effective access to the procedure to determine their refugee status.
5. Allocate sufficient resources for the integrated assistance and protection of children that are victims of forced displacement, especially for the unaccompanied minors.
6. Strengthen coordination between the competent authorities and civil society organizations assisting this population in origin, transit and destination countries.
7. Strengthen consular protection policies, especially those directed at providing assistance to the population of unaccompanied children and adolescents with the goal of guaranteeing due process and accompaniment in cases in which they are returned and/or deported.
8. Reinforce programs for the integrated prevention, assistance and integral compensation/reparation of children and adolescent victims of forced recruitment caused by different actors from TOC and OSV, including the coordination of different state institutions (education, health, housing and security, among others).
9. Generate conditions for the provision of reception, assistance and protection in the countries of origin, avoiding the re-victimization of children and

adolescents and guaranteeing non-return to places where their lives, human dignity and freedom are in danger.

10. Promote protection mechanisms and/or the regulation of migratory processes for unaccompanied children and adolescents that for different reasons cannot return to their countries of origin.
11. Waive documentation costs for children and adolescents and their families who are in vulnerable conditions due to the humanitarian situation that the region is currently facing, guaranteeing the fundamental rights of these people.

C MIXED MIGRATION FLOWS

The migratory movements from the Mesoamerican region are characterized for being very complex, due to the multiple causes that are generating forced displacements. Also because of the high levels of vulnerability experienced by these people, whether they are internally displaced, asylum seekers or refugee applicants, victims of human trafficking, pregnant women, unaccompanied children or adolescents, people with diverse sexualities, people with distinct capacities, from other continents, from indigenous populations and others. Within this context, a person could comply with two or more profiles and have more than one protection need.

The trend for reducing the causes of migration in the region to a merely economic matter has resulted in the invisibility of forced migration and the displacements caused by OSV, TOC, natural disasters, climate change, mega projects, etc.

In situations of war and generalized violence, people can be forced to flee due to well-founded fears of persecution, as established in the definition of refugees in the 1951 Convention as well as in the definition from the Cartagena Declaration. As a result, these circumstances require the development of an integrated and

updated understanding of the challenges related to international protection that the region is facing.

The border areas of the region continue to be complex scenarios where States haven't provided an appropriate response. This has caused the development of precarious conditions that affect the population who transits between these countries, with some of these people in need of international protection.

The border areas, migration control points and migratory routes in which mixed migration flows transit have become drug, human and arms trafficking routes, as well as scenarios of general crime that generate violence due to the presence of illegal groups and criminals. The institutional presence along the borders is weak, with a strong focus on national security without providing sufficient assistance to guarantee and protect human rights.

The non-differentiated implementation of security and migration laws by border authorities, the lack of knowledge and non-provision of information on international protection or the possibility of applying for refugee status create significant risk for the population in need of international protection in these zones. There is a lack of knowledge or a lack of application of mechanisms that allow an appropriate identification of the specific protection needs of the people in relation to the complex dynamics of migration flows.

In the area of people trafficking, while there has been an improvement in legislation and public policies in some countries such as Costa Rica, there is still a lack of resources for the provision of appropriate assistance to victims. For example there is no temporary accommodation available that would provide shelter and protection.

In some countries there are complementary protection mechanisms, such as humanitarian visas for people who have protection needs. However, these visa cate-

³ Understanding detention as imprisonment or confinement within a closed place in which the person is not able to leave at will (UNHCR, 2012).

gories should not be used as substitutes or affect the provision of refugee status to those people that qualify as refugees.

The detention of the people requesting refugee status is still a common practice that is observed within the region. The use of different euphemisms (personal security, temporary custody, administrative detention) for being held against their will has negative effects on the recognition and defence of their right to freedom. This results in the normalization and social invisibility of being held against their will, increasing its repetition and excessive use.

PROPOSALS

1. Immediately adopt migration policies that respect human rights, and adhere to the *Proclamation of Latin America and the Caribbean as a Peace Zone*, signed by the members of the Community of Latin American and Caribbean States (CELAC) in January of 2014.
2. Transform the national security approach that States implement in their migration policies into a human security approach, which favours actions for the prevention, protection and assistance for asylum seekers, refugees, internally displaced people and migrants.
3. Establish public policies and procedures that strengthen the detection and referral of people according to their profile - asylum seekers, victims of human trafficking and smuggling, unaccompanied minors and others - in border areas and migration routes, guaranteeing access and exercising of their rights, including people detained in migration detention centres.
4. Guarantee the application of protection safeguards at borders and ports of entry, such as the principle of no-return, non-punishment for illegal entry, non-discrimination and the right to seek asylum. Train migration authorities in the border zones and ports of entry in best practices

relating to the detection and treatment of asylum seekers through appropriate assistance and reference protocols. Provide permanent information at borders, ports of entry and migration stations/detention centres regarding the procedure to determine refugee status and people's rights in this situation. Strengthen the presence of State institutions and public services in border zones.

5. Implement liberation measures and alternatives to migratory detention that allow asylum seekers to live within the community with freedom of movement while their migratory situation is resolved, favouring the legal recognition of the principle of non-detention.
6. Apply the Regional Guidelines for the Preliminary Identification of Profiles and Referral Mechanisms for Migrant Populations in Vulnerable Conditions across the region, which were agreed upon in the XVIII Vice-ministerial Meeting at the Regional Conference on Migration held in 2014, as well as the Guiding Memo on Refugee Status Determination related to Victims of Organized Crime.
7. Standardize the crime of people smuggling in national criminal law.
8. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the incorporation of the Brasilia Regulations Regarding Access to Justice for Vulnerable People within internal legislation.
9. Apply complementary protection measures when required, but not as a substitute or in detriment to the actual recognition of the need for international protection for those who qualify as refugees.
10. Encourage the States to identify and attend to the lack of birth registration, documenting the population to avoid the risk of statelessness, especially in border areas.

D PROCEDURES TO REFUGEE STATUS DETERMINATION

In the last decade there has been significant progress in the protection of refugees in the Mesoamerican region with the recognition of the right to seek asylum in different legal national frameworks. However, there are still important challenges in strengthening the legal and institutional frameworks in order to consolidate Mesoamerica as a true protection space.

It is important to mention that some of the national legal frameworks or practices in the area of asylum are not always consistent with the 1951 Refugee Convention and its 1967 Protocol, and unfortunately they don't always include the broader definition of refugees included in the Cartagena Declaration. The procedures in place for the refugee status determination have several gaps related to the guarantee of due process. As a consequence, many of the people seeking international protection may not have their application approved, remaining in the host countries with no regular status and without access to protection mechanisms.

There is also a weak handling of the cases of asylum seekers in the borders and ports of entry –there is a lack of information and there isn't sufficient identification provided to applicants– and the principle of non-return is not always respected. In some cases the asylum seekers report rejection, unfair treatments, and extortion by security and migration authorities.

In many cases, administrative detention prevents people in need of international protection from accessing procedures. In some countries, when they apply for refugee status they are detained in migration stations for the duration of the procedure. Some countries criminalize and punish people in need of international protection for not having a regular migration status.

In some other countries there are no updated and reliable records or databases regarding the population that is in need of international protection, which makes the

phenomenon invisible and creates difficulties for the planning of protection programs.

The centralization of the National Commissions responsible for the process of refugee status determination (CONARES or their equivalent) represents an obstacle in accessing this procedure, whether applicants are located in border areas or other parts of the country. Finally, in several countries we noted discrimination and stigmatization addressed to the refugee population by authorities and the general population.

The biggest challenges include:

- The strong national security approach that impedes investigations/information requests about applications, as well as the lack of information from countries of origin.
- The adherence to deadlines (or the absence of them) for responding to the applications to refugee status determination.
- The low existing rates of refugee status recognition in the region.
- The existence of pre-admission requirements that impede effective access to procedures to refugee status determination.
- The excessively short deadlines for submitting applications.
- The lack of representation and legal assistance for people that request international protection.
- The lack of appropriate reasons given for the decisions made.
- The high cost of documentation for asylum seekers and refugees in some countries.

PROPOSALS

1. Guarantee a progressive interpretation of the 1951 Convention and the 1967 Protocol and incorporate and apply the extended definition of refugee in the Cartagena Declaration within national legislations in those countries where this has not yet occurred, providing guidelines for its correct application.

2. Make progress in the harmonization of legislation relating to asylum and statelessness across the region.
3. Adopt standards established by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in regards to asylum, statelessness and migration matters, and for all groups of people with protection needs in the context of human mobility. Ensure compliance with the regional and international commitments.
4. Establish –in countries where they don't exist– and strengthen Eligibility Commissions, including civil society members and UNHCR representatives, with the right to be heard and vote in these Commissions.
5. Each national government should create information and registration systems for asylum seekers and refugees.
6. Guarantee due process and access to justice:
 - Establishing more reasonable maximum deadlines for the refugee status determination and complying with them. Apply administrative exceptions in favour of asylum seekers when deadlines are missed.
 - Eliminate the pre-admission procedures that exist in some countries.
 - Ensure an integrated assistance system that include free legal assistance, translators, interpreters and psychosocial assistance.
 - Guarantee the equality, human dignity and non-discrimination during the refugee status determination procedure.
 - Demand the reasons behind the decisions made by CONARES or equivalent entities, to be able to guarantee the defence of asylum seekers.
 - Take into account local contexts of countries of origin in the analysis of the application, incorporating the principles of goodwill and guaranteeing the benefit of the doubt for applicants.
7. Ratify, in the countries where this has not yet occurred, the 1961 Convention on the Reduction of Statelessness.

8. Generate and strengthen networks and mechanisms at a regional level between civil society organizations, to exchange best practice, share information, contribute to the defence of the cases and advocate for the respect of the human rights of this population.

E LOCAL INTEGRATION

In the area of local integration, progress and good practices have been observed during the last few years. It is important to note that Mexico is directly granting permanent residence to people recognized as refugees, and that Panama has adopted legislation to regulate population with Temporary Humanitarian Protection (THP). Panama is also granting permanent residence to those who have been resident in the country for at least three years. It is also notable that in some countries in the region there have been exemptions or the lowering of fees for the issuing of personal documentation for refugees, as well as the recognition of the right to family reunification.

Despite these advances, there are still multiple challenges in guaranteeing the integration of the refugees in Mesoamerica, and there are still no integrated strategies to promote the local, socioeconomic and cultural integration of refugees.

The main challenges include:

- Concern for the integration of the asylum seekers facing difficulties accessing to rights due to delays in the recognition of their status.
- Problems related to accessing employment, whether it is due to the lack of a work permit or because the documentation provided isn't recognised by the institutions involved in employment requirements (social security, banks, private sector), or because the word “refugee” causes discrimination. In addition there are difficulties in accessing the banking system.

- Difficult access to dignified housing, whether it is due to elevated costs of rent and/or due to difficulty in obtaining a stable income. The States do not have a housing policy that favours this vulnerable population. Refugees and asylum seekers are also excluded from national policies in the fight against poverty because they are foreigners.
- Difficulties in validating qualifications and accessing primary, secondary or higher education. There is also a lack of scholarships or professional training programs provided by the State.
- High costs in obtaining personal documentation and accessing naturalization procedures.
- Refugees are often subject to discrimination and stigmatization as a result of general stereotypes.
- Lack of access to psychosocial assistance that helps in overcoming the pain produced by forced displacement and in adapting to a new environment.

To conclude, there is no existing public policy that promotes and supports the local integration of refugees and there is a notable absence of political will to allocate resources and implement actions in this area. Discriminatory and xenophobic behaviour do not help to improve this situation.

PROPOSALS

1. States should assume their responsibility and allocate increased human and financial resources for the protection and assistance of asylum seekers, refugees and stateless persons, guaranteeing that resources planning and implementation is coordinated between: government, international agencies, civil society and the targeted population.
2. Guarantee the provision of documentation that is approved at a regional level to refugees, asylum seekers and stateless persons and guarantees the exercising of their rights, equal opportunities and non-discrimination, independent of their status.
3. Guarantee that the population subject to international protection has access and benefits from pro-

grams and government subsidies that have already been established (health, education, employment, housing etc.) under equal conditions.

4. Guarantee work permits for people applying for refugee status. Develop national employment programs, professional training and productive projects (including credit) that allow for the integration of asylum seekers and refugee population.
5. Combat employment inaccessibility, instability and exploitation, guaranteeing the rights of workers, independent of their migratory status, in accordance with Advisory Opinion 18/03 of the Inter-American Court of Human Rights. We urge the governments to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families –or increase the existing legislation of Member States– and Convention 189 of the International Labour Organization.
6. Facilitate the mobility of people in need of International protection between countries in the region, promoting the feasibility of maintaining their rights (portability of refugee status), recognising the individual as a subject of rights.
7. Promote mass awareness raising campaigns directed at the general population, encouraging the creation of a culture of respect for diversity and solidarity with the asylum seekers, refugees and migrant population.
8. To develop measures that facilitate access of asylum seekers and refugees to the educational system, including specific actions that support the validation of qualifications and non-differentiation in the payment of education costs.
9. To promote participation and consultation processes with asylum seekers and refugees to create and develop public policies relating to integration.
10. Guarantee access to permanent residence and the possibility of accessing naturalization for those who wish to obtain citizenship through flexible and accessible procedures.

F DISPLACEMENT DUE TO CLIMATE CHANGE AND NATURAL DISASTERS

Mesoamerica is one of the regions with the highest probability of experiencing natural disasters –floods, earthquakes, volcanic eruptions, landslides, droughts and others– that have the potential to generate displacements of populations at both local and cross-border levels. The impact of climate change can also generate displacements within the region.

Most of the Mesoamerican countries have achieved great success in the development of legislation, public policies and prevention and assistance programs for the population affected by natural disasters. However, it is necessary to identify gaps during the application of these policies to generate national and binational mechanisms that adopt a regional perspective to ensure the protection of displaced populations. As a result, we have observed challenges in providing shelter for people that have been displaced for these reasons.

Consequently, different mechanisms should be generated to recognise the protection needs of people displaced by these causes. Undertaking a risk analysis will improve understanding of the effects of these processes with the goal of mitigating these risks and attending to the affected population. These include attending to displacements caused by nutritional crises (starvation, malnutrition) that are the result of climate change. It is also necessary to generate awareness raising processes related to the provision of assistance and integration of these people at local and international levels.

Finally, it is important to mention the megaprojects and exploitation of natural resources carried out by governments and large companies that are generating a growing number of internally displaced persons as a consequence of those activities. It is concerning that when implementing these megaprojects the needs of affected communities are not taken into account.

There hasn't just been an increase in social protests as a consequence of these initiatives but also a criminalization of the protestors and their human rights affected.

PROPOSALS

1. Establish concrete protection mechanisms for the population displaced by natural disasters, climate change and megaprojects both within a country as well as in cross-border areas.
2. Develop a “humanitarian protection visa in the case of natural disasters” that guarantees the documentation of people that are subject to cross-border displacement due to climate change or natural disasters, in compliance with regional and international standards.
3. Establish assessments, information systems and national action plans with regional perspective, generating specific protocols for the assistance and protection of the displaced population in short, medium and long term timeframes.
4. UNHCR should promote the study of this phenomenon and the possible responses, together with the States, the international community, civil society and the communities affected by these situations.
5. States should facilitate safe conditions for the coordination of the work of humanitarian organizations in the prevention and response to natural disasters in high risk zones.
6. Generate awareness raising processes with communities and authorities to adequately receive internally displaced populations.
7. States should guarantee the right to consultation and free, prior and informed consent of indigenous and native communities that will be displaced as a consequence of the implementation of mega projects. Truthful, transparent and appropriate information mechanisms should be created with the goal of informing the affected population about the real impact of these projects.
8. Guarantee that the diagnostics of the feasibility and social and environmental impact that are is-

sued in the process of authorizing the mega projects are external and independent from the company that is implementing the project.

9. That the States, along with civil society organizations and the affected population, develop protocols and criteria to identify long-lasting solutions –return, relocation or integration– that occurs in safe conditions and is accompanied by monitoring and evaluation mechanisms.

The Brazil Action Plan should include goals, responsibilities, timeframes and monitoring mechanisms. It is recommended that a tri-party accompaniment mechanism (governments, UNHCR and civil society) is established that would allow for the monitoring of the agreed commitments.

Panama, 7 July 2014.

This position statement document is the result of a consultation process facilitated by the Norwegian Refugee Council (NRC) and undertaken in 8 countries in the Wider Mesoamerican Region: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama. This process culminated with a regional meeting that took place in Panama on the 1st and 2nd of July 2014, in which 24 civil society organisations, representing other civil society organisations from their respective countries, agreed on a regional position in the framework of the Cartagena+30 commemoration.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Cuban refugee in Mexico where he works

THE CIVIL SOCIETY ORGANIZATIONS THAT WERE PRESENT IN THE REGIONAL EVENT WERE:

BELIZE

Help for Progress

COSTA RICA

ACAI
CIDEHUM
CEJIL

GUATEMALA

Pastoral Human Mobility – PMH-CEG
ECAP
INCEDES

EL SALVADOR

IAES – Pares
SIMN (Scalabrinian Mission)
INSAMI

HONDURAS

CIPRODEH
APUVIMEH
CPTRT

MEXICO

Sin Fronteras
Mexican Commission for the Defence and Promotion of Human Rights (Comisión Mexicana Defensa y Promoción de DDHH)
Refugee House Program
CDH Fray Matías de Córdoba
Instituto Ignacio Ellacuría de la Univ. Ibero de Puebla

NICARAGUA

CEPAD
Jesuit Migrant Service – SJM
Nicas Migrantes

PANAMA

Panama Red Cross
Centre for Popular Legal Assistance (CEALP)
Jesuit Refugee Service (SJR)

LIST OF ORGANIZATIONS THAT REPRESENTED THE CIVIL SOCIETY IN THE NATIONAL MEETINGS:

COSTA RICA

CONAMAJ
Inhabitants' Ombudsman's Office
ASTRADOMES
ILCO
Asoc. de Enlaces Nicaragüenses
Proyecto de Trabajo Comunal. Univ. de Costa Rica
CECAMMM
Fidelitas
Univ. de Costa Rica – School of Social Work
Univ. Nacional – School of International Relations

EL SALVADOR

GMIES
Red Cross El Salvador
Cáritas
UCA
UTEK
PDDH

NICARAGUA

Cáritas
PIBM
American Baptist Society
Human Rights Inspector General's Office
Evangelist Church

MEXICO

Settlement Centre CAFEMIN
International Coalition Against Detention
Estancia del Migrante González y Martínez AC
Jesuit Migrant Service LAC
Jesuit Migrant Service
Doctors without Borders
Working Group on Migration Policy (Grupo de Trabajo sobre Política

GUATEMALA

AGUND
PCS
Human Rights Inspector General's Office – PDH
Univ. San Carlos de Guatemala
Children's and Adolescents' Refuge
Univ. Rafael Landívar – IIGP
Social Protection Institution – IPS
University MENAMIG
ODHAG
ECPAT

HONDURAS

FONAMIH
RED COMIFAH
Scalabrinian Monks – AHS
CODEH
Red Trans de Honduras

PANAMA

RET
HIAS
IDEN
Fe y Alegría

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
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V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Haiti. UNHCR provides humanitarian assistance to the victims of the Earthquake.

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CARIBBEAN REGION
PRE-MINISTERIAL MEETING
ON MIXED MIGRATION AND
THE PROTECTION OF REFUGEES
AND STATELESS PERSONS

+30
CARTAGENA

Caribbean

SUBREGIONAL CONSULTATION
GRAND CAIMAN 10-11 SEPTEMBER 2014



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

SEPTEMBER 10TH 2014

08:15	Registration & Breakfast
09:00	Adoption of the Agenda
	Welcoming Remarks
	<ul style="list-style-type: none"> Mr. Franz Manderson, Acting Governor of the Cayman Islands Ms. Marta Juárez, Director of UNHCR's Regional Bureau for the Americas Introduced by Mr. Buti Kale, Deputy Regional Representative for the USA and the Caribbean, UNHCR Washington, DC
09:45	Summary of Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows held in The Bahamas, May 2013 Mr. Shelly Pitterman, Regional Representative for the USA and the Caribbean, UNHCR Washington, DC
10:00	Summary of Caribbean Civil Society Pre-Meeting convened by the Norwegian Refugee Council Ms. Rochelle Nakhid, Living Water Community, Trinidad and Tobago
10:15	Coffee Break
10:30	SESSION 1: Mixed Migration
	Paragraph 24 in the Discussion Paper
	<ul style="list-style-type: none"> Issues Relating to Protection-at-Sea Safeguards against Refoulement in the context Multilateral Bilateral Agreements on the Return of Irregular Migrations Contingency Plans Regional Consultative Process
	Moderator Judge Antônio Cançado Trindade, International Court of Justice
	Governments Ms. Jewel Major, Counsel, Office of the Attorney General and Ministry of Legal Affairs, Government of the Commonwealth of The Bahamas Ms. Doreen Missick, Director, Human Rights Commission, Government of the Turks and Caicos Islands
	UNHCR Ms. Janice Marshall, Deputy Director (Policy and Law), Division of International Protection, UNHCR Geneva
	Discussion in plenary
13:15	Lunch

14:30	SESSION 2: Refugee Status Determination
15:30	Paragraph 33 in the Discussion Paper
	<ul style="list-style-type: none"> Protection-Sensitive Entry Mechanisms Alternatives to Detention Effective Refugee Protection Regional Cooperation and Capacity-Building in the Field of RSD Development of Roadmaps
	Moderator Ambassador Emeritus Rosario Green, Ambassador Emeritus
	Governments Ms. Linda Evans, Chief Immigration Officer, Department of Immigration, Government of the Cayman Islands Ms. Charmaine Gandhi-Andrews, Deputy Chief Immigration Officer, Ministry of National Security, Government of Trinidad and Tobago
	UNHCR Ms. Simone Schwartz Delgado, Senior Regional Protection Officer, Caribbean Protection Unit, UNHCR Washington, DC
	Discussion in plenary
	Coffee Break
15:45	Continuation of Session 2, Discussion in plenary
18:30	Reception

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

SEPTEMBER 11TH 2014

09:00	SESSION 3: Durable Solutions
	Paragraph 43 in the Discussion Paper Local Integration Development of Regularization Schemes Regional Transfer Mechanism
	Moderator Judge Antônio Cançado Trindade, International Court of Justice
	Government Ms. Candelaria Saldivar-Morter, Chief Executive Officer, Ministry of Labour, Local Government, Rural Development, NEMO and Immigration, Government of Belize
	UNHCR Mr. Juan Carlos Murillo, Senior Legal Officer, Regional Legal Unit, UNHCR San Jose, Costa Rica
	Discussion in plenary
10:30	Coffee Break
10:45	Continuation of Session 3
12:30	Lunch

14:00	SESSION 4: Statelessness
	Paragraph 56 in the Discussion Paper Development of a Regional Framework to Eradicate Statelessness
	Moderator Ambassador Emeritus Rosario Green, Ambassador Emeritus
	Governments Ms. Joan Thomas Edwards, Director, International Organizations Department Ministry of Foreign Affairs and Foreign Trade, Government of Jamaica Ms. Anna Stuger, Senior Legal Officer of the Department of Legal Affairs and Treaties, Ministry of Foreign Affairs, Government of Suriname
	UNHCR Mr. Juan Ignacio Mondelli, Regional Statelessness Officer, Regional Legal Unit, UNHCR San Jose, Costa Rica
	Discussion in Plenary
15:30	Coffee Break
16:15	Adoption of Conclusions and Recommendations Chairperson and Mr. Shelly Pitterman, UNHCR Washington DC
17:00	Closing Remarks
	<ul style="list-style-type: none"> Representative of the Government of the Cayman Islands Ms. Marta Juárez, Director of UNHCR'S Regional Bureau for the Americas

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Caribbean

DISCUSSION PAPER



A protection workshop run for young children by Plan International on behalf of UNHCR at the remote town of Elias Pina near the Dominican-Haiti border area.

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I BACKGROUND

1. This document has been prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR) to inform and help structure the discussions among States and Territories, regional and international organizations, NGOs and other civil society actors, as well as academia, during the meeting for the Caribbean region to be held in Grand Cayman, Cayman Islands, in the framework of the commemoration of the 30th Anniversary of the 1984 Cartagena Declaration on Refugees (“Cartagena Declaration”).

2. This regional consultation is the fourth meeting in the Americas: including meetings in Buenos Aires, Argentina, in March for the region of Southern America;

in Quito, Ecuador, in May for the Andean region; and in Managua, Nicaragua, in July for the Mesoamerican region. The regional consultations seek to identify the most significant challenges and opportunities in the field of international protection of refugees and stateless persons. The outcomes of the four *Cartagena+30* consultations will contribute to the development of a Declaration and Plan of Action for the period of 2015-2024 to be adopted at a ministerial-level meeting in Brasilia, Brazil, on 1-2 December 2014.

3. It is worth mentioning that this is the first time the Caribbean region will host its own sub-regional event surrounding the commemoration of the Cartagena Declaration. This reflects an increasing appreciation for the perspective of the Caribbean States in the

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

wider region. As such, the Caribbean Regional Consultation can serve to launch a new decade of intensified regional cooperation and a plan of action for the Americas that will better reflect the realities, not only of larger States with land borders, but also of smaller island States in the region.

4. The Caribbean Regional Consultation will also provide important inputs for the High Commissioner's Dialogue on Protection Challenges on the theme of 'Protection at Sea', which will be held in Geneva on 10-11 December 2014.

II INTRODUCTION

5. As mentioned above, the Caribbean Regional Consultation provides an important opportunity to review the specific protection challenges for asylum-seekers, refugees and stateless persons in the Caribbean, as part of the wider Americas region. It will achieve this notably by:

- Analysing the scale and impact of mixed migration movements and the challenges they present;
- Reviewing developments related to the building of asylum systems and the promotion of durable solutions for refugees and stateless persons, while considering proposals for the way forward; and
- Exploring fresh opportunities for regional cooperation, technical assistance and financial support.

6. In this regard, it is hoped that the Caribbean Regional Consultation will build upon the *Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows-Promoting Cooperation and Identification of Good Practices* (Bahamas Conference), organized by UNHCR and the International Organization for Migration (IOM) in Nassau, The Bahamas, in May 2013. The meeting brought together

98 representatives from governments, international organizations and the civil society of 24 countries and territories¹. The 2013 Bahamas Conference centred upon the following main themes: 1) regional cooperation and the development of a protection-sensitive and solution-oriented approach to mixed migration management in the region; 2) the protection needs of those travelling within mixed migration flows and how to address these in a comprehensive manner, and 3) identification and sharing of good practices in managing mixed migration flows in the Caribbean.²

III MIXED MIGRATORY MOVEMENTS IN THE CARIBBEAN

7. States and territories in the Caribbean are confronted with an increasingly complex phenomenon of mixed migration that involves persons who may be in need of international protection, including asylum-seekers³,

1 UNHCR's Regional Office in Washington covers 27 Caribbean countries and territories, with offices in the Dominican Republic and Haiti. This includes 15 countries (Antigua and Barbuda, Commonwealth of the Bahamas, Barbados, Belize, Commonwealth of Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Republic of Trinidad and Tobago, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Suriname), and 12 overseas territories of the United Kingdom (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands (TCD) and Montserrat), and The Netherlands (Aruba, Curacao, Sint Maarten, Bonaire, St Eustatius and Saba). The French *départements d'outre-mer* (Martinique, Guadalupe, Saint-Barthélemy, Saint-Martin and French Guayana) are covered by UNHCR Paris.

2 UN High Commissioner for Refugees (UNHCR), Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows - Promoting Cooperation and Identification of Good Practices, 23 May 2013, available at: <http://www.refworld.org/docid/51e3c0384.html>

3 An asylum-seeker is an individual who is seeking asylum, whose claim has not yet been finally decided. Asylum is the grant, by a State, of protection on its territory to persons who are fleeing persecution, serious or irreparable harm, or for other reasons defined in national law. Asylum encompasses a variety of elements, including protection against *non-refoulement* and permission to remain on the territory of the asylum country, possibly with a view to local integration. The 1951 Convention, supplemented by international human rights law, lays down the standards of treatment to which refugees are entitled in the country of asylum.

refugees⁴, victims of human trafficking⁵ and stateless persons,⁶ along with other categories of migrants.⁷ The States and territories in the Caribbean are source, destination and transit countries for thousands of migrants, including persons in need of international protection, each year. The region also produces refugees and is a transit gateway for refugees and asylum-seekers trying to reach North America within larger groups of migrants by land, air and sea.⁸

4 A refugee is a person who meets the eligibility criteria in the refugee definition provided by relevant international or regional refugee instruments, UNHCR's mandate, and/or national legislation. According to many of these instruments, a refugee is a person who cannot return to his/her country of origin owing to a well-founded fear of persecution or serious and indiscriminate threats to life, physical integrity or freedom.

5 A victim of human trafficking is a person who is subject to the recruitment, transportation, transfer, or harboring, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of a vulnerable individual or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. See further the UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html>

6 A stateless person is an individual who is not considered a national under the operation of the law of any State, either because s/he never had a nationality or because s/he lost it without acquiring a new one.

7 There is no universally accepted definition of the term "migrant". It is usually understood to cover all cases where the decision to migrate is taken freely by the individual concerned for reasons of "personal convenience" and without intervention of any coercive external factors. Migration refers to any movement of persons that is not intended to be merely of short or temporary duration, either across an international border ("international migration") or within a State. It is often employed to include both forced and voluntary movements.

8 In 2013, UNHCR identified around 250 new asylum-seekers in at least 20 States and territories in the Caribbean. This is compared to around 190 new asylum-seekers in 2012, which is an increase of nearly one third over last year. In 2013, the UNHCR Regional Office in Washington conducted refugee status determinations under Mandate for over 100 individual cases in the Caribbean and resettled around 75 individuals. Most of the asylum-seekers in the region came from Cuba and Haiti. Asylum claims were also lodged by nationals from the following countries: Afghanistan, Bangladesh, Cameroon, Colombia, Côte d'Ivoire, Democratic Republic of the Congo, El Salvador, Egypt, Gambia, Honduras, Iran, Iraq, Jamaica, Kenya, Liberia, Mexico, Nigeria, Sierra Leone, Sri Lanka, and Syria. Another notable trend in the Caribbean is the gradually increasing number of asylum-seekers originating from North Africa and the Middle East.

8. This poses a number of challenges.⁹ The relatively significant arrival of persons, mostly in an irregular manner, prompts many countries and territories to view asylum safeguards as cumbersome or incompatible with immigration control and national security imperatives. At times, those who arrive irregularly in the region face negative attitudes by the host societies, and are generally perceived to be 'economic migrants.' This situation may adversely affect the ability of persons in need of international protection to apply for asylum, a concern that is compounded by the scarcity of national mechanisms to identify refugees within mixed migratory movements.

9. The ultimate challenge is how to manage migratory movements in a way that upholds human rights and humanitarian principles, while addressing the legitimate concerns of States regarding irregular migration. The Caribbean Regional Consultation offers an opportunity to consider how measures aimed at combating irregular migration, human smuggling and trafficking in persons can be accompanied by safeguards and measures to avoid the detrimental effects on refugees and asylum-seekers.¹⁰ The fact that the large majority of States and territories in the Caribbean are parties to the 1951 Convention relating to the Status of Refugees ("1951 Convention") and its 1967 Protocol already

9 These are movements in which different categories of persons are travelling together, generally in an irregular manner, using the same routes and means of transport. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation.

10 Measures which restrict channels for legal migration risk exacerbating both, human trafficking and human smuggling, as well as the human rights violations which surround them. A disproportionate focus on tighter migration controls also risks exacerbating the situation further along the trafficking cycle. Studies have noted that traffickers often exploit victims' fear of possible deportation and their irregular status to prevent victims from escaping. "It is necessary to ensure that anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers." Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeila, A/HRC/23/48 of 18 March 2013, available at: <http://www.refworld.org/pdfid/51a5cfa24.pdf>

reflects a shared commitment to providing protection to refugees. Given the increasing number of persons in need of international protection¹¹ registered in the region, progress towards more rights-respecting migration and refugee protection systems could be one of the goals set during this Caribbean Regional Consultation.

10. A particularly salient characteristic of migration in the Caribbean is travel *by sea*. As part of a *Protection at Sea Initiative*,¹² UNHCR is urging States to undertake coordinated action to improve search and rescue, ease disembarkation, ensure protection for refugees and stateless persons as well as refrain from arbitrary detention. Additionally, mixed migratory movements *by land* take place in a small number of countries in the region,¹³ and usually involve irregular (onwards) secondary movements of refugees and asylum-seekers.¹⁴

11. In stark contrast to the world of cruise ships and holiday travel, mixed movements by sea occurs on unseaworthy vessels, in many cases, operated by people in smuggling and human trafficking networks. They are not at all concerned with ‘passenger safety’ and instead place their passengers at high risk at exorbitant costs. As a result, deaths at sea and rescue-at-sea operations

in the Caribbean are regrettably common¹⁵ and critical incidents at sea have been on the rise. Many incidents go unreported and, in the absence of a comprehensive data collection system, the actual dimensions of the problem are likely to be even higher than suggested. Moreover, maritime interception, disembarkation and return procedures are often implemented without the necessary safeguards for persons with specific protection needs, with the risk of violating the principle of *non-refoulement*.

12. These incidents involve mostly Haitian, Cuban and Dominican nationals. The highest number of incidents occurred in the Mona Passage, which lies between the eastern coast of the Dominican Republic and the western coast of Puerto Rico. Asylum-seekers who have shared their experiences with UNHCR reported that, after having paid large sums of money for passage, they were left to flounder in small boats at sea or landed on uninhabited islands or were otherwise confronted with violence and threats to life.

13. In May 2014, the Inter-American Commission on Human Rights also expressed deep concern over the increase of maritime incidents involving boats carrying migrants in the Caribbean Sea and called upon “all States that carry out operations of search, rescue and interception of migrants at sea to establish appropriate measures to identify persons who may be refugees or who, due to their vulnerable condition, may have special protection needs, such as in the case of migrant children.” The Commission also reminded States that “the principle of *non-refoulement* is absolute in international human rights law, under which it is required to be guaranteed at all times and in all places regardless

15 In 2013, UNHCR became aware of 136 reported maritime incidents in the Caribbean (high seas or territorial waters of the U.S. and/or the Caribbean countries) involving a total of 4,680 passengers, the majority of whom were Haitians (3,340) followed by Cubans (824). In the context of these incidents, 75 deaths were recorded and 33 persons missing.

of the migratory situation of persons or the applicability or not of another protection regime.”¹⁶

14. Experience in the Mediterranean and other parts of the world, where mixed migration by sea is common, indicates that control and deterrence measures set up to stop large flows of irregular migrants often operate to deny access by the smaller and manageable numbers of persons in need of international protection to established legal protection mechanisms. When irregular migration is managed exclusively through a control perspective with increased restrictions and policing, fundamental human rights and refugee principles are undermined, while leaving the mixed migratory influxes unresolved and the underlying causes unaddressed. Moreover, unilateral measures often result in ‘burden-shifting’ rather than equitable responsibility-sharing in a spirit of solidarity.¹⁷ There is growing evidence that the imposition of controls has simply shifted the travel routes of both migrants and persons in need of international protection to new destinations and obliged them to resort to clandestine forms of movement, with the heightened risk of smuggling and trafficking that this entails.

16 Commissioner Felipe González, Rapporteur on the Rights of Migrants of the IACHR, signaled that, “Between 2013 and thus far in 2014, the shipwrecks of migrant boats in the Caribbean Sea have claimed the lives of some 94 migrants and another 45 are missing at sea. These deaths and disappearances highlight the level of desperation faced daily by many people who are forced to migrate because of the insecurity and lack of enjoyment of economic, social and cultural rights. These persons, who in turn are part of the groups most vulnerable, migrate assuming the extreme dangers of irregular migration routes.” The press release on deaths and disappearances of migrants at sea is available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/055.asp

17 The UN Special Rapporteur on the Human Rights of Migrants noted in his Annual Report in 2008 that: “(...) *the management of migration flows depends on regional and bilateral cooperation, and many positive elements for social and economic development and enhanced security may arise from agreements between sending, transit and destination countries. The challenge remains to construct and implement such policies so that they both prevent irregular migration and protect migrants’ rights. The promotion of increased collaboration can serve to prevent irregular migration if the migration control policies are adequately evaluated and implemented with a view to their effectiveness and with adequate consideration to the protection of all migrants in all phases of the movement process.*” UN Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, 25 February 2008, A/HRC/7/12, para 23, available at: <http://www.unhcr.org/refworld/docid/47cfb2d62.html>

15. Although mixed migration movements have existed for a long time in the region and the numbers of boat arrivals are increasing, few countries and territories have devised and adopted contingency plans. Just as many countries and territories have contingency plans that aim at preventing, mitigating and/or addressing the effects of natural hazards, there could be value in devising similar plans to address maritime arrivals, especially those that are large-scale in nature.

16. On the basis of information shared informally with UNHCR, countries and territories in the Caribbean region receive and repatriate at least 2,600 irregular migrants each year. According to statistics received from governments in the region, the affected countries and territories spend millions of dollars to receive, provide care for, detain and return irregular migrants.

17. Countries and territories in the region have negotiated a series of bilateral agreements among themselves, as well as with the U.S., enabling the return of irregular migrants. While the conclusion of these agreements is commendable and is good practice in the area of migration management, the implementation of certain provisions thereof is at variance with the principle of *non-refoulement*. For example, the requirement that the countries of origin of irregular migrants be notified by the receiving country within a short period of time (normally 72 hours) makes it difficult, if not impossible, for authorities in the receiving country to adequately identify persons in need of international protection and eventually process their refugee claims without divulging asylum-seekers’ identities to authorities of their countries of origin. This stringent requirement could, unwittingly, create *sur place* refugee cases.¹⁸ The essence of protection-sensitive measures in the context of

18 A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee “sur place”. A person becomes a refugee “sur place” due to circumstances arising in his/her country of origin during his/her absence or through his or her own actions.

11 International protection refers to the protection that is accorded to individuals or groups by the international community on the basis of international law. The State is primarily responsible for providing protection to its citizens. The need for international protection arises where such State protection is lacking either as a matter of law or as a matter of fact so that basic human rights are seriously at risk. This classically results from persecution, threats to life and personal security, armed conflict, serious public disorder or other man-made situations. Natural or ecological disasters or insecurity due to statelessness are additional causes. Frequently, these elements are interlinked. Persons who are in need of international protection and are outside their country of origin are afforded protection against *refoulement*.

12 Further details on the Protection at Sea Initiative can be found at: <http://www.unhcr.org/5375db0d9.html>.

13 The phenomenon of mixed migratory movement by land is observed particularly in Belize, Guyana Suriname and Hispaniola, whereas irregular secondary (onwards) movement is experienced throughout the Caribbean region.

14 Irregular secondary (onwards) movement of refugees and asylum-seekers refers to such movement from a country where they have already found protection in order to seek asylum or settlement in another country.

mixed migratory movements entails, among other objectives, better identifying persons in need of international protection so as to avoid sending these persons to a situation where their lives and/or liberty would be in jeopardy.

18. Several Caribbean countries have established national counter-trafficking task forces¹⁹ and have made significant strides to strengthen their legal and institutional frameworks to combat crime and to identify and assist victims of trafficking. However, States that identify trafficked persons may inadvertently generate new risks for some victims of trafficking by failing to assess their individual protection needs or by failing to consider any risks to victims of trafficking upon return to their countries of origin. Return is often considered the only available solution for victims of trafficking, disregarding the fact that some trafficked persons may qualify for refugee status or complementary forms of protection.²⁰ Victims of trafficking have a right to be informed of their legal options, and there need to be mechanisms that provide for the referral of victims of trafficking in need of international protection to the asylum system.

19. In order to address these challenges in a comprehensive manner, UNHCR encourages States to consider establishing cost-effective systems in the region based

19 Jamaica, for example through its National Task Force against Trafficking in Persons, and in collaboration with non-governmental organizations, has developed trafficking indicators, protocols and referral mechanisms for agencies involved in the identification, counselling and protection of victims of trafficking. Paragraph 36, page 9 of the report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, A/HRC/20/18 of 6 June 2012, available at: http://www.crin.org/docs/A.HRC.20.18_En.pdf

20 Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention and may therefore be entitled to international refugee protection. See for further details: UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GLP/06/07, available at: <http://www.refworld.org/docid/443679fa4.htm>

on UNHCR's 10 *Point Plan of Action*²¹ to manage mixed migration flows in line with international human rights and refugee law standards. It is the responsibility of the State, regardless of the legal status of the migrant, to ensure that fundamental human rights norms are adhered to and that all migrants are treated with dignity.²²

20. The 2013 Bahamas Conference highlighted the need to enhance regional cooperation and partnership towards the effective management of mixed migration flows in the region while recognizing the unique and diverse character of the Caribbean. The participating States agreed to “recommend that consideration be given to working together to establish a regional consultative process” on mixed migration.

21. While a number of countries have individually made progress in addressing mixed migration challenges in a protection-sensitive manner, the Caribbean Regional Consultation presents an opportunity for States to consider a regional consultative process to develop a responsibility-sharing mechanism and promote concerted dialogue and action on mixed migratory movements among the Caribbean countries. A regional forum of cooperation, possibly in the framework of CARICOM, could enable more effective cooperation in this area and facilitate interaction with States in other regions facing similar challenges, such as the Mediterranean, the Horn of Africa, Southeast Asia and the Pacific region.

22. Arrangements to strengthen regional cooperation in protection-at-sea emergencies involving refugees and asylum-seekers may also benefit from inclusion in

21 UN High Commissioner for Refugees (UNHCR), *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.refworld.org/docid/4d9430ea2.html>

22 UN Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, 25 February 2008, A/HRC/7/12, para. 14, available at: <http://www.unhcr.org/refworld/docid/47efb2d62.html>

broader regional processes to address irregular, mixed movements.²³ The Regional Mixed Migration Secretariat in the Horn of Africa and Yemen (RMMS) can serve as a reference. In its current state, the RMMS: provides support and coordination within existing frameworks in the region, produces analysis and research, and manages information and data.²⁴ Similarly, Caribbean countries and territories can join efforts to enhance measures for protection-at-sea. It is expected that other countries will demonstrate solidarity and support, particularly in funding the new Brazil Plan of Action. The exchange of information and good practices can benefit not only individual states, but the region as a whole.

23. The preparation of a Caribbean-specific Protection and Responsibility-Sharing Action Plan for adoption at the Ministerial meeting in Brazil, as part of the wider Brazil Declaration and Plan of Action for the next decade, can be a vehicle to advance the recommendations of the 2013 Bahamas Conference. Among the action points that might be considered are:

- Creation of reliable data collection and analysis systems (including disaggregated data) that are in line with international legal standards and instruments applicable to refugees and vulnerable migrants;
- Development of protection-sensitive differentiated processes and procedures enabling the early identification and referral of asylum-seekers, refugees, stateless persons, as well as vulnerable migrants, including victims of trafficking and unaccompanied and separated children;

23 UN High Commissioner for Refugees (UNHCR), *Summary Conclusions: Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Expert Meeting in Djibouti, 8 to 10 November 2011*, 5 December 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>

24 Regional Mixed Migration Secretariat, *About RMMS*, available at: <http://www.regionalmms.org/index.php?id=59>

- Elaboration of a roadmap for a regional consultative process (RCP) and the creation of a Secretariat responsible for promoting better coordination on asylum, refugee and statelessness issues in mixed migration movements;
- Adoption of bilateral and multilateral migration agreements that incorporate international protection safeguards;
- Incorporation of migration issues in policy discussions at the regional level (e.g. through existing structures such as CARICOM, IACHR, OECS);
- Elaboration of national contingency plans that address the international protection, human rights and material needs of migrants, asylum-seekers, refugees, stateless persons, victims of human trafficking and other vulnerable individuals who arrive by boat in an irregular manner;
- Establishment of multi-agency deployment team to process larger arrivals (when numbers exceed local capacities).

24. Discussion Questions

- What measures can States take so that those intercepted and rescued at sea are processed on an individual basis, afforded due process, and that persons claiming to be in need of international protection are allowed to access the national asylum procedure?²⁵
- How can countries in the region –and outside of the region– assist Caribbean countries and territories that are disproportionately affected by relatively large irregular migrant arrivals?

25 UNHCR, “Background note: The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by UNHCR”, 28 November 2007. See also UNHCR and International Maritime Organization (IMO), *Rescue at Sea: A guide to principles and practice applied to migrants and refugees*, September 2006 available at: www.unhcr.org/publ/PUBL/450037d34.pdf

iii. A significant number of countries and territories have signed multilateral/bilateral agreements on the return of irregular migrants. What are the necessary safeguards that need to be adopted to ensure that the provisions thereof are in line with the principles of *non-refoulement* and confidentiality?

iv. Just as many countries and territories have contingency plans that aim at preventing, mitigating and/or addressing the effects of natural hazards, would there be value in devising similar plans to address maritime arrivals, especially those that are large-scale in nature?

v. While a number of countries have individually made some progress in addressing mixed migration challenges in a protection-sensitive manner, would a Caribbean regional consultative process be helpful to develop a responsibility-sharing mechanism and promote concerted dialogue and action on mixed migratory movements among the Caribbean countries? If so, could participants propose a roadmap?

IV BUILDING AND REINFORCING ASYLUM SYSTEMS

25. The Caribbean States and territories are source, transit and destination countries for tens of thousands of migrants each year. In addition to the asylum applications lodged by persons originating from within the region of the Americas (Cubans, Colombians, Dominicans, Haitians, Mexicans, Venezuelans), the number of persons coming from other regions in the world, in particular from North Africa and the Middle East, is clearly on the rise. In the first 6 months of 2014, a total of 231 new asylum-seekers were registered in seven Caribbean countries alone.²⁶ This represents a 71 per cent increase

26 The largest number of new asylum-seekers was registered in Trinidad & Tobago, where 106 persons applied for asylum between 1 January and 30 June 2014.

compared to the number of new arrivals registered in the first half of 2013. The growing number of arrivals is placing a strain on the limited resources and capacities available in the small islands or coastal States.

26. The real constraints faced by countries in the Caribbean region are reflected by the scarcity of adequate reception mechanisms that are in a position to respond to the specific needs of (unaccompanied) children, women-at-risk, older persons or persons with health problems or disabilities. In several Caribbean countries, irregular migrants, including asylum-seekers, remain in detention for prolonged and even indefinite periods of time. The majority of States have no formal arrangements to address the situation of detained persons with specific protection needs, or to refer them to the competent authorities or to UNHCR.

27. Indeed, automatic administrative detention is widely practiced in the region as a means to deter irregular arrivals of migrants and asylum-seekers.²⁷ Detainees are commonly prevented from challenging the grounds for detention owing to any one or combination of factors: the absence of information about the asylum procedure and the grounds for detention, along with the lack of free legal counselling and the unavailability of interpreters or translation services. When irregular migrants are not given the opportunity to challenge the lawfulness of the detention measure, detention becomes arbitrary.²⁸ Moreover, research shows that immigration detention has widespread and seriously

27 In contrast, the UN Special Rapporteur on the human rights of migrants, François Crépeau notes in his 2012 thematic report that “there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased.” See further the Report of the Special Rapporteur on the human rights of migrants, François Crépeau, A/HRC/20/24 of 2 April 2012, available at: <http://www.refworld.org/pdfid/502e0bb62.pdf>.

28 OHCHR, Fact Sheet No. 26, The Working Group on Arbitrary Detention, <http://www.unhcr.ch/html/menu6/2/fs26.htm#IV>, pursuant to resolution 1991/42, as clarified by resolution 197/50.

damaging effects on the mental and physical health of detainees²⁹. Detention centres are often overcrowded and lack appropriate conditions of hygiene and security. This adds to the trauma and hardships that asylum-seekers already faced in the country of origin and during flight.

28. The 1951 Convention provides that asylum-seekers shall not be penalized for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence³⁰. The position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic events, need to be taken into account in determining any restrictions on freedom of movement based on irregular entry or presence. Governments should always consider³¹ completing an individual assessment and choosing the least restrictive measure, with preference to alternatives to detention³².

29 The UN Special Rapporteur on the human rights of migrants highlights in his 2012 thematic report that “detention systematically deteriorates the physical and mental condition of nearly everyone who experiences it. Symptoms related to depression, anxiety and post-traumatic stress disorder are common. Prolonged detention deepens the severity of these symptoms, which are already noticeable in the first weeks of detention.” Paragraph 48, page 13, <http://www.refworld.org/pdfid/502e0bb62.pdf>

30 Article 31 of the 1951 Convention on the Status of Refugees

31 Research has found that over 90 per cent compliance or cooperation rates can be achieved when persons are released to proper supervision and assistance. The alternatives have also proved to be significantly less expensive than detention. See further Guideline 4.3 entitled “Alternatives to detention need to be considered” in UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>

32 In the case *Velez Loo vs. Panama*, the Inter-American Court stated that “those migratory policies whose central focus is the mandatory detention of irregular migrants, without ordering the competent authorities to verify in each particular case and by means of an individualized evaluation, the possibility of less restrictive measures of achieving the same ends, are arbitrary.” Judgment of 23 November 2010.

29. In addition to detention, limited access to asylum is also a common issue in the Caribbean. All asylum-seekers, in whatever manner they arrive within the jurisdiction of a State, should have access to fair, efficient and effective refugee status determination (RSD) procedures. However, in many countries in the Caribbean, persons in need of international protection are not systematically given access to RSD procedures and, therefore, respect of the *non-refoulement* principle is not always ensured.

30. Despite the deficits described above, the Caribbean does present some good practices in the area of asylum that deserve to be highlighted. For instance, the majority of the Caribbean States have ratified or acceded to the 1951 Convention and the 1967 Protocol. Only five Caribbean States are not yet parties to these international refugee instruments.³³ Two countries (Belize and the Dominican Republic) and one territory (The Cayman Islands) have adopted enabling legislation. Another territory (Turks and Caicos Islands) is in the process of developing asylum legislation. In addition, two countries (Jamaica and Trinidad and Tobago) have adopted a specific and comprehensive refugee policy. Four States (The Bahamas, Belize, the Dominican Republic and Jamaica) have established and/or reactivated national mechanisms to determine refugee status and another State (Trinidad and Tobago) is in the process of developing RSD procedures and setting up an Inter-ministerial Eligibility Commission.

31. UNHCR is encouraged by the high rate of accessions to the 1951 Refugee Convention in the Caribbean and the various legislative actions in recent years. This indicates that there is political will in the region to address the situation of asylum-seekers and refugees in a meaningful way. While many of the solutions developed by

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

individual States are not formalized, they are building blocks for creating functioning, sustainable asylum systems.³⁴

32. UNHCR assists Caribbean countries and territories that have already set up refugee protection mechanisms to further develop and enhance these by providing support in the form of technical advice and capacity-building. UNHCR proposes the elaboration of a plan aimed at enhancing national and regional capacities to effectively determine refugee status. UNHCR also encourages countries in the region to develop strategies for the gradual transfer of responsibility for refugee status determination from UNHCR to the Government. As is³⁵ reflected in the phased approach developed by the Government of Trinidad and Tobago, such a transition process involves several phases from assessment and planning to transfer, implementation and consolidation, requiring a medium- to long-term perspective. Action plans can serve as platforms for the allocation of human and financial resources, including contributions from donors.

33. Discussion Questions

i. Would Caribbean countries and territories be willing to enhance protection-sensitive entry mechanisms and consider alternatives to detention?

ii. Which additional measures can be taken to ensure the effective protection of refugees, in particular the full respect for the principle of *non-refoulement*?

iii. In light of the diverse policy and legislative initiatives to adopt and implement international refugee protection standards, would regular meetings, regional capacity-building initiatives and exchange of information among countries in the region and beyond be considered fruitful for the further development of asylum systems?

V DURABLE SOLUTIONS FOR REFUGEES

34. The Caribbean Regional Consultation also provides a platform to discuss how Caribbean countries can work together with UNHCR to ensure that all recognized refugees in the territory are provided a viable durable solution.³⁶ UNHCR has been mandated to provide international protection and find “*permanent solutions to the problem of refugees*” through, *inter alia*, the facilitation of their voluntary repatriation, their assimilation with new national communities or resettlement to third countries.³⁷ The 1951 Convention codified this objective by indicating the need for cooperation among signatory States in finding

solutions,³⁸ by exhorting them to facilitate the assimilation and naturalization of refugees,³⁹ and by easing the transfer of assets in case of resettlement.⁴⁰ Other regional instruments have equally pointed to the primary necessity of finding solutions to the plight of refugees.⁴¹ Refugee status cannot be a permanent status. Those afforded with international protection would eventually need to find a durable solution.

35. As part of UNHCR’s strategic use of resettlement within a wider comprehensive solutions approach, resettlement is meant to provide a complementary and supportive role to local integration efforts of Caribbean States and territories. Whereas UNHCR acknowledges that there are various considerations that may limit the ability of States to provide durable solutions to refugees

in the short-term, resettlement cannot be offered to all refugees in a given country or region.⁴²

LOCAL INTEGRATION

36. Caribbean States might therefore give consideration to facilitating naturalization of refugees by shortening the required period of residence and reducing or waiving the fees for the process, as provided by national legislation. In certain instances, this could be combined with promotion of civil society initiatives in support of refugees. Moreover, the positive role of the diaspora as a resource to aid national development could be better tapped. By mobilizing skills, knowledge, innovation, ideas and technology, diasporas are making an important contribution to development in many parts of the world and are a specific focus of the Global Forum on Migration and Development.

37. All member States of the Caribbean Single Market and Economy (CSME) were required to remove existing restrictions on the rights of establishment, provision of services, movement of capital and movement of skills for the full implementation of the single market by 1 January 2006, or shortly thereafter. Yet, mobility remains hampered by cumbersome administrative processes, significant variations in the transposition of treaty requirements into domestic legislation (an important example is family reunion), and the absence of supportive regional instruments. Experience in other regions with comparable integration schemes has demonstrated the positive benefits of labour migration. The Buenos Aires Regional Consultation in the framework of MERCOSUR, for example, recommended exploring the use of anal-

34 The creation of a functioning asylum system often includes: (i) adopting refugee legislation; (ii) adopting decrees to establish fair, efficient and effective RSD procedures; (iii) establishing a technical secretariat (Refugee Unit); (iv) setting up a decision-making body (different models are possible: decision-making by an individual civil servant or through an eligibility committee); and (v) providing second instance decision-making (appeals).

35 The refugee policy adopted by the Government of Trinidad & Tobago in July 2014 provides for a gradual approach consisting of three phases: at the initial stage UNHCR leads the RSD procedure and provides intensive training to authorities on refugee protection and RSD; during the second phase the Government establishes the national framework through the enactment of refugee legislation and the creation of an Eligibility Committee and gradually assumes responsibility for the RSD process with ongoing support from UNHCR and during the third phase, the Government implements procedures for the identification, registration and referral of asylum-seekers and sets up a Refugee Unit that will be trained to handle refugee and asylum matters.

36 There are three established durable solutions for refugees – voluntary repatriation, local integration and resettlement.

37 See Article 1 of the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), Adopted by General Assembly Resolution 428 (V) 14 December 1950, A/RES/428(V). The Statute explicitly mandates the High Commissioner to provide protection also by “*assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities*” (Article 8 (c)) and prompts States to cooperate in the promotion of assimilation of refugees, especially by facilitating their naturalization (Article 2 (e)). In relation to resettlement to a third country, see Article 9 of the UNHCR Statute; see also Article 2 (f) on travel and other documentation for enabling resettlement; Article 2 (g) and 8 (e) on transfer of refugees’ assets to third countries.

38 See the Preamble of the 1951 Convention where it is affirmed that “*a satisfactory solution of a problem [the refugee problem ndr] of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation*”, UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>.

39 See Article 34 of the 1951 Convention. For a thorough analysis of this norm, see A. Zimmermann, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, March 2011, pp. 1441-59.

40 See Article 30 of the 1951 Convention. The possibility to reach permanent solutions through resettlement is additionally, contemplated in the Preamble, recommendation D. See for a commentary of Article 30 A. Zimmermann, *op. cit.* fn. 6, pp. 1227-43.

41 See Article 2 (1) of the Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>, where it is stated that “*Member States of the OAU shall use their best endeavors...to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality*”, as well as Article 5 on Voluntary Repatriation and 2 (4) on Resettlement. See also paragraph II (f), (g), III (12), and IV second alinea, of the Cartagena Declaration on Refugees, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>. See Article 33 on Integration facilities and 34 on Voluntary repatriation of the Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (“EU Qualification Directive”), 19 May 2004, 2004/83/EC, <http://www.unhcr.org/refworld/docid/4157e75e4.html>.

42 Voluntary repatriation to home countries is also rarely an option for refugees in the Caribbean, as most recognized refugees are fleeing from ongoing conflicts or recent persecution. Yet refugees cannot be left to languish without opportunities for employment and empowerment. Among recognized refugees, the lack of appropriate documentation makes it difficult to access public services, including public health and education. This results in legal limbo and induces economic dependence on UNHCR.

ogous MERCOSUR provisions to formalise labour migration for refugees in the region who have benefited from integration schemes.

RESETTLEMENT

38. UNHCR continues to pursue resettlement for the most vulnerable refugees in the Caribbean as a protection tool, a durable solution and as a responsibility-sharing mechanism in a spirit of solidarity. With the increasing numbers of persons in need of international protection arriving in the region, resettlement from the Caribbean is also on the rise. Since 2012, UNHCR has submitted 72 individuals for resettlement out of the Caribbean region. By 30 June 2014, a total of 45 refugee cases had departed to their new asylum countries, including the United States, Sweden, The Netherlands, France, Norway and Brazil. The more recent developments do not only reflect a steady increase in the number of submissions, but also a greater diversification of countries out of which refugees are being resettled. The countries for which resettlement submissions were presented included the following: Trinidad and Tobago (40%), The Bahamas (30%), Curacao (10%), Grenada (4%), Sint Maarten (4%), Saint Lucia (3%), Barbados (2%) and St. Kitts and Nevis (1%).

39. Resettlement options for refugees in the region are scarce and, due in part to limited awareness about resettlement needs in the Caribbean. In general, resettlement countries have tended to prioritize other geographic regions (e.g. the Middle East, Africa and Asia) or refugee profiles for resettlement that are less typically found in the region (e.g. women at risk). Refugees who are dispersed and in remote locations, such as low-populated islands, pose a special challenge to UNHCR and to potential resettlement states in terms of protection and durable solutions. Small numbers of refugees in remote locations make it difficult to attract the interest of resettlement countries in processing and the costs can be prohibitive. Only the U.S. undertakes

periodic interview missions in the Caribbean. For resettlement countries that accept dossier cases (based on documentation only), there is usually a requirement that the refugee's situation is urgent or even an emergency in nature. The situation of refugees in the Caribbean islands is often characterized by the lack of local integration prospects, rather than being required on urgent or emergency basis on protection grounds.

40. This explains why resettlement opportunities for refugees in the Caribbean have remained limited. Even when resettlement is able to be undertaken, the resettlement movement can take many months, if not years, to complete. A more systematic, coordinated, and informed effort should be made to respond to these situations and address the needs of these refugees. Expanding the number of resettlement countries would help provide greater flexibility and responsiveness to refugees with protection issues or special needs that cannot be addressed in situ.

41. As a means to encourage enhancing resettlement capacity, UNHCR would like to propose the creation of a regional refugee transfer mechanism in one of the larger Caribbean island States as part of its solutions strategy. The purpose of such a mechanism would be to allow refugees from more isolated locations to be transferred to a central and easily accessible location to facilitate the interviewing of refugees and the processing of resettlement referrals. UNHCR believes with a central location for resettlement processing, more resettlement States would be able to commit to responding to resettlement needs in the region than is possible now given logistics and costs. The new mechanism, while expected to expedite resettlement and reduce the need for resettlement missions to certain locations, the need for missions to other larger refugee-receiving countries in the Caribbean will still exist.

42. Rather than establishing a physical structure, this mechanism would consist of a scheme whereby exist-

ing networks for refugee accommodation in individual apartments is widened under the coordination of one of UNHCR's implementing partners and with the full consultation of the hosting State. A similar mechanism has proven successful in The Philippines for emergency cases. In the Caribbean, the mechanism could first be tested as a pilot project with a maximum of 20 cases being processed during the first year, after which it should be evaluated and adjusted. The creation of such a regional mechanism would be a unique way to promote durable solutions for refugees within the Caribbean region. It also presents an innovative scheme for responsibility-sharing in a spirit of solidarity.

43. Discussion Questions

- i. How can local integration opportunities for refugees be further increased and enhanced in the Caribbean region?
- ii. Is the development of regularization and/or integration schemes an option that Caribbean States and territories may also wish to consider?
- iii. Is there support to create a regional refugee transfer mechanism as a practical initiative to expedite resettlement in the Caribbean region?

IV STATELESSNESS

44. While the situation of statelessness is comparably less common in the Americas than other parts of the world, it is a problem that continues to affect thousands of persons in the region. The year 2014 marks the 60th anniversary of the 1954 Convention related to the Status of Stateless Persons ("1954 Convention"). In commemoration, UNHCR is launching its Global Campaign to eradicate statelessness by 2024. The Caribbean Regional Consultation provides a prime opportunity to

begin identifying and better understanding the specific situation of statelessness in the Caribbean and developing a roadmap for resolving the problem over the course of the next 10 years. The conclusions from this consultation can be incorporated in a chapter on statelessness in the future Brasilia Plan of Action.⁴³

45. In this regard, it should be noted that the General Assembly of the Organization of Americas States has encouraged member States to use the commemorations of the 30th anniversary of the 1984 Cartagena Declaration on Refugees and the 60th anniversary of the 1954 Convention to identify the challenges and the actions necessary to eradicate statelessness from the Americas, and to include a chapter on the subject in the future regional strategic framework arising from the commemorative process.⁴⁴

46. There are signs that there is an increasing awareness and political will to address statelessness in the Caribbean. In the last couple of years, there have been a marked number of positive steps taken to prevent and reduce statelessness in the region. For instance, in July 2014, Suriname announced that it amended its Law on Nationality and Residency to eliminate gender discrimination in the nationality provisions and add safeguards against statelessness. In a similar fashion, The Bahamas has activated a Constitutional Reform process to address gender discrimination in the transmission of nationality. The process in The Bahamas will culminate with a Constitutional Referendum, scheduled for

⁴³ The adoption of a statelessness chapter in the Brasilia Plan of Action will achieve the following: 1) define a regional agenda related to statelessness that could be reflected in national human rights policies; 2) strengthen the impact of the ongoing State initiatives to prevent, identify, protect and reduce statelessness; and 3) deepen the region's commitment to achieve the global objective set by UNHCR to eradicate statelessness within ten years. See Discussion Paper, Mercosur Sub-Regional Consultation, Commemorative Process of the 30th Anniversary of the Cartagena Declaration regarding Refugees, "Cartagena+30," Buenos Aires, March 2014, p. 17.

⁴⁴ AG/RES. 2826 (XLIV-O/14), Prevention and reduction of statelessness and protection of stateless persons in the Americas, June 4, 2014. Presented by the delegations of Colombia and Uruguay and cosponsored by Brazil, Costa Rica, Haiti, and Paraguay.

November 2014. It should also be noted that Jamaica acceded to the 1961 Convention on the Reduction of Statelessness in January 2013.⁴⁵ The Republic of Haiti is posed to follow suit in the near future, after pledging to accede to the 1954 and 1961 Conventions in 2011.⁴⁶

47. Despite these developments, there are a number of situations of statelessness that persist and merit intensified attention from individual States and the region as a whole. Below is a brief description of the most common causes of statelessness in the Caribbean: First, several Caribbean States have ineffective civil registration and documentation systems in place. Since birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as important documentary proof to acquire the parents' nationality or the nationality of the State in which the child is born. There are indications that a significant, yet unknown number of individuals born in the Caribbean are unable to prove their nationality. Risks of statelessness may arise for these individuals, especially if their progenitors also lack identity documents or are no longer alive. Common problems include strict time limits for birth registration, high cost of birth registration/issuance of personal documentation, poor infrastructure and transportation, lack of understanding on how to ensure the application of dual nationality regulations and lack of awareness and education of parents on the need to register their children.

48. In view of this, the countries of the Latin American and Caribbean Group (GRULAC) promoted the adoption of a Conclusion on Civil Registration in 2013 that encourages States to undertake any necessary le-

45 Unlike the Refugee Conventions, for which the majority of Caribbean States are signatories, only 5 independent Caribbean States are party to the 1954 Convention and only 2 are party to the 1961 Convention. See United Nations, Treaty Series, Vol. 989, p. 175; see also, United Nations, Treaty Series, Vol. 360, p. 117.

46 Pledges 2011, Ministerial Intergovernmental Event on Refugees and Stateless Persons, Geneva (7-8 December 2011), UNHCR, 2012, p. 80.

gal and practical measures to overcome difficulties in civil registration, including through establishing or strengthening existing institutions responsible for civil registration, building their capacity and ensuring the safety and confidentiality of their records.⁴⁷

49. Another factor that places persons at risk of statelessness in the Caribbean is the absence of birth right citizenship (*jus soli*⁴⁸) combined with a lack of safeguards to grant nationality to those who would otherwise be stateless.⁴⁹ This most commonly affects children born to parents who are not lawfully residing in the country or who do not possess valid identity documents. Even when safeguards do exist to prevent statelessness, there are often administrative barriers and discriminatory practices that prevent persons from acquiring a nationality.

50. A third notable cause of statelessness in the Caribbean continues to be gender discrimination with regard to the conferral of nationality. While this problem has been largely resolved in the region, there are a few Caribbean States, specifically The Bahamas⁵⁰ and Barbados,⁵¹ whose laws continue to prohibit women from conferring nationality to their children on equal

47 Conclusion on Civil Registration, No. 111 (LXIV) – 2013, UNHCR's Executive Committee, 17 October 2013.

48 Generally, nationality can be established at birth by a person's place of birth (*jus soli*) and/or bloodline (*jus sanguinis*) or can be acquired through naturalization.

49 Article 1 of the 1961 Convention on the Reduction of Statelessness does not oblige the State to grant their nationality to all children born on the territory, but simply requires States to do so if the child would otherwise be stateless. Similarly, Article 20(2) of the American Convention on Human Rights provides that "[e]very person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality." Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969.

50 According to Article 8 and Article 9(1) of the Constitution of The Bahamas, only children born to Bahamian fathers receive citizenship at birth. Children born legitimately to Bahamian mothers outside The Bahamas must submit a registration application after age 18, but before age 21. Furthermore, children born to Bahamian mothers must renounce citizenship to any other country prior to registration, preventing acquisition of dual citizenship.

51 The Government of Barbados amended its Constitution in 2002 to eliminate gender inequality from its nationality provisions. However, the discriminatory language remains in Barbados' nationality legislation.

footing with men. Children born to women who are nationals of these countries may be left stateless if born outside their State's borders and unable to acquire nationality from their fathers (e.g. because the father is stateless or due to limitations on *jus sanguinis*⁵² conferral of nationality under the nationality law of the State of nationality of the father).⁵³

51. The causes of statelessness discussed above are not necessarily unique to the Caribbean. The Cartagena+30 commemorative process and the 10-year campaign to eradicate statelessness will provide new opportunities for the Caribbean States to address these challenges in concert with other countries in the Americas and with the support and assistance of UNHCR, and the international community.

52. In this light, it should be noted that during the sub-regional consultations in Argentina (for the region of Southern America) and in Nicaragua (for the region of Mesoamerica) that occurred earlier in 2014, the participating Latin American countries agreed on the importance to develop a regional framework to end statelessness that is structured under the pillars of prevention of future cases of statelessness, the protection

52 See footnote 49

53 In its 2012 report to the Universal Periodic Review, the Bahamas acknowledged that: "However, separate Constitutional Provisions concerned with the transfer of nationality from parent to children and to the award of nationality to foreign born spouses of Bahamian citizens accord privileges to Bahamian men that are not afforded to Bahamian women." See Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Bahamas, Doc A/HRC/WG.6/15/BHS/1, 8 November 2012. UNHCR submitted observations on this issue and recommended amendment of the Constitution and relevant laws to remove inequality. See Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Doc. A/HRC/WG.6/15/BHS/2. In its concluding observations from 2012, the Committee on the Elimination of Discrimination against Women recommended that the Bahamas "a) Raise awareness among the population on the equal rights of women and men with regard to transmission of nationality; b) Amend its Constitution and relevant domestic laws to grant Bahamian women equal rights with men regarding the transmission of their nationality to their children or to their spouses of foreign nationality; c) Withdraw its reservation to article 9 (2) of the Convention [...]." See Committee on the Elimination of Discrimination against Women, Concluding observations, Bahamas, Doc CEDAW/C/BHS/CO/1-5, 27 July 2012

of stateless persons, and the resolutions of the existing cases of statelessness.⁵⁴

53. Concerning prevention, Latin-American countries have proposed to: 1) promote ratification and/or accession to the 1961 Convention; 2) address possible gaps in nationality laws; 3) reinforce civil registration, in line with Executive Committee Conclusion N° 111 (2013). Regarding protection of stateless persons, the States have recommended to: 1) promote ratification or accession of the 1954 Convention; 2) the enactment of national frameworks to ensure the rights of stateless persons and; 3) the establishment of statelessness determination procedures. Finally, as regard the resolution of cases of statelessness, Latin-American countries have suggested to: 1) facilitate the naturalization of stateless persons; 2) promote the confirmation of nationality and; 3) the restoration of nationality, when appropriate.

54. Given the constructive recommendations the Latin American countries have provided, and in view of the space for dialogue and political coordination that has been created in the Community of Latin American and Caribbean States (CELAC) with the aim of promoting a better integration of both regions in the international arena,⁵⁵ UNHCR would like to respectfully suggest to consider these recommendations as a starting point for the Caribbean sub-regional consultation.

55. These recommendations were not only built upon the consensus and guidelines for the Brasilia Plan of Action and OAS's resolutions on statelessness, but could be regarded as a preliminary identification of common challenges and goals, and areas of coincidence that will enable both Latin American and Caribbean countries

54 Conclusions and Recommendations, Mercosur Sub-Regional Consultation, Mercosur Sub-Regional Consultation, Commemorative Process of the 30th Anniversary of the Cartagena Declaration regarding Refugees, "Cartagena+30," Buenos Aires, March 2014, p. 8.

55 Havana Declaration, II CELAC Summit, Havana, 28-29 January, 2014.

to move forward in the integration process of the region with the goal to end statelessness within the next ten years.⁵⁶

56. Discussion Question

Do Caribbean States and territories agree to join the commitment of the Latin-American countries to develop a regional framework to eradicate statelessness within the next decade by preventing future cases of statelessness, protecting stateless persons, and resolving existing cases of statelessness?

UNHCR

Regional Bureau for the Americas.



Black coastal communities who live along the Pacific coast near the city of Buenaventura, Colombia, are in threat of displacement as their location is very strategic. Located on one of the main corridors to exporting illegal cocaine and other kinds of smuggling (human, weapons, money for laundering), they find themselves in the middle of a war among various armed groups fighting for the control of the region and trade routes. A child in the street plays a popular game with an old tyre. Their community displaced in the past and is under threat of having to move again.

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Caribbean

CONCLUSIONS AND RECOMMENDATIONS

Haiti. Christine Dominique, 34, recently received a birth certificate for her daughter with the help of the ACAT–UNHCR registration team. Civilians who lack birth certificates are unable to access basic public services like education and health care. It is estimated that 40% of Haiti's internally displaced population lost their civil registration documents after the earthquake and 30% of Haitian children do not have birth certificates.

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I INTRODUCTION

The fourth consultative meeting of the commemorative process of the 30th Anniversary of the Cartagena Declaration on Refugees (“Cartagena Declaration”) took place in Grand Cayman, hosted by the Cayman Islands, on 10 and 11 September 2014.

The Participating States to the regional consultation were: The Bahamas, Belize, the Cayman Islands, Cuba, Curaçao, Haiti, Jamaica, Saint Lucia, Suriname, Trinidad and Tobago, as well as the Turks and Caicos Islands.

Brazil, the European Union, Mexico, the United Kingdom and the United States of America also attended the meeting as observers, as well as representatives

from the International Maritime Organization (IMO), the International Organization for Migration (IOM), the Norwegian Refugee Council, regional civil society organizations and the academia.

The regional meeting was inaugurated by His Excellency, Mr. Franz Manderson, Acting Governor and Deputy Governor of the Cayman Islands, who recalled how helpful was the assistance and technical support received from UNHCR in 1994. He encouraged participants to propose ground-breaking recommendations. The Honourable Mr. Alden McLaughlin, Premier of the Cayman Islands, reminded participants about the importance of striking a balance between migration issues, national concerns and the protection of asylum-seekers, refugees and stateless persons. His Excel-

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

lency the Acting Governor and the Honourable Premier concurred on the dangers of maritime movements and called upon participating States to join efforts to promote and protect human rights, including international refugee law.

In her welcome remarks, the UNHCR's Director for the Americas, Mrs. Marta Juárez, briefed participants on the forward-looking vision of the commemorative process of the 30th anniversary of the Cartagena Declaration on Refugees. She informed the meeting on the main outcomes of the three previous sub-regional consultations: Buenos Aires (18-19 March, 2014), Quito (10-11 June, 2014) and Managua (10-11 July, 2014) as well as of the final Ministerial Meeting to be held in Brasília, on 2 and 3 December 2014. She underlined the importance of Cartagena as an international brand for refugee protection. She also pointed out that the process promotes the identification of regional contemporary protection challenges and responses and that the Caribbean should be an important part of it.

Mr. Shelly Pitterman, UNHCR Regional Representative for the USA and the Caribbean, explained that the agenda of this regional consultation builds on the main conclusions of The Bahamas Regional Conference on the Protection of Vulnerable Persons in Mixed Flows (May 2013), namely: 1) considering the establishment of a regional consultative migration process; 2) enhancing national and regional capacities to handle mixed migration flows; and, 3) more effectively identifying solutions for refugees and migrants in mixed migration flows. A fourth agenda item was introduced to reflect latest developments related to the protection of stateless persons and the prevention and reduction of statelessness.

A set of recommendations, to be discussed during the two-day meeting, was shared by civil society organisations on issues relating to mixed migration movements,

refugee status determination, durable solutions and statelessness, highlighting the specificities of the Caribbean region and the need for enhanced regional cooperation and solidarity.

During the discussions, participating States presented the following issues as inputs for the new Declaration and Plan of Action:

II MIXED MIGRATION

The panellists highlighted the challenges Caribbean countries and territories face in dealing with increasing mixed migration movements, given extensive, porous maritime borders, with limited financial, human and material resources. The main issue is how to secure border integrity while respecting the rights of migrants and other individuals, providing international protection to those in need, and encouraging countries of origin to address root causes that lead people to move. Given the tragic loss of life at sea, the importance of undertaking awareness campaigns on the risks involved in irregular migration was also underscored. In light of this, it was recommended that a Caribbean approach to mixed migration should be incorporated into the forthcoming Brazil Declaration and Plan of Action to reflect the specificities of the region.

Delegates underlined the need for an effective regional responsibility mechanism, expressing concern about the disproportionate impact of irregular migration on a few island states in the Caribbean and acknowledging the resulting problems of unequal burden-sharing.

Delegates reaffirmed the need to identify refugees and other persons with specific needs among the wider flows of irregular migration. In order to do so, they stressed the importance of protection-sensitive entry

mechanisms and differentiated procedures. On the issue of multi-stakeholder cooperation and emergency preparedness, the contingency plan for irregular migration in the Turk and Caicos Islands, which includes a chapter on humanitarian responses, was mentioned as a good practice.

Delegates also highlighted the need to enhance regional cooperation and partnerships throughout the Americas (and beyond) in order to improve the management of mixed migration movements in the Caribbean with due respect to international and regional protection standards. In this vein, the importance of UNHCR's 10 Point Plan of Action for dealing with mixed migration movements was also mentioned.

Closer cooperation among countries in the sub-region was considered crucial to effectively manage mixed migratory movements. As part of a regional responsibility-sharing mechanism, delegates recommended the development of a regional consultative process on migration issues among Caribbean countries that might be developed within existing regional platforms, such as CARICOM and the Organisation of Eastern Caribbean States (OECS), with the technical support of UNHCR and IOM.

Delegates pointed out that such a regional consultative process would be an appropriate mechanism to harmonise data collection and analysis systems, exchange information and good practices, build bilateral and regional capacities, provide practical and effective responses to challenges in the protection of refugees, stateless persons and migrants and foster cooperation among States.

Delegates highlighted and commended the existence of bilateral and multilateral agreements as important tools to address irregular migration in the region and they considered that in these agreements appropriate protection safeguards should be incorporated, in par-

ticular, the right to seek asylum and the respect of the principles of and confidentiality.

In the context of maritime movements, protection at sea is a prominent feature of the Caribbean region, particularly during interception, disembarkation and return procedures. For this purpose, the applicability of the International Convention on Maritime Search and Rescue and the UN Convention on the Law of the Sea were recalled as providing the international framework for the protection of those in distress. The representative of the IMO pointed out the importance of the international guidelines for shipmasters on how to rescue and protect people in distress at sea. It was also mentioned that this year's UNHCR High Commissioner Dialogue will provide an opportunity to further discuss and exchange experiences with other regions of the world on the challenges posed by protection at sea, where the Caribbean should be duly represented.

Given the concerns related to migrant smuggling and trafficking in persons, delegates recommended to further enhance the identification and protection of those in need and their referral to the corresponding national protection mechanisms, including asylum procedures when pertinent. They also underlined the need to strengthen international cooperation among countries of origin, transit and destination.

Civil society organizations called upon States to exchange good practices when dealing with mixed migration movements, particularly as regards alternatives to detention, and proper screening of persons in need of international protection. They further recommended avoiding detention of asylum-seekers and refugees.

Finally, it was underscored that regional responses require financial support also from the international community, as part of a responsibility-sharing approach.

III REFUGEE STATUS DETERMINATION

Taking into account that most States and territories in the Caribbean have acceded and/or ratified the international instruments on refugees, the current agenda is chiefly related to the establishment of refugee status determination procedures. In a context of increased numbers of asylum-seekers and refugees coming to the region, efforts are underway to establish and/or strengthen asylum mechanisms in several Caribbean countries. Refugee legislation has been enacted in Belize, the Cayman Islands and the Dominican Republic. In the Turks and Caicos Islands an Immigration Ordinance is being developed that will contain a specific chapter on asylum. Asylum policies have been adopted in Jamaica, and Trinidad and Tobago. The Bahamas has set up a Refugee Unit and conducts refugee status determination.

The panel introduced the experience related to refugee status determination procedures in both the Cayman Islands and Trinidad and Tobago. In the case of the Cayman Islands, the national legal framework foresees a differentiated procedure for asylum-seekers and economic migrants. Trinidad and Tobago presented its recently adopted refugee policy which includes a time-bound phased approach towards assuming full responsibility for refugee status determination, with the technical cooperation of UNHCR, including the development and adoption of national legislation on refugees.

Roadmaps, such as the phased approach adopted in Trinidad and Tobago, were found to be valuable as a regional practice to help developing asylum systems in other countries and territories. Such a State practice should take into account the characteristic and realities of other Caribbean States.

During the plenary session, delegates welcomed new capacity-building initiatives and opportunities for cross-fertilization in the Americas. In this connection, the development of a regional capacity-building strate-

gy and other areas for collaboration, including the use of a regional pool for “asylum services”, were also considered. Other suggestions that were presented for further deliberation were the establishment of a regional forum to exchange good practices on refugee status determination procedures and the implementation of programmes, such as the Quality Assurance Initiative (QAI), put into practice by Mexico.

IV DURABLE SOLUTIONS

The panellists presented experiences of durable solutions for refugees in the Caribbean and in the Americas, highlighting the need to move forward the achievement of durable solutions in the region in a spirit of innovation and enhanced solidarity. The discussion evolved around the importance of having a comprehensive strategy to consider all possible solutions tailored to regional possibilities, including the facilitation of local integration. For this purpose, a rights-based approach should be contemplated and regularization programmes and migration schemes could come into play. The issue of durable solutions for refugees could be further discussed in other regional fora, such as the Community of Latin American and Caribbean States (CELAC) and CARICOM.

As concrete regional examples, Belize described the Amnesty Programme conducted in 1999-2000 to regularise 3,608 Central American refugees. Jamaica shared information on the naturalization process that allows refugees to acquire Jamaican nationality. Curaçao commented on schemes based on which the status of select groups of migrants was regularised in its territory.

Some of the participants shared experiences on the advantages of integrating refugees within local communities, promoting a non-discriminatory environment and self-sufficiency. Good practices on local integration

were also exchanged among participants that acknowledge that local integration can be fostered through a legal framework that allows for the regularisation of status, access to employment, education and health facilities and refugee inclusion into national programs. In addition, it was mentioned that regularisation plans and migration policies might be effective complementary tools to promote the integration of refugees. The importance of adopting national policies on refugees was mentioned as a good practice by Brazil, which is in the process of elaborating a National Plan for the Integration of Migrants and Refugees, through a participatory process involving migrants and refugees.

Upon UNHCR’s suggestion, the Caribbean countries and territories, as well as destination countries, discussed the benefit of establishing a central transfer mechanism where refugees in need of resettlement could be interviewed and processed. This mechanism would overcome practical obstacles related to the dispersion of refugees throughout the region, accelerate access to resettlement as a durable solution and contribute to the diversification of resettlement countries. The participants coincided in the opinion that more consideration should be given as regards to the scope and practical aspects of this proposal, including financial implications, how travel between countries would take place, the agreement of a host country, the use of existing accommodation arrangements, freedom of movement, and potential pull factors, among others.

The civil society recommended that States in the Caribbean shall develop and implement public policies to facilitate the full local integration of refugees by providing proper personal documentation, including work permits for asylum-seekers and refugees, access to basic services and enjoyment of available economic opportunities, and facilitate naturalisation.

V STATELESSNESS

In introducing the issue of statelessness, both delegates from Jamaica and Suriname referred to national and regional situations that might lead to statelessness. UNHCR briefed participants on the efforts to eradicate statelessness in the Americas in the coming 10 years, as a regional goal within UNHCR’s global campaign.

As part of the presentations, it was recalled that the OAS’s General Assembly invited Member States to use the commemorations of the 30th anniversary of the 1984 Cartagena Declaration and the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons to identify the challenges and the actions necessary to eradicate statelessness in the Americas and to include a chapter on the subject in the future Plan of Action of Brazil.

In this regard, the participants in the meeting highlighted the need of enhancing regional cooperation and developing a framework to prevent statelessness and address the specific protection needs of stateless persons. The relevance of the guidelines provided by the 2010 Declaration of Brasilia on the Protection of Refugees and Stateless Persons in the Americas and the OAS’s resolution on statelessness was also mentioned by delegates.

The meeting reviewed the main recommendations on statelessness of the previous sub-regional consultations, held in Buenos Aires and Managua, namely the proposal to: 1) promote the accession and/or ratification to the 1954 and 1961 Conventions; 2) address possible gaps in nationality laws; 3) reinforce civil registration systems, in line with UNHCR’s Executive Committee Conclusion N° 111 (2013); 4) enact national frameworks to ensure the rights of stateless persons; 5) establish administrative procedures to determine stateless status; 6) facilitate the naturalization of stateless persons; 7) promote confirmation of nationality; and, 8) restore nationality, when appropriate.

Moreover, among the issues to be considered as proposals that might contribute to the efforts to eradicate statelessness participants in the meeting mentioned the need to further encourage States to access and/or ratify both 1954 and 1961 Statelessness Conventions and to incorporate international standards into domestic law; it was also stressed the need to build national capacity to address statelessness, including through training activities; and conduct awareness and sensitisation campaigns addressed to border control and law enforcement officers. Where applicable, it was suggested for States to build on existing structures for refugee protection to conduct statelessness status determination and issuance of documentation to facilitate proof of citizenship.

Civil society organizations additionally recommended States to refrain from producing discriminatory nationality regulation, protect against the arbitrary deprivation of nationality, eliminate gender discrimination in nationality law, and ensure that every child is immediately registered at birth.

Finally, participants thanked the contribution and effective moderation of Ambassador Emeritus, Rosario Green and Judge Antônio Cançado Trindade, two of the principal experts of the process. Participants also thanked the Government and the people of the Cayman Islands for the warm welcome and hospitality they extended to this regional consultation.

Grand Cayman, 11 September 2014



Buenaventura, Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Caribbean

CIVIL SOCIETY POSITION PAPER

Yvonne shares her home with her 5 children and 81-year-old mother. UNHCR provided humanitarian assistance to her family. Her eldest daughter is in her 2nd year of Medical School, and she has to work several jobs to help her daughter pay her higher education. Her first 3 children were given birth certificates in Dominican Republic, but the last 2 children lack of them.

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On the occasion of the 30th Anniversary of the 1984 Cartagena Declaration on Refugees we would like to thank UNHCR and Caribbean States and territories for providing the space for civil society to voice its perspective on current and emerging challenges affecting persons in need of international protection, including, but not limited to, refugees, asylum-seekers, stateless and internally displaced persons.

During the Caribbean Regional Consultation process, the undersigned civil society organizations and members of academia met to discuss the most pressing issues and to develop specific recommendations in the context of these international protection challenges. Although common protection challenges exist across the Americas, the Caribbean faces significant con-

straints that are complex and unique to the region. Our geographic configuration and location make our region prone to mixed-migratory flows that involve persons who may be in need of international protection, including asylum seekers, refugees, stateless persons and victims of human trafficking, along with other groups of migrants.

Relatedly, due to its maritime environment, migration in the Caribbean is largely characterized by movement at sea. Such movement often occurs in unseaworthy vessels, which are filled beyond capacity and operated by human smuggling and trafficking networks. This leads to deaths at sea, as well as to incidents of violence that pose high risks to vulnerable populations, in particular women and children.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

Beside these migration-specific constraints, Caribbean States and territories also face challenges in guaranteeing equal treatment before the law without discrimination based on sex, origin, color, ethnicity, language, age, sexual orientation, or other grounds. Additionally, significant gaps in the law, and the way in which such law is implemented, allow for the discriminatory treatment of vulnerable populations in contravention of international human rights standards.

Taking into account these challenges, we commend Caribbean States for the national and regional efforts that have already been undertaken to address these particular issues and we express our support and willingness to work together to find innovative solutions for the protection of human rights in our region. However, en route to the future adoption of the Brasilia Declaration and the development of an effective plan of action, we encourage Caribbean States to adopt laws and public policies, in line with international human rights and refugee law, that effectively guarantee the fundamental rights of all migrants, and address the special needs of refugees, asylum seekers and stateless persons. In this light, we also encourage States to share the responsibility for protecting these vulnerable populations by engaging in greater cooperation and developing comprehensive regional strategies and solutions to the protection challenges we face.

A MIXED MIGRATION FLOWS

Ensuring protection for Persons in Need of International Protection (PINP) and other vulnerable migrants continues to be a challenge in the Caribbean region as States have demonstrated varying levels of commitment to advancing policies and procedures that ensure such protection. A clear need thus exists to respect international and regional human rights protection standards, while taking into account the legitimate security concerns of States.

Particular attention should be paid to the special needs of vulnerable groups when managing mixed migration flows. States should therefore develop the appropriate institutional capacity to identify PINP and refer them to protection systems so that the different categories of vulnerable persons can be effectively protected. In this light, solidarity and cooperation at the regional level on protection systems is necessary to arrive at a more equitable responsibility-sharing scenario.

Finally, as PINP travel alongside other categories of migrants, they could be affected by the widespread use of detention practices in the region. In accordance with international protection standards, however, States should never detain or deprive asylum seekers, refugees and other PINP of their personal liberty.

RECOMMENDATIONS

In order to increase capacity building, States should:

- Establish protection-sensitive and differentiated processes and procedures to address the mixed flow phenomenon.
- Provide government officials at ports of entry and at sea with human rights, cultural sensitivity and language training.
- Adopt regional and international jurisprudence and recommendations for all operations of search, rescue and interception, in line with guidelines developed by UNHCR.
- Develop a multi-stakeholder national task force to respond to mixed migration issues and to strengthen protection mechanisms for vulnerable groups.

In order to promote data collection, information sharing and management, States should:

- Establish reliable data collection and analysis systems (including disaggregated data) that are in line with international legal standards and instruments applicable to refugees and vulnerable migrants.
- Improve information sharing among key stakeholders, ensuring confidentiality measures are followed.

- Identify and share best practices with key stakeholders at the regional and national level, including civil society.
- Conduct a mapping exercise on capacities at the national and regional levels.

In order to strengthen early response and access to PINP during maritime interception, States should:

- Create an Early Response Protocol (ERP) for the identification and prescreening of PIMPS. The ERP should include transfer to a place of safety, individual risk assessment, the initiation of the case management process and referral to applicable protection systems.
- Guarantee easy access to relevant civil society service providers and protection systems.
- Adopt a presumption against detention and for PINP and other vulnerable groups.
- Guarantee information to all migrants, including PINP, on their rights and their entitlement to protection procedures and access to protection systems.

In order to promote regional solidarity and coordination, States should:

- Develop a regional task force to facilitate responsibility sharing and to address the challenges and opportunities posed by mixed migration flows. Within this task force, a cadre of regional experts should be established that can be deployed in any emergency situation.
- Establish a regional fund that aims to alleviate the challenges arising from mixed migration flows, the funds of which could be used in the deployment of trained regional professionals, the provision of emergency supplies, etc.
- Revisit bilateral agreements on fast-track repatriation to establish safeguards against the repatriation of PINP and to protect their identity.
- Establish and prioritize regional forums for dialogue and the exchange of best practices in migration policies.
- Follow the guidelines provided by UNHCR on interception at sea.

In order to respect the fundamental rights of liberty and security of person, States should:

- Not place asylum seekers, refugees or PINP in detention or deprive them of their personal liberty.
- Eliminate the use of detention or any deprivation of liberty as a punishment for immigration infractions.
- Consider and implement alternatives to detention in the first instance for asylum seekers, refugees and other PINP. Alternatives must include case management for the coordinated delivery of information, as well as access to legal counsel, social services and protection for those whose who are awaiting decisions on their cases.
- Identify and build upon existing best practices within the region, and consider the conversion of Immigrant Detention Centers into open-door reception centers/shelters.

B REFUGEE STATUS DETERMINATION

Most Caribbean States lack effective national asylum procedures and enabling legislation for refugee status determination (RSD). Such limitations severely affect a State's ability to respond to the specific protection needs of asylum seekers, refugees and other vulnerable individuals.

Too often States legitimate national security concerns undermine international protection obligations. However, existing international and regional human rights and protection frameworks are clear regarding States' responsibilities to guarantee and uphold the principles of and non-discrimination, while protecting the right of persons to seek asylum and to not be penalized for irregular entry. States must also guarantee the right to due process, liberty and security of person, and freedom of movement.

An urgent need exists for Caribbean States to effectively develop legislation and institutional frameworks to carry out RSD according to international standards.

Those States that do not have an existing enabling legal framework could accomplish this through a phased approach in collaboration with civil society and international organizations. Those States that already have an enabling legal framework can prioritize the standardization of said procedures.

In order to ensure effective protection, RSD procedures should:

- Be non-discriminatory, carried out in a reasonable time frame, communicated in a language and manner that is comprehensible to addressees, while ensuring their access to legal counsel and respecting their confidentiality throughout the process.
- Take into account the special needs associated with each individual's age, gender, sexual orientation, race, ethnicity and/or other similar characteristics.
- Always prioritize the best interests of the child.
- Include standard operating procedures that clarify the roles and responsibilities among the State, civil society and international stakeholders.
- Include revision of detention, RSD and removal decisions by an inter-institutional committee.

C DURABLE SOLUTIONS

Local integration is not only about providing social services, but also about encouraging integration and community participation in a discrimination free context.

In the Caribbean, most refugees have difficulties accessing public services, such as healthcare and education, which results in high levels of economic dependence on UNHCR and civil society organizations' assistance programs, when the latter do exist. Moreover, most Caribbean States do not have established local integration policies, which results in socioeconomic exclusion for recognized refugees. The most common integration barriers are language and a lack of government-issued documentation, although indi-

viduals also suffer from discrimination by State authorities and society at large.

Integration policies are necessary to guarantee refugees' rights, and are also part of a State's responsibility to fulfill international protection obligations. Thus, States must develop and effectively implement public policies that specifically address local integration.

Finally, States must ensure that those in need of resettlement to third countries do not suffer from long delays, and are not subject to legal, social and economic limbo.

RECOMMENDATIONS

In order to promote the integration of refugees, State should:

- Ensure that refugees have non-discriminatory access to social services and other public programs.
- Issue proper documentation in a timely and efficient manner so that refugees are able to enjoy their rights to an education, work, healthcare and adequate housing, among others, on par with citizens.
- Ensure access to economic opportunities that encourage self-reliance such as the provision of special permits or work permits and the removal of barriers to equal participation in the workforce.
- Ensure recognition of refugees existing qualifications and professional skills, for instance through standardized testing, equivalency exams and trainee programs, to facilitate the contribution of refugees to local economies.
- Facilitate residency and naturalization by streamlining and simplifying processes; reducing wait times and waiving fees.
- Lead advocacy and awareness raising efforts to encourage solidarity and cultural diversity.

In order to address refugee resettlement in situations where local integration is not a viable option, States should:

- Facilitate a refugee transfer mechanism to expedite resettlement procedures to third countries.
- Actively express their willingness to participate in such resettlement programs.
- Consider, in the spirit of regional solidarity, the expansion of resettlement programs under the Brazil Plan of Action to other nations throughout Latin America.

D STATELESSNESS

Political, social and economic factors can make it difficult to prevent and reduce statelessness and address the needs of stateless persons. In the worst cases, governments have taken nationality away from their citizens for political reasons. In other cases, governments simply lack the capacity to officially recognize and document their citizens or have yet to address gaps in citizenship laws and procedures. Systematic discrimination may also render people stateless.

Unfortunately most of these situations currently exist in the Caribbean and result in an unknown number of individuals being rendered, or placed at risk of being rendered, stateless. This, in addition to the largely invisible and unaddressed nature of the problem, has a detrimental impact on these people's ability to enjoy their fundamental human rights.

In order to address these situations, we must highlight three clear international legal obligations that regulate nationality matters: (1) the prohibition against racial discrimination; (2) the prohibition against statelessness; and (3) the prohibition on arbitrary deprivation of citizenship.

RECOMMENDATIONS

In order to eliminate statelessness, States should:

- Guarantee the right to a nationality to any person in their territory who is at risk of statelessness; particular attention should be paid to those groups who are

placed in a highly vulnerable situation when stateless, such as women, children, refugees, undocumented migrants, etc.

- Refrain from producing nationality regulations or engaging in nationality practices that are discriminatory or have a discriminatory effect.
- Protect against the arbitrary deprivation of nationality and the retroactive application of nationality legislation that adversely impacts individuals' access to nationality.
- Eliminate gender discrimination in nationality laws and practices.
- Facilitate naturalization and restore nationality, when appropriate.

In order to provide proof of nationality, States should:

- Ensure that every child's birth is registered and implement public information campaigns to promote the importance of, and procedures to obtain, birth registration and nationality identification documents.
- Promote non-discriminatory, accessible and uniform procedures for issuing nationality documentation.
- Reform laws, policies and procedures to ensure that those entitled to nationality documentation under the law actually acquire said proof of nationality.

In order to identify stateless persons and provide them protection, States should:

- Establish statelessness status determination procedures. Several Latin American States have already entered pledges to establish statelessness status determination procedures (Brazil, Costa Rica, Peru, and Uruguay). This is a welcome step that we encourage all Caribbean States to take.
- Create fair and efficient procedures for identifying stateless persons located within their borders, including undertaking data collection, research and other efforts to increase knowledge about statelessness in the region. States should actively encourage the participation of civil society and academia in this endeavor.

- Ensure that stateless persons are entitled to a secure legal status, access to employment, education, healthcare and other vital human rights, without discrimination. Additionally, States should operate under the presumption against detention and removal proceedings during the statelessness status determination process.
- Ensure the right to judicial review, legal assistance, and remedy when it comes to nationality or statelessness status determination decisions for individuals at risk of statelessness, including the right to appeal and a legal explanation should they be denied citizenship.
- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and ensure their full implementation.
- Strengthen regional cooperation and collaboration with regional human rights monitoring bodies.

For countries in the Caribbean, their inclusion in the Brazil Plan of Action represents an important first commitment in addressing challenges and identifying common solutions related to the protection of migrants, refugees, stateless and other vulnerable groups, from a regional perspective. In order for the objectives in the Plan of Action to be realized, it is essential that they be followed by national legislation and practice that is in line with the Cartagena Declaration. We reiterate our willingness to collaborate in these processes and emphasize the essential role civil society organizations should play in the implementation, monitoring and evaluation of the Plan of Action. Such multi-stakeholder collaboration is necessary for the effective protection of asylum seekers, refugees, stateless and other persons in need of protection both at the regional and national level.

Grand Cayman, 9 September 2014.

This Caribbean Civil Society and Academia Position Paper is the result of a consultative process facilitated by the Norwegian Refugee Council (NRC) among six countries in the region: The Bahamas, Belize, Curaçao, Dominican Republic, Haiti and Trinidad and Tobago. This process culminated in a regional meeting held in Grand Cayman on September 8th and 9th, 2014, which 11 representatives from civil society organizations and academia attended. They all agreed on this position paper, which marks the commemoration of the 30th anniversary of the Cartagena Declaration on Refugees.

THE CIVIL SOCIETY ORGANIZATIONS AND ACADEMIA PRESENT IN THE CARIBBEAN REGION CONSULTATION MEETING WERE:

BELIZE

Help for Progress

CURAÇAO

Red Cross

HAITI

Citizen Action for the Abolition of Torture

PUERTO RICO

Caribbean Institute for Human Rights (ICADH)

THE BAHAMAS

Bahamas Crisis Center

TRINIDAD AND TOBAGO

Living Water Community

FROM INTERNATIONAL CSO AND ACADEMIA:

Human Rights Center, University of Dayton, Ohio

International Detention Coalition (IDC)

Open Society Justice Initiative



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

Team on the Cartagena+30 at the Opening Ceremony,

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+30
CARTAGENA

OPENING CEREMONY

BRASILIA 2-3 DECEMBER 2014



MINISTERIAL MEETING COMMEMORATING THE 30TH ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES

PREFACE | MARTA JUÁREZ

INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER

SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN

AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY

AGENDA

SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÔNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO

BRAZIL DECLARATION

BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

AGENDA

02 / 12 / 2014

ITAMARATY PALACE

12:00-13:30

LUNCH OFFERED BY BRAZIL'S MINISTERS OF FOREIGN AFFAIRS AND JUSTICE

- Heads of Delegations of the Invited Governments
- UN High Commissioner for Refugees
- Under-Secretary General for Political Affairs I of the Ministry of Foreign Affairs for Brazil
- National Secretary of Justice and Chairman of the National Committee for Refugees in Brazil
- Secretary General of the Norwegian Refugee Council
- Director of UNHCR's Bureau for the Americas
- UNHCR Representative for Brazil
- Expert Group of the Cartagena+30 Process

JK MEMORIAL'S AUDITORIUM - UPPER LEVEL

13:30-15:00

REGISTRATION OF PARTICIPANTS

14:00-14:45

PRESS CONFERENCE

- Minister of Justice for Brazil, José Eduardo Cardozo
- United Nations High Commissioner for Refugees, António Guterres
- Secretary General of the Norwegian Refugee Council, Jan Egeland

15:00-16:00

OPENING CEREMONY

(10 minutes for each speaker)

- Minister of Justice for Brazil, José Eduardo Cardozo
- Minister of Foreign Affairs for Brazil, Luiz Alberto Figueiredo Machado
- United Nations High Commissioner for Refugees, António Guterres
- Secretary General of the Norwegian Refugee Council, Jan Egeland
- Representative of Civil Society for Brazil, Candido Feliciano da Ponte Neto

16:00-17:00

PATH TO CARTAGENA+30 (10 minutes for each speaker)

- Judge of the International Court of Justice, Antônio Cançado Trindade
- Representative of Argentina, President of CONARE, Federico Luis Agusti
- Representative of Ecuador, Vice-minister of Human Mobility, Maria Landázuri de Mora
- Representative of Nicaragua, Minister of Government, Commandant, Ana Isabel Morales Mazún
- Representative of Cayman Islands, Director of Policy, Christopher Eakin
- Representative of Civil Society, Sally Valladares (Honduras)

17:00-17:30

Coffee Break (JK Memorial lower level)

17:30-18:00

BRAZIL'S ACTION PLAN: A NEW DECADE OF SOLIDARITY FOR LATIN AMERICA AND THE CARIBBEAN

(10 minutes for each segment)

- National Secretary of Justice and Chairman of the National Committee for Refugees in Brazil, Paulo Abrão
- Testimonials (on behalf of refugees and stateless persons)
- Screening of the documentary about Cartagena+30 Produced by TV Brasil Internacional

8:00-19:00

PLENARY

(5 minutes for each speaker)

- Representatives of participating countries on the Cartagena+30 Process (in order of registration, at JK Memorial)

19:00-19:30

AWARDS AND HONORS

(10 minutes for each segment)

- Presentation of the Journalistic award **CARTAGENA+30**
- In recognition of the **BUTTERFLIES NETWORK**, Nansen Refugee Award 2014 winners
- Tribute to the authors of the Cartagena Declaration on Refugees

19:30-20:00

MUSICAL PRESENTATION

- Grupo Quarteto de Brasília

20:00-22:00

COCKTAIL (JK Memorial lower level)

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

AGENDA

03 / 12 / 2014

JK MEMORIAL - UPPER LEVEL

09:00-11:00

PLENARY - CONTINUATION

(05 minutes for each speaker)

- Representatives for participating countries of the Cartagena+30 Process (in order of registration, at JK Memorial)
- Representatives for the observer countries (in order of registration, at JK Memorial)
- Representatives for International Organizations (in order of registration, at JK Memorial)
- Representative of Civil Society, Rochelle Nakhid (Trinidad and Tobago)

11:00-11:30

Coffee Break (JK Memorial lower level)

11:30-12:00

ADOPTION OF THE BRAZIL DECLARATION AND ACTION PLAN

- National Secretary of Justice and Chairman of the National Committee for Refugees in Brazil, Paulo Aarão

12:00-12:30

CLOSING CEREMONY

- Regional Coordinator of the Norwegian Refugee Council, Enrique Torrella (on behalf of Civil Society)
- United Nations High Commissioner for Refugees, António Guterres
- Under-Secretary General for Political Affairs I of the Ministry of Foreign Affairs for Brazil, Ambassador Carlos Antônio da Rocha Paranhos
- Minister of Justice for Brazil, José Eduardo Cardozo



In Brazil, soccer is a mean of integration in the national culture for refugees.

UNHCR. L. F. GODINHO

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ IN CELEBRATING ITS 30 YEARS, WE ALSO CELEBRATE THE PROGRESS MADE BY OUR COUNTRIES, AND WE EXPRESS OUR WISH TO IMPROVE THE STANDARDS AND THE INSTITUTIONS CHARGED WITH ADEQUATELY RECEIVING THOSE PEOPLE WITHIN OUR TERRITORIES, OFFERING THEM A SAFE PLACE AND THE OPPORTUNITY TO RESTART THEIR LIVES.”

LUIS ALBERTO FIGUEIREDO MACHADO

LUIS ALBERTO FIGUEIREDO MACHADO
MINISTER OF FOREIGN AFFAIRS
FEDERAL REPUBLIC OF BRAZIL

Good afternoon, everyone; Justice Minister Mr. José Eduardo Cardoso, my dear friend Madam Minister Menicucci, it is a great pleasure to see you; United Nations High Commissioner for Refugees Mr. António Guterres, on behalf of whom I greet all other members of the presidium; Uruguay Foreign Affairs Minister Mr. Luís Almagro; Saint Lucia Foreign Affairs Minister Mr. Alva Baptiste; ladies and gentlemen, friends: thirty years ago a small group of countries adopted a document that would come to revolutionise the treatment afforded to refugees in our region. By extending the concept of asylum beyond the circumstances foreseen in the 1951 Convention and the 1967 Protocol, the high standards of protection enshrined in the Cartagena Declaration decidedly influenced national legislation enacted by several States. At that time, a modern concept of the status of refugees was established; one that sought to take into account the profound changes that had taken place in the world since the end of World War II. Practical and symbolic values also inspired new meetings that took place on this subject in 1994 and 2004, the results of which broadened the humanistic legacy created by what is known as the spirit of Cartagena.

The Cartagena Declaration on Refugees was adopted within a specific context. In 1984 our region was in the last phase of a politically difficult period; many of our citizens had been forced to leave their homes and find a new life in other countries. In these past 30 years, circumstances have changed. Latin America and the Caribbean

+30
CARTAGENA

 **UNHCR**
The UN Refugee Agency

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIS ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

have asserted themselves as regions of peace and cooperation, and now have political and collective instruments to promote and preserve democratic order. Fortunately, our people are spared the horrors of war. However, circumstances vary greatly throughout the planet, and the plight of refugees, internally displaced, and stateless persons is one of the most significant indicators of the difficulties and challenges we face today and will continue to face in the coming years. Suffice it to recall that the numbers are the highest they have ever been since 1945; more than 56 million people find themselves in these conditions. Furthermore, the subject of asylum has become the most tragic manifestation of the failure of global governance structures to provide adequate solutions to the gravest crises of our time, particularly with regard to peace and international security. A comprehensive and structural response to those challenges has failed to emerge. Reality demands commitments and political efforts beyond solidarity and humanistic responses; we must move toward a more just and peaceful international order in which the prevention of conflicts and their peaceful resolution play the central role assigned by the UN Charter.

In any case, our region has unequivocally shown that it is no stranger to the human drama of refugees, internally displaced, and stateless persons in the world. We have significantly progressed in recent decades in providing shelter and protection to those in need. That tradition is a new source of pride, and I dare say we must redouble our efforts to preserve and promote the Cartagena Declaration on Refugees, as a symbol of that commitment. In celebrating its 30 years, we also celebrate the progress made by our countries, and we express our wish to improve the standards and the institutions charged with adequately receiving those people within our territories, offering them a safe place and the opportunity to restart their lives.

We have had much to celebrate since the adoption of the Mexico Declaration and Plan of Action of ten years ago. While in other parts of the world, those in need are restricted by borders, in our region the willingness to continue advancing this crucial agenda remains intact. It is also gratifying that the small group of nations that met in Cartagena 30 years ago has grown over time. This year for the first time within the Cartagena framework, a consult was held specifically focusing on the Caribbean nations, and I am deeply gratified to salute our Caribbean friends present here, whose integration in this Cartagena+30 Process is most welcome. I hope that in this meeting that begins today we may collaborate in order to consolidate the tradition of protection and reception enshrined in Cartagena.

Thank you very much.

Grand Cayman 9 September 2014



A Colombian refugee girl sits outside of her family's shack near the Venezuelan border with Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ THIS MEETING SHOULD BREAK AWAY FROM THE PARADIGM OF TRIVIALISING VIOLENCE AND THE PASSIVE ATTITUDE TOWARDS THE CULTURE OF VIOLENCE ON ALL FRONTS, IN ORDER THAT, TO MAKE A DEFINITIVE BREAK WITH THIS PARADIGM, A NEW PARADIGM –WHICH IS OLD, BUT ALWAYS NEEDS TO BE RESTATED –MAY BE REINSERTED: THE PARADIGM OF FREEDOM, OF BEING FREE TO COME AND GO, OF EXERCISING ONE’S OWN FREE WILL TO CHOOSE WHERE TO LIVE AND WORK.”

ELEONORA MENICUCCI



ELEONORA MENICUCCI

MINISTER OF THE SPECIAL SECRETARIAT
FOR POLICIES ON WOMEN

Good afternoon to you all:

I would like to begin by welcoming my two colleagues at the ministry: the Minister of Justice, Jose Eduardo Cardozo, a close friend and colleague, and the Minister of Foreign Affairs –also a good friend –Minister Figueiredo, and, on behalf of them both, I welcome all of you here present on this important occasion, otherwise all my time will be taken up welcoming each of you in person.

I would like to discuss things that are small but very important, and with which I am closely connected to the issue of asylum; asylum and its consequences.

The first is that we are honoured and proud to represent the government that is hosting this extraordinary meeting in commemoration of the thirtieth anniversary of the Cartagena Declaration, Cartagena+30, at a time when, as already mentioned, the world is upside down and human rights, social justice, freedom and the entire range of human rights in all its diversity, are not only not respected but violated. In this regard, the meeting here in Brazil seeks greater respect for human rights and the ever-increasing pursuit of social justice that mainstreams gender, race, ethnicity, age, sexual orientation and disability, in order that everyone may play an important role in the history of our country, as well as being the protagonist of their own personal

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

history. It is as if we are swimming against the tide; Brazil, as well as its neighbouring countries, namely Uruguay, Chile and Argentina in particular, lived through many horrific years at the hands of military dictatorships and, during that time, many of our people –myself included –were detained and tortured, and were refugees in other countries, especially in these four in South America, to whom we owe a debt of gratitude and profound appreciation for their hospitality.

And yesterday the Minister of Health and I were commemorating thirty years of the fight against STD HIV/AIDS in Brazil, with a policy that is a global benchmark for antiretroviral cocktails and a policy without prejudice. Thirty years ago Brazil banned the concept of groups at risk for HIV and AIDS treatments. And thirty years ago Brazil also signed the Cartagena Declaration, not for nothing, but because we were still emerging from a deep-rooted process and were only just beginning to establish our democracy following a very tough dictatorship.

The second point I would like to put forward is, and I hope and am certain that under the leadership of such key figures gathered here today at the Cartagena Declaration+30, this meeting should break away from the paradigm of trivialising violence and the passive attitude towards the culture of violence on all fronts, in order that, to make a definitive break with this paradigm, a new paradigm –which is old, but always needs to be restated –may be reinserted: the paradigm of freedom, of being free to come and go, of exercising one’s own free will to choose where to live and work.

The third point I would like to make, and which I cannot fail to do so, is what asylum means to women and children: it represents a break from their emotional ties, an intense search for a new way of life in another country, and also being vulnerable to all forms of violence, especially sexual violence and rape. Rape is not only a weapon of war, but is primarily a weapon of war in short rounds, “in inverted commas”; the minor and major daily assaults that occur in our countries. Women make up 10 to 20% of the refugee population in Brazil (I naturally consulted Paulo Aarão for these figures) and are now in the range of 10%. However, in absolute numbers this is 727 out of 7277.

But along with women come children and probably the elderly, for whom they are responsible, and in Brazil there is no obstacle to the family reunification of male or female refugees.

I would like to conclude my speech by calling attention to women refugees, who are more vulnerable to all types of violence than any other refugees but who, above all, are constantly exposed and vulnerable to rape, and domestic and sexual violence.

I therefore wish to congratulate my two colleagues from the ministries, and also congratulate the civil society representatives here present because I do not believe in a democratic process without the participation of members of civil society since this is fundamental and vital. In other words, we can only make progress along this path of Cartagena+30 with freedom and social justice, and without prejudice, discrimination or violence.

Thank you.

“ WE FACE COMPLEX PROBLEMS DETERMINED BY THIS NEW REALITY; AS IN SCIENCE, CRIME IS DEVELOPING NEW OPERATIONAL FORMS - GLOBALISED CRIME, TRANSNATIONAL CRIME, CRIMINAL ORGANISATIONS THAT CURRENTLY ACT AT UNPARALLELED LEVELS. LIKEWISE, NEW AND MORE SOPHISTICATED FORMS OF POLITICAL PERSECUTION, MORE TERRIFYING THAN EVER, DEMAND THAT STATES OPEN THEIR DOORS TO PERSONS WHO FLEE FROM CRIMINAL ACTIONS, WHO SEEK PROTECTION FROM PERSECUTORY POLITICAL ACTIONS.”

JOSÉ EDUARDO CARDOZO

JOSÉ EDUARDO CARDOZO

JUSTICE MINISTER

To begin, I would like to salute His Excellency the Minister of Foreign Affairs from Brazil, my dear friend Luiz Alberto Figueiredo; my dear friend and colleague, Secretary of Policy Eleonara Menicucci; and my colleague António Guterres, United Nations High Commissioner for Refugees; Secretary of Justice and President of the National Committee for Refugees (CONARE) Professor Paulo Abrão; Secretary of the Norwegian Refugee Council Mr. Jan Egeland; Director of Caritas of the Archdiocese of Rio de Janeiro Dr. Candido Feliciano de la Puente Neto; Director of UNHCR's Bureau of the Americas and the Caribbean Marta Juárez; Dr. Bruno Arruda, Public Defender, who in this event represents His Excellency the General Defender for the Nation; Her Excellency, my dear friend, who is here in the audience, Professor Eloisa Arruda, Secretary of Justice for San Pablo; and all the ladies and gentlemen present here.

Thirty years ago none of us could have predicted how the world would be today, and even if we could have seen into the future at that time, we would probably not have believed our eyes: transactions of millions of dollars instantly carried out on a cellular device, changes in social relations in a globalised world never before imagined, and transformations of such magnitude that every day we are reminded that how we socialised 30 years ago is becoming completely obsolete.



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

We live in a very different moment in the history of humanity, and therefore we must continue to praise those visionaries who even without that view into the future, laid the foundation for what they believed could take place and should come to pass based on their actions. Thirty years ago, the Cartagena Declaration was a framework, a visionary framework, a framework created by people who did not know what would happen 30 years later, but who laid the groundwork for a set of actions that became crucial to the historic moment we live today. It was a visionary declaration, and it allowed us to come together today to consider actions that will further its directions and values, and provide assurances that could not be made, if 30 years ago such an important structure had not been put in place to receive those people who flee from one country to another in search of asylum.

We face complex problems determined by this new reality; as in science, crime is developing new operational forms - globalised crime, transnational crime, criminal organisations that currently act at unparalleled levels. Likewise, new and more sophisticated forms of political persecution, more terrifying than ever, demand that States open their doors to persons who flee from criminal actions, who seek protection from persecutory political actions. Those who are called to humanitarian action must give themselves to this purpose. A globalised world can be more humane or less humane, it is up to us to fight for its humanisation; it is up to us to protect those who need protection, and it is up to us to have the audacity to pave the way so that human rights can always be respected, regardless of changes and transformations. Men and women are human beings and must be treated as such, now and always, and we must be prepared to defend that; not only the men and women who govern, but also civil society that works with governments, considers respect for human beings, and ponders what a truly humanised future would mean for our peoples. I am absolutely certain that Brazil has been and continues to be committed to building on these actions. Brazil has always held a humanitarian position regarding the reception of people, only now we find ourselves in a different situation from that of the past.

I have had the opportunity today to speak with Dr. Guterres. In the past, Brazilians did not want to live here; today Brazilians abroad want to return, and many foreign nationals want to live here. Why? Because they seek better opportunities for work and life, because sometimes they need to take refuge from catastrophes and situations they experienced in their country, because often times they seek to flee from persecution resulting from political actions and criminal actions, and Brazil has to adapt to this new reality. We must have State structures in place that enable us to continue to hold a humanitarian position for those who want to live here. We must have more policies that lead to changes in Brazilian legislation, that lead to new definitions of policies, that allow Brazilian tradition to be respected, when a Brazilian wishes to return, when a foreign national wishes to enter, and when that type of migratory flow does not take place.

Therefore the Brazilian government, under the leadership of President Dilma Rousseff, is firmly determined that Brazil should continue on this path, as a country that receives foreigners well, so that people who come to us for asylum can obtain it and be treated with dignity and respect, and exercise civil rights. This is one of our commitments, but we are not alone in this. We must build this with all States, we must stand with other governments, and we must stand with our civil society that has a deep affection for this issue. This is why I believe the Declaration and Plan of Action that are put forth today are of fundamental importance, not only for us Brazilians, but also for all countries in the world that hold the same position regarding human rights and respect for receiving persons who seek protection in a turbulent and changing world, who seek refuge, a safe place in which to live with dignity.

Therefore I believe they were visionaries 30 years ago when, dear friend Guterres, they presented the Cartagena Declaration; and God willing, with the presentation now of the Brazil Plan of Action, may we act with the same pragmatic and visionary approach as those who came before us, because that remains our role and our duty: to ensure that human beings are treated with dignity. Let the changes come, we will never give up the struggle for the dignity of all human beings, wherever they may be.

Thank you very much.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ WE ARE WATCHING AN EXPLOSION OF HUMANITARIAN NEEDS; WE DO NOT HAVE, HOWEVER, THE CAPACITY TO RESPOND TO THIS AT THE INTERNATIONAL LEVEL. THE LATIN AMERICAN EXAMPLE OF A PEACEFUL AND PROTECTIVE CONTINENT IS MORE NECESSARY THAN EVER. I SINCERELY HOPE THAT THE PEACE NEGOTIATIONS IN COLOMBIA WILL MEET WITH SUCCESS IN THE NEAR FUTURE, SINCE IT REPRESENTS TODAY THE ONLY CONFLICT SITUATION ON THE CONTINENT.”

ANTÓNIO GUTERRES



ANTÓNIO GUTERRES
UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
UNHCR

Excellencies,

Ladies and Gentlemen,

It is an honour to be here in Brasília, celebrating the 30th Anniversary of the Cartagena Declaration. The Cartagena Declaration is not a simple adaptation of international legislation on refugees in Latin America. It is a fundamental milestone for protection frameworks on a global scale, because it goes beyond, it is more advanced and more progressive than the general regime defined by the 1951 Convention.

I also want to thank the Brazilian leadership, the Ministry of Justice and the Ministry of Foreign Affairs, for the vision they have given to this process so that the Brazil Declaration would become a new pact. Furthermore, I would like to thank every State in Latin America and the Caribbean, who we gladly see joining us in this common journey in the spirit of cooperation and commitment.

I would like to mark a profound recognition of the work of our main experts, Ambassador Emeritus Rosario Green, His Excellency the Judge of the International Court of Justice, Professor Antônio Cançado Trindade, and the honourable Judge of the Inter-American Court of Human Rights, Mr. Diego Garcia Sayán. At the

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

same time, I would like to thank the more than 150 civil society organizations, and the Refugee Norwegian Council, for their extraordinary contribution to the success of our work and the institutional advances that the Brazil Plan of Action and Declaration represent.

When it comes to the protection of refugees, internally displaced and stateless persons, Latin America is an example; an example of solidarity in a world that urgently needs this example. As Brazil's Minister of Foreign Affairs has said, we live in a situation in which more than 50 million people have been displaced by conflict, internally or externally, with an exponential increase: in 2011 we had 14,000 people displaced every day in the world due to violence; in 2012, 23,000 a day, and in 2013 32,000 people displaced every day.

We are watching an explosion of humanitarian needs; we do not have, however, the capacity to respond to this at the international level. The Latin American example of a peaceful and protective continent is more necessary than ever. I sincerely hope that the peace negotiations in Colombia will meet with success in the near future, since it represents today the only conflict situation on the continent.

Every Portuguese remembers the many of our citizens who came to Brazil, as do the many Spanish who sought protection in Latin America, during the dictatorships of Salazar and Franco. We have a debt of gratitude with Latin America, and we shall never forget that debt. I also would like to state that the Brazil Declaration and Plan of Action, within the Cartagena+30 Process, represents a confirmation of four essential values: quality, innovation, openness and generosity.

First, quality. The best asylum laws in the world are Latin American, including the one here in Brazil. Secondly, innovation. In Cartagena+20, with the Mexico Plan of Action, the Borders of Solidary, Cities of Solidary and solidary resettlement, created extremely important and innovative measures for the protection of refugees and internally displaced. Furthermore, generosity, progressively introducing new roles and functions. The way countries addressed migratory movements with the same perspective of solidarity, in certain cases helped to find solutions to protection problems. And finally, openness. In Cartagena+10, there was openness to broaden the definition to include the issue of internally displaced persons, and today, in Brasília, there is the openness to understand a new phenomenon, non-state actors of persecution such as criminal organized groups. The Northern Triangle in Central America is an example, where this phenomenon creates significant movements, involving many unaccompanied young people and children; an issue that demands an effective protection response. Latin American countries have always shown

openness to explore new possibilities to respond to new protection challenges. This is an attitude that must be complimented and strongly encouraged at a global level.

Finally, a word on statelessness. This is possibly the most forgotten aspect of the international human rights agenda. When I am talking with friends and ask them whether they know what statelessness means, many people do not even know that there are over 10 million people in the world who do not have a country to call their own. And to those who ask me what is a stateless person, I usually answer with an exercise of imagination. I ask them to close their eyes and imagine themselves to wake up without an identity card, without a credit card, without driver's license or any other document. To imagine that when they go to school, their kids are not accepted, when they go to the hospital, they cannot receive any treatment, that when the day comes and they die, their families will not be able to have a death certificate, to prove that the person does not exist anymore. There are 10 million people in the world that legally do not exist, and this is absurd in the 21st century. Also here, the Brazil Declaration and Plan of Action take on our global commitment of eradicating statelessness in the next 10 years. I very much hope that Latin America will be the first continent in the world to completely eradicate statelessness.

Finally, I would like to wish you all that this conference is successful and, above all, that our commitment with the world in the protection of refugees, internally displaced and stateless persons may be ever stronger in Latin America. This region is a lesson for all those, as the Ambassador said, who within their borders use populist and xenophobic discourse that creates environments hostile to foreigners, and who do not understand that diversity is wealth and that migration is not a part of humanity's problems, but a part of humanity's solutions.

Thank you very much.

“ IN ORDER TO REDUCE THE LEVELS OF VULNERABILITY OF PEOPLE, AND AVOID FORCED DISPLACEMENT, STRUCTURAL MEASURES ARE REQUIRED TO ADDRESS ISSUES THAT GO BEYOND THE HUMANITARIAN EMERGENCY: TO STRENGTHEN JUSTICE SYSTEMS, REDUCE LEVELS OF IMPUNITY, AMONG OTHER MEASURES, AND ABOVE ALL, RECOGNIZE AND ADDRESS THE CHALLENGE OF ORGANIZED VIOLENCE AS IT EXISTS IN SOME CENTRAL AMERICAN COUNTRIES.”

JAN EGELAND

JAN EGELAND

EXECUTIVE SECRETARY
NORWEGIAN REFUGEE
COUNCIL

Ladies and gentlemen,

On behalf of civil society and the Norwegian Refugee Council, I want to thank the Government of Brazil, the governments that hosted the subregional consultations: Argentina, Ecuador, Nicaragua and Cayman Islands, and all States that have participated in the commemoration of the 30th anniversary of the Cartagena Declaration, the space provided for the participation of civil society.

I would also like to express a special thank you to the United Nations High Commissioner for Refugees-UNHCR for its hard work and vision, and highlight its ongoing effort and cooperation with the governments of the region to make regional solidarity a reality, and the Declaration of Cartagena a cornerstone of protection.

More than 150 civil society organizations have participated in the Cartagena+30 Process, and based on its vision and commitment to refugees, displaced and stateless persons and those with protection needs, have contributed ideas, recommendations and suggestions to improve the lives of these persons.

I first came to Latin America at age 19 as a volunteer with a Catholic organization in Colombia. I was surprised, as I still am, by the great contrasts of the continent: the

+30
CARTAGENA

 **UNHCR**
The UN Refugee Agency

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

injustice and extreme violence on the one hand, and the rich tradition of civil society and solidarity on the other. Forced displacement of vulnerable communities -caused by the armed forces, guerrillas, paramilitaries, gangs and drug traffickers contrast with the courageous initiatives to protect and care for the displaced.

This commitment and solidarity, the day-to-day experience of civil society with the victims, is an opportunity that should not be missed for the implementation and participation in monitoring mechanisms that must be established for effective implementation of the Brazil Plan of Action.

National and local monitoring will be very important, and perhaps the formula could be through government-UNHCR-civil society tripartite committees. But now that we have sat at the same table, we have spoken the same language, reached conclusions and recommendations in each subregional consultation, and can and must work together to provide greater protection to those who need it.

There are recommendations that I would like to emphasize for their scope and depth:

1. In order to reduce the levels of vulnerability of people, and avoid forced displacement, structural measures are required to address issues that go beyond the humanitarian emergency: to strengthen justice systems, reduce levels of impunity, among other measures, and above all, recognize and address the challenge of organized violence as it exists in some Central American countries.

2. In the times ahead —remembering that the Plan to be signed is for the next 10 years— we must respond to new forms of displacement caused either by natural disasters or climate change, or even disasters caused by our species. We have yet to face major challenges related to preventing and responding to these realities that are already here.

3. Internal displacement is not only a reality in Colombia, but also in other countries of the Northern Triangle of Central America; it is therefore essential to support countries suffering this phenomenon and its humanitarian impact, ensuring commitment and regional solidarity.

4. And since we are gathered here to mark the 30th anniversary of the Declaration of Cartagena, let us encourage countries that still have not done so to adopt its expanded definition in their national legislation, and congratulate those who have already done so.

It is clear that governments of various countries can and should do more, both nationally and regionally. Countries should identify the causes of displacement within their

territories and implement coordinated responses with neighbouring countries. Cartagena+30 should develop common solutions for the protection of migrants, refugees, stateless persons and unaccompanied minors. Through the numerous sub-regional consultations co-organized by NRC, local organizations have made recommendations to strengthen regional action. Now, we challenge the various governments to use the proposals and resources that exist in the organizations to establish national and sub-regional mechanisms for monitoring these commitments. This would allow Cartagena+30 to rediscover the exceptional solidarity of the first Declaration of Cartagena and respond to current challenges.

The opportunity is now. The solution is regional.

“ I WOULD LIKE TO HIGHLIGHT THE IMPORTANT ROLE OF CIVIL SOCIETY IN THE DEFENSE OF HUMAN RIGHTS, AND ESPECIALLY IN PROJECTS THAT ASSIST AND INTEGRATE REFUGEES. WE ARE PRESENT BECAUSE WE HAVE A MANDATE FROM SOCIETY, BECAUSE WE REPRESENT ALL CITIZENS AND WILLINGLY CHOOSE TO FIGHT FOR THE CAUSES OF THE MOST VULNERABLE, OF THOSE WHO ARE SUFFERING, OF THOSE WHOSE RIGHTS ARE VIOLATED, OF THOSE WHO HAVE BEEN EXCLUDED FROM FAMILY LIFE AND FROM THEIR CULTURE, AND OF THOSE WHOSE DIGNITY HAS BEEN UNDERMINED. ”

CÂNDIDO FELICIANO DA PONTE NETO



CÂNDIDO FELICIANO DA PONTE NETO

REPRESENTATIVE OF BRAZILIAN
CIVIL SOCIETY

I would like to welcome all the members of the table and each one of you here present. Friends, this is a special opportunity and I am extremely pleased to participate in this event commemorating the thirtieth anniversary of the Cartagena Declaration on Refugees, one of the most important instruments of protection, solidarity and international cooperation aimed at responding effectively to the different situations of forced displacement in the Americas. Throughout this year, four preparatory meetings have been held in which the governments of Latin America and the Caribbean, with the close involvement of civil society and under the auspices of UNHCR, led hundreds of people to develop their ideas on asylum, using the Cartagena Declaration as a point of reference. The process generated an extraordinary wealth of proposals, of shared experiences, of presentations of best practices, of creativity in solving everyday problems and in the proposed progress to be achieved in the future.

I would also like to commend the tripartite spirit that marked the debates concerning the region and I am proud to say that Brazil is a good example in this respect since Brazilian civil society is now a member of the National Commission for Refugees, where it is entitled to participate and vote. In the run-up to negotiations for Cartagena+30 it was not only governments, together with the support of UNHCR, but everyone who participated fully and substantially, and the understanding of this tripartite structure –acting jointly and harmoniously –is essential for strengthening

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

the cause of refugees, where each of these three stakeholders plays a specific and important role.

At the event that is about to begin, two documents are to be adopted: the Brazil Plan of Action, which involves commitments for concrete action. This is a strategic planning document aimed at addressing the key challenges and emerging concerns regarding the protection of refugees, the internally displaced and stateless persons in the Americas and the Caribbean. And the second is a Declaration indicating the principles and policies that should also be adopted by the countries jointly and consistently.

As already mentioned at this event, the world has not experienced a humanitarian crisis as serious as that which is occurring now since World War II. There are over 50 million refugees or internally displaced persons, representing a major challenge for those dedicated to providing protection and humanitarian aid. Wars are on the rise, intolerance is becoming increasingly acute, violence is relentless, respect for human beings is trivialised, and human dignity is undermined, violated, abused and debased. It is an absurd state of affairs that does and should cause outrage. Added to this, millions of refugees have, for years or even decades, been waiting for a long-term solution that eludes them. In his message on this year's World Day of Migrants and Refugees, Pope Francis said that in fleeing from poverty or persecution, in the search for better prospects or in order to save their lives, millions of people embark on the path of migration and, while hoping to fulfill their expectations, what they often encounter instead is mistrust, confinement and exclusion, when not affected by even more serious misfortunes that undermine their human dignity. He also said that the reality of migration and its scope in our era of globalization must be addressed and tackled in a new, fair and effective manner and that, above all, it demands international cooperation and a spirit of profound solidarity and compassion.

Collaboration on various levels, along with the unanimous approval of the regulatory instruments for protecting and supporting human beings, is important. These quick references reveal the importance of this meeting. The Brazil Declaration and Plan of Action should serve as a model and a guide; in short, as good practice we wish to share with the world. The Mexico Plan of Action came to fruition, with results that indicate they are lasting. Many actions were implemented, such as the Borders of Solidarity, Cities of Solidarity and Solidarity Resettlement programmes, which have strengthened international protection.

I would like to highlight the important role of civil society in the defense of human rights, and especially in projects that assist and integrate refugees. We are present because we have a mandate from society, because we represent all citizens and willingly

choose to fight for the causes of the most vulnerable, of those who are suffering, of those whose rights are violated, of those who have been excluded from family life and from their culture, and of those whose dignity has been undermined. New challenges motivate us to be more focused and require us to work together. We are facing serious environmental problems, natural disasters, resource shortages, urban violence, human trafficking, religious persecution and other acts of violence caused by humans themselves or by nature. This array of dire situations that threaten people's lives and dignity demands that we remain active in this cause and encourages us to continually raise awareness worldwide of effective and efficient actions that both address the causes of asylum and serve those affected.

Finally, I would like to take this opportunity to extend my deepest gratitude to the Norwegian Refugee Council, who contributed generously and decisively towards making the Cartagena+30 Process possible; and to express our appreciation and gratitude to UNHCR for its initiative and leadership, commending the competence and respect for plurality shown throughout its efficient organisation and coordination of this process.

Thank you very much.

Displaced children
in Colombia.

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+30
CARTAGENA

Path to Cartagena

BRASILIA 2-3 DECEMBER 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ CIVIL SOCIETY IS COMMITTED TO CONTINUE WORKING FOR A PEACEFUL TERRITORY IN THE AMERICAS, ADVOCATING FOR THE RIGHTS OF PERSONS, INCLUDING COMPLIANCE WITH THE COMMITMENTS OF STATES AND ACTIVELY PROMOTING THE PARTICIPATION OF THOSE AFFECTED IN ALL PROCESSES OF THE BRAZIL PLAN OF ACTION, MAINTAINING THAT THE REGIONAL CONTRIBUTION OF LATIN AMERICA SHOULD HELP ALLEVIATE SUFFERING AND BRING HOPE TO THE VICTIMS IN THE FACE OF THE NEW REALITIES EMERGING IN THE REGION. ”

SALLY VALLADARES

PRESENTATION OF CIVIL SOCIETY
ON THE CONSULTATION PROCESS
CARTAGENA+30
SALLY VALLADARES
REPRESENTANT OF THE
LATINOAMERICAN
AND CARIBBEAN CIVIL SOCIETY

Civil society in the region of Latin America and the Caribbean wishes to thank the various States and UNHCR for the opportunity to participate in the government consultation processes that have been held throughout this year in the framework of the commemoration of the 30th anniversary of the Cartagena Declaration. We would like to make special mention of the governments of Brazil, Argentina, Nicaragua and the Cayman Islands, for their hospitality in hosting this important consultation and final event of Cartagena+30. For us it was an opportunity to reflect on the challenges facing our region in matters of protection and to submit our proposals and recommendations to strengthen the right to asylum.

We would also like to note our appreciation to the Norwegian Refugee Council for its facilitation of civil society's full participation in the Cartagena+30 Process.

More than 150 organizations from the four sub-regions: Mercosur, Andean Region, Mesoamerica and the Caribbean have participated in this process, with an approach based on the realities of each country, to subsequently reach a common construction at the sub-regional level.

To this end, national meetings were held in 15 countries, led by national organizations working with people in mobility-refugees and/or displaced, stateless and migrants in



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

need of protection, with support from the Norwegian Refugee Council (NRC). At these meetings, the major challenges facing the people in need of protection were discussed, deepening the analysis on the procedure for refugee status determination and the situation on the Mercosur borders; local integration, resettlement programmes, labour mobility programmes and possible return/repatriation programmes in the Andean region; the situation of people displaced by organized violence and the particular issues faced by women and children, especially those traveling unaccompanied in Mesoamerica; and mixed migration flows, alternatives to detention and the situation of the stateless persons or those at risk of statelessness in the Caribbean people. Following an analysis of protection gaps surrounding these issues, a number of recommendations were emitted that collected consensus proposals to improve the situation of persons in need of protection at the national level. At these meetings, representatives of civil society in the country were chosen among the participants to attend sub-regional meetings. The documents emanating from each country, with the challenges and recommendations, have been shared with each State.

During this year, four sub-regional meetings of civil society were held prior to the consultations of UNHCR and governments:

- The expanded Mercosur held in Buenos Aires on 13 and 14 March with the participation of 22 organizations from 10 countries of the Southern Cone.
- The consultation of the Andean region, held in Quito on 5 and 6 June, with the participation of 15 organizations from civil society and academia from five Andean countries: Bolivia, Colombia, Ecuador, Peru and Venezuela and where specific topics on the situation of displaced persons and Colombian refugees in that area were discussed.
- The meeting of Mesoamerica, which took place in Panama City on 1 and 2 July, attended by 24 representatives of civil society organizations and academia from eight countries in the Mesoamerican sub-region.
- And finally, for the first time, a sub-regional meeting was held in the Caribbean, held in Grand Cayman on 8 and 9 September, with the participation of 11 representatives from civil society organizations and academia from seven countries.

In each of these encounters, challenges were analysed and proposals and recommendations developed for each sub-region, as reflected in a position paper of civil society organizations and academia for each of the corresponding sub-regions. In addition, the four sub-regional representatives of civil society were chosen among the national representatives, who would subsequently present these documents at the Sub Regional Events organized by UNHCR with the governments and hosted by Argentina, Ecuador, Nicaragua and Grand Cayman, respectively.

Various initiatives from civil society organizations and academia were included in the different sub-regional meetings of civil society, highlighting the importance of the 30th anniversary of the Cartagena Declaration, namely: the II Regional Humanitarian Conference (RHC), the Cartagena Initiative and the Academy of Brazil.

We are pleased that some of the proposals and recommendations that we made to the governments were included in the final documents and recommendations of each sub-regional consultation, which were then used as the basis for the construction of the soon to be signed Brazil Declaration and Plan of Action. Civil society would have liked the opportunity to participate in the final stages of negotiation of the Declaration and Plan of Action and have prior access to the final draft, in the spirit of contributing our perspective. Civil society is not a mere executor nor does it replace the responsibility of States, its active inclusion in all processes of the Brazil Plan of Action is essential to achieve its objectives.

With a view to implementing the Plan, national plans should be developed that include goals, responsibilities, timetables and monitoring bodies. We suggest the need to establish a tripartite assistance mechanism (governments, UNHCR and civil society) for this monitoring. The region has a great opportunity to advance in creating a space that is characterized by the protection of human rights and that ensures the effective exercise of the rights of displaced, refugee and stateless persons.

We consider it fundamental for States to have a greater commitment to issues such as the elimination of the detention of persons that enter a country to apply for refugee status; the eradication of statelessness; greater complementarity between the security approach that prevails in our borders with a focus on respect for human rights, the need to meet the challenges of organized violence, weak justice systems, impunity and corruption as causes of forced displacement that people in the region continue to suffer, particularly in the countries of the Northern Triangle of Central America.

Finally, we would like to note that the peace process in Colombia, welcomed by all, requires a commitment by States to ensure sustainable agreements in time and the fulfilment of all the rights of the victims, inside and outside the country.

Civil society is committed to continue working for a peaceful territory in the Americas, advocating for the rights of persons, including compliance with the commitments of States and actively promoting the participation of those affected in all processes of the Brazil Plan of Action, maintaining that the regional contribution of Latin America should help alleviate suffering and bring hope to the victims in the face of the new realities emerging in the region.



Butterflies, Nansen Award 2014, is a network comprised of about 100 women core volunteer. The group is described as a "protection network of women helping women within the armed conflict." Buenaventura, Colombia.

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+30
CARTAGENA

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ADOPTION BY ACCLAMATION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

BRASILIA 2-3 DE DECEMBER 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ WE RECOGNIZE AND DEEPEN OUR REGIONAL COMMITMENT TO INCLUDE IN OUR SOCIAL FABRIC, THOSE PERSONS WHO SEEK PROTECTION. WE AFFIRM THE CONTINUED VALUE OF REGIONAL RESETTLEMENT STRATEGIES, AND WE FORGE A PATH TO INCLUDE OUR ENTIRE CONTINENT THROUGH OUR INTEGRATION MECHANISMS, AS WELL AS OTHER REGIONS. THESE STRATEGIES AIM TO ESTABLISH A COMMON PROTECTION SPACE, RAISE OUR NATIONAL STANDARDS FOR CARE, EXCHANGE BEST PRACTICES THROUGH GREATER COOPERATION AMONG PEOPLES, AND CONTINUE TO DELVE INTO FREE RESIDENCE WITH A VIEW TOWARD PROTECTIVE AND INCLUSIVE HUMAN MOBILITY, FIRMLY GUIDED BY THE UTMOST DIGNITY OF THE INDIVIDUAL. ”

PAULO ABRÃO



PAULO ABRÃO

NATIONAL SECRETARY
OF JUSTICE AND PRESIDENT
OF BRAZIL'S NATIONAL
REFUGEE COMMITTEE

[Greetings]

It is with great joy that we come to the close of this ministerial event that also marks the beginning of a new and long cycle of activity for the next ten years, as we act in favour of international protection for refugees, stateless persons, and displaced populations. We are both closing and beginning again, because the challenges that await us and the aims of the Brazil Declaration are many, more complex and deeper than those foreseen prior to the long process of participation that has culminated in the accords we sign today.

The preparatory process of these last months by definition put us in complete harmony with our aspirations. It was a horizontal and transparent process, based on mutual comprehension and understanding among the peoples and the States of Latin America and the Caribbean. Thus we came not only to affirm our mutual commitments, but also to become part of a collective body that increasingly sees itself as inseparable. With regard to international protection, not only is our “interdependence” clear in rational and strategic terms, but so too and primarily so, is the need to share aspirations, a social memory and a common future. The displacement of our peoples within the continent is but one of the vectors that highlights this communion of feelings, history and future.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

This is because human displacement continually redefines our territories, beyond the narrow borders that our demarcation commissions established on our continent. The displacement of refugees, stateless persons, and all migrants brings various realities in contact with each other, brings us closer together, and brings us closer to ourselves. Those new territories pile emotions, feelings, and all manner of human existence onto open wounds, pulsating scars, and open veins. They bear witness to our deep ties and our latent conflicts, and shed light on different ways of life and different ways to overcome crises, disasters, and natural and human upheavals. Migrations and the arrival of new refugees from other continents also connect us on a global scale, in an interconnected, permanent, and changing network.

To understand that is to understand the true meaning of the solemn act we carried out over these two days. As in all international conferences, there is inevitably a centre stage and a single choreography within the rituals and formalities required. Nevertheless, as in the theatre and the theatre of life, our actions can be genuine, emotionally rich, and dense with meaning and sensibility. Or they can be mechanical and devoid of humanity.

Let us not doubt the speeches, testimony, or dedication of government and international officials dedicated to the cause of protection –dozens, hundreds of people. Nor do we question the mobilisation of more than 150 civil society organisations in various countries. We do not question the continual, sincere, prolonged, and silent contribution of all these people, including refugees, stateless and displaced persons themselves, in and outside their countries, who were deeply engaged in the preparations and the ceremonies. We have no doubt that this solemn act is replete with utopian energy, exudes hopes and dreams, and inspires us to fully and meaningfully realize the imperative to live, which pushes people to cross borders, oceans, deserts and mined fields in order to create the lives they dream of for themselves and their loved ones in every part of this world.

Let us not question for a moment that today we are adding one small brick or stone to an edifice that is still under construction, the architectural scale of which remains to be seen and the height of which will be limited only by our aspirations and commitments.

This stone we are laying, this Brazil Declaration and Plan of Action, reveal our inclination toward collective work and exchange, our deep understanding of the interconnection between the subjects addressed here and all human action and feeling. Therefore and for the first time, our Declaration makes the necessary and urgent connection between refugee protection and the eradication of all forms of violence against women. We raise the issue of age and link our ambitions to the work of the

Inter-American Court of Human Rights in Consultative Opinion 21 of 2014, which recommends special attention be given to the issue of displaced children and youth.

Our collective work must also address sub-regional specificities; it expresses solidarity with, and broadens our understanding of the drama experienced by the population held hostage by criminal groups in the Northern Triangle of Central America. Our understanding is not one of diminishment, but rather based on a deep knowledge that our specificities define us and our dramas, and thus determine our solutions for a common future.

We recognize and deepen our regional commitment to include in our social fabric, those persons who seek protection. We affirm the continued value of regional resettlement strategies, and we forge a path to include our entire continent through our integration mechanisms, as well as other regions. These strategies aim to establish a common protection space, raise our national standards for care, exchange best practices through greater cooperation among peoples, and continue to delve into free residence with a view toward protective and inclusive human mobility, firmly guided by the utmost dignity of the individual.

We undertake this as we forge new paths toward our own ethic of human mobility, different from that practiced in other areas, where walls are erected and massive deportation machines are deployed from bureaucracies supported by xenophobic populist movements. Until now, we have managed as a region to overcome our internal crises, our financial and capital crises, without giving in to the terrible escape valve of the discontent that fuels xenophobic demagoguery.

We are able to visualise migration and mobility as mechanisms for our own prosperity, the encounter between identities and differences that characterise us now and characterised us, not without conflict, throughout our history. As the migrants we all are, we have connected to our peoples and, considering the original peoples of these lands, to the idea that we all live and exist in permanent displacement. This concept is now incorporated in the constitutions and regulations of our region, and broadens our horizons, so we may see more open skies.

This has all been underpinned by the sincere belief that all techniques, institutions and bodies must serve a purpose. They must weave a fabric of reachable goals and lay the foundation for new dreams. Thus the architecture of the Brazil Declaration must also be praised, because it enables our aspirations and our highest principles to be supported by our institutions, technicians and specialists, who share in those aspirations and feelings. Therefore, this Declaration links us –governments, departments, secretariats, ministries, eligibility officers, diplomats, persons and institutions– so

that we may make real dreams come true, including the eradication of statelessness, and improved refugee status determination procedures.

The Declaration calls on us as political, social, human, and national communities to overcome our official borders, and consider the continual improvement of our legislations, the internationalisation of all parts of the international protection regime, and the changes needed to overcome the obstacles to the doctrines on the right to a nationality, obstacles which are so damaging to persons, families and whole populations.

Because of all this, my friends, collaborators, government colleagues, UNHCR, international bodies, and civil society, rest assured that requesting the adoption of the Brazil Declaration and its Plan of Action, makes me very happy, because in this solemn act, on this beautifully prepared stage, there is truth, feeling, sweat, blood, hope. Our hopes are renewed in Brasília, but they will be fulfilled only if we directly and continually broaden our highest human responsibilities to receive, include, protect, and recognise rights and autonomy.



Tule baby and his mother, in a hammock.
Arquíá, Chocó,
Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÔNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

BRAZIL DECLARATION

A FRAMEWORK FOR COOPERATION AND REGIONAL SOLIDARITY TO STRENGTHEN THE INTERNATIONAL PROTECTION OF REFUGEES, DISPLACED AND STATELESS PERSONS IN LATIN AMERICA AND THE CARIBBEAN

We, the participating Governments of the countries of Latin America and the Caribbean,

Gathered in the city of Brasilia to commemorate the thirtieth anniversary of the Cartagena Declaration on Refugees of 1984, whose commemorative processes have enabled us to identify new humanitarian challenges and to propose effective solutions to improve the protection of refugees, displaced and stateless persons in the region, in a spirit of flexibility and innovation,

Underline the important, inclusive and constructive dialogue that the *Cartagena+30* Process has fostered among Governments and civil society from all coun-

tries in the region, including refugee youth and refugee women, and pertinent regional and international organizations, through four subregional consultations held between March and September 2014 in the cities of Buenos Aires, Quito, Managua and Grand Cayman,

Highlight the achievements attained through the adoption of the Cartagena Declaration on Refugees of 1984, the San José Declaration on Refugees and Displaced Persons of 1994, the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America of 2004 and the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas of 2010,

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

Acknowledge the humanitarian commitments that we have made in relation to the protection of refugees, displaced and stateless persons, addressing newly identified challenges and reinvigorating the search for durable solutions,

Emphasize the convergence and complementarity of International Human Rights Law, International Refugee Law and International Humanitarian Law, to provide a common legal framework to strengthen the protection of refugees and other persons in need of it, on account of their vulnerable situation, in light of the *pro homine* principle,

Underline that States have the primary responsibility to protect refugees, displaced and stateless persons, and that international cooperation and solidarity are fundamental for responding to humanitarian challenges,

Recognize the efforts of the countries of Latin America and the Caribbean in their support for refugees, displaced and stateless persons, and in particular those of the Republic of Ecuador for hosting the largest number of refugees in the region,

Reaffirm the enduring applicability and validity of the principles and standards of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol for the protection of refugees, with a primary focus on the human being,

Highlight the importance of ensuring unrestricted respect, protection and promotion of the human rights of refugees, displaced and stateless persons, with special emphasis on groups in a vulnerable situation,

Highlight that the extended refugee definition of the Cartagena Declaration has been incorporated in large measure by the majority of Latin American countries in their internal legislation, and *recognize* the existence of new challenges regarding international protection

for some countries of the region that need to continue making progress in the application of the regional extended refugee definition, thus responding to the new international protection needs caused, among others, by transnational organized crime,

Underline the gradual progress we have made to incorporate into national legislation high protection standards, with a comprehensive and differentiated age, gender and diversity approach, in accordance with the international obligations we have acquired in this area,

Recognize developments in the jurisprudence and doctrine of the Inter-American Court of Human Rights, in those countries in which they apply, regarding the content and scope of the right to seek and be granted asylum enshrined in the regional human rights instruments, their relationship to international refugee instruments, the *jus cogens* character of the principle of *non-refoulement*, including non-rejection at borders and indirect *refoulement*, and the integration of due process guarantees in refugee status determination procedures, so that they are fair and efficient,

Reaffirm the importance of consolidating national refugee status determination systems through the effective application of the standards of due process of law,

Appreciate the good practices in the region of regulating complementary protection and the grant of humanitarian visas to people who may not necessarily qualify as refugees under the Convention, but who may also benefit from protection responses,

Recognize that the specific characteristics and realities of the Caribbean require a dialogue for the adoption of a subregional strategy for the progressive development of asylum systems,

Highlight the changes in the dynamics of international migration within the continent, particularly the

increase in mixed migration movements, which may include people who are in need of international protection,

Underline the need to analyse in depth and address the causes that generate displacement in the region, with the cooperation of States, international and civil society organizations, within a framework of cooperation and regional solidarity,

Recognize that, owing to a multiplicity of causes, the displacement of persons, including accompanied and non-accompanied children, forced to escape from their community of origin constitutes a new challenge in El Salvador, Guatemala and Honduras, and *highlight* the importance of promoting shared but differentiated responsibility among the States of origin, transit and destination and of providing a differentiated response in view of their high degree of vulnerability, as well as the need to work jointly and in close coordination between Governments, civil society and regional and international organizations, in order to guarantee to these persons due process, dignified treatment and respect of their rights,

Emphasize the importance of striking a balance between States' legitimate security concerns and the protection needs of asylum-seekers and refugees, including the application of the refugee definitions in a manner which is consistent with international instruments, jurisprudence and doctrine,

Highlight with concern the vulnerable situation and increased presence of accompanied and unaccompanied migrant children and adolescents, who may be in need of international protection,

Acknowledge the challenge posed by the disproportionate impact of mixed migration movements in the Caribbean owing to its geographical, economic and demographic characteristics and the need for effective mechanisms of international cooperation and solidarity,

Acknowledge that new realities in Latin America and the Caribbean require a comprehensive durable solutions strategy which, based upon the lessons learned in the implementation of the "Cities of Solidarity", "Borders of Solidarity" and "Solidary Resettlement" programmes of the Mexico Plan of Action, provides for simultaneous and inclusive implementation of local integration, resettlement and voluntary repatriation, and guarantees the exercise of the rights of binational families and of foreigners in conditions equal to those of nationals, as appropriate,

Recognize the measures implemented by countries of the South American region, in the framework of the migration agreements to which they are parties, permitting the free movement of people, in full respect of human rights, which can serve as a possible alternative durable solution for persons in need of international protection, with the due safeguards,

Recognize the importance of the "Solidarity Resettlement" programme as an effective protection and burden-sharing mechanism within a comprehensive durable solutions strategy, and *highlight* the importance of strengthening support from the international community for its continuation,

Underline the need for voluntary repatriation to be based on objective and updated information on the country of origin and to be carried out in safety and dignity, as part of a comprehensive solutions strategy, taking into account national legislation, through tripartite mechanisms between the country of origin, the country of asylum and **unhcr**, and considering the participation of the refugees themselves as a good regional practice,

Recognize the positive contribution that refugees can make to their countries of origin, through the experience and knowledge acquired in the countries of asylum, and their contribution to host communities by becoming promoters of local development,

Take note of the regional good practices in the adoption of public policies that promote the local integration of refugees, through joint efforts of States, UNHCR and civil society, and *highlight* the important role of local authorities and the private sector, with the active involvement of the refugees themselves and host communities,

Highlight the importance of making a distinction between the legal status of refugees and the migratory category or status granted to them for their residence in the countries of the region, in order to facilitate their local integration through the grant of permanent residence, without leading to the loss of their refugee status, in accordance with the national legislation in force,

Stress that every person has the right to a nationality and that statelessness is a violation of this individual right when a State's prerogative to regulate the acquisition, loss, renunciation and deprivation of nationality in its internal legislation infringes upon the limits set by international law,

Recognize the progress made in the region in identifying, preventing and reducing statelessness, bearing in mind the important challenges that still exist in this regard in some subregions,

Take note of UNHCR Executive Committee Conclusion No. 111 on civil registration of 2013, promoted by the Latin American and Caribbean Group (GRULAC) of States,

Recognize the challenges posed by climate change and natural disasters, as well as by the displacement of persons across borders that these phenomena may cause in the region, and *recognize* the need to conduct studies and give more attention to this matter, including by UNHCR,

Reaffirm our commitment to the consolidation of regional integration and *make a collective call* to deepen

the degree of coordination, complementarity, cooperation and convergence between regional and subregional integration mechanisms, including on issues relating to migration, refugees, displaced and stateless persons,

AGREE TO,

Approve this Brazil Declaration “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean” and the Plan of Action in annex.

Promote and implement this Declaration and the Plan of Action in annex to respond to the new challenges in international protection and in the identification of solutions for refugees, displaced and stateless persons in Latin America and the Caribbean in the next 10 years.

Congratulate the countries of Latin America and the Caribbean that acceded or ratified international instruments on refugees, displaced and stateless persons, and *invite* those countries that have not yet done so, to consider accession or ratification, as appropriate, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, as well as the 1989 Convention on the Rights of the Child, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 2000 United Nations Convention against Transnational Organized Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocols), and other relevant instruments; and to foster the progressive development of the interpretation of these instruments.

Deepen cooperation within the framework of regional integration mechanisms such as CELAC, MERCOSUR, the Andean Community, SICA and CARICOM, among others, in order to improve the analysis and understanding of displacement and address its causes; offer international protection to those persons in need; and continue moving towards the progressive harmonization of public policies, standards and procedures through the exchange of good practices for the protection of refugees, displaced and stateless persons.

Continue strengthening national bodies for the determination of refugee status, for example through quality assurance mechanisms, such as the *Quality Assurance Initiative* (QAI), allocating greater human and financial resources, strengthening bilateral and regional cooperation and implementing regional training programmes, thereby ensuring the effective implementation of the principle of due process of law established in international and regional instruments, as well as in national legislations.

Support the establishment of a regional dialogue in the Caribbean in order to adopt a strategy for institutional strengthening, which should envisage, among other things, a progressive approach for the development of asylum systems and the implementation of refugee status determination procedures, as appropriate.

Continue making progress in the identification, prevention, effective protection and the implementation of differentiated referral and response mechanisms for victims of sexual and gender-based violence, and in the development of specific programmes, within a rights-based framework and a community-based approach, that take into consideration the needs of groups and populations in a vulnerable situation.

Highlight that victims or potential victims of trafficking may, in some circumstances, be in need of international protection and that their access to refugee status deter-

mination procedures must be guaranteed, stressing the importance of early identification because of their great vulnerability and recognizing the complementarity of asylum systems and mechanisms for the protection of victims of human trafficking.

Promote the assessment of the protection needs of accompanied and unaccompanied children and adolescents, including their access to refugee status determination procedures, and *emphasize* that all considerations in this matter should be governed by the principles recognized in the Convention on the Rights of the Child, in particular the best interests of the child and non-discrimination, seeking to preserve family unity and recognizing children as persons entitled to rights and special protection.

Promote the increased presence in border areas, to the extent possible, of national bodies for the determination of refugee status, so as to provide dignified treatment to persons in need of international protection with full respect for their human rights.

Recognize that the deprivation of liberty of migrant children in an irregular situation, ordered solely for this reason, is arbitrary and that consequently we must make progress in adopting alternatives to detention, aimed at its prohibition, that promote their care and welfare with a view to their full protection in light of their particular vulnerabilities, taking into account Advisory Opinion 21/14 of the Inter-American Court of Human Rights, as appropriate.

Promote the adoption of comprehensive public policies and their inclusion in national development plans that address the needs of refugees, displaced and stateless persons, ensuring their participation and that of the host communities; and *multiply efforts* to guarantee the enjoyment of economic, social and cultural rights, including labour rights, taking into account the differentiated needs of groups and popu-

lations in a vulnerable situation, in order to promote their local integration.

Urge States to establish tripartite mechanisms between the country of origin, the country of asylum, and UNHCR to facilitate voluntary repatriation processes, considering the participation of refugees as a regional good practice.

Facilitate the issuance of personal identification documents to refugees, displaced and stateless persons, without mention of or reference to their status, in order to promote local integration in accordance with national legislation.

Foster hospitality and non-discrimination policies to strengthen local integration through the promotion of respect for diversity and interculturalism, highlighting the positive contribution of refugees, displaced and stateless persons to host communities.

Facilitate the naturalization of refugees and stateless persons through appropriate procedures, as part of a comprehensive durable solutions strategy, in accordance with national legislation.

Invite the countries of the region which have not yet done so to evaluate the possibility of participating in the regional resettlement programme, in a framework of international solidarity and cooperation.

Encourage traditional resettlement countries to continue receiving refugees from the region, in particular from those Latin American and Caribbean countries hosting large numbers of refugees.

Consider, in countries where the legal framework allows it, the implementation of temporary or permanent options offered by regional integration systems, such as labour mobility programmes for refugees, to promote their integration in third countries and as a regional

solidarity mechanism to support countries hosting large numbers of refugees.

Reaffirm our commitment to the eradication of statelessness within the next ten years and *support* the campaign and the *Global Plan of Action to End Statelessness*, launched by UNHCR within the framework of the sixtieth anniversary of the 1954 Convention relating to the Status of Stateless Persons, by resolving existing situations, preventing new cases of statelessness and protecting stateless persons, through the revision of national legislation, the strengthening of national mechanisms for universal birth registration and the establishment of statelessness status determination procedures.

Request UNHCR to continue providing its support to States, including for the implementation of the Plan of Action in annex, through technical support and assistance, including the provision of legal assistance, opportunities for education and training, and dissemination of its policies and guidelines, as appropriate, to guide the work of States in the protection of refugees, displaced and stateless persons.

Urge UNHCR to prepare periodic reports on the implementation of the protection programmes for refugees, displaced and stateless persons in the countries of Latin America and the Caribbean, resulting from the implementation of the Plan of Action in annex and of the respective international instruments.

Disseminate widely the outcomes of the *Cartagena+30* Process through the publication of its documents, with the support of the Government of Brazil, UNHCR and the regional and subregional mechanisms.

Express our deep gratitude to the Government and people of Brazil as the host country of the Ministerial Commemorative Event held in Brasilia on 2 and 3 December 2014; to the Governments of Argenti-

na, Ecuador, Nicaragua and the Cayman Islands for having co-sponsored the subregional meetings; to UNHCR and the Norwegian Refugee Council as organizers; to the Human Rights Ombudsmen Offices and civil society organizations and to the Principal Experts, appointed by the High Commissioner, who made important contributions to this commemorative process.

Brasilia, 3 December 2014

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

BRAZIL PLAN OF ACTION

A COMMON ROADMAP FOR STRENGTHENING PROTECTION AND PROMOTING SUSTAINABLE SOLUTIONS FOR REFUGEES, AND DISPLACED AND STATELESS PERSONS IN LATIN AMERICA AND THE CARIBBEAN WITHIN A FRAMEWORK OF COOPERATION AND SOLIDARITY

PREAMBLE

The commemorative process for the thirtieth anniversary of the Cartagena Declaration on Refugees of 1984 (the “Cartagena Declaration”), referred to as *Cartagena+30*, has been organized by the Government of Brazil in its capacity as host country, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Norwegian Refugee Council (NRC).

This dialogue process was conducted through four subregional consultations held in 2014 in Buenos Aires (18 and 19 March) for the countries of the Southern Common Market (MERCOSUR), in Quito (9 and 10 June) for the Andean countries, in Managua (10 and 11 July) for the countries of Mesoamerica and in Grand Cayman (10 and 11 September) for the Caribbean re-

gion. These consultations have fostered a broad debate among Government representatives from more than 30 countries of the region, observer countries, more than 150 civil society organizations, ombudsmen and the main competent international organizations.

Each of the consultations adopted a series of conclusions and recommendations that served as the elements for the preparation of the Brazil Declaration and of this Plan of Action. These were the subject of further consultations in the framework of the Latin American and Caribbean Group (GRULAC-UNHCR) based in Geneva. This inclusive and open consultation process has allowed for the identification of the programmes that constitute the core of this common road map for Latin America and the Caribbean to strengthen the imple-

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÔNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

mentation of the Brazil Declaration in the region for the next 10 years.

The Plan of Action, therefore, proposes programmes to be implemented by Governments that decide to do so, taking into account their legal systems and national legislation in this area, with the support of UNHCR and civil society.

CHAPTER ONE

THE SITUATION OF REFUGEES, DISPLACED AND STATELESS PERSON IN LATIN AMERICA AND THE CARIBBEAN

Over the past thirty years, cooperation and regional solidarity in Latin America and the Caribbean have proven effective in dealing with situations of displacement. Despite the important political, social, economic and cultural advances in the region, as we commemorate the thirtieth anniversary of the Cartagena Declaration, challenges in this area still exist in Latin America and the Caribbean.

Although Latin America and the Caribbean have made significant progress in the field of international protection and the search for solutions, it is essential to continue such progress, through a comprehensive and differentiated approach to age, gender and diversity and the implementation of the highest human rights standards, to guarantee the protection of refugees, displaced and stateless persons.

Mixed migratory movements in Latin America and the Caribbean are increasingly complex and stem from a variety of causes. In recent years, there has been an increase in the number of asylum-seekers and refugees in the region, including asylum-seekers from other continents, often through networks trafficking in persons and smuggling migrants. Among particularly vul-

nerable groups in the context of mixed migration the following were highlighted: asylum-seekers and refugees; victims of trafficking in persons and smuggling; stranded migrants; women who are victims of violence; victims of violence and psychological trauma suffered during the migration process or persons with disabilities; lesbian, gay, bisexual, transgender and intersex people (hereinafter referred to as “LGBT”); older persons; indigenous people; afro-descendants; and other vulnerable people such as pregnant women and accompanied and unaccompanied children.

In South America, significant progress has been made at both the normative and the political level, with the aim of creating a common space for all citizens of the countries of the region. This framework augurs well for the identification of innovative approach to the search for solutions for refugees that should be developed so that they may become, in the near future, instruments of solidarity.

Since 2004 there has been an increase in the number of refugees in the countries of the Andean subregion. New political developments in Latin America and the Caribbean provide hope that - during the term of this Plan of Action - sustainable and fair solutions for the vast majority of this population can be achieved; without detracting from the continuous attention that should be focused on new situations of displacement.

In the Northern Triangle of Central America, displacement was observed of persons forced to escape their community of origin due to, among other causes, transnational organized crime. In particular, there has been a significant increase in the numbers of Guatemalan, Honduran and Salvadoran citizens who leave their countries in search for international protection or who are displaced internally owing to security reasons. These movements include significant numbers of accompanied and unaccompanied children and women.

The Caribbean is a region of origin, destination and transit for thousands of migrants and displaced persons, including people who may require international protection. The complexity of this phenomenon, together with the characteristics of the countries of the region, requires a detailed analysis to develop effective regional responses, within a rights-based framework, with special attention to the prevention of trafficking in persons and smuggling of migrants, as well as to the introduction of safeguards in refugee status determination procedures.

Although the principles of *jus sanguinis* and *jus soli* for the acquisition of nationality are enshrined in the constitutions of most countries in the region, there are still some legislative gaps and omissions in State practices to prevent statelessness. The phenomenon of migration in some countries of Latin America and the Caribbean has led to a situation of thousands of persons, especially children, lacking birth registration, with the risk of becoming stateless. There have also been cases of statelessness linked to the situation of children of nationals born abroad. Although no precise statistics are available, estimates of people at risk of becoming stateless in the region remain high.

CHAPTER TWO

THE INTERNATIONAL PROTECTION OF REFUGEES AND ASYLUM-SEEKERS

The subregional consultations analysed achievements since the adoption of the 2004 Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America (“Mexico Plan of Action”). They recognized that most of the countries have incorporated in their legislation high international protection standards and have established refugee status determination bodies and procedures within a solid

legal framework relating to refugees. The consultations underlined the importance of further developing the legal and institutional frameworks in order to consolidate high-quality international protection systems in the course of the next decade. The Caribbean, in general, has subscribed the international refugee instruments. The current priorities in the subregion are the establishment or strengthening of refugee status determination procedures, the enactment of legislation and the adoption of specific policies in this area.

Mention was also made of: the progressive development of normative and institutional frameworks in this area; enshrining the right to asylum in national constitution; the adoption of legislation incorporating high protection standards based on international refugee law and human rights law; the strengthening of national bodies for refugee status determination; the mainstreaming of a differentiated approach to gender, age and diversity; and greater involvement of asylum authorities in the adoption of public policies on refugees.

The consultations also acknowledged the situation in border zones, as complex areas, sometimes with limited socio-economic conditions or insufficient presence of State social institutions. The Mexico Plan of Action designed a series of measures to address the specific conditions in these areas through the “Borders of Solidarity” programme. During the subregional consultations it was noted that additional efforts were needed to strengthen border and transit areas through actions aimed at the timely identification of asylum-seekers and other persons in need of protection, respect for the principle of *non-refoulement*, their timely attention through immediate referral to national protection institutions and the fulfilment of their differentiated protection needs. The consultations also recommended that practical methods should be developed and implemented to strike a balance between States’ legitimate security concerns and a rights-based approach.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

THE “QUALITY ASYLUM” PROGRAMME

In the framework of renewed regional cooperation and coordination, and in order to progressively achieve harmonized asylum systems at regional level, the “*Quality Asylum*” programme, facilitated by UNHCR in the region, aims to improve the quality of status determination procedures, strengthen the capacity and knowledge of asylum authorities and introduce efficient management concepts and procedures. The programme is a useful tool, which is available to States. Should they decide to take part in the programme, a joint evaluation and assessment diagnostic of the asylum system of the country will be carried out to establish needs and specific priorities. Depending on the findings, the programme will include all or some of the following actions:

- a. Establish a permanent internal mechanism to audit the functioning of the asylum system and improvement in quality, to detect gaps in the legal framework and in refugee status determination procedures, from the filing of an asylum claim to its final resolution.
- b. Adopt or amend internal regulations to incorporate high standards of protection under international refugee law and human rights law, and to include provisions on specific protection needs based on age, gender and diversity.
- c. Continue making progress in applying the regional extended refugee definition recommended in the Cartagena Declaration and its incorporation in the national legislation of the countries in the region.
- d. Establish electronic registration and database systems that facilitate systematic data recording, information gathering and authorized access for the accurate tracking of cases and tabulation of statistics.
- e. Strengthen the systems for the provision of country-of-origin information, with specialized officials and an ongoing training programme for eligibility staff in the use of this information in their decisions.
- f. Consolidate national refugee status determination systems, particularly to guarantee:
 - i. Effective access to refugee status determination procedures, especially at borders, airports and ports, that respect due legal process and regional and international standards;
 - ii. Respect for the principle of *non-refoulement* and the right to legal representation, if possible through mechanisms that are free of cost, with qualified interpreters or translators;
 - iii. The principle of confidentiality for the applicants and their asylum claim and the applicants’ right to be heard through a pre-established and objective procedure including an assessment of the risk to their most fundamental rights, and the possibility of contacting UNHCR;
 - iv. The asylum-seekers’ right to receive a decision on their case in writing, which duly founded and reasoned, within a reasonable, set timeframe, applying the principles of good faith and benefit of the doubt.
- g. Establish independent administrative appeal and judicial review bodies, respecting the right to appeal with suspensive effect until the competent authority takes a final decision.
- h. Strengthen the differentiated approach to age, gender and diversity, both in refugee status determination procedures and in decisions regarding applications for family reunification, as appropriate.
- i. Develop and implement priority procedures –with the participation of a legal representative and/or guardian, as appropriate– in cases concerning unaccompanied and separated children, guaranteeing the minor’s participation according to their age and maturity.
- j. Develop protocols or procedures for protection, assistance and the search for durable solutions for refugee and asylum-seeking children who are unaccompanied and separated from their families.

- k. Provide personal identification documents, as quickly as possible, in order to prevent discrimination against asylum-seekers and refugees.
- l. Distinguish between the legal status of refugees from the migratory category or status granted for their residence.
- m. Strengthen institutional capacities and the education and training of officials in order to maintain quality asylum systems through improved inter-agency coordination, the identification of additional human and financial resources, and implementation of regional training and twinning programmes through South-South cooperation.

THE “BORDERS OF SOLIDARITY AND SAFETY” PROGRAMME

Borders are characterized as being areas of entry and transit, and sometimes of permanent stay and return, for persons who are part of migratory movements, including those seeking international protection.

In order to preserve borders as areas of safety and protection for people and States, it is proposed to establish the “*Borders of Solidarity and Safety*” programme to be implemented through joint cooperation among the State, UNHCR, other international organizations and civil society actors. The programme will include the following actions:

- a. Develop, disseminate and implement guidelines for the identification, immediate assistance and timely referral to the competent Government departments of persons in need of international protection.
- b. Reinforce the presence in border areas of National Commissions for Refugees (CONARES) or equivalent bodies and other protection institutions in border areas.
- c. Design norms and operating procedures to introduce alternatives to administrative migratory detention of asylum-seekers, in particular for accompanied and unaccompanied children.

- d. Provide continued training for State officials working in border areas on the rights of persons, the profiles of asylum-seekers and refugees in situations of vulnerability and on the measures adopted by the State in the implementation of the “Borders of Solidarity and Safety” programme.
- e. Carry out broad information and dissemination campaigns, both at border posts and in areas along migratory routes, on the risks and dangers to which people are exposed when travelling as part of mixed migratory movements and on the protection mechanisms that exist in each country.
- f. Improve basic care and assistance infrastructure for asylum-seekers and refugees, as well as access to social and community services.

CHAPTER THREE

COMPREHENSIVE, COMPLEMENTARY AND SUSTAINABLE SOLUTIONS

The subregional consultations highlighted the importance of achieving durable solutions for refugees, particularly those living in protracted situations in host countries.

The three traditional solutions, voluntary repatriation, local integration and resettlement, together with labour mobility programmes within the existing regional integration frameworks in Latin America and the Caribbean, can be implemented in a joint, coordinated and complementary manner in order to achieve the most suitable and sustainable solutions for the entire refugee population through a comprehensive response.

THE “VOLUNTARY REPATRIATION” PROGRAMME

Voluntary repatriation is undoubtedly the preferred solution, since the aspiration of most refugees is one day to return voluntarily to their country of origin in

conditions of safety and dignity. This solution was especially considered in the Andean subregional consultation and a number of particularly important actions were recommended:

- a. Guarantee that voluntary repatriation is a free, individual and informed decision of refugees and that it takes place in conditions of safety and dignity as part of a comprehensive durable solutions strategy.
- b. Actively continue binational cooperation between refugees' country of asylum and country of origin to find prompt and appropriate solutions.
- c. Strengthen international cooperation in the search for durable solutions, giving priority to tripartite mechanisms for voluntary repatriation, emphasizing the experience of establishing quadripartite coordination commissions between the country of origin, the country of asylum, UNHCR and the refugees' own representatives.
- d. Continue developing public policies to promote needed social, economic and protection progress in the areas of origin of refugees and displaced population and to implement specific assistance programmes for returnee populations to create the necessary conditions for voluntary repatriation in dignity and safety.

THE "LOCAL INTEGRATION" PROGRAMME

The subregional consultations confirmed that, under current conditions, local integration is the solution that poses the greatest challenges and is of great importance for the majority of refugees. All the consultations stressed the need for public policies and legal and economic frameworks that promote the local integration of refugees, highlighting the central role of the State but also the fundamental role of local municipal authorities, host communities, the refugees themselves, the private sector, civil society, and international cooperation through UNHCR and international and regional development and financing organizations.

Based upon the recommendations of the subregional consultations, it is proposed that the "Cities of Solidarity" programme be strengthened and updated through a new "*Local Integration*" programme, which would include the following actions:

- a. Promote inclusive processes for the formulation of public policies and the corresponding amendment of internal legislation for the integration of refugees.
- b. Strengthen the coordination of relevant governmental and non-governmental institutions to facilitate, within current legal frameworks, effective access for refugees to "solidarity-based public services", such as health care, education, housing and employment, and learn from the best practices on access to rights already applied by some countries in the region.
- c. Create policies and a regional legal framework that respond to the challenges posed by the situation of binational families with regard to local integration and voluntary repatriation.
- d. Design policies and programmes at the local level to promote intercultural integration of refugees and host communities, and acknowledge the contribution of refugees to community development.
- e. Highlight the importance of personal identification documents, and of their issuance and renewal, which should if possible be free of charge and expeditious, without mention of or reference to refugee status, and promote their recognition by national banking systems.
- f. Facilitate the change of the migratory status of refugees from temporary residents to permanent residents and naturalization processes, when so requested, through streamlined, accessible and low-cost procedures.
- g. Promote, to the extent possible, income-generating or livelihood projects, as well as vocational and professional training programmes, and the active participation of the public and private

sectors in generating employment for refugees through, for example, corporate social responsibility programmes, access to productive projects, microcredit, State social programmes and bank loans.

THE "SOLIDARITY RESETTLEMENT" PROGRAMME

The subregional consultations highlighted the importance of resettlement as an instrument of refugee protection, of solidarity with countries hosting large number of refugees, and of regional and international cooperation. Countries that participate in the "Solidarity Resettlement" programme, since it was launched as part of the Mexico Plan of Action, recommended conducting a joint evaluation to share experiences and good practices, and consolidate the programme in line with the region's current reality. Moreover, the participant countries encouraged other countries in the region to join the Programme.

In order to energize and strengthen the "*Solidarity Resettlement*" programme, the following actions were proposed:

- a. Jointly evaluate national resettlement programmes in order to identify obstacles and good practices during the selection and profiling phases and in the integration process. The evaluation will be conducted with the technical support and advice of UNHCR. The evaluation process should ideally be completed before the 2015 Annual Tripartite Consultations on Resettlement, where it will be presented.
- b. Identify current and mid-term priority situations that may require the support of the "Solidarity Resettlement" programme. In this respect, the following actions are proposed as expressions of solidarity and cooperation:
 - i. Support the Republic of Ecuador as the country currently hosting the largest number of refugees in Latin American and the Caribbean.

ii. Cooperate with the three countries of the Northern Triangle given their vulnerability to the activities of transnational organized crime.

iii. Increase resettlement opportunities for refugees in the region.

iv. Demonstrate solidarity with international humanitarian crises through either the use of humanitarian visas or resettlement quotas.

- c. Consider the possibility of establishing a *Transit Mechanism* to process resettlement cases, with the aim of enabling the transfer in transit, for short periods of time, of persons recognized as refugees in the Caribbean and the Northern Triangle. UNHCR is requested to carry out consultations with interested Governments and, based on these consultations, to submit a proposal preferably before the 2015 Annual Tripartite Consultations on Resettlement.
- d. Explore the possibility of establishing a voluntary *Cooperation Fund* to strengthen the "Solidarity Resettlement" programme with contributions from the international community, including from Latin American and Caribbean States. UNHCR is requested to carry out consultations with interested Governments and, based on these consultations, to submit a proposal preferably before the 2015 Annual Tripartite Consultations on Resettlement.

THE "LABOUR MOBILITY" PROGRAMME

As part of a comprehensive durable solutions strategy, the MERCOSUR subregional consultation discussed the possibility for refugees to benefit from existing migration options under regional integration frameworks, as a novel mechanism of cooperation and regional solidarity.

It is proposed to establish a "*Labour Mobility*" programme to facilitate the free movement of refugees to third countries where they can have access to gainful employment and achieve economic self-sufficiency, whose actions could be the following:

CHAPTER FOUR

SOLIDARITY WITH THE NORTHERN TRIANGLE OF CENTRAL AMERICA IN SEEKING AND IMPLEMENTING DURABLE SOLUTIONS

The Mesoamerican subregional consultation highlighted, in the Northern Triangle of Central America, migration owing to multiple causes, among them the actions of transnational organized crime that cause the displacement of persons forced to escape from their communities of origin. This problem has a particular impact on highly vulnerable groups such as women, accompanied and unaccompanied children and those separated from their families, and LGBTI persons. The principal forms of violence suffered by these extremely vulnerable populations include threats, harassment, extortion, forced recruitment, sexual abuse and gender-based violence.

This phenomenon is reflected in the increased number of asylum claims in neighbouring countries and other countries within the continent, as well as of pending asylum applications and of refugees. The importance of maintaining a balance between humanitarian needs and the legitimate security considerations of States was also highlighted.

The subregional consultation noted the importance and urgency of crafting regional actions, within the framework of the Central American Integration System (SICA), to prevent displacement, protect victims and search for durable solutions. The humanitarian response must be implemented in countries of origin, transit and destination and must include coordination mechanisms to give it coherence and strength. Moreover, the ability of transnational organized criminal groups to operate in different countries of the region, their complex networks and their demonstrated ability to persecute beyond a country's national territory should be taken into account. The consultation also recommended the strengthening of regional cooperation between States based on shared but differentiated responsibility and

- a. Carry out an in-depth study on the appropriate legal framework to facilitate labour mobility for refugees recognized in any member or associated State of MERCOSUR, including the necessary protection safeguards, such as: unrestricted respect for the principle of *non-refoulement*, confidentiality and facilitation of the issuance of personal identity and travel documents.
- b. Establish subregional and/or bilateral framework agreements specifying the obligations of the country of asylum and the country receiving refugees benefiting from this programme.
- c. Consider the option of making a distinction, within the legal framework, between the legal status or condition as refugee from the migratory status or category granted to them for their residence in the countries of the region, as is already done in a number of countries in Latin America.
- d. Identify the labour needs of the country of destination and the professional profiles of refugees who choose this solution, in accordance with the demand, in countries hosting large numbers of refugees.
- e. Promote vocational and professional training programmes and those to facilitate cultural, social and linguistic adaptation.
- f. Establish effective and streamlined mechanisms for the recognition and accreditation of academic qualifications.
- g. Guarantee the prompt delivery and renewal of personal identity documents.
- h. Ensure that refugees' contributions to the host country's social security system are recognized in the first country of asylum should they return there.

international solidarity, with the support of SICA, UNHCR, other international organizations and civil society, to support the programmes outlined below:

THE "HUMAN RIGHTS OBSERVATORY ON DISPLACEMENT" PROGRAMME

Within the framework of the Cooperation Agreement between SICA and UNHCR, it is proposed to support the establishment of a "*Human Rights Observatory on Displacement*" in Central America for displaced populations who have been forced to leave their communities of origin. The goal is to set in place a common system for the analysis of quantitative and qualitative information about this phenomenon in order to facilitate the formulation of public policies and regional coordination and cooperation. The Observatory should also have an early-warning and emergency response system for situations with high risk of producing displacement and should conduct analyses of protection needs, including the identification of trends and profiles of these groups. It is suggested that synergies be fostered between the Observatory, other relevant international organizations, and regional processes such as the Regional Conference on Migration (RCM), with the aim of promoting actions in areas such as the sharing of good practices and experiences and the training of public officials, in matters of mutual interest, including in those where integrating an international protection component is considered appropriate.

THE "PREVENTION" PROGRAMME

The establishment of a "*Prevention*" programme is proposed in the countries of the Northern Triangle in order to strengthen national protection and assistance mechanisms for populations in vulnerable situations. This programme includes the following actions: the design and implementation of protocols for the registration of victims and displaced persons; coordination between human rights institutions and the competent State agencies responsible for the welfare of children returned or deported and reunified with their families; the develop-

ment and implementation of assistance programmes for victims of violence perpetrated by organized criminal groups; and the provision of training and increased human and financial resources for national institutions for the protection of women and children. The importance of promoting South-South and triangular cooperation schemes for the implementation of this programme, based on best practices and experiences of other countries of the region, is recognized.

Moreover, as a complementary action, international and regional organizations and the international community, including Latin America and the Caribbean, are invited to support and finance the *Plan Alliance for the Prosperity of the Northern Triangle* jointly presented by the three countries to the Secretary-General of the United Nations. The goals of this initiative are to energize social and economic development, promote settlement of migrant populations in their own communities, and implement long-term measures to respond to the underlying causes of displacement.

THE "DIGNIFIED AND SAFE TRANSIT" PROGRAMME

It is recognised that the complexity of the displacement of persons forced to leave their communities owing to transnational organized crime requires better understanding of the international protection needs of the victims. To this effect, the "*Dignified and Safe Transit*" programme proposes, among other actions, to improve access to differentiated and quality procedures for refugee status determination and to disseminate and take into account the UNHCR *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*. In addition, the programme will seek to promote in border areas: better understanding among people of their right to seek international protection; the training of border officials on national mechanisms for refugee status determination, particularly concerning accompanied and unaccompanied children; and a rights-based approach that includes the design of procedures based on the best interests of the child.

CHAPTER FIVE

REGIONAL SOLIDARITY WITH THE CARIBBEAN
FOR A COMPREHENSIVE RESPONSE ON INTERNATIONAL
PROTECTION AND DURABLE SOLUTIONS

The Caribbean region faces special challenges in the complex management of mixed migratory movements due to efforts to find a balance between ensuring the integrity of its extensive maritime borders and addressing the protection needs of an increasing number of asylum-seekers in the region, in a context of limited financial, technical, human and material resources to respond in an adequate manner.

Protection at sea is an important feature in the Caribbean, in particular during interception, disembarkation and return procedures. For this purpose, the Caribbean subregional consultation underlined the relevance of the International Convention on Maritime Search and Rescue and the United Nations Convention on the Law of the Sea, which provide the international framework for the protection of persons in distress at sea.

Within the framework of a renewed spirit of regional cooperation, the Caribbean wish to overcome these challenges and move forward in strengthening the protection and solutions agenda for asylum-seekers, refugees and stateless persons, through measures that would ensure phased, coherent and sustainable progress and take into account the specificities of each country. The subregional consultation also supported the global commitment to eradicating statelessness in the next decade.

To achieve these goals, the Caribbean has given consideration the launch of a “*Regional Solidarity with the Caribbean*” programme, whose main objective is to promote a regional dialogue, which may lead to the establishment of a Regional Consultative Mechanism (RCM) for the efficient management of mixed migration. The creation of a RCM would require the agreement of

the Caribbean region and the support of the international community through UNHCR and the International Organization for Migration (IOM), among others. Its establishment, were it to be agreed, must occur gradually through the creation of a structure, which could be located within existing regional platforms such as the Caribbean Community (CARICOM) or the Organization of Eastern Caribbean States (OECS). The RCM would have four main areas of action:

- a. Strengthen cooperation between the countries of origin, transit and destination of asylum-seekers and refugees in order to increase national and regional capacities to optimize the management of mixed movements and implement comprehensive responses within a rights-based framework, with a focus on protection of persons at sea. Among other means, this could be done through bilateral and multilateral agreements that would include protection safeguards, such as the respect for the *non-refoulement* principle and the right to seek and receive asylum.
- b. Progressively establish asylum systems through the formulation of public policies and internal regulations and the implementation of procedures for the identification of and differentiated assistance to the different groups in situations of vulnerability, guaranteeing access to refugee status determination procedures and alternatives to detention for asylum-seekers, and accompanied and unaccompanied children.
- c. Formulate programmes that promote comprehensive durable solutions, including measures to promote integration in local communities and the inclusion of refugees in national plans and policies, as well as the promotion of international cooperation and regional solidarity to facilitate the resettlement of refugees, including to South American countries, and voluntary return of migrants, and thus relieve the disproportionate burden on some island countries.

- d. Initiate measures to foster coordination in the Caribbean in order to promote appropriate implementation of refugee status determination procedures.

CHAPTER SIX

STATELESSNESS

The subregional consultations identified challenges and actions required to eradicate statelessness in the region. At the end of the next ten years, we hope to be in the position to affirm that the countries of Latin America and the Caribbean succeeded in eradicating statelessness, provided that legislation and practice do not create new cases of statelessness (prevention); protect stateless persons arriving in their territories while providing access to definitive solutions such as naturalization (protection); and resolve existing cases of statelessness, promoting the restoration or recovery of nationality through inclusive legislation and policies on nationality (resolution).

In order to achieve this goal, the “*Eradicating Statelessness*” programme, which follows the guidelines set out in the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas of 2010, the strategies developed by UNHCR pursuant to the mandate conferred by States on this matter, and the resolutions on statelessness adopted by the Organization of American States (OAS), aims to assist countries that will implement it, with the support of UNHCR and civil society, through the following actions:

- a. Access, as appropriate, to the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) and the 1961 Convention on the Reduction of Statelessness (“1961 Convention”).

- b. Promote the harmonization of internal legislation and practice on nationality with international standards.
- c. Facilitate universal birth registration and the issuance of documentation, implementing the activities proposed in Conclusion No. 111 of UNHCR’s Executive Committee, promoted by Latin America and the Caribbean. These activities may include, among others: i) the adoption of simplified administrative procedures; ii) the periodic organization of awareness campaigns and community outreach activities; iii) the application of appropriate measures to ensure that rural or remote areas are reached, for example through mobile registration units.
- d. Establish effective statelessness status determination procedures. The subregional consultations recommended including this competence within the functions of the CONARES or equivalent institutions.
- e. Adopt legal protection frameworks that guarantee the rights of stateless persons, in order to regulate issues such as their migratory status, identity and travel documents and, more generally, ensure full enjoyment of the rights protected by the 1954 Convention and other human rights treaties.
- f. Facilitate naturalization in accordance with article 32 of the 1954 Convention.
- g. Confirm nationality, for example, by facilitating late birth registration, providing exemptions from fees and fines and issuing appropriate documentation for this purpose. Given that cases of people who may require having their nationality confirmed frequently arise in situations of irregular migration or when people live in border areas, achieving this goal may require the strengthening of bilateral or multilateral dialogue and cooperation, as appropriate, between civil registration authorities, as well as binational civil registration and documentation projects.
- h. Facilitate the restoration or recovery of nationality through legislation or inclusive policies, especially the automatic restoration of nationality as a solution for cases in which the person had been arbitrarily deprived of nationality.

CHAPTER SEVEN

REGIONAL COOPERATION

The *Cartagena+30* commemorative process has reaffirmed the commitment to consolidate regional integration and has made a collective call to deepen levels of coordination, complementarity, cooperation and convergence among regional and subregional integration mechanisms, including those related to migration, refugees, displaced and stateless persons.

States highlighted the advisability of including the themes discussed within the *Cartagena+30* Process in the agendas of the Regional Conference on Migration, the South American Conference on Migration and the MERCOSUR Specialized Forum on Migration.

In addition, the subregional consultations highlighted the programmes carried out within the framework of CARICOM, Community of Latin American and Caribbean States (CELAC), the Andean Community, MERCOSUR, OAS, SICA and the Union of South American Nations (UNASUR), among others.

The subregional consultations of the MERCOSUR, Andean and Mesoamerican countries underlined the important contributions to the progressive development of international human rights law and international refugee law of the Inter-American Court of Human Rights and the regional agreements in this area, in countries in which they apply.

Moreover, reference was made to the great potential and benefits that could result from strengthening cooperation between Latin American and Caribbean countries in the field of international protection (South-South cooperation). In this area, mention was made of exchanges between national refugee status determination commissions, within the framework of both MERCOSUR and SICA, and the Cooperation Agreement between the General Secretariat of SICA and

UNHCR in the area of protection of refugees and displaced persons.

A fundamental element for continuing to develop the legal and institutional framework for the protection of refugees, displaced and stateless persons, and to ensure the effective implementation of regional and international standards, is to promote knowledge and training among all stakeholders, which include States, international organizations and civil society, and ensure the dissemination of regional guidelines, doctrine and jurisprudence. The consultations particularly recommended reinforcing existing training programmes such as the Regional Course on International Refugee Law, the Introductory Course to the International System of Refugee Protection within MERCOSUR and its associate States, and the Regional Course on Statelessness for Latin America and the Caribbean.

In light of the new challenges posed by climate change and natural disasters, as well as by displacement of persons across borders that these phenomena may generate, UNHCR is requested to prepare a study on the subject with the aim of supporting the adoption of appropriate national and regional measures, tools and guidelines, including response strategies for countries in the region, contingency plans, integrated responses for disaster risk management and humanitarian visa programmes, within the framework of its mandate.

Throughout the entire preparatory process, attention was drawn to the importance of cooperation and collaboration among all relevant actors, including those outside the region, to respond to the current challenges of displacement and statelessness. In particular, Governments reaffirmed the importance of working closely with UNHCR regarding asylum-seekers, refugees, returnees, displaced and stateless persons and those without a clear nationality or at risk of statelessness. The need to consult UNHCR about matters related to its mandate, to make rapid prevention interventions in these areas, was recognized.

Finally, the subregional consultations recommended strengthening national and regional civil society networks, including academics, to carry out research in this area, exchange good operational practices contribute to the legal representation of asylum cases and ensure respect for human rights standards for the protection of asylum-seekers, refugees, displaced and stateless persons.

CHAPTER EIGHT

IMPLEMENTATION AND FOLLOW-UP

In response to the request of States set out in the Brazil Declaration, UNHCR undertakes to disseminate the Brazil Declaration and Plan of Action widely at regional and international levels through publications and to promote it in international forums on refugees, displaced and stateless persons.

In order to promote international cooperation for the implementation of the different programmes included in this Plan of Action, the Governments will –once they have defined their priorities regarding these programmes– elaborate specific projects with the collaboration and technical advice of UNHCR and other organizations. States will explore the possibility of creating evaluation and follow-up mechanisms for this Plan of Action.

UNHCR, as requested by the States adopting this Plan of Action, will produce triennial progress reports on the basis of which it will present a final report at the end of the duration of this Plan of Action.

Brasília, 3 December 2014

Guatemalan
refugees.
Ixcan, Mexico.
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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Loatian (Hmong) refugee.
La Pampa, Argentina.
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MINISTERIAL MEETING COMMEMORATING THE 30th ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES

CLOSING CEREMONY

BRASILIA
2-3 DECEMBER 2014



Ministério das
Relações Exteriores



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

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MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ DESPITE THE URGENCY OF THE ISSUE, THE EXPERIENCE OF THOSE PRESENT, AND THE POLITICAL SUPPORT RECEIVED, FEW FORESAW THE IMPORTANCE THAT THE CARTAGENA DECLARATION ON REFUGEES WOULD HAVE AS AN INSTRUMENT FOR REGIONAL PROTECTION, WHICH, THREE DECADES LATER, STILL HAS THE STRENGTH AND RELEVANCE TO CALL US TO AN ANALYTICAL AND PROPOSITIONAL REFLECTION ON NEW CHALLENGES AND APPROPRIATE HUMANITARIAN RESPONSES FOR THE NEXT TEN YEARS. ”

MARTA JUÁREZ

MARTA JUÁREZ
DIRECTOR OF
REGIONAL BUREAU
FOR THE AMERICAS
UNHCR

Ladies and Gentlemen,

As you know, on 22nd November, 1984, 26 government delegates and 12 academic representatives from ten countries in Latin America, together with three members of the Inter-American Commission on Human Rights, one functionary from UNDP and 17 from UNHCR, met in a colloquium at the University of Cartagena de Indias to analyse a critical subject at that time, “the international protection of refugees in Central America, Mexico and Panama in its legal and humanitarian aspects”.

That meeting, as many attendees emphasised, was a colloquium but also much more than that; it had the explicit support of the *Contadora* Group and was inaugurated by Colombian President Dr. Belisario Betancur, Foreign Affairs Minister Dr. Augusto Ramírez Ocampo, and the United Nations High Commissioner for Refugees Mr. Paul Hartling.

Despite the urgency of the issue, the experience of those present, and the political support received, few foresaw the importance that the Cartagena Declaration on Refugees would have as an instrument for regional protection, which, three decades later, still has the strength and relevance to call us to an analytical and propositional



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

reflection on new challenges and appropriate humanitarian responses for the next ten years.

In this solemn act that brings us here to this important ministerial meeting, it is only fitting to recognize and pay homage to this group of visionary people, who individually and collectively marked a turning point in the history of refugee protection in the Americas.

The convergence of in-depth knowledge of international refugee law and of inter-American human rights instruments, as well as the humanistic and innovative spirit of all those present, resulted in a legacy in which I believe all Latin Americans are proud, and which represented a crucial platform on which UNHCR was to collaborate with States and help resolve the plight of thousands of refugees.

As Paulo Abruá so aptly described, the Declaration, with its 17 conclusions and 5 recommendations, is the first chapter in a book to which this meeting in Brasília has contributed an additional chapter. A book that after all these years maintains a consistent narrative: the history of a commitment to international protection, in which responsibilities are shared in solidarity in order to protect and resolve, with the humanitarian needs of persons at its core.

It is an honour for me to pay homage to all the participants at that meeting on November 22nd, 1984. We share their names as a testimony of our great appreciation and admiration, and with a special remembrance for those dear friends who are no longer with us.

As the leader of the team of UNHCR colleagues who contributed to the Cartagena+30 Process, I would like to say that the founders of the Cartagena Declaration have been a source of inspiration in this aim to continue what they began.

I am certain that in years to come the Brazil Declaration and Plan of Action will be reference points and worthy heirs of the legacy of the founders.

We have wished to share the names of all the participants at the Colloquium of Cartagena de Indias, but I would like to mention and pay special tribute to two of them in this forum, Leonardo Franco and Diego García Sayán.

I ask that you join me in recognizing them in an ovation.

Thank you very much!



Doris Berrio founded the “League of Displaced Women”, a group of women denouncing human rights violations and supporting women’s issues, after fleeing massacres in her village in Antioquia and arriving in Cartagena in 1998. Doris has been subject to death threats from armed groups ever since. Her eldest son Jorge Ivan was attacked in 2004 in Cartagena but luckily survived. They then decided to come to Bogota. But her younger son Jair was killed in 2009 when he returned to Cartagena to check the house. Today Doris continues the struggle in the hope that her grandchildren will live in a peaceful Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ WE FACE SIGNIFICANT CHALLENGES IN THE NEXT 10 YEARS: THE CRISIS OF STATELESSNESS IN THE DOMINICAN REPUBLIC, THE SCENARIO OF POST-PEACE TALKS IN COLOMBIA, THE HUMANITARIAN IMPACT OF VIOLENCE IN MESOAMERICA, DISPLACEMENT AS A RESULT OF NATURAL DISASTERS AND CLIMATE CHANGE, ... AMONG OTHERS. ”

ENRIQUE TORELLA

ENRIQUE TORELLA
REPRESENTANT
OF THE NORWEGIAN
REFUGEE COUNCIL

Ladies and gentlemen, distinguished members of the table,

It is an honour to speak on behalf of civil society, and although this is a formal act, I feel that I am among friends as we have already reached an agreement on the sub-regional consultations and this final act.

For the closing words of this important event, I, on behalf of civil society and the Norwegian Refugee Council, thank the Government of Brazil, its people and the governments that hosted the sub-regional consultations: Argentina, Ecuador, Nicaragua and Cayman Islands, and all States that have participated in the commemoration of the 30th anniversary of the Declaration of Cartagena, the space provided for the participation of civil society.

I would also like to express a special thank you to the United Nations High Commissioner for Refugees-UNHCR for its hard work and vision, and highlight the team led by Ms. Marta Juárez —Carlos, Davide, José and Juan Carlos and other colleagues in the Americas—, which led this process to fruition.

I do not want to forego the opportunity to underscore and recognize the commitment and participation of civil society throughout the process, with some expectations met,



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

and others to achieve- and acknowledge some of the representatives present: Rosita, Sally, Eli, Rochelle, Cândido, Gabriela, Marco, Karina ... among others. I cannot fail to mention Clara, who although not a formal representative of civil society, has become a representative through her tireless work and dedication. Thank you very much.

Each of us seeks a better world: dignity, justice, freedom, solidarity are key values in our region, and that is why civil society offers all of its energy and capacity to work hand-in-hand with governments and UNHCR, in order to make the Declaration and Plan of Brazil a tangible reality for refugees, displaced and stateless persons.

We have to take advantage of all existing regional instruments, including the important pronouncements of the Inter-American System for the protection of human rights.

And we face significant challenges in the next 10 years: the crisis of statelessness in the Dominican Republic, the scenario of post-peace talks in Colombia, the humanitarian impact of violence in Mesoamerica, displacement as a result of natural disasters and climate change, ... among others.

All of this means that we should work together through government-UNHCR-civil society tripartite committees to effectively implement and monitor the Brazil Plan of Action.

A great leader of our Americas said, "If I help only one person to have hope, I shall not have lived in vain."

Yesterday we heard the testimony of Charly, Ahmad, Luz Dary and Sara.

We owe ourselves to people like them; it is for them that we devote our work.

Let us, together, ensure that the Brazil Declaration and Plan of Action takes us beyond hope. Then, we will not have lived and worked in vain.

Thank you very much.

Nicaona, 18, a high school student and haitian refugee spends her spare time as a volunteer teacher, teaching maths and social sciences at a centre supported with assistance from UNHCR. Nicaona hope to go to University to study Tourism after graduating high school. She has been volunteering at the centre since January 2012. The centre provides a safe and secure place for children to work and play outside of their nearby homes.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

“ I JUST WANT TO REFLECT QUICKLY ON THE IMPORTANCE OF THE DECLARATION AND THE PLAN OF ACTION AT A TIME WHEN, IN TODAY’S GENERAL GLOBAL CONTEXT, WE HAVE TWO DEFICITS THAT TO ME ARE PARTICULARLY DISTURBING: A ‘GOVERNANCE DEFICIT’, ESPECIALLY OF MULTILATERAL AND DEMOCRATIC GOVERNANCE, AND A ‘DEFICIT OF UNIVERSAL VALUES’ TO MOBILIZE YOUNG PEOPLE FOR NOBLE AND FAIR CAUSES.”

ANTÓNIO GUTERRES

ANTÓNIO GUTERRES

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

Excellencies,

Ladies and Gentlemen,

Allow me not to repeat myself thanking you today as I did yesterday, although it would be just as merited as yesterday after the successful approval of the Brazil Declaration and the Plan of Action. Let me also not talk about the content of these documents; they were explained brilliantly by all stakeholders and magnificently summarized by Mr. Paulo Abrão.

I just want to reflect quickly on the importance of the Declaration and the Plan of Action at a time when, in today’s general global context, we have two deficits that to me are particularly disturbing: A ‘governance deficit’, especially of multilateral and democratic governance, and a ‘deficit of universal values’ to mobilize young people for noble and fair causes.

First, the ‘governance deficit’: We are all aware of the paralysis we are in as regards the reform of major international institutions, the UN Security Council and the Bretton Woods organizations. We are all aware of the enormous difficulties that the international community faces today in preventing conflicts or solving them –on the

+30
CARTAGENA

 **UNHCR**
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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY’S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

contrary, conflicts multiply and the old ones never seem to get resolved. We are all aware of how difficult it has been for the international community to get organized to respond to challenges such as climate change or, more recently, major epidemics. All this reflects the deficit of multilateral and democratic governance. And this is why it is extremely reassuring to see that a group of Latin American and Caribbean countries are able to gather and jointly establish a strategy, a plan of action and a set of mechanisms to respond to one of the greatest dramas of today –that of refugees, internally displaced, stateless persons– in an exemplary manner and demonstrating such a strong sense of shared responsibility in resolving shared problems. This shared responsibility in solving mutual problems is exactly what is lacking at the global level.

And secondly, there is a worrying deficit of values, to which the Declaration and the Action Plan also respond at their level. The United Nations are supposed to stand for universal values. But if you allow me to say so, Europe and the Americas together perhaps gave one of the most important contributions in this regard: tolerance and the rule of reason. Almost three centuries later, we know that this cannot be a bare, pure reason, but a reason permeated by affections and emotions, although never losing rationality. What worries us most in the world today, and what is behind such a large number of people forced to flee their homes and communities, is mainly the triumph of irrationality, of religious fundamentalisms, ethnic conflicts, political populism whose sole program is the hatred of the foreigner, the hatred of the other. This irrationality today permeates many social protests and has led to a growing separation between political systems and their populations. This hinders the resolution of major conflicts and problems of our time, including that of human mobility.

In my opinion, the Brazil Declaration and Plan of Action are linked to the very best values I described. They are a symbol of tolerance, of respect for what is different, of the understanding that diversity is wealth. They reflect the understanding that all societies are, or will soon be, multi-ethnic, multicultural, multi-religious and that we must reject false identities that are not inclusive of that diversity. This Declaration and this Plan of Action not only prove that the borders of Latin America and the Caribbean are open to those in need of protection. They prove, even more importantly, that the hearts of the citizens of this region are also open. For this very reason, uprooted people feel at home here, be they Colombians in Ecuador or Syrians in Brazil. And this is the best definition of refugee protection.

Thank you very much.



Chocó, Colombia.

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

“ THE BRAZIL PLAN OF ACTION DEVOTES A SPECIFIC CHAPTER TO SOLIDARITY WITH THE COUNTRIES THAT ARE MOST DIRECTLY AFFECTED BY THIS SITUATION. IT REITERATES THE FACT THAT THE DISPLACEMENT OF CHILDREN AND ADOLESCENTS SHOULD BE CONSIDERED FROM A HUMANITARIAN PERSPECTIVE BASED ON THE PRINCIPLES LAID DOWN IN THE CONVENTION ON THE RIGHTS OF THE CHILD, IN PARTICULAR THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD AND THAT OF NON-DISCRIMINATION, IN THE ATTEMPT TO RESPECT THE FAMILY UNIT AND RECOGNISE CHILDREN AS SUBJECTS OF RIGHTS AND SPECIAL PROTECTION. ”

CARLOS ANTONIO DA ROCHA PARANHOS

+30
CARTAGENA



CARLOS ANTONIO DA ROCHA PARANHOS

DEPUTY SECRETARY GENERAL POLICY
MINISTRY OF FOREIGN AFFAIRS
OF THE FEDERATIVE REPUBLIC OF BRAZIL

Mr. António Guterres, High Commissioner, whom I had the pleasure of accompanying throughout his excellent career at UNHCR from the time when I served as alternate permanent representative at Geneva, and who now honours us with this wonderfully moving speech concerning our work; Mr. Enrique Torrella, Regional Coordinator of the Norwegian Refugee Council; Mr. Paulo Abrão, National Secretary of Justice and President of CONARE; Mr. Jose Eduardo Cardozo, representing the Minister of Justice; I would also like to welcome Professor Cançado Trindade, our esteemed representative at the International Court of Justice, as well as Dr. Diego Garcia and Dr. Roberto Caldas, president and vice-president of the Inter-American Court of Human Rights, respectively; Ambassador Rosario Green; UNHCR's Director for the Americas, Mrs. Marta Juárez; in addition to the UNHCR Representative in Brazil, Andres Ramirez, and the Director of Caritas Rio de Janeiro, Cândido da Ponte Feliciano Neto; distinguished representatives of the diplomatic corps, esteemed colleagues, ladies and gentlemen, as announced, I am honoured to represent Minister Luiz Alberto Figueiredo Machado who, due to other commitments, could not be present, as he would have wished, at this closing ceremony.

The stated goal of this meeting that now draws to a close was, as we all know, to commemorate the thirtieth anniversary of the Cartagena Declaration on Refugees, the importance of which is widely recognised with respect to the protection of refugees

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

in our region. Over and above this objective, however, I would like to believe that we are also fulfilling a second –more crucial and urgent –objective: that of updating this document’s mechanisms for facing the challenges that have emerged over the course of these 30 years.

Among the important developments resulting from Cartagena+30 are, firstly, the inclusion of Caribbean countries in the spirit of Cartagena, as well as the inclusion of specific chapters regarding the Caribbean in the Brazil Plan of Action. We are also very pleased that numerous delegations from countries in that region have been present here in Brasilia. This is yet another sign of the close ties that exist between Latin America and the Caribbean, and we are certain that Cartagena+30 will provide valuable contributions for meeting the challenges that Caribbean countries face in this regard.

Notwithstanding, we addressed an aspect that was not mentioned thirty years ago in Cartagena: the plight of the stateless. This group totals almost ten million people worldwide who, due to their lack of a nationality, have little or no access to the basic rights and services that countries normally offer their citizens. In the Brazil Declaration and Plan of Action our nations reiterated the importance of the right to a nationality, as set out in the Universal Declaration of Human Rights, and reaffirmed their commitment to eradicating statelessness over the course of the next decade. We must now translate this commitment into effective action for the prevention of statelessness and the protection of stateless persons, whilst seeking solutions for cases where people have no nationality.

On the subject of durable solutions, Cartagena+30 is innovative insofar as it fosters migratory alternatives offered by regional integration schemes that benefit refugees. The proposed example is the MERCOSUR agreement on residence, which aims to facilitate the movement of refugees from MERCOSUR countries who wish to move in search of better opportunities. In Brazil, the National Council for Refugees is in the final stages of discussions regarding a project that will, on this basis, complement our already well-established resettlement programme.

Ladies and gentlemen, in keeping with all the forums in our region, Cartagena+30 has not failed to take charge of a problem that is currently affecting countries in particular in the northern part of Central America: the migration of children –including those who are unaccompanied –heading north. The Brazil Plan of Action devotes a specific chapter to solidarity with the countries that are most directly affected by this situation. It reiterates the fact that the displacement of children and adolescents should be considered from a humanitarian perspective based on the principles laid down in the Convention on the Rights of the Child, in particular the principle of the

best interests of the child and that of non-discrimination, in the attempt to respect the family unit and recognise children as subjects of rights and special protection.

Finally, the Brazil Declaration draws attention to the issue of the movement of persons across borders due to natural disasters and climate change. This is another key update to the Cartagena Declaration of thirty years ago. Despite the fact that these displaced persons are not, strictly speaking, considered refugees according to the parameters laid down by international law, they are often in vulnerable situations and can benefit from protective responses. The policy of reception of Haitian immigrants implemented by Brazil following the earthquake that devastated that country in 2010 was based on these principles. In the document adopted today we recognise the need to discuss this subject and devote more attention to it. This is important progress in a region where authorities are often confronted with high-impact disasters such as earthquakes and hurricanes.

Ladies and gentlemen, much has been done to adapt the Cartagena Declaration to modern times. Over the course of the next decade new challenges will undoubtedly arise, demanding renewed regional joint efforts to ensure the acceptance and protection of those most in need, which is commonly and affectionately known as the spirit of Cartagena. May this spirit –now reinforced by the Brazil Declaration and Plan of Action –serve as a beacon for facing the challenges of the future.

Thank you all very much.

PARTICIPANTS



PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

**I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH** | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

GOVERNMENT DELEGATIONS

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Haiti	Director of Legal Affairs, Ministry of Foreign Affairs	Jean Claudy Pierre
Haiti	Deputy Director of the Cabinet, Ministry of Foreign Affairs	Jacques André Brutus

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Saint Lucia	Minister of Foreign Affairs	Alva Romanus Baptiste
Saint Lucia	Minister of Legal, Internal and National Security Affairs	Victor Philip La Corbiniere
Suriname	Minister of Justice	Edward Belfort

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

**I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH** | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

**OPENING CEREMONY
AGENDA
SPEECHES**

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

**IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION** | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
**BRAZIL DECLARATION
BRAZIL PLAN OF ACTION**

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

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Regional Representative for the United States and the Caribbean	Shelly Pitterman
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UNHCR Colombia	Francesca Fontanini
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PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

**I. ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH** | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

CARTAGENA: LATIN AMERICA AND CARIBBEAN'S HUMANITARIAN BRAND



CARLOS MALDONADO

COORDINATOR
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Ten years ago, while writing the epilogue to the memories of the “Cartagena 20” process, I reflected on the journey by Latin America and the Caribbean in the field of refugee protection since the 1984 Cartagena Declaration. I was looking for the common elements to all commemorative processes that had produced important Regional Declarations; as well as for the most unique elements of each. This reflection is even more timely today at the conclusion of its 30th anniversary, which has culminated in the adoption of the Declaration of Brazil and its Action Plan by 28 countries and 3 territories of Latin America and the Caribbean.

A unifying element, of paramount importance in my opinion, is that since 1984 participating States have reaffirmed the need to strengthen the international protection regime for refugees, displaced and stateless persons by highlighting the centrality of the principle “*pro homine*”, the reliability of the international instruments on refugees and stateless persons, as well as the convergence and complementarity of International Human Rights Law, International Refugee Law and International Humanitarian Law. Most remarkably, this ongoing defense of international protection by Latin America and the Caribbean has taken place within an ever restrictive global environment.

Furthermore, all Regional Declarations put emphasis on sustainable or durable solutions, privileging pragmatic and flexible approaches, while stressing that sustainable

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

solutions are best achieved in a framework of peace and respect for human rights. As a corollary, the Declarations explicitly or implicitly underline that refugees and displaced persons are an essential part to the construction of peace.

Also, all Declarations recognize the importance of the collaboration of the international community, and highlight the principles of regional solidarity, cooperation and responsibility, which indicate that the region is committed to finding its own solutions and implement specific responses. It is within this framework, which emphasizes the region's primary responsibility, that international cooperation is sought and welcomed.

There are many more common elements that cannot be mentioned in this brief review, but I would not fail to draw two more. The first defines methodologically the *Cartagena* processes since they have been built on open, inclusive and comprehensive dialogues among governments, civil society, including the Academia, and relevant international and regional organizations. The second is the ability of the region to generate innovative ideas, but also effective proposals that have not only served well to situations of refugees and displaced persons in Latin America and the Caribbean, but that have been the subject of study and use in other geographical areas.

For the sake of brevity, I would like to point out only a couple of elements of each of the Regional Declarations linked to the *Cartagena* commemorative processes. In addition to its pioneering character, the Cartagena Declaration of 1984 is cited above all by its expanded refugee definition, which no doubt was a crucial instrument for the protection of refugees from Central America in the 1980s and has continued to be so for thousands of refugees from the region and from other continents who have found protection in the 15 countries which so far have incorporated the *Cartagena* definition in their national legal frameworks.

The Declaration of San José of 1994 is perhaps the least known and cited. However, it is also visionary since it brought forward a series of principles on internal displacement, which predated in years Dr. Deng's "*Guiding Principles*". It is no coincidence, since for a few years in the 1990s the "Permanent Consultative Group on Internal Displacement" met in San José, Costa Rica, where distinguished jurists and scholars debated on this contemporary phenomenon, some of whom advised Dr. Deng in his role as Special Representative to the UN Secretary General on IDPs.

The 2004 Mexico Declaration is unique for several reasons, but in my opinion three elements are the most salient of all. For the first time the Declaration is accompanied by an Action Plan, a common operational strategy to transform into action the postulates of the politico-humanitarian text. The Mexico Action Plan includes three innovative programs for sustainable solutions, where the region embraces even more

strongly the principles of solidarity and joint responsibility: "Cities of Solidarity", "Solidarity resettlement" and "Borders of Solidarity". At the methodological level, the *Cartagena 20* process widened the scope of consultations with three sub-regional meetings, which provided even greater legitimacy to the process.

The Declaration of Brazil follows the path marked by the Declaration of Mexico, since it includes a very important and ambitious Plan of Action for the period 2015-2024, with 11 programs, seven thematic and 4 geographical, of the latter three dedicated to the Northern Triangle of Central America and one to the Caribbean. It is precisely the incorporation of Caribbean countries as full members of the process one of the most novel elements of *Cartagena+30*.

Furthermore, *Cartagena+30* set forth the broadest ever consultative process since 1984, with four sub-regional meetings and a Ministerial closing event in Brasília, which counted with the participation of virtually all Governments of Latin America and the Caribbean, other observer Governments, more than 150 NGOs and Academia, Ombudsmen, refugees, displaced and stateless persons, and relevant international and regional bodies.

Cartagena+30 also featured a negotiation mechanism under the GRULAC framework, in which representatives of all Governments reached a consensus on the Draft Declaration of Brazil and its Plan of Action. This new mechanism bestowed on governments an unprecedented leadership role, which has enhanced the importance, legitimacy and authoritative value of the Brazil Declaration and its Plan of Action.

I would like to end this note underlining the exceptionality of the *Cartagena* commemorative processes as a humanitarian forum in which the States of Latin America and the Caribbean commit to address united and in collaboration with civil society and the international community the needs of refugees, internally displaced and stateless persons. A similar forum does not exist in any other continent and its replica is difficult to foresee in any other region at least in today's international environment.

Carlos Maldonado Castillo *

* Carlos Maldonado Castillo is a UNHCR staff member who in 1994 participated in the tenth anniversary of the Cartagena Declaration on Refugees and coordinated the processes "Cartagena 20" and "Cartagena+30" on behalf of UNHCR



Commemorative event Cartagena+30, Brasília, Brazil ©UNHCR

APPENDICES

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÔNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÔNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÔNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÔNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010



Refugee children at the Ecuador-Colombian border.

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CARTAGENA DECLARATION ON REFUGEES

ADOPTED BY THE COLLOQUIUM
ON THE INTERNATIONAL PROTECTION
OF REFUGEES IN CENTRAL AMERICA,
MEXICO AND PANAMA, HELD AT CARTAGENA,
COLOMBIA FROM 19-22 NOVEMBER 1984

United Nations Convention and the 1967 Protocol, as well as those of resolution 428 (V) of the United Nations General Assembly, by which the mandate of the United Nations High Commissioner for Refugees is applicable to all States whether or not parties to the said Convention and/or Protocol;

Bearing in mind also the function performed by the Inter-American Commission on Human Rights with regard to the protection of the rights of refugees in the continent;

Strongly supporting the efforts of the Contadora Group to find an effective and lasting solution to the problem of Central American refugees, which constitute a significant step in the negotiation of effective agreements in favour of peace in the region;

Expressing its conviction that many of the legal and humanitarian problems relating to refugees which have arisen in the Central American region, Mexico and Panama can only be tackled in the light of the necessary co-ordination and harmonization of universal and regional systems and national efforts;

I
Recalling the conclusions and recommendations adopted by the Colloquium held in Mexico in 1981 on Asylum and International Protection of Refugees in Latin America, which established important landmarks for the analysis and consideration of this matter;

Recognizing that the refugee situation in Central America has evolved in recent years to the point at which it deserves special attention;

Appreciating the generous efforts which have been made by countries receiving Central American refugees, notwithstanding the great difficulties they have had to face, particularly in the current economic crisis;

Emphasizing the admirable humanitarian and non-political task which UNHCR has been called upon to carry out in the Central American countries, Mexico and Panama in accordance with the provisions of the 1951

II
Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the bases of which the Colloquium fully shares and which are reproduced below:

(a) “To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.”

(b) “To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants.”

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF “CARTAGENA+30”
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

(c) “To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above.”

(d) “To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State.”

(e) “To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfillment of his mandate.”

(f) “To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR.”

(g) “To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees.”

(h) “To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety.”

(i) “To ensure that programmes and projects are set up with a view to ensuring the self-sufficiency of refugees.”

(j) “To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies.”

(k) “To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies.”

(l) “To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be transferred to a third country against his will.”

(m) “To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem.”

(n) “To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps.”

(o) “To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation.”

(p) “To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees.”

III

The Colloquium adopted the following conclusions:

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.

2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.

5. To reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens.

6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiency and integration into the host society.

7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.

8. To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx.

9. To express its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.

10. To call on States parties to the 1969 American Convention on Human Rights to apply this instrument in dealing with asilados and refugees who are in their territories.

11. To make a study, in countries in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by

allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.

12. To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.

14. To urge non-governmental, international and national organizations to continue their worthy task, co-ordinating their activities with UNHCR and the national authorities of the country of asylum, in accordance with the guidelines laid down by the authorities in question.

15. To promote greater use of the competent organizations of the inter-American system, in particular the Inter-American Commission on Human Rights, with a view to enhancing the international protection of asilados and refugees. Accordingly, for the performance of this task, the Colloquium considers that the close co-ordination and co-operation existing between the Commission and UNHCR should be strengthened.

16. To acknowledge the importance of the OAS/UNHCR Programme of Co-operation and the activities so far carried out and to propose that the next stage should focus on the problem raised by massive refugee flows in Central America, Mexico and Panama.

17. To ensure that in the countries of Central America and the Contadora Group the international norms and

national legislation relating to the protection of refugees, and of human rights in general, are disseminated at all possible levels. In particular, the Colloquium believes it especially important that such dissemination should be undertaken with the valuable co-operation of the appropriate universities and centres of higher education.

IV

The Cartagena Colloquium therefore

RECOMMENDS:

- That the commitments with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.
- That the conclusions reached by the Colloquium (III) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.
- That a volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents, and that the Colombian Government, UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.
- That the present document should be proclaimed the “Cartagena Declaration on Refugees”.
- That the United Nations High Commissioner for Refugees should be requested to transmit the contents of the present declaration officially to the heads of State

of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombian authorities, and in particular to the President of the Republic, Mr. Belisario Betancur, the Minister for Foreign Affairs, Mr. Augusto Ramírez Ocampo, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de Indias and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolívar and the City of Cartagena. It also thanked the people of Cartagena, rightly known as the “Heroic City”, for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practised by the Colombian people and authorities.

Cartagena de Indias, 22 November 1984

SAN JOSE DECLARATION

ON REFUGES AND DISPLACED PERSONS

ADOPTED BY THE INTERNATIONAL COLLOQUIUM

IN COMMEMORATION OF THE "TENTH ANNIVERSARY

OF THE CARTAGENA DECLARATION ON REFUGEES",

SAN JOSÉ, 5-7 DECEMBER 1994

Stressing that, pursuant to the adoption of the Cartagena Declaration, a significant process in the search for durable solutions has been initiated, whereby such solutions have been integrated within the framework of convergence between respect for human rights, peace-building and linkage with economic and social development;

Appreciating the generous efforts made, with the valuable support of the international community, during the past decade of economic and political crises, by countries of the region to provide protection and humanitarian treatment to persons forced to abandon their homes, while remaining determined to continue the concerted search for solutions to alleviate the human suffering of these persons and help them to resume normal life;

Confirming that the consolidation of democracy in the continent has laid the basis for finding solutions to the challenges of the past decade and for firmly addressing those of the present;

Underscoring the contribution made to this process by the *Procedure for the Establishment of a Firm and Lasting Peace in Central America (Esquipulas II)*, as well as the Tripartite Commissions for Voluntary Repatriation, and the achievements made possible by the *Declaration and Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons* adopted by the International Conference on Central American Refugees (CIREFCA), held in Guatemala City in May 1989; this experience being viewed as a guiding framework for dealing with similar situations in other regions of the world;

Appreciating the valuable contribution of the documents on *Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America (1989)* and the *Evaluation of the Practical Application of those Principles*.

and Criteria (1994), which elaborated on the Cartagena Declaration;

Taking into consideration the influence which the Cartagena Declaration and its aforementioned related elaboration have had beyond the Central American region, through the incorporation of some of its provisions into legal measures and administrative practices of other Latin American countries, as well as in its widespread dissemination in academic circles of the Continent;

Recognizing the admirable efforts which the Inter-American Institute of Human Rights has made in identifying and promoting areas of convergence between International Refugee Law, International Human Rights Law, and International Humanitarian Law;

Welcoming the incorporation of the United Nations Development Programme (UNDP) in the efforts to find solutions to the problems of refugees, returnees and displaced persons through their joint sponsorship of CIREFCA, other technical cooperation efforts and the initiation of human development programmes in favour of the affected populations;

Appreciating in particular the outstanding work of UNHCR in the region in fulfilment of its mandate, as well as the creative approach applied thereto, which has enabled the opening of a 'humanitarian space' which has favoured peace-building and the attainment of new horizons in the field of Refugee Law;

Noting with satisfaction the references made to the Cartagena Declaration and the accomplishments of CIREFCA by the General Assembly of the United Nations, the General Assembly of the Organization of American States, the Executive Committee of the High Commissioner's Programme, and other international fora;

Also bearing in mind the conclusions of the First Regional Forum on Gender Focus in working with Refugee, Returnee and Displaced Women (FOREFEM), held in Guatemala City in February 1992, as well as those of the Partnership in Action Conference between UNHCR and the non-governmental organizations (PARINAC, Caracas, June 1993 and Oslo, June 1994) which, together with the CIREFCA follow-up mechanisms, in the spirit of the Cartagena Declaration, have strengthened cooperation with non-governmental organizations and the beneficiary populations;

Recognizing the challenges posed by the new situations of human displacement in Latin America and the Caribbean, including, in particular, the increase in internal displacement and forced migration due to causes other than those provided for in the Cartagena Declaration;

Considering that human rights violations constitute one of the causes of displacement and that, therefore, the safeguarding of those rights is an integral element for both the protection of the displaced and the search for durable solutions;

Also considering that the protection of human rights, and the strengthening of the democratic system are the best means of preventing conflict, refugee flows and serious humanitarian crises;

In compliance with the request to hold this Colloquium made in Conclusion No. 71 (XLIV) of the Executive Committee of the High Commissioner's Programme, as well as by the General Assembly of the Organization of American States at its 24th Session, and including the preparatory technical meetings of Caracas in March 1992, Montevideo in May 1993, and Cocoyoc in March 1994;

CONCLUSIONS AND RECOMMENDATIONS

Commemorating the Tenth Anniversary of the *Cartagena Declaration on Refugees*, which has, for the past decade, proven its validity and usefulness in addressing the problems of human displacement in the region;

Recognizing that the said Declaration constitutes an efficient instrument of international protection by serving as a source of guidance for the humanitarian practices of States and by encouraging the adoption of legislative and administrative measures based on the principles contained therein;

Recognizing the importance of the Central American experience which has, amongst other achievements, enabled the mass return of thousands of refugees and the closing of the majority of camps in the region, thus providing opportunities for finding appropriate solutions to a regional crisis;

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES

MARTA JUÁREZ | ENRIQUE TORELLA

ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

II THE PARTICIPANTS IN THE COLLOQUIUM HAVE REACHED THE FOLLOWING

CONCLUSIONS:

First. To recognize the overriding importance of the Cartagena Declaration in addressing refugee situations generated by the Central American conflicts of the past decade, and, consequently, to stress the appropriateness of resorting to the Declaration in order to find solutions both to pending problems and to the new challenges posed by uprootedness in Latin America and the Caribbean.

Second. To reaffirm the validity of the principles contained in the Declaration as elaborated in the documents *Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America (1989)*, as well as in the *Evaluation of the Practical Application of those Principles and Criteria (1994)*, and to reiterate, in particular, the value of the refugee definition contained in the Cartagena Declaration, which, by being based upon objective criteria, has constituted an effective humanitarian instrument in support of State practice in extending international protection to persons in need thereof, beyond the scope of the 1951 Convention and the 1967 Protocol.

Third. To stress the complementary nature and convergence between the systems of protection to persons established in International Human Rights Law, International Humanitarian Law and International Refugee Law, and, with the aim of establishing a common legal framework, to reiterate the convenience for those States which have not yet done so to adhere to the pertinent international instruments. In this context, the Colloquium makes an appeal to the States party to the 1969 American Convention on Human Rights to adopt the domestic measures required to ensure the full application and promotion of its provisions, as well as supervision by the pertinent bodies provided for therein.

Fourth. To encourage the commitment of the governments, non-governmental organizations and the jurists of the region in favour of the promotion, development and harmonious application of international human rights law, humanitarian law, and refugee law.

Fifth. To urge governments to encourage, with the collaboration of UNHCR, a process of progressive harmonization of rules, criteria and procedures concerning refugees, based on the 1951 Convention and the 1967 Protocol relating to the status of refugees, the American Convention on Human Rights, and the Cartagena Declaration.

Sixth. To encourage governments to seek humanitarian solutions, within a coordinated framework, to pending problems of refugees and persons displaced as a result of situations which have now been resolved, or which are in the course of being resolved, by reinforcing voluntary repatriation and reintegration programmes in their places of origin, and considering, whenever possible, programmes to facilitate local integration, the issuance of essential documentation and the normalization of their migratory status, with the aim of preventing such problems from becoming new sources of tension and instability.

Seventh. To call upon governments to increase their region-wide cooperation in admitting refugee groups, including those fleeing from situations foreseen in the Cartagena Declaration, as well as to encourage concerted efforts to find solutions to the problems which generate such forced displacement.

Eighth. To reiterate the responsibility of the States to eliminate, with the support of the international community, the causes of forced mass exodus and, in this way, ensure that refugee status is only granted for as long as required.

Ninth. To underscore the importance of fostering full observance of economic, social and cultural

rights, in an effort to contribute to their development and to their legal protection. *Tenth.* To reaffirm that refugees as well as those persons who migrate for other reasons, including economic ones, have human rights which should be respected at all times and in all circumstances and places. These inalienable rights should be respected before, during and after their flight or return to their places of origin, with a view to ensuring their well-being and human dignity.

Eleventh. To stress the advisability of improving the situation of refugee and displaced children, taking into account the specific provisions in this regard set forth in the 1989 Convention on the Rights of the Child.

Twelfth. To underline the importance of addressing the needs of refugee and displaced women and girls, particularly those in a vulnerable situation, in the field of health, security, employment and education, as well as to encourage the inclusion of gender-based criteria in the examination of claims for refugee status.

Thirteenth. To recommend the full participation of affected populations, especially women's groups and indigenous communities, by encouraging the development of mechanisms which facilitate concerted action in the design and implementation of programmes aimed at resolving situations affecting refugees, returnees and displaced persons.

Fourteenth. To encourage an integrated approach to the solution of problems of forced displacement, particularly as regards voluntary return and repatriation, within the framework of coordinated efforts in order to ensure, in addition to the security and dignity of the beneficiaries, the durability of solutions. In this sense, reintegration and rehabilitation efforts should be linked to medium and long-term sustainable development efforts intended to alleviate and eradicate extreme poverty, satisfy human needs, and strengthen

respect for human rights, with due regard for civil, political, economic, social and cultural rights.

Fifteenth. To stress the contribution of the United Nations and the Organization of American States to the peace process in Central America and the Caribbean through peacekeeping operations and mechanisms for verification of compliance with specific agreements in the field of human rights. At the same time, to urge the organizations responsible for those operations to favourably consider requests made by concerned States that they continue to carry out their activities.

Sixteenth. To affirm that the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows. In this regard, persons in this situation should be assured of the following:

- (a) application of human rights norms and, when applicable, International Humanitarian Law as well as, by analogy, certain relevant principles of Refugee Law, such as non-refoulement;
- (b) recognition of the civilian character of displaced populations and of the humanitarian and apolitical nature of the treatment afforded to them;
- (c) access to effective protection by the national authorities and to essential assistance, with the support of the international community;
- (d) attention to those rights which are crucial for their survival, security and dignity, as well as other rights such as adequate documentation, ownership of land and other assets, and freedom of movement, including the voluntary nature of return; and

(e) the possibility of attaining a dignified and safe solution to their displacement.

Seventeenth. To support the work of the Representative of the Secretary General of the United Nations for the Internally Displaced; within this framework, to foster and contribute to the preparation of an international declaration founded on a set of principles and basic rules for the protection and humanitarian treatment of internally displaced persons whatever their situation or circumstances, without prejudice to the basic right to seek asylum in other countries.

Eighteenth. To note with particular interest the efforts initiated by the Permanent Consultative Group on Internally Displaced in the Americas, as a regional inter-agency forum dedicated to the study and consideration of the acute problems faced by the displaced within their own countries for reasons similar to those that result in refugee flows.

Nineteenth. To stress the positive contribution made by the churches, the non-governmental organizations and other sectors of civil society in providing assistance and protection to refugees, returnees and the displaced in Latin America and the Caribbean, through the coordination of their activities with those of the governments and the international organizations.

Twentieth. To call upon States to urge existing regional fora dealing with matters such as economic issues, security and protection of the environment to include in their agenda consideration of themes connected with refugees, other forced displaced populations and migrants.

Twenty-first. To urge governments and relevant international organizations to take account of the specific needs of indigenous populations affected by the situations of uprootedness, with due respect for their dignity, human rights, cultural identity and the links which they maintain with their ancestral lands.

In situations of uprootedness, the affected population should be consulted directly and specialized approach and the full participation of indigenous populations in assistance programmes and in the planning of durable solutions in their favour, should be guaranteed.

Twenty-second. To support the efforts of the Latin American and Caribbean countries in the implementation of sustainable human development programmes, whose impact is crucial for both the prevention of and solution to the problems of uprootedness and forced migration; and to invite donor countries, financial institutions and the international community to collaborate in these efforts through technical and financial cooperation projects.

Twenty-third. To urge UNHCR to encourage the Latin American and Caribbean countries to disseminate and promote, at all possible levels, the norms relating to the protection of refugees, including those that emanate from the Cartagena Declaration, and their linkage with norms of International Humanitarian Law and, in general, to human rights; and to urge the Inter-American Institute of Human Rights to continue its dissemination and promotion efforts in this regard, in close collaboration with other competent organizations.

THE PARTICIPANTS IN THE COLLOQUIUM THEREFORE,

RECOMMEND:

- That the foregoing Conclusions be duly taken into account in the search for solutions to pending problems related to refugees, returnees and displaced persons, and in addressing new challenges currently being faced throughout the continent;

- That the present document be proclaimed as the San José Declaration on Refugees and Displaced Persons;
- That the working documents, presentations and reports, as well as the Conclusions and Recommendations adopted and other documents of the Colloquium, be published, and that the Inter-American Institute of Human Rights, the United Nations High Commissioner for Refugees, academic institutions and non-governmental organizations adopt the necessary measures for the widest distribution of this publication;
- That UNHCR and the Inter-American Institute of Human Rights, with the support of other pertinent organizations, be requested to sponsor a study of the scope of Article 22 (7) of the American Convention on Human Rights, as it relates the right to asylum, as integrating the right to seek and be granted asylum (Refugio) on the basis of those causes set forth in the refugee definition contained in the Cartagena Declaration, and that this study be subsequently submitted to the consideration of States;
- That the co-organizers be entrusted with officially forwarding the contents of the present Declaration to the Secretary General of the United Nations, to the Secretary General of the Organization of American States and to the Heads of State and Government of the American Continent, so that they in turn submit them to the competent organs;
- That the participants be requested to forward the contents of the present Declaration to their respective governments, so as to contribute to the application of its contents, to its dissemination as well as to its presentation to the Executive Committee of the UNHCR's Programme;

- That an extension of the mandate of the Representative of the Secretary General for Internally Displaced Persons be promoted, and that he considers incorporating the relevant Conclusions of this Colloquium in the reports he presents to the United Nations Human Rights Commission and the United Nations General Assembly;
- That the co-organizers and the Government of Costa Rica, with the support of UNDP, intercede before the World Bank, the International Monetary Fund and the Inter-American Development Bank, as well as before bilateral aid agencies, in order for them to include the specific needs of displaced populations within programmes aimed at the alleviation and eradication of extreme poverty;
- That the message sent to the Colloquium by the United Nations High Commissioner for Human Rights be acknowledged with thanks, and that the contents of the present Declaration be forwarded to him.

Finally, the participants in the Colloquium express their deep appreciation to the United Nations High Commissioner for Refugees and to the Inter-American Institute of Human Rights and, in addition, to the Government of Costa Rica for initiating and carrying out this important event. The participants express their gratitude for the personal interest shown by the President of Costa Rica, Mr. José María Figueres Olsen, and took the liberty to ask him, as he deems appropriate, to inform the participants of the Summit of the Americas, to be held in Miami from 9 to 11 December 1994, about the celebration of this Colloquium.

San José, 7 December 1994

MEXICO DECLARATION AND PLAN OF ACTION

TO STRENGTHEN
THE INTERNATIONAL PROTECTION
OF REFUGEES IN LATIN AMERICA
MEXICO CITY,
16 NOVEMBER 2004

DECLARATION

The Governments of participating Latin American countries,

Gathered in Mexico City to celebrate the twentieth anniversary of the Cartagena Declaration on Refugees of 1984, that reinvigorated the generous tradition of asylum in Latin America,

Recognizing Latin America's contribution to the progressive development of international refugee law beginning in 1889 with the Treaty on International Penal Law and continuing with, among other instruments, the American Declaration of the Rights and Duties of Man of 1948, the American Convention on Human Rights of 1969, the Cartagena Declaration on Refugees of 1984, the document entitled "Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America" (CIREFCA-1989), the 1988 Additional Protocol to the American Convention on

Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" and the San Jose Declaration on Refugees and Displaced Persons of 1994, as well as the doctrine and jurisprudence in this field developed, respectively, by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights,

Reaffirming their solemn commitment towards persons entitled to international protection in Latin America,

Emphasizing that humanism and solidarity are fundamental principles that should continue to guide State policies on refugees in Latin America,

Reaffirming the fundamental human right to seek and receive asylum established in Article XXVII of the American Declaration of the Rights and Duties of Man of 1948, and Article 22(7) of the American Convention on Human Rights of 1969,

Reaffirming also the enduring validity of the principles and norms contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, as well as the complementary nature of international refugee law, international human rights law, and international humanitarian law and, hence, the importance of using, according to the principle of *pro homine*, the norms and principles of these three bodies of international law to strengthen the protection of refugees and other persons entitled to international protection,

Recognizing the *jus cogens* nature of the principle of *non-refoulement*, including non-rejection at the border, the cornerstone of international refugee law, which is contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, and also set out in Article 22 (8) of the American Convention on Human Rights and Article 3 of the 1984 Con-

vention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the commitment of Latin American countries to keep their borders open in order to guarantee the protection and security of those who have a right to enjoy international protection,

Reaffirming the obligation of States to respect the principle of non-discrimination and to take measures to prevent, combat and eliminate all forms of discrimination and xenophobia, guaranteeing the exercise of the rights of all persons under the jurisdiction of the State without any distinction on the grounds of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social status, including refugee status or status of others in need of international protection,

Requesting the media to promote the values of solidarity, respect, tolerance and multiculturalism, underscoring the humanitarian plight of victims of forced displacement and their fundamental rights,

Reaffirming the principles of the indivisibility and interdependence of all human rights and the need to provide comprehensive protection to refugees that guarantees the full enjoyment of their rights, in particular, civil, economic, social and cultural rights,

Recognizing that family unity is a fundamental human right of refugees, and *recommending*, therefore, the adoption of mechanisms to guarantee its respect,

Recognizing the enduring relevance of the Cartagena Declaration on Refugees of 1984 and its importance in continuing to guide public policies for refugee protection and the search for durable solutions to refugee situations faced by Latin America at the present time,

Recognizing the importance of the principles contained in the Cartagena Declaration on Refugees to the provision of protection and finding durable solutions and the need to carry out a more detailed analysis of its recommendations,

Recommending, in the framework of the progressive harmonization of legislation relating to refugees within ongoing regional integration processes, the due incorporation of the principles and norms contained in the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, the American Convention on Human Rights and other relevant international instruments,

Acknowledging the significant progress of some States in the Latin American region in establishing efficient mechanisms for determining refugee status and, likewise, *affirming* the importance of continuing to strengthen these mechanisms,

Encouraging States that have not yet adopted refugee legislation to promulgate such legislation as soon as possible and to request for this purpose UNHCR's technical advice; and States that are in the process of amending their legislation to align it with international and regional standards relating to refugees and human rights, so as to bridge any gaps that may exist between State practice and such standards,

Recognizing the responsibility of States to provide international protection to refugees, as well as the need for international technical and financial cooperation to find durable solutions within the framework of a commitment to consolidate the rule of law in Latin American countries, universal respect for human rights and the principles of international solidarity and responsibility sharing,

Affirming that national security policies and the fight against terrorism should be framed within respect

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS

MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III MEETING COMMEMORATING CARTAGENA +30

OPENING CEREMONY
AGENDA
SPEECHES

LUÍZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI

EDUARDO CARDOZO | ANTÓNIO GUTERRES

JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO

IV. THE PATH TO CARTAGENA

CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION

SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION

VI. CLOSING CEREMONY

SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS

EPILOGUE | CARLOS MALDONADO

VIII. APPENDICES

CARTAGENA DECLARATION | 1984

SAN JOSE DECLARATION | 1994

MEXICO DECLARATION AND PLAN OF ACTION | 2004

BRASILIA DECLARATION | 2010

for domestic law and international instruments for the protection of refugees and of human rights in general,

Noting with concern that in some parts of Latin America the internal displacement of persons as well as refugee flows persist,

Highlighting that, in view of the gravity of the problem of forced displacement in the region, it is necessary to address its causes and, at the same time, develop policies and pragmatic solutions to provide effective protection to those who need it,

Reiterating Conclusion 16 of the 1994 San Jose Declaration on Refugees and Displaced Persons which affirmed that “the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows...”

Recognizing that persecution can be related to gender and age of refugees; and the need to provide protection and humanitarian assistance in keeping with the differentiated needs of men and women, boys and girls, adolescents and elderly persons, persons with disabilities, minorities and ethnic groups,

Recognizing the existence of mixed migratory movements, including persons who can qualify for refugee status and who require specific treatment, with due legal safeguards to guarantee their identification and access to refugee status determination procedures; and therefore *highlighting* the importance of continuing to take into account the issue of refugee protection in regional multilateral fora in the field of migration and, in particular, the Regional Conference on Migration (Puebla Process) and the South American Conference on Migration,

Highlighting the role in refugee protection of the Ombudsmen and Human Rights Commissioners, understood hereafter as national institutions for the promotion and protection of human rights, as independent state entities that monitor the proper functioning of public administration and the promotion and protection of fundamental human rights,

Highlighting, moreover, the decisive contribution of non-governmental organizations and other sectors of civil society to the protection and assistance of refugees and other persons in need of protection, including their work in providing advice for the development of policies regarding protection and durable solutions,

Recognizing the need to continue promoting international refugee law, international human rights law and international humanitarian law, as well as to disseminate good practices relating to protection and durable solutions in Latin America,

Underscoring the importance of strengthening cooperation between the organs of the Inter- American human rights system and UNHCR, aimed at more effective protection of refugees and other persons in need of protection and urging them to continue strengthening this collaboration,

Convinced that, despite the significant progress in the protection of refugees in Latin America, it is necessary for States to redouble their efforts to provide protection, assistance and find adequate solutions for refugees in the region, within a spirit of international solidarity and responsibility sharing with the support of the international community,

Underscoring that voluntary repatriation is the durable solution *par excellence* for refugees and the fundamental need for governments of countries of origin to take appropriate measures, with the support

of the international community, to guarantee the protection of its nationals who have repatriated, in order to ensure that repatriation takes place in safety and dignity,

Reiterating to States, international organizations and civil society the importance of fully involving uprooted populations in the design and implementation of assistance and protection programmes, recognizing and valuing their human potential,

Appealing to the international community, represented by the United Nations, the Inter- American system and, especially, donor countries, to continue supporting this important effort for the protection of refugees by Latin American States with the cooperation of UNHCR and civil society,

Taking note of the conclusions adopted by consensus in the four sub-regional meetings held in Brasilia, Brazil; San Jose, Costa Rica; Cartagena de Indias and Bogota, Colombia, and *expressing the desire* to put into practice the valuable recommendations deriving from the preparatory process, whose implementation will contribute to Latin America’s compliance with the Agenda for Protection, adopted by UNHCR’s Executive Committee in 2002,

RESOLVE,

- *To approve* this Declaration and of Plan of Action as “Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America”.
- *To request* the support of UNHCR and the international community for the implementation of the Plan of Action, including the programmes relating to durable solutions.
- *To welcome and to support* the proposal made by Brazil for the establishment of a regional resettlement programme in Latin America.

- *To urge* UNHCR to request of States, in the exercise of its supervisory responsibility, periodic reports on the situation of refugees in the Latin American countries and, in the signatory countries of Latin America, the status of implementation of the 1951 Convention relating to the Status of Refugees and its Protocol of 1967.

- *To request* UNHCR to redouble its support to Latin American countries for the local integration of refugees.

- *To take due account* of the present Declaration and Plan of Action in order to address the solution of the situation of refugees in Latin America.

- *To request* the organizers and co-sponsors of this event to publish a book containing all of the background documents, reports of the preparatory meetings and the Mexico Declaration and Plan of Action, asking the Government of Mexico, UNHCR and the competent organs of the Organization of American States to adopt the measures required for its broad dissemination.

- *To request* that UNHCR officially transmit the Mexico Declaration and Plan of Action to the Heads of State of the participating countries for its broad dissemination.

- *To request* the President of the United Mexican States, Vicente Fox Quesada, should he consider it appropriate, to provide information regarding the holding of this event at the XIV Iberoamerican Summit that will take place on 18 and 19 November of this year in San Jose, Costa Rica.

Finally, the participants expressed their deep gratitude to the Government and people of Mexico for having hosted this commemorative event on 15 and 16 November 2004 in Mexico City; to the Governments of Costa Rica, Brazil and Colombia for having co-sponsored the preparatory meetings; to UNHCR and the Norwegian Refugee Council for having organized the event; and to the Inter-American Court of Human

Rights, the Inter-American Commission on Human Rights, and the Inter-American Institute of Human Rights for their sponsorship; as well as to civil society organizations, national institutions for the promotion and protection of human rights, and the experts who, through their advice and appropriate recommendations, have made a fundamental contribution in this process.

Mexico City, 16 November 2004

MEXICO PLAN OF ACTION TO STRENGTHEN INTERNATIONAL PROTECTION OF REFUGEES IN LATIN AMERICA

PREAMBLE

On the occasion of the twentieth anniversary of the Cartagena Declaration on Refugees, the United Nations High Commissioner for Refugees (UNHCR), together with the Norwegian Refugee Council, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights and the governments of Brazil, Costa Rica and Mexico, brought together governments of Latin America countries, experts and different sectors of civil society to analyze jointly the main challenges to the protection of refugees and other persons in need of international protection today in Latin America, and to identify courses of action to assist countries of asylum in the search for appropriate solutions within the pragmatic and principled spirit of the Cartagena Declaration on Refugees.

To this end, four sub-regional preparatory meetings were held in San Jose, Costa Rica (12-13 August), Brasília, Brazil (26-27 August), Cartagena de Indias, Colombia (16-17 September) and Bogota, Colombia (6-7 October), in which the refugee situation in each

region was analyzed. As the outcome of each gathering, a report was adopted by consensus. Based on the conclusions and recommendations of these regional preparatory meetings, the participants have prepared the following Plan of Action aimed at continuing to strengthen mechanisms for protection and the search for solutions for refugees and other persons in need of protection in the region.

CHAPTER ONE THE SITUATION OF REFUGEES IN LATIN AMERICA

Upon the commemoration of the twentieth Anniversary of the Cartagena Declaration on Refugees, there are still situations that generate forced displacement in Latin America, particularly in the Andean Region. In addition to a growing number of Latin American refugees, the region also provides protection and durable solutions to refugees from other continents.

With the exception of the Andean Region, where cross-border movements are driven by a humanitarian crisis characterized by forced displacement within Colombia's borders and which variously affects neighboring countries and other countries of the region, at the present time asylum-seekers and refugees are caught up within migratory flows across the continent.

Furthermore, the magnitude of forced displacement in the Andean Region is made less visible in a context where many people in need of international protection opt for anonymity and dispersion, and therefore, do not formally request international protection.

At the same time, pilot resettlement programmes for refugees recognized in other parts of the world have been launched in the Southern Cone.

As a result, various situations co-exist in Latin America at present: 1) countries that continue to receive a small number of asylum-seekers and refugees im-

mersed in regional and continental migratory flows; 2) countries hosting a significant number of recognized refugees and/or asylum-seekers; and 3) countries with emerging resettlement programmes. All three situations may converge in some countries of the region.

The normative and institutional framework for the protection of refugees has been strengthened in the last twenty years. A large number of Latin American countries have enshrined the right to asylum in their constitutions and the large majority of countries are party to the 1951 Convention relating to the Status of Refugees and/or its Protocol of 1967. Likewise, the large majority have national bodies, norms and procedures for determining refugee status. Some countries recognize that persecution can be related to gender and age, and take into consideration the differentiated protection needs of men and women, boys and girls, adolescents and elderly persons. However, some of these national mechanisms are still at incipient stages of development and require greater human, technical and financial resources to be operative, including training on international refugee law so as to guarantee fair and efficient procedures.

The Cartagena Declaration's refugee definition has been included in the national legislation of a significant number of countries. Nevertheless, during the preparatory process it was observed that there is a need to clarify and specify the criteria for its interpretation, in particular, the restrictive interpretation of the exclusion clauses, the interpretation of the specific grounds and their application in individual cases, using the jurisprudence of human rights organs and tribunals and taking into account the legitimate security concerns of States, through a broad and open dialogue, with a view to systematizing doctrine and state practice.

The enjoyment by refugees of their fundamental rights determines the quality of asylum. The quality of asylum is likewise vital to finding durable solutions to

the plight of refugees. To the extent that refugees find effective protection in a receiving country, they will not be obliged to seek protection in third countries through secondary and/or irregular movements. At the same time, it is necessary for refugees' countries of origin, with the cooperation of the international community, to continue to make efforts to create adequate conditions for the safe and dignified return of its nationals who are refugees.

Taking into account the socio-economic conditions prevailing in the countries of asylum, as well as the distinct profiles of refugees and other persons in need of protection in the region, it is necessary to design and implement creative new policies to facilitate the search for adequate solutions. This requires devising new strategies to achieve self-sufficiency and local integration, both in urban centers as well as border areas, as well as the strategic use of resettlement, in a framework of regional solidarity.

In parallel, it is important to strengthen humanitarian and social programmes in border areas, emphasizing a geographic approach instead of a population approach, so that receiving communities benefit on equal footing with refugees and other persons in need of protection.

CHAPTER TWO THE INTERNATIONAL PROTECTION OF REFUGEES

RESEARCH AND DOCTRINAL DEVELOPMENT:

The preparatory meetings considered it appropriate to acknowledge Latin America's contribution to the progressive development of international refugee law. In this respect, regional instruments such as the Cartagena Declaration on Refugees, the 1948 American Declaration of the Rights and Duties of Man and the 1969 American Convention on Human Rights, as well as the doctrine and jurisprudence developed, respectively, by the Inter-American Commission on Hu-

man Rights and the Inter-American Court of Human Rights have contributed to improve the situation of refugees in Latin America.

In this regard, note is taken of an additional recommendation reiterated in all of the preparatory meetings regarding the strengthening of cooperation among States in the region, as well as between the States and UNHCR, the human rights bodies of the Inter-American system and academic and research institutions in Latin America in the fields of interdisciplinary research, promotion and development of international refugee law.

Within this cooperation framework, it was recommended to initiate a consultative process aimed at clarifying the content and scope of Conclusion III of the Cartagena Declaration on Refugees, in order to strengthen the international protection of refugees in Latin America. In this respect, the development of a Handbook on Procedures and Criteria for Application of the Refugee Definition of the Cartagena Declaration is foreseen.

To deepen knowledge of international refugee law, it is proposed that UNHCR implement the following projects, in cooperation with the human rights bodies of the Inter-American System, as well as research and academic institutions:

- Legal Research Series on “The International Protection of Refugees in Latin America”,
- Handbook on “Procedures and Criteria for Application of the Cartagena Declaration’s Refugee Definition”, and
- Glossary on “Concepts and Legal Terminology of International Refugee Law”.

TRAINING AND INSTITUTIONAL CAPACITY-BUILDING:

The noteworthy efforts of countries in Latin America over the past 20 years to establish an institutional framework to ensure the right to seek and enjoy asylum were

acknowledged throughout the consultation process. However, deficiencies in the asylum systems, which make it more difficult for refugees and asylum-seekers to access effective protection, were also noted.

2.1. With the aim of contributing to a broader knowledge of the normative framework and its effective implementation, as well as facilitating the effective use of domestic legal remedies (administrative, judicial and constitutional) for the protection of the rights of asylum seekers and refugees, thus ensuring the right to seek and be granted asylum, it was agreed to request that UNHCR, in collaboration with the human rights bodies of the Inter-American System, the Inter-American Institute of Human Rights, universities and civil society organizations, and national institutions for the promotion and protection of human rights, develop and implement a “*Latin American Training Programme on International Refugee Protection*”. This Programme will be directed towards State officials and members of civil society “protection networks”. The Programme will entail a rigorous selection of participants, and a teaching methodology combining on-the-job training, distance-learning, self- and on-campus study, along with the development of precise evaluation and impact indicators, and proper follow-up of participants, among other technical aspects.

The Programme would give priority to:

- Presidents, members, legal advisers and interviewers of National Eligibility Commissions;
- State officials at borders and airports (police, military and migration staff)
- Judges, public Attorneys and Prosecutors;
- Professional staff from the national institutions for the promotion and protection of human rights;
- Staff from non-governmental organizations and other civil society institutions participating in national and regional protection networks; and
- Legislators.

2.2. The difficulties faced by National Refugee Commissions or other institutions responsible for refugees in identifying specialized staff, setting up computerized registration systems, as well as the slow pace of refugee status determination procedures or the weaknesses of documentation processes owing, among other reasons, to lack of technical, human or financial resources were also noted. In this regard, States were urged to strengthen established refugee status determination mechanisms, allocating to them more financial resources, and UNHCR was requested to provide training and technical advice.

Recognizing the importance of National Refugee Commissions in guaranteeing effective protection, UNHCR is asked to cooperate with Latin American governments interested in drawing up regional or national projects within the framework and priorities of a “*Programme to Strengthen National Refugee Commissions*”. In this regard, it is necessary to note that the Andean countries that met in Cartagena de Indias on 16-17 September 2004, in the course of the preparatory process, agreed to submit for the consideration of the Andean Council of Ministers of Foreign Affairs the creation of an Andean Committee of Authorities responsible for Refugees.

The consultation process determined that strengthening of the Commissions could aim, *inter alia*, at:

- Guaranteeing respect for due process standards by ensuring asylum-seekers’ access to refugee status determination procedures, establishing effective remedies, taking decisions on claims within a reasonable timeframe and establishing procedures for appealing a decision to an independent body; and
- Simplifying procedures and facilitating the issuance of documentation.

The role of civil society organizations and national institutions for the promotion and protection of

human rights in Latin American in the defense and protection of refugees is widely acknowledged by the governments. This important work is carried out by non-governmental organizations and churches, in a spirit of cooperation with State institutions, including national institutions for the promotion and protection of human rights, with UNHCR and other regional and international protection-oriented institutions. During the preparatory process, recommendations were made to further involve civil society in the design of public policies on refugees and to continue building their capacities.

It is therefore proposed to establish a “Programme to Strengthen National and Regional Protection Networks” to address the needs of non-governmental organizations, churches and national institutions for the promotion and protection of human rights. This Programme could cover the following priority areas:

- Reinforcing legal advice and assistance services for refugees and asylum-seekers with a focus on meeting the specific needs of those seeking such services, whether they be men, women, boys, girls, adolescents, elderly persons, persons with disabilities, indigenous persons or other categories of persons;
- Reinforcing awareness of international refugee law and human rights law;
- Systematizing and disseminating best practices and successful programmes developed by some protection networks; and
- Exchanging experiences among the various protection networks.

The following programmes are suggested within this area of Training and Institution- Building:

- Latin American Training Programme on International Protection of Refugees
- Programme to Strengthen National Refugee Commissions

- Programme to Strengthen National and Regional Protection Networks

CHAPTER THREE DURABLE SOLUTIONS

The preparatory meetings identified operational priorities in the different sub-regions and countries of the region. It was noted that Latin America has a broad tradition of protection and solidarity toward those who have been persecuted and has been able to find solutions for its own refugees within the sub-continent. It was acknowledged that voluntary repatriation is the ideal solution for refugees, as an individual right to be exercised in a voluntary manner in conditions of safety and dignity. Furthermore, the current need to facilitate self-sufficiency and local integration for an increasing number of refugees, and the challenge that this represents to States, was underlined.

The preparatory process reiterated the need for international cooperation, in keeping with the principles of solidarity and responsibility-sharing, as a means to achieve effective durable solutions, as well as to disseminate best practices in the area of durable solutions in the region, promoting south-south cooperation and the creative approach of the 1984 Cartagena Declaration on Refugees.

In view of the current regional context, two situations were highlighted as requiring urgent attention and international support: the situation of growing numbers of urban refugees living in large urban centers in Latin America; and the situation of a large number of Colombian citizens living in border areas between Colombia and its neighbours Ecuador, Panama and Venezuela, most of whom are undocumented and in need of urgent protection and humanitarian assistance, owing to their acute vulnerability.

“SOLIDARITY CITIES” PROGRAMME FOR SELF-SUFFICIENCY AND LOCAL INTEGRATION

Urban refugees hail from a wide range of nationalities, with a small, but growing, percentage of refugees coming from other continents and cultures. These refugees predominantly settle in urban centers and their self-sufficiency and socio-economic integration remain a challenge for the States and civil society, especially given the economic difficulties faced by the countries of asylum themselves. When designing integration projects, it is therefore necessary to bear in mind the difficult situation of host communities.

The preparatory process highlighted the following: a) the political will of governments to facilitate the economic self-sufficiency of refugees; b) the lack of resources and experience of state social welfare institutions to achieve this goal; c) recognition of the work and experience of civil society; d) the need to create strategies appropriate to the reality of the asylum countries and to exchange best practices; and e) the need for international technical and financial cooperation.

The preparatory meetings suggested that, in designing this Programme, due consideration should be given to the region’s socio-economic realities, in terms of unemployment levels, poverty, and social exclusion, as well as to the socio-economic profiles of the beneficiaries. In the same vein, the following broad goals were mentioned:

- Fostering the generation of sources of employment, in particular, the establishment of micro-credit systems;
- Setting up mechanisms for the expedited issuance of documents and simplifying procedures for authentication and recognition of certificates and diplomas issued abroad; and
- Contemplating mechanisms for the participation of civil society and UNHCR in designing, implementing, monitoring and improving integration projects.

The “*Solidarity Cities*” Programme for Self-Sufficiency and Local Integration seeks to mitigate, to the extent possible, so-called “irregular or secondary movements”, but its main aim is to provide effective protection which encompasses enjoyment of social, economic and cultural rights and observance of the obligations of refugees. It would also aim at facilitating the implementation of public policies, within an integrated social strategy, with the technical cooperation of United Nations and civil society organizations, and the financial support of the international community, in order to integrate a number of refugees, to be determined, in a series of “pilot” urban centers in Latin America.

INTEGRATED “BORDERS OF SOLIDARITY” PROGRAMME

In the third sub-regional preparatory meeting, held in Cartagena de Indias, Colombia (16-17 September 2004), representatives of the Governments of Ecuador, Panama and Venezuela indicated that the true magnitude of the refugee problem is not known. In this regard, the 10,000 refugees and 30,000 asylum-seekers in these three countries is likely to represent only a fraction of the total number of Colombian citizens who transit and/or reside in these countries, most of them irregularly, and they also underlined the special plight of provinces and States bordering Colombia.

In light of the situation prevailing in the country of origin, as well as the economic difficulties faced by the receiving countries, it is presumed that a considerable number of Colombians, whether undocumented or in an “irregular” migratory situation, are in need of protection and humanitarian assistance. However, the majority of them remains “invisible” and therefore, vulnerable and marginalized. The hosting countries expressed their will to comply with their international protection obligations but, at the same time, expressed concern about the magnitude of the humanitarian problem whose real dimensions are not yet known.

In order to foster a humanitarian response towards those who are in need of and deserve international protection, and to address basic infrastructure and community services needs, in particular in the areas of health and education, as well as to facilitate employment generation and productive projects, it is necessary to promote the development of border areas through the consolidation of the presence of the State institutions along with specific investments and projects sponsored by the international community.

Government representatives meeting in Cartagena de Indias also mentioned the difficulties faced by local authorities in maintaining basic services in the area of health, sanitation, education and others in view of the overwhelming, and unplanned for, demand. They underlined the compelling need to include local populations as recipients of development aid since these populations are bearing the brunt of solidarity, despite being populations as needy and poor as the refugees themselves.

The preparatory meetings proposed the following priorities in hosting communities in border areas of the mentioned countries:

- Support to implement a programme with the objective of determining in a reliable manner the magnitude and the characteristics of the refugee problem, with a view to identifying protection and assistance needs as well as to propose the most appropriate durable solutions;
- Reinforcement of institutional mechanisms for protection and refugee status determination;
- Implementation of public awareness programmes targeting local populations to prevent negative feelings and all forms of discrimination;
- Formulation of a Regional Strategic Plan to address the protection, basic assistance and integration needs of all of the populations in need, using a territorial and differentiated approach, whose main components could include:

- Promoting social and economic development, benefiting persons who are in need of international protection and local hosting communities alike;
- Taking into account the profile of the uprooted population and local hosting communities living in border areas, composed mainly of rural and agricultural populations, the majority of whom are women and children; and
- Taking due account of the specific protection needs of women and men, ethnic minorities, elderly persons and persons with disabilities.

It was noted that solidarity can only be sustained through active cooperation between the State, civil society and UNHCR, with the financial contribution of the international community, within the framework of responsibility-sharing. The importance of ensuring the participation of civil society in existing and future mechanisms (bilateral, tripartite and international) to consolidate the protection framework for persons in affected border areas, and to analyze the problem of forced displacement in the region, was mentioned. In this regard, participants took note with satisfaction of the proposal made by Brazil to promote the creation of a regional resettlement programme (see paragraph below).

REGIONAL “SOLIDARITY RESETTLEMENT” PROGRAMME

In the preparatory meeting held in Brasília (26-27 August 2004), the Government of Brazil proposed the creation of a regional resettlement programme for Latin American refugees, in the framework of international solidarity and responsibility-sharing. This initiative opens the possibility for any Latin American country, at the opportune time, to participate and to receive refugees who are in other Latin American countries. The announcement of this programme was well received by the countries of the region who currently host an important number of refugees, as a tool to help to mitigate the effects of the humanitarian situation these countries face.

Latin American countries agree upon the importance of establishing resettlement policies that include a framework of principles and eligibility criteria, with due regard for the principle of non-discrimination. Furthermore, based on the experience of Brazil and Chile as emerging resettlement countries, they appeal to the international community to support the strengthening and consolidation of these initiatives, in order to improve and replicate them in other countries of Latin America.

In any case, it is underlined that resettlement, as a durable solution in the region and for the region, should not be viewed as “burden-sharing” but, instead, as a duty deriving from international solidarity, and the need for technical and financial cooperation from the international community for its strengthening and consolidation was reiterated.

CHAPTER FOUR PROMOTION, IMPLEMENTATION, FOLLOW-UP AND EVALUATION MECHANISMS

In order to implement this Plan of Action, a series of activities are foreseen at different levels:

AT THE NATIONAL LEVEL (DURING THE FIRST SEMESTER OF 2005)

To carry out an assessment of the number of persons who could benefit from this Plan of Action as a basis for the formulation of projects within the programmes herein contemplated. Preparation of national projects within the framework of the Plan of Action. Furthermore, countries interested in the “*Solidarity Borders*” programme should present a study on the impact of the presence of asylum-seekers, refugees and other persons in need of international protection in the geographical areas covered by the programme. UNHCR shall provide all of its support and expertise in the formulation of these projects, which will be submitted for the consideration of the international community.

The national institutions for the promotion and protection of human rights will issue a regular evaluation and follow up report on the projects and programmes formulated within the framework of this Plan of Action.

AT THE REGIONAL AND SUB-REGIONAL LEVEL

To organize at least two meetings per year to facilitate the exchange of information and experiences, the design of regional projects and the supervision of the implementation of this Plan of Action, with the participation of governments, the United Nations High Commissioner for Refugees, other UN agencies, the Organization of American States, donors, representatives of civil society, national institutions for the promotion and protection of human rights and experts.

AT THE INTERNATIONAL LEVEL

Within the framework of the Executive Committee of the High Commissioner’s Programme, organize an annual meeting with donor countries and financial institutions, with the participation of civil society, in order to present the Plan of Action programmes and projects and to provide information on their implementation and impact on the beneficiary populations.

Mexico City, 16 November 2004.

BRASILIA DECLARATION ON THE PROTECTION OF REFUGEES AND STATELESS PERSONS IN THE AMERICAS

Brasília, 11 November 2010

The Governments of the participating countries from the Americas: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and the Bolivarian Republic of Venezuela.

Gathered in the city of Brasília to mark the sixtieth anniversary of the Office of the United Nations High Commissioner for Refugees (UNHCR), the sixtieth anniversary of the 1951 Convention Relating to the Status of Refugees and the fiftieth anniversary of the 1961 Convention on the Reduction of Statelessness;

Highlighting the contribution of the Americas to strengthen the protection of victims of forced displacement and stateless persons through the adoption

of multilateral treaties on asylum, statelessness and human rights;

Recognizing UNHCR's work to promote international refugee law and guidelines on forced displacement and statelessness, as well as its supervisory responsibility in the field of refugees and stateless persons;

Acknowledging the progress achieved in caring for and protecting refugees and internally displaced persons, since the adoption of the Cartagena Declaration and the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America of 2004, and addressing the new challenges presented by mixed migratory movements in various regions of the continent, as well as acknowledging the need to revitalize the search for durable solutions with the active participation of these populations, taking into account UNHCR's new policy on refugees in urban areas;

Reiterating the right of every person to seek and be granted asylum and the importance of the right to a nationality, enshrined in the American Declaration of the Rights and Duties of Man of 1948 and the American Convention of Human Rights of 1969;

Reiterating our unrestricted respect for the principle of *non-refoulement*, including non-rejection at the border and indirect *non-refoulement*, as well as for the non-penalization of illegal entry, and non-discrimination, as the fundamental principles of international refugee law;

Recognizing with satisfaction that the existing domestic legislation on refugees and internally displaced persons of the countries on the continent has incorporated gender, age and diversity considerations to respond to the differentiated care and protection needs of men and women, girls and boys, the elderly, persons with disabilities, indigenous peoples and Afro-descendants;

Highlighting the broader scope of the protection accorded by the regional refugee definition, which has been reflected in the domestic legislation of some countries in the region;

Acknowledging the efforts that countries of origin have been making, with support from the international community, to deal with the circumstances that generate movements of people seeking international protection as refugees, and the importance of continuing those efforts;

Underlining the efforts made by receiving countries in the region, even under difficult socio-economic circumstances and faithful to their generous asylum tradition, to continue providing protection to asylum-seekers and refugees;

Underscoring the fundamental contribution made by States, with the support of UNHCR, the donor community, national institutions for the promotion and protection of human rights and civil society organizations, among others, to care for, protect and seek durable solutions for refugees, stateless persons and internally displaced persons;

Reiterating the importance of continuing to make progress in the search for and implementation of durable solutions for refugees and internally displaced persons, through renewed commitment to international cooperation as well as to responsibility sharing in relation to refugees;

Underlining the creative and innovative character of the regional solidarity resettlement programme, implemented by Argentina, Brazil and Chile, joined by Uruguay and Paraguay, as well as the need to consolidate this with the technical and financial support of the international community;

Taking into account the growth and complexity of mixed migratory movements, especially from outside the continent, fostered by transnational networks engaged in smuggling and trafficking in persons;

Taking note of "UNHCR's Refugee Protection and Mixed Migration: A 10-Point Plan of Action", and the recommendations and conclusions of the "Regional Conference on Refugee Protection and International Migration in the Americas: Protection Considerations in the Context of Mixed Migration", held in San Jose, Costa Rica, in November 2009, and the importance of acknowledging the different profiles of persons within migratory movements so as to respond to the specific, differentiated protection needs of refugees, victims of trafficking, unaccompanied/separated children and migrants who have been subjected to violence;

Underscoring the importance of State-led regional consultative migration *fora* as they contribute to the development of safeguards for the care and protection of refugees, victims of trafficking, unaccompanied/separated children and vulnerable migrants;

RESOLVES

1. *To revitalize* implementation of the "borders of solidarity", "solidarity cities" and "solidarity resettlement" programmes of the 2004 Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America, with the support of the international community, as necessary.

2. *To promote* the exchange of good practices and lessons learned throughout the region within the framework of the Mexico Declaration and Plan of Action which could be useful for the care and protection of refugees and internally displaced persons and the search for durable solutions.

PREFACE | MARTA JUÁREZ
INTRODUCTION | ANTÓNIO GUTERRES

I. ORIGIN AND SIGNIFICANCE OF "CARTAGENA+30"
INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II. THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

III. MEETING COMMEMORATING CARTAGENA +30
OPENING CEREMONY
AGENDA
SPEECHES
LUIZ ALBERTO FIGUEIREDO MACHADO | ELEONORA MENICUCCI
EDUARDO CARDOZO | ANTÓNIO GUTERRES
JAN EGELAND | CÂNDIDO FELICIANO DA PONTE NETO
IV. THE PATH TO CARTAGENA
CIVIL SOCIETY'S PRESENTATION | SALLY VALLADARES

V. ADOPTION OF THE BRAZIL DECLARATION AND PLAN OF ACTION
SPEECH | PAULO ABRÃO
BRAZIL DECLARATION
BRAZIL PLAN OF ACTION
VI. CLOSING CEREMONY
SPEECHES
MARTA JUÁREZ | ENRIQUE TORELLA
ANTÓNIO GUTERRES | CARLOS ANTONIO DA ROCHA PARANHOS

VII. PARTICIPANTS
EPILOGUE | CARLOS MALDONADO
VIII. APPENDICES
CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010

3. *To recommend* applying the Mexico Plan of Action as the regional framework to address new challenges related to the identification and the protection of refugees in the context of mixed migratory movements.

4. *To recognize* the importance of achieving durable solutions for refugees and, in particular, the need to address the fundamental root causes of refugee displacement, in order to avoid new refugee flows.

5. *To promote* accession in the hemisphere to the international instruments for the protection of refugees and, in this regard, to call on States that have not yet done so to consider speedy accession to these instruments.

6. *To consider* the possibility of adopting appropriate national protection mechanisms to address new situations not foreseen by the international instruments for the protection of refugees, giving due consideration to the protection needs of migrants and victims of trafficking, including whether they are in need of international protection as refugees.

7. *To urge* countries in the Americas to consider acceding to the international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and strengthening national mechanisms for comprehensive birth registration.

8. *To promote* the values of solidarity, respect, tolerance and multiculturalism, underscoring the non-political and humanitarian nature of the protection of refugees, internally displaced persons and stateless persons, and recognizing their rights and obligations as well as their positive contributions to society.

9. *To recognize* the importance of greater opportunities for regular migration and policies that respect the human rights of migrants, regardless of their migration status, for preserving the space for refugee protection.

10. *To promote* assessment of the protection needs of separated or unaccompanied children, including their need for international protection as refugees, and the establishment of national mechanisms for the determination of the best interests of the child.

11. *To thank* the Government and the people of Brazil for their initiative to hold this meeting and their generous hospitality and solidarity.

12. *To approve* the present Declaration as the “Brasilia Declaration” and disseminate its contents as a contribution of the region to the commemorations organized by the Office of the United Nations High Commissioner for Refugees (UNHCR).



Young colombian refugees celebrate World Refugee Day at the Plaza San Francisco, Quito, Ecuador.
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Cover photo:
A refugee family in Peru
UNHCR / C.UGARTE

Back cover photo: Ministerial Meeting commemorating the 30th Anniversary of the Cartagena Declaration on Refugees. Memorial JK, Brazil.
ACNUR / B. BARATA

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INFORMATION PAPER
SPEECH | ANTÓNIO CANÇADO TRINDADE

II THE CARTAGENA+30 SUBREGIONAL CONSULTATIONS
MERCOSUR
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
ANDEAN COUNTRIES
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
MESOAMERICA
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY
CARIBBEAN
AGENDA | DISCUSSION PAPER | CONCLUSIONS AND RECOMMENDATIONS | POSITION OF CIVIL SOCIETY

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CARTAGENA DECLARATION | 1984
SAN JOSE DECLARATION | 1994
MEXICO DECLARATION AND PLAN OF ACTION | 2004
BRASILIA DECLARATION | 2010