



# CARTAGENA +30

International protection  
and effective integration:  
recomendations from  
civil society for the current  
state of asylum and  
statelessness in  
Latin America and the Caribbean

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# Index

<b>Executive summary</b> .....	5
Recommendations.....	9
<b>Introduction</b> .....	12
<b>1. The Cartagena Declaration: A milestone in international protection in the Americas</b> .....	14
<b>2. Current sociopolitical issues affecting humanitarian space and work in the region</b> .....	18
Forced displacement in the region: Violence and internal conflict.....	18
Megaprojects.....	22
Natural disasters.....	23
Femicide and gender-based violence .....	24
Unaccompanied immigrant children and adolescents.....	25
Human rights defenders.....	27
Mixed extracontinental migration flows.....	28
<b>3. Challenges and best practices for international protection in Latin America and the Caribbean</b> .....	29
Access to asylum and the quality of refugee status determinations.....	30
Borders, mixed migration flows and identification.....	30
Fair and efficient refugee status determinations:	
Contributions to the harmonization of regional regulations.....	34
Administrative detention and the dilemma of stations/shelters/ migrant centers.....	40
A permanent necessity: Continuous training for government officials.....	43
Towards integration and creation of opportunities: Economic, social and cultural rights without discrimination.....	45
The importance of documentation for effective protection.....	45
The right to work.....	48
The right to health.....	50
The right to education.....	51
The right to housing.....	53
Non-discrimination: A challenge in integration.....	54
Access to permanent residence and naturalization.....	55

<b>4. The situation of stateless persons in Latin America and the Caribbean.....</b>	<b>57</b>
<b>5. Coordination between government institutions, international organizations and civil society.....</b>	<b>59</b>
<b>6. Recommendations: A new framework for international protection based on solidarity, diversity, harmonious coexistence and social justice.....</b>	<b>61</b>
<b>7. Organizers .....</b>	<b>64</b>
<b>APPENDIX 1. Methodology for the preparation of the document.....</b>	<b>75</b>
1. Interviews with participating civil society organizations and reports produced.....	75
2. Focus groups or participatory assessments of refugees, the internally displaced and the stateless population.....	76
Focus groups.....	77
<b>APPENDIX 2. The Cartagena Declaration and its regional application.....</b>	<b>80</b>
Countries that directly incorporate the Cartagena.....	80
Countries that incorporate elements of the Cartagena definition.....	82
Countries that do not incorporate elements of the definition Cartagena.....	83

## Executive Summary

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

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

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

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

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

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

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

**1. Access to asylum and the quality of procedures for determining refugee status,** which must be evaluated both in terms of fulfilling regional and international standards and how the procedure works in practice – it is important to note the decline in rates of granting refugee status in some countries of the region. The document highlights the commitment made by the MERCOSUR states, set out in MERCOSUR's Declaration of Principles on International Protection of Refugees, in which the states take responsibility for adopting common measures to allow the identification of persons in need of international protection in the context of the growth and complexity of mixed flows. Likewise, it notes the approval of the "Regional guidelines for the preliminary identification of vulnerable migrants" in the XVIII Vice-Ministerial Meeting of the Regional Migration Conference in June 2013.

**(a)** A common concern in the countries analyzed is the dichotomy between national security and international protection, particularly observed in the border controls (land, sea and air). This is one of the main challenges facing the region. States have a legitimate interest in the area of national security but this should include their obligation to provide international protection to persons who for various reasons require it within the framework of due process.

**(b)** In practice there are big discrepancies in the application of the rights enshrined in national legislation

with regard to fair and efficient procedures in the refugee status determination process and respect for the right of non-return. The challenges for provision of a fair process include: admissibility procedures, the short time period for claiming asylum, lack of advice and legal representation, inadequate interviews, limitations on the right to review or appeal, and long waits to receive responses to a claim. It is fundamental that legal authorities in the region take a more active role and strengthen the issuance of judicial tools and opinions with a human rights focus, which consolidate the paradigm shift that recognizes those subject to international protection as rights subjects.

**(c)** Legal norms and government policies and practices that endorse the detention of persons for migratory reasons, often because of an irregular migratory situation, persist in the region. In the most serious cases, the power to detain and criminally penalize irregular migration exists, as in the case of Belize. In other cases, such as Mexico, Costa Rica, Guatemala, Ecuador and Honduras, the deprivation of liberty by administrative-migratory means is enabled or endorsed, and in some cases, detention for migratory reasons is practiced in a discretionary manner in police stations or other spaces that do not meet minimum accommodation conditions.

**(d)** A permanent challenge for the exercise of the rights of asylum-seekers and refugees, which has a bearing on the points described above, is the availability of officials trained in matters of refuge and human rights at the border points of entry, in the different dependencies that provide public services and particularly in the bodies that adjudicate refugee status. This, without doubt, is a great challenge that has been indicated throughout the interviews and focus groups in the region. While efforts exist to provide training to officials, the challenge is to convert professional formation into a permanent, continuous and sustainable activity.

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

**(a)** The documentation granted to asylum-seekers and refugees is a subject of great concern for civil society organizations and people under international protection in almost all participating countries, with the exception of Uruguay. In Uruguay, the identity document granted to refugees and asylum-seekers does not include the term refugee and is the same document received by any national or foreigner, avoiding discrimination and limitations on the exercise of their rights.

**(b)** In many countries, the refugees' right to work is incorporated into legislation. However, the real challenge is the access to the labor market and conditions of employment. The first issue identified is the difference between asylum-seekers and refugees. With regard to asylum-seekers, this right is granted in Ecuador, Uruguay, Argentina, Costa Rica and Brazil. In other cases, for example in Guatemala, Panama, Mexico and the Dominican Republic, asylum-seekers are barred from working until their refugee status is recognized. During the waiting period, which can last months or even years, the person is forced to carry out informal economic activities, often falling victim to labor exploitation.

(c) Access to the free public health system for asylum-seekers and refugees is guaranteed in almost all the countries. That is, a guarantee exists of primary care in health centers of the state network and, in many cases, there are also specific support programs for people with serious illnesses, such as cancer, and other specific programs for people with disabilities.

(d) While barriers exist in some countries with regard to access, recognition of qualifications and other issues, the refugee population has access to free public education in Argentina, Brazil, Uruguay, Ecuador, Mexico, Venezuela, Panama, Guatemala, El Salvador, Costa Rica and Nicaragua, in some cases even during the process of determining eligibility for refugee status. Likewise, in Argentina, Ecuador, Uruguay and Brazil university education is guaranteed. Costa Rica also guarantees this, but the person must have his/her degree qualifications legalized in his/her country of origin or duly notarized.

(e) Finding accessible housing in good condition and in safe neighborhoods is a challenge for asylum-seekers and refugees in the countries analyzed. Some of the difficulties experienced by the refugee population in finding decent housing in Mexico, Panama, Venezuela, Ecuador, Brazil and Costa Rica are the payment of rent in advance, excessive monthly payments and deposits due to their nationality and/or migratory status and the non-return of deposits on the threat of deportation or reporting to the migratory authorities. The refugee population sometimes chooses to live in areas that are seriously disadvantaged economically, putting their personal safety at risk.

(f) Discrimination towards the population under international protection is a phenomenon present in most of the countries consulted. Citizens of receiving countries are unaware of the reasons that lead a person to claim asylum and associate them with criminals and those linked to political issues.

(g) Permanent residence and naturalization are available as durable solutions in almost all the countries. However, the challenge lies in the cost of the processes, which limits their use.

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

## RECOMMENDATIONS

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

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

the countries. It is important, as civil society, to monitor that the recommendations that emanate from this process are supported and implemented by government bodies, with the help of the production of reliable and comparable official statistics in each of the countries.

**7.** Encourage dialogue and the effective participation of claimants and refugees themselves, with the aim of taking coordinated action to strengthen and integrate them.

**8.** Develop regional strategies to institutionally strengthen and promote strategic decentralization of the national commissions responsible for granting refugee status through systematic training of their officials on a regional scale and the exchange of experiences to fulfill regional and international refugee standards, with a view to achieving full autonomy for agencies or institutions responsible for migration management (whose approach is normally instrumental) and which in general are in the ambit of ministries with a heavy emphasis on security.

**9.** Unrestricted respect for the principle of non-detention for migratory reasons, even as a measure of last resort, since in general terms it is a violation of human rights which in turn conditions the possibility of petitioning for asylum. As various studies have shown, people detained who could claim asylum prefer not to do so in order not to spend any more time in detention.

**10.** Guarantee the application of the best interests of asylum-seeking, stateless or refugee boys, girls and adolescents, ensuring they have adequate treatment that is sensitive to gender and to all the factors that make their migratory experience different.

**11.** Adopt the regional commitment to issue an identity document for refugees, asylum-seekers and stateless persons that guarantees the exercise of rights, equality of opportunities and non-discrimination, and that does not include reference to the person's status. The quality of documentation is closely linked to the success of the integration process, its low-cost accessibility and the definitive regularization of stay in the country.

**12.** Guarantee that the population under international protection benefits from established state programs and subsidies (health, employment, and housing) on equal terms, with the aim of guaranteeing the inclusion of the asylum-seeking, refugee and stateless population in obligatory services without discrimination. Likewise, local integration (legal, socioeconomic and cultural), naturalization, voluntary repatriation and the strategic use of resettlement should be promoted.

**13.** Develop strategies for access to employment, professional training and support to productive enterprises (including credit) within the framework of government programs at various levels and of private initiative, which allow integration and fight precarious employment and labor exploitation, in line with efforts already carried out by some governments in the region.

**14.** States should assign greater human and financial resources, and guarantee that these are not reduced, for the agenda of protection and attention to asylum-seekers, refugees and stateless persons, guaranteeing that these activities are planned and carried out jointly (government, civil society and international organizations).

**15.** Strengthen services for guidance, complaints and claims of discrimination and human rights violations, including help and compensation to victims and their families. Strengthen the coordination and role of ombudspersons and/or public defenders.

**16.** That states which still have not done so should consider signing and/or ratifying the international instruments on statelessness, so that the American continent advances determinedly towards the eradication of this phenomenon in the next decade.

## Introduction

The 30th anniversary of the Cartagena Declaration represents an opportunity to reflect and analyze the present advances and challenges of international protection and effective integration of refugee populations, asylum seekers and stateless persons in the region. The document *Cartagena Initiative +30* is the result of the efforts of several organizations and persons subject to international protection in 14 countries in the region. It proposes strategies for cooperation within the framework of shared responsibility and solidarity a particularly important exercise as we advance regional integration.

This document supports the long tradition of consolidation in offering international protection by adopting recommendations to help make protection of rights and effective integration of refugees, asylees and stateless persons a reality in Latin America and the Caribbean. This is the vision of our region and the affirmation of our commitment to confront this challenge. This document proposes ways to encourage a dialogue that allows us to meet the goals of international protection in the region during the next ten years. It has been constructed from an exchange of various actors and addresses the current situation of asylum and statelessness in a transparent way.

The document is based on the interviews and findings of leading regional organizations in protection and social inclusion. It also includes information derived from focus groups of persons currently benefiting from international protection in Mexico, Guatemala, Nicaragua, Honduras, Costa Rica, El Salvador, Panama, Belize, the Dominican Republic, Venezuela, Ecuador, Brazil, Uruguay and Argentina.<sup>1</sup> Their input was compiled to identify the current needs of international protection in the region and to identify common government challenges in practice and implementation.

The document starts with a review of the evolution of protection granted to refugees, asylees and stateless persons in Latin America and the Caribbean. It evaluates the development of norms that have given the region its uniqueness. It examines subjects like the Cartagena Declaration and recent developments in the Inter-American System. The document also provides a survey of the challenges facing humanitarian concerns in the region such as violence, organized crime and internal displacement in Central America and Mexico. It also surveys the enduring internal conflict in Colombia which is characterized by systematic human rights violations. It analyzes the reality of forced displacement as a result of: megaprojects, natural disasters, gender based violence, persecution of human rights defenders, unaccompanied immigrant children and the mixed flows of extracontinental migration and their special needs.

The document then analyzes the challenges and good practices in: (1) access to asylum and refugee status determination in the fulfillment of regional and international standards, as well as the procedures involved. It is

1 See Appendix 1: Methodology for the preparation of the document.

important to note the reduction in the recognition rate of refugee status in some countries in the region,<sup>2</sup> (2) the integration and the creation of opportunities, without discrimination, for persons subject to international protection (economic, social and cultural rights), and (3) the situation of statelessness, primarily noted by organizations from the Caribbean, in particular in the Dominican Republic. This issue urgently requires inclusion in our regional agenda.

In the first section, the following common topics were determined to be of importance in the analyzed countries; (a) borders, mixed migration flows and proper identification of populations in need of protection, (b) due process during the refugee status determination process, (c) administrative detention and the impact of detention centers or migrant shelters, (d) and the need for training of officials to provide effective protection. Emphasis is given to the commitment assumed by States that are parties to MERCOSUR, identified in The Mercosur Declaration of Principles on International Refugee Protection,<sup>3</sup> in which these states adopted measures for the identification of persons in need of international protection due to the complexity and increase of mixed migration. Likewise, the approval of Regional guidelines for the preliminary identification of vulnerable migrants of the XVIII Vice-Ministerial Meeting of the Regional Conference on Migration in June, 2013.<sup>4</sup>

In the second section, the analysis is focused on; (a) the role of documentation in the effective exercise of rights, (b) access to employment, (c) the right to health, (d) the right to education, (e) the right to housing, (f) the impact of discrimination on those subject to international protection laws and (g) and permanent residence and naturalization as durable solutions. Many examples of good practices in the region regarding the right to work, housing programs and access to education serve as a testament that current challenges can be overcome.

The third section underscores the long tradition of the prevention of statelessness in the region. There is discussion of the current situation in the Dominican Republic, with the expatriation of thousands of persons whose family members were immigrants of Haitian descent and lived in the country between 1929 and 2007. This has created the most serious case of statelessness in the Americas, a subject that is of great concern for the entire region.

The document then tackles the importance of collaboration between civil society organizations, governments and the UN High Commissioner for Refugees (UNHCR) in order to provide concrete and viable strategies for public policies that align with the tradition of international protection in the Americas. The multidimensional and multisectional nature of forced migration and challenges of protection require strengthening mechanisms of coordination between the various stages in the process.

Finally, the recommendations offered are based on current best practices in the region as identified by civil society and the populations in need of international protection. The goal of these recommendations is to advance a productive discussion with our governments and the UNHCR. We also hope to come to agreements that will be integral in creating viable strategies for international protection, with concrete accords and tripartite follow-up mechanisms, which can help guarantee regional protection for refugees, asylees and stateless persons.

2 The phenomenon has been observed in Mexico, Costa Rica and Ecuador (See section 3 of this report).

3 The Mercosur Declaration of Principles on International Refugee Protection 2012, at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2013/9079> [viewed: January 26, 2014].

4 At the conference the vice ministers and heads of the delegations from Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic participated.

# 1. The Cartagena Declaration: A milestone in international protection in the Americas

Latin America has been characterized as a pioneer in the protection of the right to asylum for persecuted individuals. In early 1889, the Regional Treaty on International Penal Law established that asylum is an inviolable norm for politically persecuted persons. It included concepts such as the apolitical humanitarian and inviolable nature of asylum.<sup>5</sup> During the second half of the 20th century, the right to the asylum in the region proved to be insufficient due to the pressure and demands for asylum as a result of the Cuban Revolution in 1960. This insufficiency was again evident during the repression against political opposition in the military dictatorships of the Southern Cone in the seventies. During this period, countries in the region requested the cooperation of the UNHCR, and there was a generalized ratification of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.

Later, with the civil wars in El Salvador, Guatemala and Nicaragua in the eighties,<sup>6</sup> the region once again established its progressive approach in its manner of addressing the crisis and reaching a regional consensus. This enabled the development of a regional framework of protection, which was adaptable to the needs confronted by the refugees and internally displaced persons in the region. These efforts materialized in the Cartagena Declaration (1984), which extended the definition of a refugee to include persons fleeing widespread violence and massive violations of human rights to guarantee protection without having to establish a founded fear of persecution.

The Cartagena Declaration was preceded by the Colloquium on Asylum and the International Protection of Refugee in Latin America held in Mexico in 1981. In its conclusions it declared that:

In Latin America it is necessary to extend the protections that universal and Inter-American instruments grant refugees and asylees, to all those who have fled their country of origin due to aggression, occupation, or foreign domination, massive violations of human rights, or events that seriously alter public order, in all or part of the country.<sup>7</sup>

With minor modifications, this conclusion was used in the extended definition of refugees in the Cartagena Declaration.

5 Francisco Galindo Vélez, "El asilo en el Sistema de las Naciones Unidas y en el Sistema Interamericano", in *Compilación de instrumentos jurídicos regionales relativos a derechos humanos, refugio y asilo, tomo II, México*, United Nations High Commissioner for Refugees (UNHCR)/Comisión Nacional de los Derechos Humanos (CNDH)/Universidad Iberoamericana, 2002, 2a. ed.

6 Leonardo Franco y Jorge Santistevan de Noriega, "La contribución del proceso de Cartagena al desarrollo del Derecho Internacional de Refugiados en América Latina", 2004, in *La protección internacional de refugiados en las Américas*, Quito, UNHCR/OACDH-Ecuador, 2011, p. 91.

7 Conclusión No. 4, idem, p. 120.

The Cartagena Declaration reaffirmed the principle of non-refoulement, which is to not return someone to their country of origin when that person faces grave dangers to their life or freedom due to their race, religion, nationality, social group or political opinions. It urged the signatory states to implement minimal standards for the treatment of refugees in accordance with the norms of the 1951 Convention and the 1967 Protocol.

As a result of the Cartagena Declaration and the Esquipulas Peace Agreements, a new process began with the International Conference on Central American Refugees (CIREFCA), the Declaration of San Jose of 1994 and the Mexico Plan of Action of 2004.

The Declaration of San Jose emphasizes the complementary character and the convergences between the systems of protection established in international refugee, human rights and humanitarian law, and how to apply these laws to existing norms with refugees and internally displaced persons.<sup>8</sup> It also seeks to find lasting solutions in the prevention of conflicts and humanitarian crises, voluntary repatriation and the return of internally displaced persons with safety guarantees.<sup>9</sup>

With the Declaration and Mexico Plan of Action to Strengthen the International Protection of Refugees in Latin America (2004), the governments in attendance took concrete steps toward collaboration and protection. They also recognized the importance of strengthening national and regional protection networks for state and international organizations as well as civil society and the Inter-American System. The Plan of Action supported the establishment of a regional resettlement program as a demonstration of regional solidarity. In the same spirit, the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2010) invites countries to continue their tradition of finding ways to provide for the needs of refugees and the displaced in the Americas.

The definition of a refugee in the Cartagena Declaration is based on the doctrine of the Inter-American Commission on Human Rights.<sup>10</sup> The Inter-American System has formed a fundamental and complementary role in the protection of refugees and internally displaced persons. It is important to note that in the 1948 American Declaration of the Rights and Duties of Man, it was already declared in Article XXVII that: "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements." and later the 1969 American Convention of Human Rights confirmed: "Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being persecuted for political offenses or related common crimes." (Art. 22.7).

Although the definition of a refugee in the Cartagena Declaration explicitly references armed conflicts, generalized violence and massive violations of human rights, in recent investigations the UNHCR has confirmed that the 1951 Convention applies when analysis identifies that persons or groups are fleeing discrimination due to race, ethnicity, religion, political affiliation, gender or social group. This applies both in war and in cases of widespread violence. This is because, in both cases, a person may be forced to flee due to a well-founded fear of persecution as defined in

8 Memoria del vigésimo aniversario de la Declaración de Cartagena sobre los Refugiados (1984-2004), San José, Editorama, 2005, p. 111-112, at: <http://www.acnur.org/index.php?id-pag=3728> [visited: February 3, 2014].

9 Antônio Augusto 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: Memoria del Vigésimo Aniversario de la Declaración de Cartagena sobre los Refugiados (1984-2004), op. cit., p. 147.

10 Juan Carlos Murillo González, "La protección internacional de los refugiados en el Sistema Interamericano de Derechos Humanos", Informe: Sesión especial sobre temas de actualidad del derecho internacional de los refugiados, Washington, Consejo Permanente de la Organización de los Estados Americanos, 2008.

the 1951 Convention.<sup>11</sup> On a positive note, while Costa Rica and Venezuela have not included the broader definition of a refugee found in the Cartagena Declaration in their national law, they have adopted expanded interpretations of the definition of a refugee include persons who have fled due to armed conflict and general violence, like that experienced in Central America and Colombia.<sup>12</sup> Nevertheless, in Costa Rica, there is a drop in the recognition rate of this interpretation, which has limited its application, especially in cases from Colombia.<sup>13</sup>

*Some states apply restrictive interpretations of the 1951 Convention in protecting these particular refugee populations. States argue that a high level of individualized persecution is required for a person to be recognized as a refugee. In reality there is no element of individualized persecution mentioned in the 1951 Convention. This is the result of the erroneous juxtaposition between an individual “well-founded fear of persecution” in the 1951 Convention’s definition of a refugee, and the regionally recommended definition of “widespread violence” in the 1984 Cartagena Declaration. The restrictive application of this definition has no basis in international refugee law, and it prevents the intent behind the regional definition from serving its purpose to extend international protection to additional groups in need of such protection. Contrary to those who maintain these restrictive interpretations, even individuals fleeing from contexts of conflict and violence may simultaneously constitute a group being persecuted for one of the reasons cited in the definition of a refugee in the 1951 Convention.<sup>14</sup> As Vanessa Holzer wrote in her report published by the UNHCR:*

The wording of the 1951 refugee definition also does not support an interpretation that is more restrictive in providing protection during peacetime. The 1951 Convention’s object and purpose warrant an inclusive and dynamic interpretation that provides protection to people fleeing armed conflict and other situations of violence without confronting them with higher hurdles.<sup>15</sup>

Aside from defining who refugees are in the region, the Inter-American System has used many tools to ensure their protection. Its General Assembly has published resolutions (currently twice a year) where it urges member states to respect the rights of refugees in accordance with international or regional laws.<sup>16</sup> In the resolutions of the General Assembly, Inter-American Commission and the Inter-American Court there is a preservation of the right of non-refoulement and the right to request and be granted asylum. The Court, through its contentious jurisprudence and advisory opinions, has issued seventeen legal opinions that can be applied in analysis for the protection of refugees.<sup>17</sup>

11 In the director of the UNHCR’s recent pronouncement before the ExCom’s 64th session in 2013, he refers to this new vision with respect to the 1951 Convention to individuals who flee from armed conflicts and other violent situations. See: Volker Türk, 64th Session of the Executive Committee of the High Commissioner’s Programme: Agenda Point 5(a). Geneva, UNHCR, 2013, at: <http://www.unhcr.org/524d26059.pdf> [visited: February 10, 2014].

12 Vanessa Holzer, *The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence*, Legal and Protection Policy Research Series, UNHCR, Division of International Protection, Geneva, 2012, p. 12, at: <http://www.unhcr.org/504748069.pdf> [visited: January 30, 2014].

13 In the case of Costa Rica, the drastic reduction in the rate of the recognition of refugee status in the country has been followed with concern; however, regarding the situation of the Northern Triangle of Central America, there is the consideration to be appreciated that some asylum seekers from El Salvador and Honduras have been recognized. This, at least in the first stage of proceedings, seeing as resolutions in the second are unheard of, and are thus recorded correspondingly. Informe de Costa Rica sobre Cartagena +30, Costa Rica, ACAI, San José, 2013.

14 Vanessa Holzer, op. cit., p. 5.

15 Ibid., p. 43.

16 For more information about the General Assembly’s resolutions on refugees, consult *Refugiados*, Departamento de Derecho Internacional, Organización de los Estados Americanos, at: [http://www.oas.org/dil/esp/refugiados\\_resoluciones.htm](http://www.oas.org/dil/esp/refugiados_resoluciones.htm) [visited: February 3, 2014].

17 To see a list of contentious cases and the court opinions, refer to: Alto Comisionado de las Naciones Unidas para los Refugiados, “Protección de refugiados y solicitantes de asilo en el Sistema Interamericano de Derechos Humanos”, at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/2869> [visited: February 3, 2014].

In November 2013, the Inter-American Court of Human rights issued a decision in the case “Family Pacheco Tineo vs. the Plurinational State of Bolivia ”which outlined the scope of the right to apply and receive asylum, the principal of non-refoulement and due process during refugee status determination. It also informs of the right to judicial protection through instruments such as habeas corpus, that are speedy, adequate and effective in order to address possible violations of the right to receive asylum and the principle of non-refoulement.<sup>18</sup> Undoubtedly, all these contributions show the possibilities available in international protection in Latin America and the Caribbean.

18 Corte Interamericana de Derechos Humanos (CIDH), Caso Familia Pacheco Tineo vs. Estado Plurinacional de Bolivia, OEA, 2013, at: [http://www.corteidh.or.cr/docs/casos/articulos/resumen\\_272\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_272_esp.pdf) [visited: February 11, 2014].

## 2. Current sociopolitical issues affecting the humanitarian space in the region

### Forced displacement in the region: Violence and internal conflict

One of three identified factors that contribute to internal displacement in Central America is violence committed by transnational organized crime.<sup>19</sup> A 2012 study by the Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM) regarding organized crime indicates that this “manifests itself in form of extortions, homicides, forced recruitment, strategic control of territories, the terror instilled in the population, the increase in rates of violence (historically high in these states), and the collusion and weakening of the structures of the state.”<sup>20</sup>

These factors are particularly present in the three countries that form the Northern Triangle (El Salvador, Guatemala and Honduras). They share a history of conflict and sociopolitical alliances<sup>21</sup> which lasted until the decade of 1990s and which have had a profound effect on the current social, political and economic situation of the region. The three countries have relatively new constitutions from 1993, 1986 and 1982, respectively. The most recent political crisis in the region came from Honduras in 2009 after a military coup. The coup plunged the country into a democratic crisis and has increased violence, inequality and social exclusion.<sup>22</sup>

After the end of the armed conflicts and attainment of relative political stability, in these last decades the region has seen a transformation in its political, judicial and social institutions. This has translated into modest advances in regards to human rights. However, the slow growth and institutional weaknesses like corruption, impunity and the lack of access to justice still persist and are of concern. Crime and violence are issues that infringe upon the human rights of the citizens of these Central American countries. According to the Organization of American States (OAS),<sup>23</sup>

19 Gabriela Rodriguez Pizarro, *Estudio: Tendencias migratorias, pautas y marcos legales de migración en América Central*, Iniciativa Nansen – Consulta Regional en America Central, 2013, p. 3. The other factors identified in the study are: (1) structural factors like poverty, socio-economic barriers and social exclusion and (2) unexpected natural disasters and the effects of climate change visible in the slow degradation of the environment. The latter is discussed in this document.

20 CIDEHUM, Diagnostic “Desplazamiento forzado y necesidades de protección, generados por nuevas formas de violencia y criminalidad en Centroamérica”, 2012, p. 6.

21 El Salvador: 1980-1992 Civil War which cost approximately 75,000 lives; Guatemala: armed conflicts from 1960 to 1996 which produced more than 200,000 deaths and created about a million refugees; Honduras in 1969, El Salvador and Honduras faced an armed conflict lasting 4 days and took the lives of 10,000 people and the displacement of Honduran territory of approximately 100,000 Salvadorian undocumented migrants. During the 1980s, Honduras was an ally of the Salvadorian government in the fight against the guerrilla.

22 PCS- Project Counseling Services, *Mapeo de actores sociales de la migración en Mesoamérica: Desafíos organizativos y oportunidades de incidencia, Guatemala: 2011 [updated edition]*, p. 21.

23 Organization of American States (OAS), *Report on Citizen Security 2012: Official Statistical Information on Citizen Security Provided by the OAS Member States*, 2012.

the crime rates in the Northern Triangle of Central America in 2010 were the highest in Latin America.<sup>24</sup> Honduras has the highest homicide rate with 81.9 per 100,000 inhabitants, followed by El Salvador and Guatemala with rates of 64.7 and 41.5 per 100,000 inhabitants, respectively. The current situation has led to grave violations of the rights to life, liberty, and personal security for local and foreign individuals.

It is important to mention that this crisis is both the cause and result, among others, of the high levels of corruption and impunity. The justice system faces many challenges especially in addressing felonies committed by organized criminal actors like drug trafficking and gang-related activity. There is a lack of a proper state mechanism to address the investigation and prosecution of such crimes, as well as some corrupt state actors who collaborate with organized criminal actors. According to the World Bank,<sup>25</sup> Honduras received 63,527 criminal complaints in 2006, of which 49,198 were submitted for investigation and only 1,015 (1%) ended with conviction. Furthermore, underreporting is considered an important problem in the region due to inhabitants' low level of trust in the justice system and their fear of retaliation from organized criminal actors.

Additionally, the violence associated with gangs in Mexico and Central America, as Saskia Sassen maintains, does not come from conflicts among gangs, but due to the armed conflict that the region is enduring. In early 2003, the offices of the UNHCR and the Comisión Mexicana de Ayuda a Refugiados (COMAR) of Mexico, relocated their Chiapas sites from Comitán to Tapachula and received forty-three requests for asylum, of which eighteen were due to issues with the Mara gang. Individuals were physically harmed by either former Mara members or by groups of Mara members in their place of origin<sup>26</sup>

Diego Lorente, from the Centro de Derechos Humanos Fray Matías de Córdova in Mexico, describes the manner in which the violence in Central America generates more human movement in search of international protection toward Mexico:

The situation of physical and political violence, mainly in the Northern Triangle of Central America—Honduras, El Salvador, and Guatemala—is deteriorating in such a way that there are continually more individuals who have been directly affected, and have begun to come to Mexico seeking refugee status. This is something that did not happen previously. People did come in great numbers, but the majority were not considered deserving of the possibility to apply for asylum.<sup>27</sup>

Throughout the history of politics regarding immigration and transmigration in Mexico, there have been various key moments. However, this history may be summarized as a gradual trend towards the control, restriction and reduction of individuals' rights and liberties, which they argue is in the interest of the preservation of "national security". No attention is paid to the security of the very migrant or refugee at any point. In regards to the asylum and protection of international refugees, Mexico had a policy known as "open arms" for refugees of the Spanish Civil War and the victims of the dictatorships of the Southern Cone in the 70s. Yet it was less open or accepting of Central

24 The rate of homicides in Central America was 43.3 per 100,000 inhabitants in 2010, compared to the rate of about 21.1 for 100,000 for South America.

25 World Bank, *Crime and Violence in Central America – A Development Challenge*, 2011, p. iii, at: [http://siteresources.worldbank.org/INTLAC/Resources/FINAL\\_VOLUME\\_I\\_ENGLISH\\_CrimeAndViolence.pdf](http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf)[http://siteresources.worldbank.org/INTLAC/Resources/FINAL\\_VOLUME\\_I\\_ENGLISH\\_CrimeAndViolence.pdf](http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf)

26 Hugo Ángeles Cruz & Santiago Martínez Junco, "Violencia social y pandillas. Las maras en la región fronteriza del Soconusco, Chiapas," in Daniel Villafuerte Solís & Xóchitl Leyva Solano (coords.), *Geoconomía y geopolítica en el área del Plan Puebla-Panamá*, Mexico, Chamber of Deputies/CIESAS/Miguel Ángel Porrúa, 2006, p. 276.

27 Diego Lorente, CDH Fray Matías de Córdova, Mexico. Personal Interview, November 22, 2013.

American refugees in the 80s. Now it has a policy of restrictions and is not effectively granting due process to the current influx of refugees.

However, while **Mexico** is gradually becoming a destination country for many people from the Northern Triangle of Central America, it is also experiencing internal displacement and violence. Project Counseling Services (PCS), in its analysis of the political dynamics of Central America, asserts:

[...] the social, political, and economic conditions which have caused the current inequality in these countries—and have favored discrimination, exclusion and the consequential forced migration—are similar in many instances. They persist in all Central American countries and are comparable in many ways with Mexico.<sup>28</sup>

Recently, Mexico has experienced transformations within its political, judicial and social institutions that in the last decade have translated into modest advances in regards to human rights. However, the slow growth and persisting practices are concerning. The “war against drug trafficking” began during the six-year administration of President Felipe Calderón. It is characterized by general violence that has taken the lives of at least 70,000 people<sup>29</sup> and caused severe violations to the rights to life, liberty and security of Mexicans and foreigners within the country’s territory. The justice system faces great challenges, particularly in relation to crimes committed by organized crime, the authorities, and armed forces.

In **Colombia**, the internal armed conflict as well as systematic and continuous human rights violations persist. This causes the displacement of populations to other cities within the country or to other countries in the region. Between 1985 and 2013, the Colombian government recognized 5.2 million internally displaced persons (IDPs) due to the armed conflict, while the organization CODHES estimates that it is actually 5.7 million.<sup>30</sup> The areas most affected by the conflict, and correspond with the highest numbers of IDPs, are Antioquia, Nariño, Cauca, Valle del Cauca, and Putumayo. The Colombian cities receiving most of the displaced population are Medellín, Bogotá, Cali, Pasto, Suárez, and Buenaventura.<sup>31</sup>

Many civil society organizations claim that the armed conflict “has changed in the last years as a consequence of the demobilization of paramilitary groups, as well as the proliferation of illegal armed actors, many of whom are closely connected to drug trafficking, organized crime, and illegal as well as legal mining.”<sup>32</sup> A Constitutional Court decision from June 2013<sup>33</sup> recognized these new actors of the armed conflict and the new generation of paramilitary groups, and has obligated the government to include the victims of the armed conflict as well as the new generation of

28 PCS- Project Counseling Services, (op. cit.\*), p. 29

29 “La lucha anticrimen de Calderón causó 70 000 muertos, dijo Osorio Chong”, CNN en español, 2013, at: <http://mexico.cnn.com/nacional/2013/02/15/la-lucha-anticrimen-de-calderon-dejo-70000-muertos-dijo-osorio-chong> [Viewed: October 9, 2013]

30 OCHA, United Nations Office for the Coordination of Humanitarian Affairs, “September Overview,” *Monthly Humanitarian Bulletin Colombia*, Issue 20, 2013, at: [http://www.colombiassh.org/site/IMG/pdf/131015\\_Monthly\\_Bulletin\\_September\\_2013.pdf](http://www.colombiassh.org/site/IMG/pdf/131015_Monthly_Bulletin_September_2013.pdf)

31 Gabriel Rojas and Paola Hurtado, “Continuidades de la desprotección: desplazados, y refugiados en la frontera colombo-ecuatoriana”, Codhes, 2014, at: <http://www.codhes.org/index.php/home-mobile/14-articulos-de-opinion/110-continuidades-de-la-desproteccion-desplazados-y-refugiados-en-la-frontera-colombo-ecuatoriana?templateStyle=8>

32 AAE, USCRI et al, “Documento de trabajo para Audiencia temática ‘Situación de derechos humanos de los refugiados en la región de las Américas’ ante Comisión Interamericana de Derechos Humanos”, 149 periodo de sesiones, October 31, 2013, p. 4.

33 Republic of Colombia, Constitutional Court, Sala Especial de Seguimiento a la Sentencia T-025 de 2004 y sus autos de cumplimiento, Auto 119 de 2013, Bogotá, June 24, 2013, at: <http://www.corteconstitucional.gov.co/T-025-04/A2013.php> [Viewed: February 3, 2014].

paramilitaries in its official register.<sup>34</sup>

Currently, the Colombian government recognizes the impossibility of the immediate improvement of the humanitarian situation, even with a possible peace agreement between the state and the guerilla, but negotiations are fundamental step. After over a year of dialogue between the Revolutionary Armed Forces of Colombia (FARC) and the Colombian government in Havana, of the six points of negotiation, the Colombian government has signed two partial agreements as of the date of this document; one regarding agrarian development policy and another regarding political participation. However peace talks continue without a cessation of hostilities. As a result, according to the recent report from the Internal Displacement Monitoring Centre (IDMC) and the Norwegian Refugee Council (NRC):

[...] the security forces of Colombia, the National Liberation Army (ELN), the Revolutionary Armed Forces of Colombia (FARC), as well as the consequential paramilitary organizations or the demobilized factions between 2003 and 2006, continue to share the responsibility for the displacement of thousands of Colombians from their homes in the rural regions of the country and, gradually more, from urban areas.<sup>35</sup>

Despite the fact that most displacement occurs in rural areas, there is currently an increase in intra-urban displacement. In the urban context, the most common perpetrators are newly armed actors, labeled criminal gangs (bandas criminales or BACRIM) or post demobilized groups (grupos desmovilizados or GDP) which emerged from the demobilization process of the United Self-Defense Forces of Colombia (AUC) in 2003 to 2006. Today, the principal narco-paramilitary groups are the Urabeños, the Aguilas Negras, the Rastrojos and the Oficina de Envigado who have a strong presence in Antioquia and the Atlantic and Pacific coasts. These groups are one of the main causes of displacement due to their territorial disputes with the aim to control drug trafficking and their exercise of economic and political control. The groups most affected by the conflict still continue to be the indigenous and Afro-Colombian populations, female victims of sexual violence used as a weapon during conflicts, and minors at risk of forced recruitment.<sup>36</sup>

As Sabrina Lustgarten, Executive Director of the Hebrew Immigrant Aid Society (HIAS), highlights, “the situation of forced displacement of Colombians to Ecuador has not changed. The organization continues to receive the same number of people as in previous years, including those not admitted or denied due process. This shows the need to make the situation of the refugee populations more visible.”<sup>37</sup> In this context, though the peace process is applauded, it must include a progressive peace process, which ultimately eliminates violence. It should also require other measures of structural changes because the levels of vulnerability and instability will continue to be high in Colombia.<sup>38</sup>

34 IDM & NRC, Colombia: Displacement continues despite hopes for peace, January 16, 2014, p. 1, at: <http://www.internal-displacement.org/americas/colombia/2014/displacement-continues-despite-hopes-for-peace/> [Viewed: February 3, 2014]

35 Ibid., p. 4.

36 Ibid., p. 5 & ss.

37 Sabrina Lustgarten, HIAS-Ecuador. Interview, November 18, 2013.

38 Heloisa D. Marino, “Revisiting Cartagena: Lessons Learned from Ecuador’s Refugee Policy,” in *Oxford Monitor of Forced Migration*, Vol. 3, No. 2, November 2013, p. 38.

## Megaprojects

If a route is drawn of conflict and zones to which violence has spread in the region of Latin America, it is evident there is a relation to the location of megaprojects. In many countries of the region, Guatemala and El Salvador for example, forced displacement is rooted in "development efforts related to extractive industries or these megaprojects [...] supported by transnational companies and foreign investment."<sup>39</sup> Danilo Rivera, from the Instituto Centroamericano de Estudios Sociales y Desarrollo (Incedes), asserts that the momentum of megaprojects is leading to the displacement of the indigenous populations in Guatemala, since transnational companies look for natural resources where whole populations reside. In Colombia, both displaced persons' organizations and the human rights organizations believe that forced displacement is directly linked to the politics of this so-called development, specifically extraction, agriculture, megaprojects, and infrastructure projects.

It should be emphasized that states - both the state where the extractive industry is based as well as the state where the extrication is taking place, due to its lack of protection for the affected population - have a shared responsibility given companies that prioritize profit over human rights and the environment. The UN's Global Pact,<sup>40</sup> created a decade ago, and is worth noting here. This initiative established ten principles to be applied to corporate strategy with the goal of encouraging responsible corporate behavior in regards to human rights, the environment, employment and anticorruption. The Pact encourages that companies adopt, support, and spread, within their spheres of influence, a collection of fundamental values in human rights, labor standards, environmental protection and the fight against corruption.

Aside from the forced displacement occurring in the region due to the extractions, Danilo Rivera comments that in Guatemala another evident problem is the continuous threats against peasant and indigenous leaders, the women and children who have stood up defending their lands from transnational firms, sometimes leading to their death. It is believed that as up to 2013, about 40 indigenous leaders had been assassinated in Guatemala.<sup>41</sup>

39 PCS- Consejería en Proyectos, op. cit., p. 16.

40 UN Global Compact, "The Ten Principles.", at: <http://unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> [Viewed: February 24, 2004].

41 Danilo Rivera, INCEDES. Personal interview, December 4, 2014.

## Natural disasters

In the last few decades a new trend has been observed- displacement as a result of natural disasters. This has highlighted the inability of the affected states to counteract the effects of these disasters and protect the population, as well as the absence of adequate services and policies for sustainable development. According to the Internal Displacement Monitoring Centre, 32.4 million people fled their homes in 2012 due to events such as floods, fires, earthquakes and storms. This figure represents 98 percent of all the forced displacement that occurred in the world that year.<sup>42</sup> One of the most impactful natural disasters in the Americas was the earthquake that Haiti suffered in January of 2010, which killed 200,000 people, destroyed 300,000 homes<sup>43</sup> and displaced nearly two million people<sup>44</sup>

Although international assistance arrived en masse to Haiti after the earthquake, the immigrants who left the devastated country did not receive the same humanitarian response abroad. The United States and France, for example, implemented measures to block the arrival of large streams of Haitian people at their borders, arguing that they did not fit the definition of a refugee in the 1951 Convention.<sup>45</sup> On the other hand, at the regional level, solidarity was shown by the States of the Union of South American Nations (UNASUR). They stressed the importance of special immigration mechanisms to provide an immediate response to the catastrophe.<sup>46</sup>

The border between the Dominican Republic (DR) and Haiti has been historically porous. It was estimated that before the earthquake, 600,000 Haitians were living in the DR, many without documentation, due in part to the recent implementation of policies that denied the right of citizenship to children born to Haitian immigrant parents in the DR. After the earthquake, the government of the DR immediately responded by providing an estimated \$27 million in assistance to its neighbor in 2010, and opening its borders to the Haitian people in need of medical care.<sup>47</sup> Additionally policies for coordination were developed between the two governments on issues such as gender-based violence and shelters. Although there is no information about the number of people who crossed the border after the earthquake, in the first six months one sixth of the total number of births in public hospitals in the DR were to children of Haitian mothers. The Dominicans, who had an unemployment rate of 14 percent before the earthquake, grew tired of the Haitian people in their country very quickly.<sup>48</sup> Citing the risk of the spread of cholera, which had caused the death of more than 3,500 people in Haiti, the Dominican authorities resumed the deportations of thousands of Haitians back to Haiti. The result according to Javier Zuniga, General Counsel of Amnesty International, was to "condemn them to a situation of great danger to their health and safety."<sup>49</sup>

42 Global Estimates Report 2012: Highlights, Internal Displacement Monitoring Centre, 2014, at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/7054BD160B92E264C1257B6A00397F72/\\$file/Highlights%20Global%20Estimates%20Report%202012.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/7054BD160B92E264C1257B6A00397F72/$file/Highlights%20Global%20Estimates%20Report%202012.pdf) [visited: February 3, 2014].

43 Iolanda Fresnillo, "Los olvidados de Haití siguen invisibles bajo las carpas", in *El Diario.es*, 2014, at: [http://www.eldiario.es/desalambre/olvidados-Haiti-siguen-invisibles-carpas\\_0\\_213128900.html](http://www.eldiario.es/desalambre/olvidados-Haiti-siguen-invisibles-carpas_0_213128900.html) [visited: January 27, 2014].

44 Bridget Wooding, "El impacto del terremoto en Haití sobre la inmigración haitiana en República Dominicana", in *América Latina Hoy*, Vol. 56, 2010, p. 111-129, at: <http://www.redalyc.org/articulo.oa?id=30816743006> [visited: February 3, 2014].

45 Diana Thomaz, "La migración haitiana tras la catástrofe", in *Forced Migration Review*, University of Oxford, Refugee Studies Center, July 2013, p. 35-36, at: <http://www.fmreview.org/es/estadosfragiles/Thomaz.pdf> [visited: January 27, 2014].

46 UNASUR, Decisión de Quito, Solidaridad de UNASUR con Haití, from February 9, 2010, By means of this decision, states in the region are insisted to apply special processes of migratory regularization to benefit Haitian citizens.

47 Bridget Wooding, op. cit., p. 111-129.

48 Randal C. Archibold, "As Refugees From Haiti Linger, Dominicans' Good Will Fades", in *The New York Times*, August 31, 2011, at: <http://www.nytimes.com/2011/08/31/world/americas/31haitians.html?pagewanted=all&r=0> [visited: January 28, 2014].

49 Amnesty International, "Dominican Republic must stop forcible deportation of Haitians", January 7, 2011, at: <http://www.amnesty.org/fr/node/20286> [visited: January 27, 2014].

In addition to the earthquake damage in Haiti, the United Nations Office for Disaster Risk Reduction (UNISDR) estimated that 42,000 were killed as a result of natural disasters between 1990 and 2011, and more than a million homes were destroyed.<sup>50</sup> In recent decades Latin America has seen, flooding in Colombia,<sup>51</sup> hurricanes in Mexico, Central America and the Caribbean,<sup>52</sup> landslides in Nicaragua,<sup>53</sup> and much more. Due to climate change the number of natural disasters (in addition to earthquakes) is expected to increase dramatically. Between 1990 and 2011, UNISDR reported a 200 percent increase in affected persons and 600 percent more damaged homes due to these events.<sup>54</sup>

### Femicide and gender-based violence

The situation of increasing violence against women in the Americas has been the subject of complaints by civil society organizations and international agencies in recent years. According to a regional report published by the United Nations in 2012 on femicide:

The conventional forms of violence against women, especially those that occur at home, in situations of armed conflict, displacement or post-conflict, have expanded to all societies and even modernized, and are added, today, to new forms of violence against women (trafficking for slavery and sexual exploitation, the feminization of poverty and the related femicide) as well as to an unprecedented increase in terms of numbers and the brutality with which women today are abused to the detriment of their human rights.<sup>55</sup>

The report states that fourteen countries in the region are among the twenty-five countries with the highest femicide rate in the world; El Salvador (first), Guatemala (third), and Honduras (seventh). . Despite the decision of the Inter-American Court of Human Rights in the case *González et al. ("Cotton Field") vs. Mexico* in 2009 concerning violence against women,<sup>56</sup> such violence and de jure and de facto barriers to access to justice persist.

Violence against women in contexts of internal armed conflict and post-conflict in the countries of the region, PCS has found in Colombia, Peru and Guatemala, most recent victims are indigenous or afro-descendants. They are also living in poverty or extreme poverty, which shows the exclusion and discrimination that characterizes the region. Thus, violence is closely associated with the processes of exclusion and discrimination which have placed indigenous, rural and poor women in greater conditions of vulnerability.

Sexual violence in armed conflict is used as "as a weapon of intimidation, punishment, retaliation or pressure to

50 Impacto de los desastres en América Latina y el Caribe, 1990-2011, Oficina de las Naciones Unidas para la Reducción del Riesgo de Desastres (UNISDR), 2013, at: [http://www.unisdr.org/files/35334\\_impactodelosdesastresenlasamericas1.pdf](http://www.unisdr.org/files/35334_impactodelosdesastresenlasamericas1.pdf) [visited: January 27, 2014].

51 Alice Thomas, "Colombia: Flood Response Improves, But Challenges Remain", in Refugees International, Field Report, March 27, 2012, at: <http://www.refintl.org/policy/field-report/colombia-flood-response-improveschallenges-remain> [visited: January 27, 2014].

52 "A 14 años de las heridas del Mitch", in La Tribuna, 30 de octubre de 2012. Disponible en: <http://www.latribuna.hn/2012/10/30/a-14-anos-de-las-heridas-del-mitch/> [visited: January 27, 2014].

53 "América Latina: 42 000 personas murieron por desastres naturales", in Infobae, November 1, 2013, at: <http://www.infobae.com/2013/11/01/1520553-america-latina-42000-personas-murieron-desastres-naturales> [visited: January 17, 2014].

54 Impacto de los desastres en América Latina y el Caribe, 1990-2011, op. cit.

55 Ana Isabel Garita Vélchez, *La regulación del delito de femicidio/feminicidio en América Latina y el Caribe*, United Nations, 2012, p. 9, at: [http://www.un.org/es/women/endviolence/pdf/reg\\_del\\_femicidio.pdf](http://www.un.org/es/women/endviolence/pdf/reg_del_femicidio.pdf) [Viewed: January 27, 2014].

56 Inter-American Court of Human Rights, *González et al. ("Cotton Field") vs. México Case. Preliminary Objection, Merits, Reparations and Costs, Judgment on November 16, 2009. Series C No. 205*, at: <http://www.corteidh.or.cr/index.php/es/jurisprudencia> [Viewed: February 24, 2014].

obtain information.”<sup>57</sup> Sexual violence becomes a powerful tool for exercising power over women and over the male relatives of the victims. To exert control over the bodies of women is a spoil of war in the region and a form of punishment. Moreover, gender-based violence affects homosexuals, transgendered, transsexual and intersexual individuals who are threatened or persecuted in armed conflict. There is still little information available about these populations. Little is known about the different protection challenges facing them in countries of asylum. A study on LGBTI asylum seekers and refugees in Mexico revealed that the agents of persecution are commonly families, governments and non-state actors. Most LGBTI-identified asylum seekers and refugees in the study came from Central America, particularly Honduras,<sup>58</sup> and they reported both positive and negative experiences with authorities in the country of asylum. However their protection was undermined by acts of discrimination, isolation, violence or abuses, extortion, lack of employment opportunities, inadequate medical care, and barriers to education or decent and stable housing...<sup>59</sup>

### Unaccompanied children and adolescents

According to various investigations<sup>60</sup> carried out in recent years by civil society organizations, public institutions, academia, as well as international organizations, forced migration of children and adolescents (hereafter NNA, for its acronym in Spanish) has increased significantly in recent years in Central and North America, with different profiles and destinations. Its structural causes are the same as those that cause the forced migration of adults, but risks are increased due to their age and thus increased vulnerability.<sup>61</sup>

According to the Mexican National Human Rights Commission (NHRC) approximately 214 million immigrants are presently reported worldwide, of which eleven million are between the ages of fifteen and nineteen years old; nine million, are ten to fourteen years old; seven million, are five to nine years old; and six million, are zero to four years old. Most of these children are exposed to high risk situations and extreme vulnerability.<sup>62</sup> The increase in cases of

57 PCS, Project Counseling Service, *Impunidad, pongámosle fin. Violencia sexual contra las mujeres en conflicto armado y post conflicto en América Latina*, 2006, p. 15.

58 ORAM, Organization for Refugee, Asylum & Migration, *Callejones sin salidas, Part II, Hallazgos de país: México, 2013*, p. 7, at: [http://www.oraminternational.org/images/stories/PDFs/blindalleys/oram\\_ba\\_mexicospa\\_lr.pdf](http://www.oraminternational.org/images/stories/PDFs/blindalleys/oram_ba_mexicospa_lr.pdf)

59 ORAM, op. cit., p. 8 and ss.

60 Pablo Ceriani Cernadas, *Niñez detenida. Los derechos de los niños, niñas y adolescentes centroamericanos migrantes en la frontera México-Guatemala. Diagnóstico y propuestas para pasar del control migratorio a la protección integral de la niñez*, México, Fontamara, UNLa, CDH Fray Matías de Córdova, Ford Foundation, 2013; Mauricio Garborit, Mario Zetino Duarte, Larissa Brioso, Nelson Portillo, *La esperanza viaja sin visa: Jóvenes y migración indocumentada en El Salvador, San Salvador, UNFPA-UCA, 2012*; Alliance House, *Análisis de la situación de derechos de la infancia migrante no acompañada en el marco de los procedimientos de deportación y retorno a Honduras, Tegucigalpa, June 2012*; Álvaro Caballeros, “Migración con rostro de niños, niñas y adolescentes”, in *Encuentro*, No. 90, p. 84-93, Guatemala City, 2011; UNICEF Guatemala, *El salto al norte. Violencia, inseguridad e impunidad del fenómeno migratorio en Guatemala*, Guatemala City, 2011; Carolina Rivera Farfán, “El trabajo de niñas, niños y adolescentes guatemaltecos en el Soconusco”, in Daniel Villafuerte Solís y María del Carmen García Aguilar (coord.), *Migración, seguridad, violencia y derechos humanos. Lecturas desde el sur*, Miguel Ángel Porrúa/Promep/Unicach, 2011; Appleseed, *Niños en la frontera: Evaluación, protección y repatriación de niños, niñas y adolescentes mexicanos sin compañía*, Appleseed, Washington, 2011; Carol Girón, “Migrantes mam entre San Marcos (Guatemala) y Chiapas (Mexico)”, in Alicia Torres (coord.), *Niñez indígena en migración. Derechos en riesgo y tramas culturales*, Quito, Flacso/AECID/UNICEF, 2010; Catholic Relief Services, *Niñez migrante. Detención y repatriación desde México de niños, niñas y adolescentes centroamericanos no acompañados*, Investigation Report, Baltimore, January 2010; Incedes y Sin Fronteras, *Niñez migrante no acompañada, investigation published on December 2008, to mention some of the most recent*.

61 Regional Network of Civil Organizations for Migrations, *Posicionamiento RROCM en el Marco del Seminario Regional sobre Niñez Migrante de la CRM (Antigua Guatemala, August 27 and 28, 2013)*, at: <http://www.migrantologos.mx/index.php/menu-categ-der-pol-inmigra/1928-posicionamiento-rrocm-en-el-marcodel-seminario-regional-sobre-ninezmigrante-de-la-crm-antigua-guatemala-27-y-28-agosto-2013>

62 Karla Meza Soto, *La protección de los y las migrantes en Centroamérica y México*, excerpt from: Blog en otra tierra: Una ventana a la realidad de las personas migrantes, solicitantes de asilo y refugiadas, Mexico, Sin Fronteras, 2012, at: <http://www.sinfronteras.org.mx/index.php/>

unaccompanied/separated children and adolescents is mentioned throughout the interviews conducted in the region as one of the challenges anticipated for protection in the region.

The vulnerabilities and protection needs of unaccompanied children have always been issues of concern, but the dangers are growing along with the number of unaccompanied children, from Honduras, El Salvador and Guatemala who are headed primarily to the United States of America and Mexico. The United States government reported earlier in 2014 that it anticipated the arrival of 60,000 to 70,000 unaccompanied children from Central America. The number of arrivals to the United States has been growing since 2012. In 2012, 13,625 children came to the United States, in 2013, 24,668 children.<sup>63</sup> These unaccompanied children and adolescents often face the risk of recruitment by gangs or organized crime in their countries of origin. The ideal age for recruitment in a gang is between thirteen and fifteen years of age.<sup>64</sup> According to the United Nations Office on Drugs and Crime (UNODC, for its acronym in English), in 2012 there were approximately 20,000 gang members in El Salvador, 12,000 in Honduras, and 22,000 in Guatemala.<sup>65</sup> The two most powerful gangs in Central America are Calle 18 and its rival the Mara Salvatrucha (SRA. 13).<sup>66</sup> These two gangs originated in Los Angeles, California, and are considered transnational.

Regionally, particularly in the countries of the northern triangle of Central America, it is necessary that the response of the States of destination respond is guided by the principle of the protection of children in any situation where the life and safety of children and/or adolescents is at risk. It must be taken into account that, before being undocumented migrants, they are minors under eighteen years of age, and therefore in dealing with them traditional protocols of immigration control and border security should not be applied to them in the same manner as they are applied to adults. In caring for them, the best interest of the child must be prioritized, which is to be interpreted as non-punitive<sup>67</sup> This requires a profound rethinking<sup>67</sup> of the detention measures that continue to be implemented in some countries, since according to international standards NNA should not be treated in a punitive or disciplinary manner, but rather should ensure their protection. This was noted by the Committee on the Rights of the Child when explaining that NNA should not be deprived of their liberty for reasons of migration.<sup>68</sup> This affirmation covers all situations of child migrants, including NNA asylum seekers.

Furthermore, it is essential to have different and preferential methods to address the asylum applications of NNA with priority and efficiency. There must be a serious risk assessment in case of return or repatriation to the country of origin and the active participation of the NNAs themselves in the process. It is also necessary to have staff which is trained in child welfare, and also trained to detect the aspects of types of child-specific persecution. Moreover, it is of great importance to strengthen the mechanisms of consular protection in order to provide assistance to NNA

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es/publicaciones/de-sin-fronteras/informes-2/22-en-otra-tierra-una-ventana-a-la-realidad-de-personas-migrantes-solicitantes-de-asilo-y-refugiadas [Viewed: January 7, 2014].

63 "About Unaccompanied Children's Services", U.S. Department of Health and Human Services, Office of Refugee Resettlement, at: <http://www.acf.hhs.gov/programs/orr/programs/ucs/about>.

64 *Keeping Kids Cool and Confident and Out of Gangs*, National Crime Prevention Council, 2012-2013, at: <http://www.ncpc.org/programs/crime-prevention-month/crime-prevention-month-kits/NCPCCrime%20Prevention%20Month%20Kit%202012.pdf>

65 *National Gang Threat Assessment, 2009*, The National Gang Intelligence Center, January 2009, at: <http://www.fbi.gov/stats-services/publications/national-gang-threat-assessment-2009-pdf>

66 *Idem.*

67 Sin Fronteras/Incedes, *Adolescentes migrantes no acompañados: Estudio sobre sus derechos humanos durante el proceso de verificación migratoria, detención, deportación y recepción*, México, 2007, at: [http://www.sinfronteras.org.mx/attachments/article/1150/Informe\\_Adolescentes\\_NA\\_web.pdf](http://www.sinfronteras.org.mx/attachments/article/1150/Informe_Adolescentes_NA_web.pdf) [Viewed: January 7, 2014].

68 Committee on the Rights of the Child, General Observation No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005, § 40-61.

migrants in transit and receiving countries. It is also important to promote the systematization of statistical information to allow access to current data on NNA as they move across international borders. This should take into account the specific risks they might face as children in order to design and implement policies consistent with their best interest.

In examining the treatment that states should give unaccompanied children, the Committee on the Rights of the Child called attention to a ban on carrying out refoulement that could put the child danger. Thus it is important to conduct a comprehensive initial risk assessment of repatriation. In turn, according to the Committee, these risks are not limited to the possible imprisonment or infringement of rights like physical integrity or life but:

[...] a risk assessment of such serious violations should be made taking into account age and gender and taking into consideration, for example, the particularly serious consequences for minors of having insufficient food or health services [...] The return to the country of origin may in principle only be considered if it is in the best interests of the child. In an effort to determine this circumstance, it will take into account, among other things, personal and public safety and other conditions, particularly those of socio-economic nature, awaiting the child upon his return [...]<sup>69</sup>

No child should be deported to a territory where his/her life, survival, development or freedom is at risk. This is not limited to the fear of torture or other cruel, inhuman or degrading treatment, but also to the absence of essential elements for normal and dignified growth.

As for the reasons that may lead to the recognition of refugee status of NNA, or of any other kind of additional protection, both The UNHCR and the Committee on the Rights of the Child have developed a number of special considerations for the early identification of NNA at risk. The UNHCR has recognized certain risks as well as the collective effect of these risk. s Risk factor identified such as; lack of security, ; inadequate procedures which take account the child's status, the absence of durable solutions, poverty and lack of opportunities, denial of access to education and health, disruption of family and community support structures., discrimination, xenophobia and gender inequality, child victims of trafficking and sexual abuse, and so on.

### Human rights defenders

It is concerning that the civil society organizations, activists and defenders that provide support to migrants and refugees are threatened and intimidated by xenophobic groups in the Dominican Republic,<sup>70</sup> or harassed by groups linked to organized crime, as was reported by various organizations in Mexico, especially those working in shelters on the route north. Additionally in Mexico, there are reports of local and federal authorities criminalizing and vilifying organizations and advocates that lend assistance to migrants by local and federal authorities.<sup>71</sup>

The harassment suffered by organizations in Mexico is compounded with the suffering of human rights defenders originating mainly from Central America and other countries, who flee their countries, seek refuge and are many times deprived of freedom at immigration stations without any regard for their condition and without receiving adequate protection. Instead, they are locked up together with nationals of their countries who are sometimes agents

69 Request for Advisory Opinion on Migrant Children before the Inter-American Court of Human Rights, p. 36

70 William Charpantier, Menamird, Dominican Republic. Personal interview, December 16, 2013.

71 PCS-Project Counselling Service, op. cit., p. 10; Diego Lorente, CDH Fray Matías de Córdova, Mexico. Cited interview.

of their persecution, with no mechanism by which they can protect themselves.<sup>72</sup>

It should be explicitly noted that States bear the full responsibility of ensuring the protection of human rights the defenders who are threatened for; advocating for protection, demonstrating against the violation of their rights by megaprojects or economic associations, or intervening to protect the rights of migrants and refugees. The State's responsibility to ensure protection applies whether they are local community members, indigenous peoples, activists or civil society organizations.

### Mixed extracontinental migration flows

Our region is witnessing an increase in extracontinental migration, in other words, migrants from other continents. These migrants leave their countries in search of opportunities in the Americas for numerous reasons, economic, social and political. Some people have to migrate in search of opportunities on the America for various reasons according to Juan Carlos Murillo from the UNHCR, economic causes, persecution, internal armed conflicts and massive violations of human rights.<sup>73</sup>

People in need of international protection and those who migrate for economic reasons coincide in choosing their destination countries, based on similar criteria. They travel the same routes, and often receive support from the same trafficking networks.<sup>74</sup> People making these extracontinental flows come from Africa (Somalia, Eritrea, Ethiopia, Democratic Republic of Congo, Senegal and Sierra Leone) and Asia (Nepal, Bangladesh, India and Sri Lanka).<sup>75</sup>

In many countries, authorities do not have the capacity to serve extracontinental migrants and refugees.<sup>76</sup> Those with extracontinental backgrounds face significant challenges in their adaptation and integration because of their lack of knowledge of the language and culture or because of the other special. At the same time, the resources, infrastructure and the institutional knowledge are inadequate to serve this population. Often, these people are stuck in legal limbo, which makes them very vulnerable to abuse by different agents. Many report discrimination and xenophobia, and consequently problems accessing resources and basic services primarily related to health, education and legal identity, as well as due process in their refugee status determination. .<sup>77</sup>

72 Diego Lorente, CDH Fray Matías de Córdova, México. Cited interview.

73 Juan Carlos Murillo, "Migración extracontinental en América Latina: Algunas tendencias y consideraciones de protección internacional", presentation in the Workshop "Migración Extracontinental en las Américas de la Organización de los Estados Americanos" for the Special Committee on Migration Issues (SCMI), Washington, 2010, p. 1, at: <http://www.acnur.org/biblioteca/pdf/7720.pdf> [Viewed: January 27, 2014].

74 Luisa Feline Freier, "Introducción" in *Migrantes extracontinentales en América del Sur: estudios de casos, Cuadernos Migratorios, No. 5, Buenos Aires, OIM, 2013, p. 13*, at: [http://publications.iom.int/bookstore/free/Cuaderno5\\_Migrantes\\_extracontinentales\\_AmericadelSur.pdf](http://publications.iom.int/bookstore/free/Cuaderno5_Migrantes_extracontinentales_AmericadelSur.pdf) [Viewed: January 27, 2014].

75 Juan Carlos Murillo, "Principios básicos y varias propuestas programáticas", in *Migración extracontinental en las Américas* (Memory), Special Committee on Migration Issues-SCMI, 2010.

76 PCS-Project Counselling Service, op. cit., p. 30.

77 Luisa Feline Freier, op. cit., p. 11-21.

### 3. Challenges and best practices for international protection in Latin America and the Caribbean

In Latin America, the systems of international protection have undergone major changes and innovations in recent years, with a greater or less commitment by the states of Latin America to human rights. Also, there are exemplary programs aimed at ensuring all persons under international protection have access to rights. It is important to highlight that several South American countries have implemented the Solidarity Resettlement Program as a strategy in addressing international responsibility to people in need of protection. The Solidarity Resettlement Program, according to the UNHCR, "is one of the most iconic and innovative components of the Mexico Plan of Action" of 2004.<sup>78</sup> Brazil, Argentina, Chile, Uruguay and Paraguay have hosted refugees of Colombian origin, and thus have expressed their willingness to support countries hosting larger populations of Colombian refugees, such as Ecuador, Venezuela, Panama and Costa Rica.

In everyday life however, asylum seekers, refugees and stateless persons face challenges regarding access to adequate protection and due process, and respect to social and economic inclusion. In many cases, administrative impediments make it difficult for asylum seekers, refugees and stateless persons to gain access to many important services in their day to day lives (i.e. having proper identification documents).

Moreover, it has been confirmed that the recognition rates of refugees have been affected. For example, in Mexico in 2013, the recognition rate was approximately twenty-one percent - only 245 people were recognized as refugees. While this may be close to the average rate of some Latin American countries, we cannot ignore the significance of its geographical location. According to estimates from 2007 to 2010 there were about 1.9 million arrivals through the southern border of which about 323,000 were irregular migrants on their way to the United States; for economic reasons or fleeing the violence in Central America. We can assume that there is a greater number of people in need of international protection but have not found the means to enter the process, or that the authorities are not carrying out their duties of identification as required by the law.

In Ecuador in 2012 1,555, of the 12,099 asylum applications received by the Ministry of Foreign Affairs and Human Mobility were approved. This granted the recognition of the individual as refugee. In the first quarter of 2013, 167 people obtained refugee status in the country, which shows a reduction in the number of recognized cases by the Ecuadorian state.

In Costa Rica, the low recognition rate is concerning, since in 2013 the global rate was seven point six percent (there were 1062 resolutions, of which 981 were rejected applications and only eighty one were approved). For people in the northern triangle of Central America in particular, who are applicants in such a condition, this rate increases and

78 UNHCR, Mexico Plan of Action, *Solidarity Resettlement*, at: <http://www.acnur.org/t3/pam/resultados-en-soluciones-duraderas/reasentamiento-solidario/> [Viewed: February 3, 2014].

reaches 21.6 percent (these are serious cases of persecution, victims of organized crime).

These experiences show that the laws and administrative practices of the Americas must be improved to ensure refugees are granted full access to their rights. As described by Rosita Milesi of the IMDH in Brazil: “[...] it is one thing to have the right of access to a range of policies and services, but it is another thing to conquer the mechanisms and bureaucracy to achieve those rights.”<sup>79</sup>

It is worth mentioning the effort of Costa Rica in approving the comprehensive migration policy. This policy is a tool that provides guidance so states consider migration as a part of the development of the country. However in order to advance the implementation of this policy it is essential to develop an action plan that implements and defines the concrete actions for the fulfillment of the proposal.<sup>80</sup>

## Access to asylum and quality of refugee status determinations

### Borders, mixed migration flows and identification

A common theme in some of the countries surveyed for this document is the dichotomy between national security and international protection at various borders (terrestrial, maritime, and air-based) which coincides with one of the biggest challenges facing the region. States have a legitimate interest in national security, but that interest should not preclude its obligation to ensure due process for persons seeking international protection.

The dilemma between national security and international protection is evident in the restrictive measures for admissions of and in the absence of adequate information provided at the borders and the scarce resources allotted in the identification and protection of people. Proper identification provides the information needed for specialized and appropriate treatment for cases of persons needing international protection. Without such procedures there is an infringement upon the due process of these persons. In the decision of the case Pacheco Tineo Family vs. Bolivia, the Inter-American Court of Human Rights stipulates that while states can take action when a person does not comply with state law on migration issues, states must respect human rights without discrimination,:

[...] in the field of international law, certain limits to the application of migration policies have developed that impose, in removal proceedings or the deportation of foreigners, a strict adherence to the guarantees of due process, judicial protection and respect for human dignity, whatever the legal or migration status of the migrant may be.<sup>81</sup>

This shows the need to holistically improve the entry and protection systems at the borders to follow a human rights approach. This increased security at the borders must be done with the proper mechanisms in place to ensure basic universal rights by creating a minimum standard. These mechanisms would then be activated based on the situation and needs that may arise in the context of international displacements. This will undoubtedly, have an impact on improving asylum systems in our region and will allow the adjustment of immigration and asylum legislation to international standards of human rights.

79 Rosita Milesi, IMDH, Brasil. Personal interview, November 28, 2013.

80 Comprehensive Migration Policy for Costa Rica, 2013, at: <http://www.migracion.go.cr/institucion/politica/Politica%20Migratoria.pdf> [Viewed: February 24, 2014].

81 Inter-American Court of Human Rights (IACHR), Pacheco Tineo Family vs. Bolivia Case, op. cit.

In particular, asylum seekers must be protected against refoulement and sanctions for irregular entry. Danilo Rivera from Programa de Gestion e Incidencia de Incedes:

The challenge for states and civil society organizations is to expand the consciousness of people as it relates to the right to be an asylum seeker, regardless of gender, age, nationality, religion, political position, etc. Creating the right conditions to enable the protection of persons, ensuring implementation, and reminding the region of the right to seek asylum and that being an asylum seeker is a right.<sup>82</sup>

In the countries analyzed in the document guidance and information on the procedure on refugee status determinations as well as complementary measures of protection are nonexistent or precarious, especially at the borders. An analysis provided by the organization HIAS-Venezuela with applicants for asylum and refugee populations in Caracas, Guasualito, San Cristobal, Maracaibo and Machiques provides evidence that participants were unaware of the right of all persons and never told of such rights by immigration officials. In addition, not all locations have information centers where people can be informed of this right.<sup>83</sup> The same problem emerged in assessments of adult refugees and residents of Costa Rica. Many indicated that "there is no clear information regarding the requirements that must be met to complete the refugee application process, leaving them in a state of helplessness."<sup>84</sup>

Another challenge that is evident throughout the region is the lack of specialized services for priority groups who have unique and diverse needs. In interviews with various leaders of civil society organizations, one of the biggest perceived challenges is the absence of specialized services and lack of coordination. One example of this is in services for unaccompanied children. There is no doubt that during the migration process unaccompanied children, are at a risk; however, it is worth noting that certain factors such as age, gender, ethnicity, nationality, language, sexual orientation, various types of violence, etc. can put certain unaccompanied minors at an even greater risk. Female teenagers or girls who travel alone face a greater risk of being victims of physical, sexual and psychological violence and are more vulnerable to trafficking for sexual and/or employment exploitation.

International protection requires states to understand the composition of mixed migration flows. While all people under the jurisdiction of a state have rights regardless of their migration status, it is essential to develop strategies to identify people in need of international protection and/or victims of organized crime when crossing the border. As commented by Kiriam Bonilla, coordinator of the refugee program of the Anglican Episcopal Church of El Salvador:

As a matter of public policy we should not focus so much on national security and migration control therefore make treatment more humane. . El Salvador does not offer a humanitarian visa. There is no way to legally stay in the country if not as a temporary or permanent resident. And this is our biggest challenge to develop a more humane and a more humanitarian view of migration.<sup>85</sup>

In the same manner, Pablo Asa of CELS-Argentina, emphasizes:

There must be a shift in how migration is controlled at the borders. We should search among governments, civil society and protection seekers for a way meet all needs at border. Although this is an issue of control it is also an issue of rights. It is like a rope being pulled on both sides, but is now giving way to the side of

82 Danilo Rivera, Incedes. Cited interview.

83 HIAS-Venezuela. Focus Groups, November 11-15, 2013.

84 ACAI-Costa Rica. Focus Groups, December 6, 2013.

85 Kiriam Bonilla Nuila, Anglican Episcopal Church of El Salvador. Personal interview, November 11, 2013.

security. We have to start balancing the discussion so that the topic of rights does not remain overlooked.<sup>86</sup>

In this regard, security measures the refugee status determinations process more difficult if there is not only a guarantee of protection for the person but also of national security. In some countries, there are known cases of deportation of populations who deserve international protection, which creates greater vulnerability. . This view of the importance of national security which is the cause of the way migrants are treated in the region leads to the administrative detention of irregular migrants. .<sup>87</sup> Gisele Bonnici and Elba Coria of the International Detention Coalition (IDC) state that “detention is used due to the lack of effective tools for dealing with migrations in states.”<sup>88</sup> This is an illustrative example of how the exercise of a state’s right to sovereignty and control admission and residence of foreigners can inhibit their ability to exercise certain rights, to the point of not allowing access to international protection for persons who need it.

The result is that people run the risk of being detained, deported, or miss the filing deadline (depending on the country) to file for refugee status or asylum. This complicates the process for migrants and sometimes they stay in the country as irregular migrants.

In this context, it is essential to highlight **the MERCOSUR Declaration of Principles on International Refugee Protection**,<sup>89</sup> in which states assumed the responsibility of adopting similar policies that allow for proper identification of people in need of international protection. This was agreed to because of the due to the increase and complexity of mixed migration flows. In particular, the states committed to:

Adopt nonrestrictive migration policies, identify situations of asylum in mixed migratory flows, pay special attention to gender and age (especially in cases of children who are unaccompanied or separated from their families) and not return refugees and asylum seekers to their countries of origin or territories where their lives are in danger<sup>90</sup>

These principles were recognized with the approval of the **“Regional Guidelines for the Preliminary Identification of Migrant Populations in Vulnerability Conditions”** of the XVIII Vice-Ministerial Meeting of the Regional Conference on Migration. The vice-ministers and heads of delegations from Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic participated in June 2013. The guidelines provide strategies for action in the field of mixed migration because they include specific references to the status of a person in the refugee status determination process. . The application of these guidelines should be done quickly in order to meet the identified challenges.<sup>91</sup>

86 Pablo Asa, Center for Legal and Social Studies (CLSS), Argentina. Personal interview, January 10, 2014.

87 Sin Fronteras-México, *Ser migrante no me hace delincuente: Situación de las personas en detención en las estaciones migratorias de Iztapalapa, Distrito Federal, y Tenosique y Villahermosa, Tabasco 2011-2012*, México, 2013, at: [http://www.sinfronteras.org.mx/attachments/article/1432/INFORME\\_EM\\_2013.pdf](http://www.sinfronteras.org.mx/attachments/article/1432/INFORME_EM_2013.pdf) [Viewed: January 7, 2014].

88 Gisele Bonnici and Elba Coria, International Detention Coalition (IDC). Personal interview, December 13, 2013.

89 MERCOSUR Declaration of Principles on International Refugee Protection, op. cit.

90 Mercosur Residence Agreement, 2002, at: <http://www.parlamento.gub.uy/htmlstat/pl/acuerdos/acue17927-2.htm> [Viewed: January 26, 2014]. The countries that have ratified the treaty to this day are: Argentina (July 19, 2004), Brazil (October 18, 2005), Bolivia (April 11, 2005), Chile (November 18, 2005), Uruguay (March 8, 2006), Paraguay (July 28, 2009), Peru (April 6, 2011), Colombia (June 29, 2012) and Ecuador (June 29, 2011).

91 International Center for the Human Rights of Migrants, *Regional Guidelines for the Preliminary Identification of Profiles and Referring Mechanisms of Migrant Populations in Vulnerability Conditions*. San José, Cidehum, 2013, at: <http://www.cidehum.org/index.php/biblioteca/category/5-publicaciones-de-interespor-parte-de-otras-instituciones?download=107:lineamientos-regionales-pa-ra-la-identificacion-de-perfiles-de-referenciadepoblaciones-migrantes-en-condicion-de-vulnerabilidad> [Viewed: February 6, 2014].

There are agreements for free transit and residence like *the Central American Single Visa of the CA4 countries and the MERCOSUR Residence Agreement*. The first allows nationals from Nicaragua, Honduras, El Salvador and Guatemala free movement within the territories of these countries. The second initially grants a two year residency to citizens of countries that are parties to the agreement and then permanent residency. The main requirements to obtain residency are no criminal record, medical certification and certification of a legal form of earning a living. . These agreements facilitate mobility of people for tourism and residence. They could also be used in implementing calls to action about, the portability of rights and/or to help ensure the safety of migrant workers within the region, who are often victims of rape and various abuses by public and private agents. In the matter that concerns us, these instruments can be the starting point in creating mechanisms for the harmonization and standardization of immigration procedures and , to develop a strategy that allows an individual to keep their refugee status (portability of refugee status), ensuring the principles of non-refoulement are applied for those in need of international protection.

**At the operative level**, in Argentina a short period of 48 hours, is granted to the person seeking asylum at the border. In this short period it is expected that the asylum seeker will go to the National Commission for Refugees (Conare), which will formalize his/her petition. Once at the Conare the person will be notified of his/her rights and obligations during the process as well as its purpose.

In Ecuador the mobile brigades in border areas were established by the Refugee Directorate of the Ministry of Foreign Affairs and Human Mobility and in coordination with the UNHCR and civil society. These mobile brigades facilitate the asylum application process for those who for which the Refugee Directorate is not easily accessible.<sup>92</sup> The brigades also represent an effort by the state to ensure access to due process.<sup>93</sup> At the same time, civil society organizations have coordinated the transportation of people to the nearest Refugee Directorate to support the monitoring of cases as well as enable applicants to appear at their interviews.<sup>94</sup> This is a solution to the problem of access for people living far from the capital and other cities.<sup>95</sup>

A very similar mechanism exists in Venezuela with special days are designated for registration and documentation at the borders. This is done is jointly with the Venezuelan National Commission for Refugees (VNCR), the UNHCR and civil society. Information on the refugee status determination process is given by community leaders and civil society organizations in order to promote registration missions with the National Commission for Refugees.<sup>96</sup> These registration missions have been recognized by civil society organizations to be of great importance made by the Bolivarian Government of Venezuela.<sup>97</sup>

In Costa Rica there have been efforts, particularly on the southern border in Paso Canoas, to ensure access to information for people entering the country, as recommended by the Quality Assurance Initiative (QAI). In a joint effort the Office of the Ombudsman, ACAI and the UNHCR, have used to increase the capacity of officials and providing information in at least two languages. An official has been designated to coordinate with immigration officials admissions of persons that express the need of international protection. The application of tools like the Equipo de

92 In Ecuador there are several offices of the Refuge Directorate, organ of the Ministry of Foreign Affairs and Human Mobility, which analyze asylum applications. These offices are located in Esmeraldas, Carchi y Sucumbíos (on the northern border), Quito, Guayaquil and Cuenca (main urban centers).

93 Adriana Blanco y Carmen Atkins, Asylum Access Ecuador (AAE). Personal interviews, December 19, 2013.

94 This action is part of a project carried out by SJRM and NRC which Asylum Access Ecuador and HIAS are participating in. The coordination between civil society, UNHCR, and the government has been achieved.

95 Sabrina Lustgarten, HIAS-Ecuador. Cited interview.

96 HIAS-Venezuela. Cited focus groups.

97 HIAS-Venezuela. Interviews with civil society organizations in Venezuela. HIAS: 2013, p. 4.

Situación Migratorio Especial (ESME) by Costa Rican immigration authorities should be highlighted in order to promote regional progress and modernization by incorporating these instruments that provide or specialized attention to specific groups; This specialized approach enables a more immediate identification of protection needs of asylum seekers, victims of trafficking, unaccompanied or separated minors, and extracontinental and other vulnerable migrants.<sup>98</sup>

### **Fair and efficient procedures in refugee status determinations: Contributions to the harmonization of regional regulations**

In practice, there are large discrepancies in the implementation of the rights enshrined in national laws with regards to fair and efficient procedures in refugee status determinations and the right of non-refoulement. In most of the countries included in this document, due process guarantees should be improved to meet the guidelines of the right to asylum, among other human rights. In the decision of the Inter-American Court of Human Rights on November 25, 2013 in the case Pacheco Tineo Family vs. Bolivia, the Court established the minimum due process guarantees in refugee status determinations and the principle of non-refoulement as found in the Convention relating to the Status of Refugees of 1951, the 1967 Protocol relating to the Status of Refugees and the 1969 American Convention on Human Rights (Articles 8, 22.7, 27.8 and 25).

Moreover, throughout the year 2013, a number of organizations in the region began an analysis of due process standards and procedures in refugee status determinations and titled the document The determination of refugee status in Latin America: Challenges and regional opportunities. Approaching the national systems of Brazil, Colombia, Costa Rica, Ecuador, and Mexico (March 2013).<sup>99</sup> The same group of organizations used the document as a reference during a thematic hearing before the Inter-American Commission on Human Rights (IACHR) called Human rights situation of refugees in the region of the Americas (October 2013).<sup>100</sup> The case presented during the hearing provided an analysis and recommendations for the harmonization of standards at the regional level.

The document highlighted specific points which were also raised in the interviews and focus groups for this document:

### **Accelerated processes that safeguard the due process guarantees**

- ▲ The admissibility procedure in Panama and Ecuador weakens the refugee status determination process. In both countries, no protection is given to people who are awaiting a response as to the admissibility of their claim. In Panama, this period lasts six months or more. During that time people run the risk of being de-

98 Gloria Maklouf, Asociación de Consultores y Asesores Internacionales (ACAI). Contextual report and interviews with civil society organizations and state institutions in Costa Rica, January 2014 and February 18, 2014.

99 Karina Sarmiento, Jessica Soley et al., La determinación de condición de refugiado en América Latina: desafíos y oportunidades regionales. Los sistemas nacionales de Brasil, Colombia, Costa Rica, Ecuador y México, Asylum Access Ecuador/U.S. Committee for Refugees and Immigrants, 2013, at: <http://asylumaccess.org/AsylumAccess/wp-content/uploads/2013/04/DETERMINACIÓN-DE-CONDICIÓN-DEREFUGIADO-EN-AMÉRICA-LATINA.pdf>

100 The following entities participated in the production of the paper: Sin Fronteras I. A. P., Asylum Access Ecuador (AAE), U.S. Committee for Refugees and Immigrants (USCRI), Center for Justice and International Law (Ceji), Refugee Council U.S.A. (RCUSA), Migrações e Direitos Humanos Institute (IMDH), International Detention Coalition (IDC), Caribbean Observatory on Migration, International Human Rights Law Clinic at American University Washington College of Law in Washington, D. C., Consultancy for Human Rights and Displacement and the International Centre for the Human Rights of Migrants.

ported, which is a clear violation of the rule of non-refoulement.<sup>101</sup> In addition, only about five percent of applicants are admitted,<sup>102</sup> which represents a barrier to the right to seek asylum. Meanwhile, in Ecuador, individuals in the application process do not have access to any rights. A person may be declared inadmissible to the refugee status determination procedure without even the slightest consideration of his/her application and without receiving an interview.<sup>103</sup> The review of these requests in the admissibility stage are only made by officials of the Refuge Directorate, rather than the Commission that is the trained and informed entity on the subject.

- ▲ Different practices exist, as in the case of Costa Rica. According to the Regulation of Refugees (Decree No. 36831-G), when an application is considered manifestly unfounded or clearly excessive because it is found to contain a fraudulent connotation or the case has basis according to the criteria for a refugee status determination. An applicant can apply for an expedited procedure in which, according to current legislation, an interview is conducted with the applicant immediately to substantiate the baseless nature of his/her request, and the decision is issued in writing. This decision may be contested by an appeal and resolved preferably by the Commission of Restricted Visas and Refugees.<sup>104</sup> One of the features of this legislation and how it is used in practice is that the expedited processing of the case ensures that the person does not remain defenseless and that the fundamental rights of an asylum applicant are not violated. This also applies to the principle of non-refoulement.<sup>105</sup> However, it should be noted that in practice this has been difficult to enforce. Applications with this profile all follow the regular process, which does not fulfill the objective of judicial efficiency by not of not overwhelming the decision-making an appellate bodies with such request.<sup>106</sup>

#### The opportunity to apply for asylum in a flexible and reasonable timeframe

- ▲ Currently in Brazil, Costa Rica, Venezuela, Panama, Nicaragua, Argentina, Guatemala, Uruguay and Honduras there are no time limits for filing asylum applications. However, this continues to be a challenge in several countries: Dominican Republic (fifteen days), Mexico (thirty days), Ecuador (fifteen days), Belize (fourteen days), and El Salvador (five days). However in the latter case applications filed after the deadline are accepted. The applicant must list the reasons for the delay. The Salvadoran government accepts the lack of knowledge of the system of refugee protection as justification.
- ▲ Due to the vulnerability of this population oftentimes a person cannot file his/her request within these very short deadlines. As commented by Alejandra Macias, from Sin Fronteras: “[...] many times the people who come to Mexico do not know they have the right to seek asylum. When they learn of that right usually thirty business days have already passed, thus barring them from access to the procedure.”<sup>107</sup> In these situations, asylum applications may be rejected after the deadline. In such cases merits of the cases have not been adequately considered based simply because of the administrative deadline. Equally important is the fact that

101 Carlos Smith, HIAS-Panamá. Personal interview, November 21, 2013.

102 Idem.

103 Adriana Blanco y Carmen Atkins, AAE. Cited interviews.

104 Decree No. 36831-G of 2011, Regulation of Refugees, RefWorld, Costa Rica, September 28, 2011, at: <http://www.refworld.org/docid/4ffe64d2.html> [Viewed: February 3, 2014].

105 Gloria Maklouf, ACAI. Contextual report and cited interviews.

106 Idem.

107 Alejandra Macías, Sin Fronteras, Mexico. Personal interview, December 16, 2013.

in Mexico most asylum seekers are detained,<sup>108</sup> depriving them of their liberty during the procedure. Thus they find themselves in a situation where they don't feel safe seeking asylum, which explains their delay in making their request until the arrest ends. By the time they are released, the thirty day filing deadline has frequently already expired, or they are deported. Some may return to Mexico and this will affect their case if they re-apply for asylum.

- ▲ These deadlines are contrary to the recommendations of the UNHCR. The automatic and mechanical rejection of an application within a defined period should not exclude an applicant from the process per se since it may violate their right to non-refoulement.<sup>109</sup> Similarly, it contravenes the standards issued by the Inter-American Court in its judgment in the case Pacheco Tineo Family vs. Bolivia.
- ▲ It is necessary to find a mechanism that allows asylum seekers to exercise their right to international protection at the time they consider it relevant and upon being provided the necessary information. Many of the applicants do not have a high level of education, cannot read or write. Some never had access to any kind of justice in their home countries so they may lack the initiative to approach an authority who will give them the protection they need. This is worrisome because the risk and vulnerability in which asylum seekers find themselves is not taken into account.

#### Access to legal advice and representation to file an application before competent authorities

- ▲ In most countries, civil society organizations provide support, offering free legal advice and representation. During the refugee status determination procedure, if there are no restrictions put in place by the states,<sup>110</sup> the organizations guide and accompany individuals during the asylum process. , Mainly they provide legal assistance, a fundamental pillar of due process. Of the countries analyzed counsel provided by civil society organizations is the only option many have during the administrative process of applying for asylum in Costa Rica, Mexico, Panama, Ecuador, Brazil, El Salvador, Nicaragua, Belize, Guatemala, Honduras, Dominican Republic and Venezuela.
- ▲ In Costa Rica, there are alliances between the judiciary and bar associations that contribute to the provision of legal support for asylum seekers. This serves to improve the procedural standards and increase the legality of the refugee status determination procedure. However, the creation of a network of local partners with legal capacity to guide and support asylum seekers through the various stages of the process is a challenge for the country.
- ▲ In Uruguay asylum seekers can access free legal aid clinics at universities, and from the Office of the Ombudsman. In practice, it is not something that normally happens. Legal aid is mandatory in the case of appeal against a decision, and asylum seekers can gain access to these free services under the same conditions as any other person who is a resident.

108 Only people who make it to an office of the Comar (Mexican Commission for Refugees) on their own are not deprived of their liberty. If they are stopped on the road or surrender to immigration authorities, they are arrested and detained. Center for Human Rights Fray Matías de Córdova, A. C.

109 AAE, USCRI et al., "Documento de trabajo para Audiencia temática 'Situación de derechos humanos de los refugiados en la región de las Américas'... op. cit.

110 For example, from the information collected in Mexico and Ecuador, access to the detention centers is very limited and is not conducive for exercising legal advice, which restricts access to this right.

- ▲ In Argentina, the Commission for Integrated Assistance and Protection of the Refugee and Refugee Petitioner, part of the Office of the Ombudsman, was created to ensure access to justice and respect for the human rights of refugees and petitioners for refugee status. The Commission has a Program of Guardianship, Legal Representation and Accompaniment of Children, Girls and Adolescent Refugees and Petitioners for Refugee and a Consulting and Legal Representation Program for Refugees and Petitioners for Refugee Status.<sup>111</sup> Among the functions of the programs, the provision of legal aid at every stage of the administrative and/or court procedure of the refugee status determination process. Likewise, information is provided on access to health, education, employment and housing through the Interdisciplinary Team of the Commission. This Commission is an exemplary effort by Argentina to secure the rights of refugees and petitioners of refugee status. It also represents a good practice that other states could replicate in order to meet their commitments to build a system that is accessible, efficient and provides access to refuge. It is worth noting that the creation and practice of the Commission is in line with the “100 Brasilia Regulations Regarding Access to Justice for People in Condition of Vulnerability”, adopted at the XIV Ibero-American Judicial Summit.
- ▲ In Mexico the applicant may request legal assistance from the Office of the Ombudsman. The major drawback is that only the President of the Supreme Court of Justice can grant such assistance. This does not guarantee that the defense provided is effective because many of the public defenders are not specialists in immigration and asylum matters, as is the case in many other countries.

#### **The guarantee of an interview under appropriate conditions, in terms and a language that the person can understand**

- ▲ Another hindrance to due process are the interviews. Rarely is there a translator accredited in the native language of the applicant to facilitate the interview.<sup>112</sup> There is not adequate attention or support provided to people with disabilities, or to those in need of psychological care<sup>113</sup> (i.e. children and adolescents, survivors of sexual violence and torture, and people who show signs of mental illness). The lack of appropriate care during the asylum process complicates the decision of their case because it may affect the ability and confidence of the person to tell his/her story. It can also inhibit an accurate understanding of the circumstances of the case. This is also related to the type of questions that arise in the interview, which do not always allow the person to express all of his/her story or because trauma is not expressed or information about the country of origin is unknown.<sup>114</sup>
- ▲ Also, in most countries, it is still necessary to develop and/or implement or strengthen protocols of specialized care for priority groups, particularly children and adolescents, survivors of sexual violence and torture, and LGBTI population. Vivian Holzacker, from Caritas of São Paulo, mentioned the difficulties faced by applicants who are unaccompanied minors and who have been victims of sexual exploitation:

[...] many times they are denied refugee status because their interviews are confusing, with many contradictions. Many do not want to give details of their history because of the all they have suffered or experienced. Applicants go to the interviews alone, or with a social worker from the shelter where

111 Institutional information available on the website of the Office of the Ombudsman, at: <http://www.mpd.gov.ar/articulo/index/articulo/programas-de-la-comision-2991> [Viewed: February 20, 2014].

112 Alejandra Macías, Sin Fronteras, México. Cited interview; Sabrina Lustgarten, HIAS-Ecuador. Cited interview; Diego Lorente, CDH Fray Matías de Córdoba, México. Cited interview.

113 Sabrina Lustgarten, HIAS-Ecuador. Cited interview.

114 Gloria Maklouf, ACAI. Contextual report and cited interviews.

they stay. This shows that especially in cases of sexual violence survivors there must be special consideration and treatment given due to the likely impact that such abuse may have on the interview.<sup>115</sup>

**There is almost no consideration given to gender in order to allow an accurate and objective assessment of the applications and avoid the creation and promotion of protected stereotypes.**

- ▲ It is necessary for the adoption and adaptation of existing legislation in the region, for implementation and application of current protection standards. As an example of good practice in Argentina the General Act of Refugee Recognition and Protection states that “during the procedure, the recommendations made by the UNHCR in the Guidelines for the Protection of Refugee Women and the guidelines on gender-based persecution must be observed” (Art. 53). Argentina also adopted the “Protocol for the Protection, Assistance and Search for Durable Solutions for Unaccompanied or Separated Children Petitioning Asylum,” through and in coordination with state, international and civil society organizations, it provides a response to the diverse needs that this population presents.
- ▲ In Costa Rica there is the “Protocol for the Detection, Care and Integral Protection of Minors Requiring International Protection, Whether They be Applicants for Refugee Status, Refugees and Stateless Persons “. The main objective is to direct and guide the work of officials : the Patronato Nacional de la Infancia (Pani), the Dirección General de Migración y Extranjería (DGME), UNHCR, and the Asociación de Consultores y Asesores Internacionales (ACAI), “to protect and care for foreign minors in different situations of migratory nature in a more efficient and effective way.”<sup>116</sup> From the perspective of the state, it stipulates that interviews must be conducted by qualified and motivated people with adequate training.<sup>117</sup> The latter aspect is being evaluated in Costa Rica through the Quality Assurance Initiative (QAI), by which the various stages of the procedure are analyzed and pertinent recommendations are issued.
- ▲ In Venezuela, civil society organizations emphasize that, in matters of gender-based violence, the Law on the Right of Women to a Life Free of Violence protects women refugees or asylum seekers as well as Venezuelan women. Under the coordination of the National Women’s Institute, a comprehensive plan for education, sensitization and awareness was created. It involves all public entities responsible for the implementation of the law in order to “recognize the dimensions and characteristics of the problem of gender-based violence and have the proper tools to effectively tackle it”.<sup>118</sup> There have been advances in training and awareness for state entities as well as greater attention to the cases.<sup>119</sup>
- ▲ In Guatemala, civil society organizations also emphasized that, in matters of gender-based violence based they have at their disposal the Law Against Femicide and Other Forms of Violence against Women, Decree 22-2008 of the Congress of the Republic of Guatemala. This law has brought about progress in training and implementation.

115 Vivian Holzacker, Caritas Archdioceses of São Paulo, Brazil. Personal interview, November 18, 2013.

116 General Directorate of Immigration, National Children’s Trust, Protocolo para la Atención y Protección de las Personas Menores de Edad Extranjeras No Acompañadas o Separadas, Fuera de su País de Origen, San José, UNICEF, 2012, at: [http://www.unicef.org/costarica/docs/cr\\_pub\\_Protocolo\\_menores\\_extranjeros\\_solos\\_o\\_separados\\_fuera\\_pais\\_origen.pdf](http://www.unicef.org/costarica/docs/cr_pub_Protocolo_menores_extranjeros_solos_o_separados_fuera_pais_origen.pdf) [Viewed: February 10, 2014].

117 Head of the Refuge Unit of the General Directorate of Immigration of Costa Rica. Interview carried out by ACAI, January 2014.

118 United Nations Population Fund (UNFPA), Law on the Right of Women to a Life Free of Violence, Caracas, UNFPA, 2007, at: [http://venezuela.unfpa.org/documentos/Ley\\_mujer.pdf](http://venezuela.unfpa.org/documentos/Ley_mujer.pdf) [Viewed: February 10, 2014].

119 HIAS-Venezuela. Interview of civil society organizations, Venezuela, Caracas, HIAS, 2013.

## The right to a petition for review or appeal within a reasonable time period and suspension of decision

- ▲ A good practice highlighted by civil society in Venezuela is the Jornada Belandria Acacio, developed by the National Commission for Refugees in Venezuela in 2013. It is a mechanism of direct action that reviews cases denied for not meeting the definition of a refugee according to the 1951 Convention, but which are related to widespread violence. With more information from the country of origin and new interviews<sup>120</sup> this effort sheds light on a possible expansion of the application of the refugee definition and guarantees the right of individuals to have their cases heard and reconsidered.
- ▲ In some of the countries analyzed, another barrier is decisions that are not properly justified. In Argentina, Brazil, Ecuador, Panama and El Salvador, the reasons for which an application is rejected are not always given. This makes appeals more difficult and goes against the right to a fair, effective and impartial appeal.<sup>121</sup>
- ▲ There are countries like Mexico, where exercising the right to appeal is not only complicated by the limitations established by the authorities to provide a person with legal assistance, but the use of this right is penalized. According to Article 111 of the Migration Act of Mexico, the filing of an administrative or judicial appeal against a decision for deportation or, in this case, of refusal to grant refugee status in the first instance, may lead to indefinite imprisonment. The possible consequence of this is that detainees can be deprived of their liberty for almost a year and due to the confinement they withdraw their application for a refugee status determination because of the physical and emotional impact of isolation.
- ▲ In Costa Rica, the Migration Administrative Tribunal (MAT) is intended to ensure people have the right to seek refugee status in the country, and to appeal negative decisions. Thus, the MAT seeks to be a reviewer of legality, working independently of the commission that issues the initial decisions, or “first instance”, this way providing bifurcated judicial guarantees. However according to interviews with heads of both institutions (DGME and TAM), Costa Rica has begun a new phase with a more protective system. However some factors such as lack of human resources, have limited the progress anticipated upon the creation of the institution. The president of TAM acknowledges there is a delay in issuing of decisions, but expects more favorable circumstances in the new phase that the Tribunal has begun in extending its membership and starting with a new operating plan.<sup>122</sup>

### Deadlines for appeals

- ▲ Delays in receiving a response to asylum applications represents another barrier found in several countries. Not receiving a response within a specified period of time puts applicants into a legal limbo while their cases are pending. This limbo prevents applicants from feeling safe and secure about their migration status and continuing with their lives. Similarly while under this status asylum seekers in many countries are not guaranteed their economic, social, and cultural rights, not to mention many of their civil and political rights.
- ▲ The participating organizations from El Salvador, Costa Rica, Ecuador, Uruguay, Mexico and Guatemala argue

120 Idem.

121 Carlos Smith, HIAS-Panamá. Cited interview; Vivian Holzacker, Caritas Archdiocese of São Paulo, Brazil. Cited interview; Kiriam Bonilla Nuila, Anglican Episcopal Church of El Salvador. Cited interview.

122 Gloria Maklouf, ACAI. Contextual report and Cited interviews

that this process takes much longer than the period established by law.<sup>123</sup> This reflects the discrepancy between law and practice frequently found in the region. In Argentina and Brazil, however, there is no deadline or average time by which a decision must be made. In Guatemala, Danilo Rivera of Incedes points out that thirty of the forty -seven applicants last year abandoned their asylum claim due to the absence of an effective process by the Commission. The Commission also does not convene often enough. “[...] The problems which asylum applicants encounter are very complicated. Applicants come, they enter, they request refugee status, and then they are frustrated by the inefficiency of the process [...] they are in a state of total vulnerability, they cannot work, they cannot do absolutely anything”.<sup>124</sup>

- ▲ Similarly, in El Salvador Kiriam Bonilla Nuila, of the Anglican Episcopal Church of El Salvador expressed: “The eligibility process takes too long, and this makes people vulnerable because while their case is evaluated, they do not have identification documents or grant them the ability to legally stay in the country.”<sup>125</sup> In the Dominican Republic, as noted by William Charpantier, of Menamird:

One of the problems we have here with asylum seekers is the slow manner in which authorities investigate and process cases. We have applicants have been seeking asylum for over twelve or thirteen years and the state never accepts their request. However the government gives applicants one document at a time every thirty or sixty days but it does not grant them official refugee status [...] while the state has an infrastructure to process cases it does not have a policy. We are members of the Convention and all that, but there is never follow-up with these cases<sup>126</sup>

- ▲ In Costa Rica, the problem is most evident at the level of the second instance review where nearly 753 cases are awaiting a decision. Some of them have been waiting for over three years. The officials, both the Refuge Unit of the DGME and the Migration Administrative Tribunal, recognize the delay as the most significant weakness of the system. Authorities emphasize that the lack of timeliness is not due to a lack of will, but rather to the high number of applications submitted in the country. Costa Rica is not only a transitory country but a final destination as well. Therefore, with limited economic and human resources, it is difficult to respond more quickly to the applicants. According to an interview with the head of the Refuge Unit, he is aware that an exact timeline for the processing an application cannot be stipulated, which works against the interests of the applicant.<sup>127</sup>

### Administrative detention and the dilemma of stations/shelters/migrant centers

Legal standards, government policies and practices which allow for the detention of people for migration purposes persist in the region. Often people are detained because of their irregular status. In the most serious cases migrants face countries like Belize that have the power to detain and punish irregular migration. In other cases, such as Mexico, Costa Rica, Guatemala, Ecuador and Honduras, there is the possibility of migrants being deprived of their liberty for administrative migration purposes. In other countries detention due to migration practiced discretely in police headquarters or other spaces that do not meet minimum housing conditions.<sup>128</sup>

123 Danilo Rivera, Incedes. Cited interview; Kiriam Bonilla Nuila, Anglican Episcopal Church of El Salvador. Cited interview.

124 Danilo Rivera, Incedes. Cited interview.

125 Kiriam Bonilla Nuila, Anglican Episcopal Church of El Salvador. Cited interview

126 William Charpantier, Menamird, Dominican Republic. Cited interview.

127 Gloria Maklouf, ACAI. Contextual report and cited interviews.

128 Gisele Bonnici y Elba Coria, International Detention Coalition (IDC). Cited interviews.

Administrative detention, although it has not been used widely across the region, evidence of the implementation of viable alternatives exist. It is a practice that is increasingly being adopted in countries with stations/shelters/migrant centers. Of the countries surveyed, the following stand out: (a) the widespread practice of not detaining asylum seekers in Argentina and Uruguay;<sup>129</sup> (b) regulations and/or practices that establish maximum periods of detention permissible in El Salvador and Nicaragua; (c) regulations and/or practices of releasing asylum seekers once they are detained in Brazil, Honduras, Nicaragua and Panama; and (d) regulations and public policies for the adoption of models alternatives migrant detention in Costa Rica (however, there is a need to apply them more systematically; migration bonds) or to vulnerable groups such as asylum seeking children and adolescents in Argentina or to victims of trafficking in Belize, Mexico and Nicaragua, among others.

There is a practice of administrative detention in several countries, including Mexico, Belize, El Salvador, Honduras, Dominican Republic, Panama and Ecuador.<sup>130</sup> In Mexico, organizations stress that another problem when applying for asylum is that many people, including those who are underage, are deprived of their freedom during the process and have little access to legal representation.<sup>131</sup> This has resulted in many people abandoning the asylum application process.<sup>132</sup>

In the case of Mexico, Belize and the Dominican Republic, there is no affordable alternative for those seeking recognition of individual refugee status once they have been arrested. Therefore, many people have no choice but to pursue their asylum claims in detention. Additionally, when recognition as a refugee is denied, the person must remain in the detention center while his/her appeal for review is resolved. Or he/she can file an action for legal protection but must remain in detention for the case to be resolved. This usually prevents asylum seekers from having effective access to justice, leading opt for deportation even though their lives may be in danger.<sup>133</sup>

It has been highlighted in several of the interviews with various civil society organizations from Mexico, that many of the so-called migration stations, which are detention centers where asylum seekers are placed after their arrest, do not have proper sanitary conditions. In Belize, they are usually detained in the same centers where criminals are housed. In general, there is no separation by gender. Men and women are housed together and quite frequently are victims of extortion and suffer many violations of their rights.

Moreover, there is also the practice of mass deportations, sometimes of people who are in need of international protection. Civil society organizations from the Dominican Republic addressed this in a report for the Universal Periodic Review (UPR):

The expulsions or mass deportations of Haitian migrants and their families remain the main focus of the implementation of the migration policy of the Dominican state. These actions against non-citizens of Haitian

129 Gabriela Cortina, Sedhu, Uruguay. Personal interview, November 19, 2013.

130 Alejandra Macías, Sin Fronteras, México. Cited interview; Diego Lorente, CDH Fray Matías de Córdoba, Mexico. Cited interview; Center of Human Rights Fray Matías de Córdoba, *Acción urgente: Privación de libertad y violaciones al debido proceso de personas solicitantes de la condición de refugio en el centro de detención para migrantes de Tapachula, Chiapas, Tapachula, Fundación Ford, 2013*, at: [http://www.cdhfray-matias.org/sites/default/files/acciones\\_urgentes/accion\\_urgente\\_detencion\\_solicitantes\\_refugio.pdf](http://www.cdhfray-matias.org/sites/default/files/acciones_urgentes/accion_urgente_detencion_solicitantes_refugio.pdf); Enrique August, Help for Progress, Belize. Personal interview, December 12, 2013; Danilo Rivera, Incedes, Guatemala. Cited interview; William Charpantier, Menamird, Dominican Republic. Cited interview; *Informe de organizaciones de la sociedad civil dominicana en el Examen Periódico Universal (EPU): Situación migratoria, República Dominicana, Menamird, 2012*.

131 Diego Lorente, CDH Fray Matías de Córdoba, México. Cited interview; Alejandra Macías, Sin Fronteras, Mexico. Cited interview.

132 Alejandra Macías, Sin Fronteras, Mexico. Cited interview.

133 Sin Fronteras-México, *Being a Migrant does not Make me a Criminal*, op. cit.

origin are made using the application of discriminatory criteria. Migrants of Haitian origin, documented or undocumented, are subjected daily to collective deportations to Haiti without respect for the slightest procedural guarantees, including due process during arrest and detention. This is in violation of several articles of the Convention.<sup>134</sup>

The practice of migrant detention has been criticized by several international agencies for its complete inefficiency and its burden on rights like the right to seek asylum. Various studies found that migrant detention tends to be arbitrary and ineffective in achieving legitimate state objectives and is costly to public funds. In addition it is harmful to protection and respect of the rights of people. It is particularly detrimental to the physical, emotional and psychological health of people seeking international protection, who flee their countries escaping persecution or violence, and then are placed in a position of vulnerability and victimization by the states. States have a duty to welcome and provide these people protection and lend assistance in helping them feel they are physically and emotionally safe, so that they can feel secure in filing for asylum.<sup>135</sup>

In relation to the detention of asylum seekers and refugees, the UNHCR has established guidelines for all states in the region to only use detention for asylum seekers “as an exceptional measure, only where it complies with the law and guarantees of due process, when it is determined to be necessary, reasonable considering all circumstances and proportionate to a legitimate purpose, therefore not arbitrary.”<sup>136</sup> Similarly, the UNHCR document states that the detention of asylum seekers should always be used as a last resort and for the shortest time possible. In the event that there is no alternative, the arrest should be made under “humane and dignified conditions, and the facilities should be subject to independent monitoring.”<sup>137</sup>

Another problem with migrant detention which is common in several countries is the lack of independent monitoring of facilities. Civil society organizations of various countries expressed concern regarding the limitation on access to these detention centers.<sup>138</sup> There is no openness on behalf of the authorities which would enable the people held at these centers to be properly informed on their rights and the analysis of their individual case. Diego Lorente, from the Centro de Derechos Humanos Fray Matías de Córdova, in Tapachula, Mexico, which is thought to have one of the largest detention centers in Latin America Estación Migratoria Siglo XXI, indicated that his organization faces many obstacles and restrictions that prevent access to the site. He discussed that the Fray Matías CHR team is allowed to enter the detention center only on Tuesdays and Thursdays, from 10am to 1 pm. Information regarding the people who have been arrested (including potential asylum seekers) is not provided. It is the detainees themselves who sometimes give them the names of newly arrived persons at the center, and the organization lacks the ability to monitor all since they are only provided a small space in which to speak with the people.<sup>139</sup>

As for alternatives to detention the International Detention Coalition and the Center for Refugee Research from La Trobe University in Australia published a report in 2011 titled: *There are Alternatives: A Handbook for Preventing Unnecessary Immigration*

134 Menamird, Report of the Dominican Civil Society Organizations in for the Universal Periodic Review, op. cit.

135 AAE, USRCI et al., *Documento de trabajo para Audiencia temática “Situación de derechos humanos de los refugiados en la región de las Américas”*, op. cit.

136 Idem.

137 Idem.

138 Gisele Bonnici y Elba Coria, IDC. Cited interviews.

139 Diego Lorente, CDH Fray Matías de Córdova, Mexico. Cited interview

Detention,<sup>140</sup> where it presents the Evaluation Model and Community Placement and describes good practices around the world, which could help many governments in the exploration and development of preventive mechanisms and alternatives to detention.

### **A permanent necessity: Continuous training for government officials**

An ongoing challenge for asylum seekers and refugees to exercise their rights is the lack of properly trained staff in matters of refuge and human rights at various borders and public service agencies, particularly those authorities granting refugee status. This, undoubtedly, is a huge challenge and one that has been noted throughout the interviews and focus groups in the region. While there are efforts to provide training for officials, the challenge is to make training permanent, continuous and sustainable. The role of the UNHCR to provide technical assistance to states must transcend into the development of ongoing training programs. In response to the specific needs of the migration flows in border regions, it is also becoming increasingly imperative to have mechanisms of coordination among the various state agencies of legal and social assistance and civil society, in order to ensure access to rights at the border.

The formidable challenge of maintaining trained personnel in different areas is recognized. Staff turnover in many instances can make this difficult. However this fact is related to the absence of comprehensive public policies that make continuous training in this area a priority. In one of the focus groups conducted by the HIAS-Venezuela organization, people describe it as follows: "There is still misinformation on the part of public officials. It seems that some do not know what refugee status means. Some people think they are people living in a shelter and so officials fail to collaborate effectively for good proceedings".<sup>141</sup>

The organizations note the need to continuously train the officials who are responsible for the processing of applications. They should be trained regarding countries of origin, gender, basic principles of refuge, as well as increasing awareness of the topic.<sup>142</sup> Similarly, there is a high turnover of members of the Commission and not enough training to compensate the constant changes in staff. This creates a wide range of discrepancies in decisions.<sup>143</sup> Under these circumstances, we see the need for a reassessment of the quality level of training of staff receiving asylum applications. To comply with due process requirements officials must be able to competently analyze and judge the merits of asylum applications. This requires having knowledge of the issue of refuge and the conditions in the countries of origin. As expressed by Gustavo Peralta, from the Centro de Asistencia Legal Popular de Panamá: "Unfortunately the commissioners are constantly changed. If one comes, he/she is trained, but then comes another who does not know the issue".<sup>144</sup> Similarly, the organization Sin Fronteras I.A.P. conducted a focus group where applicants seeking asylum participated. All were men between thirty and seventy-nine years of age, and of Honduran, Colombian or Nigerian nationality. They commented that in Mexico:

There is a lack of awareness by the authorities in charge of the process since not all people are trained in the field of asylum. This in their opinion blocks the process since adequate information is not provided. They

140 International Detention Coalition (IDC) and Center for Refugee Research from La Trobe University, *Existen alternativas: Manual para la prevención de la detención innecesaria de migrantes*, Melbourne, IDC – LaRR, 2011, at: [www.idcoalition.org/cap/](http://www.idcoalition.org/cap/)

141 HIAS-Venezuela. Focus Groups, November 11-15, 2013.

142 Diego Lorente, CDH Fray Matías de Córdoba, México. Cited interview; Alejandra Macías, Sin Fronteras, México. Cited interview; Carlos Smith, HIAS-Panamá. Cited interview.

143 Gustavo Peralta, Center for Popular Legal Assistance, Panamá. Personal interview, January 14, 2014.

144 Idem.

also expressed the lack of sensitivity on behalf of the officials and ignorance or lack of concern for the rights of people concerned.<sup>145</sup>

In addition to the need for ongoing training in the field, it has become increasingly urgent in the region to incorporate recruitment standards for staff and officials working at agencies and making decisions on refugee status determination applications. A more fair selection process of suitable staff would be a new approach that would lead to the necessary transparency and expertise in the operation of decision-making state agencies. In this regard, it is also necessary to note that one of the obstacles is the administrative and financial dependence by the majority of national refugee commissions in the region. Its operation inside of the ministries of the interior and its dependence in terms of national leadership on migration, make it impossible for applicants to access to a truly humanitarian focused process as embodied in international refugee law. This often translates politically influenced treatment of migrants and decisions of cases. Therefore, a good practice that states can adopt is to provide functional autonomy and financial independence to national refugee commissions, coupled with more democratic procedures in the access and allocation of staff positions.

Given that the review of applications by competent staff is crucial to a fair process, training and awareness on the right to asylum should improve. Improvement of trainings should be not only for officials at the border, but also members of the commissions or committees who make decisions on asylum applications. It is essential to be versed in both national and international refugee standards as well as the forms of forced displacement and new trends in the region and world.

Mexico has withdrawal rate of nearly seventy percent. It is not just that people do not consent due to lack of information but because they think they cannot ask, or because the authorities do not give them the opportunity to access an appropriate procedure. There are also people who because of the number of holes and gaps in their procedure drop their case and end up leaving the country.<sup>146</sup>

The training of officials should also include training on what people vulnerable, including victims of sexual or domestic violence, trafficking, unaccompanied minors and LGBTI persons. In the interview with HIAS-Panama, the UNHCR's effort to sensitize officers, was mentioned, which has made people less afraid and thus more likely to seek justice. Also, the National Office for the Care of Refugees in Panama has allowed civil society organizations, such as HIAS, to provide a monthly psychosocial training to migration officials so they have better tools to treat and evaluate different types of cases.<sup>147</sup> In Argentina, attention to applicants with cases of gender-based violence stands out because of the commitment to give people the appropriate amount of time in interviews, so people can tell their story in a supportive environment.<sup>148</sup> All states should train officials on these issues and adapt the process of determination accordingly.

A good practice that developed in Mexico in 2013 by the Supreme Court of Justice was the Action Protocol for those who Administer Justice in cases Involving Migrants and People Subject to International Protection. While the Protocol is a recent development and its success is yet to be seen, it is the first protocol in the region that provides guidelines to assist judges on dealing with migrants and people subject to international protection. "Its implementation aims to contribute to the issuance of legal criteria with a focus on human rights that consolidate the paradigm

145 Sin Fronteras I. A. P., México. Focus Group, México, 2013.

146 Diego Lorente, CDH Fray Matías de Córdoba, México. Cited interview.

147 Carlos Smith, HIAS-Panamá. Cited interview.

148 Pablo Asa, CELS-Argentina. Cited interview.

shift that criminalizes migration by recognizing migrants and people subject to international protection as subjects of law.”<sup>149</sup> It is a tool that can be used in other countries in the Americas.

In Costa Rica, as part of the National Commission for the Improvement and Access to Justice (CONAMAJ) and Law School, CIDEHUM and the UNHCR initiated a project of training and awareness to judiciary officials (such as the Police, public defenders, prosecutors and judges) on human rights tools for the care and specialized approach to migrant and refugee populations and the implementation of national and international instruments.<sup>150</sup> However, the need for constant training continues because of the turnover of personnel in the different units, as well as the need to stay current as to the various profiles and nationalities of the population requiring protection.<sup>151</sup>

In Venezuela, UNHCR offers courses on refugee law, and HIAS has participated on issues related to interview methodology and people with special needs.<sup>152</sup> In El Salvador, training for police and migration officials has been provided by the efforts of the Church and the International Organization for Migration (IOM):

The Church has trained police, mainly at the border and migration control. The General Directorate of Migration and Immigration trained a hundred people this year. It also trained the Salvadoran Institute for Women in cases of domestic violence. Additionally, the Church has trained the Office of Human Rights, since they have offices in each one of the areas of El Salvador, and are therefore closer to the population and could also refer cases or offer advice.<sup>153</sup>

In other countries in the region, there are similar programs; the challenge is to ensure that this training become a permanent and continuous part of the public service program.

## **Towards the integration and the creation of opportunities: economic, social and cultural rights without discrimination**

### **The importance of documentation for effective protection**

The identity documents given to asylum seekers and refugees is a matter of great concern for civil society organizations and people in need of international protection in almost all participating countries, except Uruguay. In this country, the identity document given to both refugees and asylum seekers is the same given to any national or foreign person and does contain the term refugee on it. Gabriela Curtain, of the Servicio Ecuménico de la Dignidad Humana (Sedhu), recognized the swiftness in the issuance of the identity document in Uruguay as an innovative solution. It is valid for one year and renewable until a decision is made on the case. It also guarantees access to health care, public education and formal employment similar to that of citizens and nationals in the country.<sup>154</sup>

149 Sin Fronteras, “México con primer Protocolo en América para orientar a jueces en atención de personas migrantes y sujetas de protección internacional”, comunicado de prensa, México, Sin Fronteras, 2013, at: [http://www.sinfronteras.org.mx/attachments/article/1492/Comunicado\\_30\\_SEP\\_2013\\_SF\\_Protocolo.pdf](http://www.sinfronteras.org.mx/attachments/article/1492/Comunicado_30_SEP_2013_SF_Protocolo.pdf) [viewed: February 10, 2014].

150 Poder Judicial Costa Rica, Comisión Nacional para el Mejoramiento de la Administración de Justicia (Conamaj), Política institucional para el acceso a la justicia por parte de la población migrante y refugiada (PIMR), Acuerdo de Corte Plena, sesión No. 32-10, San José, Conamaj, 2011, at: <http://www.conamaj.go.cr/images/libros/pdf/032.pdf> [consultado: February 10, 2014].

151 Gloria Maklouf, ACAI. Contextual document and cited interviews.

152 HIAS-Venezuela. Interview with civil society organizations, Venezuela, 2013.

153 Kiriam Bonilla Nuila, Anglican Episcopal Church of El Salvador. Cited interview.

154 Gabriela Cortina, Sedhu, Uruguay. Cited interview.

Mexico, Brazil, El Salvador and Costa Rica have succeeded in expunging the term refugee from the identity documents. This example must be followed in all countries to prevent discrimination. A major challenge is the inclusion in identify documents the status of refugee or applicant for refugee status, which leads to discrimination and confusion on the part of officials and employers.<sup>155</sup> As Gustavo Peralta from CEALP (Panama) said: "If a person carries a document with the word 'refugee', many authorities believe he/she committed a crime, that he/she committed an atrocity, and they do not know that it is something completely different."<sup>156</sup>

Little is known about the type of identity documents given to people seeking asylum and refugees, especially in cases where the document differs from the one given to native-born and other non-nationals in the host country. Additionally the fact that there is no obligation to have a passport by people in need of international protection is generally unknown. Thus, impediments are reported in opening checking or savings accounts and applying for credit in banking institutions due to the rejection of their identity. This happens even when there are clear guidelines issued by regulatory bodies regarding the equitable treatment of non-domestic customers and particularly of refugees in countries like Costa Rica, Ecuador and Venezuela. In focus groups in Venezuela people reported "[...] that they must ask that paychecks be issued on behalf of a Venezuelan in order to be cashed, in most cases, and they pay a percentage to whomever does them the favor."<sup>157</sup> In other cases, such as Ecuador, the identification number assigned to the document of the person applying for asylum or refuge is different from that of the identity document of nationals or resident visas. Therefore it is not compatible with the different computer systems used by the state entities (for example, in the Ecuadorian Institute of Social Security and in schools) and banks in order to gain access to programs and services. However the government is making progress in the implementation of measures for a sustainable solution to this problem.<sup>158</sup>

In some countries, non-recognition or the ignorance of employers of these identification documents limit the right to work. Although documentation and a work permits are given to applicants,<sup>159</sup> the documents are unfamiliar to both officials and employers. Consequently, people seeking asylum and refugees struggle to find work and gain access to public services.<sup>160</sup> A refugee who participated in a focus group organized by ACAI of Costa Rica shared: "There is a significant lack of support and information in businesses because, although we may have the work permit, they ask us for a residence card. People do not recognize the document of refugee applicants as a work permit."<sup>161</sup> Along with other challenges in Costa Rica, the high cost of the document was signaled as another challenge. Another challenge is the requirement of affiliation social security for its renewal, which hinders effective access to basic services and real integration.<sup>162</sup>

The documentation provided to asylum seekers and those in the process of eligibility determination can create greater difficulties. In some countries, interim documents carried by people seeking asylum and people in the admissibility stage (i.e. Ecuador) are usually certified on paper. This arouses suspicion and mistrust of the people with whom they interact, both in private and in public institutions. For example, in Venezuela, refugees and applicants have started having difficulties grocery shopping in the markets organized by the government, where prices are

155 Adriana Blanco y Carmen Atkins, AAE. Cited interview.

156 Gustavo Peralta, CEALP, Panama. Cited interview.

157 HIAS-Venezuela. Cited focus groups.

158 Adriana Blanco y Carmen Atkins, AAE. Cited interviews.

159 See section: "Right to work" in this document.

160 Adriana Blanco y Carmen Atkins, AAE. Cited interviews.

161 Gloria Maklouf, ACAI. Contextual document and cited interviews.

162 Idem.

cheaper (Food Markets, C.A., Mercal, from the Bolivarian Government of Venezuela). Not possessing an identification document as a temporary resident, or a provisional document that is recognized means refugees and applicants are not sold products. The stories point out, "I have suffered inconvenience due to the document, because it is useless to us to shop at the supermarkets." Likewise someone shared:

With HIAS I received a little help, and when I went to buy chickens for fattening, the first thing they asked me for was the identification card and RIF (Registration Tax ID). Since I do not have it, I had to look for a third party, and this one demanded that I give them half of the profits. If I were to report the incident legally the chickens belong to that person, because with my name can't be on anything.<sup>163</sup>

In Belize, the document of asylum seekers is included in the passport. In the case of a person who does not have a passport, he/she must go to his/her country's consulate in Belize; and if there is no consulate, he/she must return to his/her home country to process a passport.<sup>164</sup> This violates the principle of non-refoulement, which carries great risk. Moreover, it does not consider the provisions established in the Convention on the Status of Refugees regarding administrative support from the receiving state (Art. 25).<sup>165</sup>

In Argentina and Panama, abuses by security forces have been reported where asylum applicants were confronted in the streets and extorted to avoid arrest.

In Venezuela, it can take two to five years to get a response to an asylum application. During this period refugees are given a provisional document. This document is unknown to Venezuelan authorities, which exposes asylum seekers to threats of deportation and verbal abuse, as well as detention at checkpoints. One person in a HIAS-Venezuela focus group noted: "We feel as if we are flailing in the air, unprotected because they have not given us the document that we need to walk freely in the country."<sup>166</sup> In Mexico, asylum seekers are entitled to a visa on humanitarian grounds; but, according to Alejandra Macias from Sin Fronteras (Mexico):

What is happening is that Immigration Officials are no longer issuing that document. Immigration now waits for Comar to issue the decision. If the person is granted refugee status then Immigration gives them the document. If refugee status is denied, it does not. In other words, the right of all asylum seekers to a visa is not being fulfilled.<sup>167</sup>

The combination of the waiting period, which can take months or years, and the lack of protection while applying for asylum makes people seeking asylum feel unsafe in some host countries.

Another difficulty many refugees face is the requirement of frequent renewals of status documents. Often this process can only be done at capital cities or large cities in the country. The frequent renewal of documents is complicated by the costs associated with transportation and the need to miss work.<sup>168</sup> Another problem that exists in some countries,

163 HIAS-Venezuela. Cited focus groups.

164 Enrique August, Help for Progress, Belize. Cited interview.

165 1951 Convention relating to the Status of Refugees, Art. 25, UNHCR, at: <http://www.unhcr.org/3b66c2aa10.html> [viewed: February 12, 2014].

166 HIAS-Venezuela. Cited focus groups.

167 Alejandra Macías, Sin Fronteras, México. Cited interview.

168 Rosita Milesi, IMDH, Brazil. Cited interview.

for example in Panama, is that this process takes too long, which leaves people totally unprotected in the country.<sup>169</sup>

In many countries, civil society organizations must act to ensure access to services. For example in Panama, due to refusals to care for the refugee population, CEALP accompanies or the presentation of notes, petitions and letters to hospitals, schools and administrative police stations so that refugees receive care and their rights are respected.<sup>170</sup>

### The right to work

The right of refugees to work is incorporated into the legislation of many countries as a right; however access to the labor market and employment conditions remain a challenge implicit in being an asylum seeker or a refugee. The first topic identified here is the difference between a person seeking asylum and a refugee. Whereas countries like Ecuador, Uruguay, Argentina, Costa Rica and Brazil have granted the right to work to asylum seekers, other countries, such as Guatemala, Panama, Mexico and Dominican Republic do not allow asylum seekers to work until the government has legally recognized their status.<sup>171</sup> During the waiting period, which might last for months or even years, asylum seekers are forced to engage in economic activities in the informal sector, often becoming victims of labor exploitation.<sup>172</sup> Venezuela, for instance, recognizes the right to work for people recognized as asylum seekers, but the identity card does not allow them to access work.

In reality the difficulties experienced by asylum seekers and refugees are diverse and significant. The lack of access to employment and economic exclusion generates psychosocial exhaustion that consequently becomes one of the main barriers to integration to the host country. Although those whose refugee status has been already been recognized are entitled to engage in economic activities, employers lack awareness in terms of applicable regulations towards refugees. In many cases refugees in a position of dependence are victims of long working hours, receiving a salary below the legal minimum wage, the absence of a legal work contract, and the lack of access to benefits from the social welfare system. As one participant in the focus groups conducted in Quito, Ecuador stated, “we are people who are not accustomed to this treatment, people who want to fight and work hard to earn a living, but unfortunately it’s difficult for us [...] our contracts say eight hours, but often we work from 7 am to 8 pm”.<sup>173</sup>

On the southern border of Mexico in the Chiapas region of Soconusco, one of the main arrival points of asylum seekers, entry into the labor market takes place under deficient circumstances. They work without contracts and without wages that allow a person to live a life in dignity; because the daily wage varies between 50 and 60 pesos (less than \$ 4 a day). Their jobs are associated with informality, without any benefits such as social security, holiday schemes, or annual bonuses, among other things. Unfortunately, discrimination and the correlation between gender-ethnicity-nationality-labor supply are evident in the following way: If the applicant for refugee status is a Guatemalan-woman-mestizo or indigenous, it is very likely that the “job opportunities” are in the domestic sector. On the contrary, for applicants who are Honduran/Salvadoran-woman-mestizo, it is possible that the host society will repeatedly refer them to work in bars, cantinas and table dancing. In the case of men of Guatemalan origin with or without any indigenous characteristics, discrimination within the labor market would be send them to the

169 Carlos Smith, HIAS-Panamá. Cited interview.

170 Gustavo Peralta, CEALP, Panama. Cited interview.

171 Carlos Smith, HIAS-Panamá. Cited interview; HIAS-Venezuela. Cited focus groups; Danilo Rivera, Incedes. Cited interview; William Charpentier, Menamird, Dominican Republic. Cited interview.

172 The most serious case in this regard occurred in the Dominican Republic, where there are asylum seekers who are still awaiting a response after 12 or 13 years, and during this time have not had the right to work formally nor access to social security. (William Charpentier, Menamird, Dominican Republic. Cited Interview.)

173 Asylum Access Ecuador. Focus group Quito, October 9, 2013.

agricultural and services sectors (informal shops and transport assistants, for example, cycle rickshaw operators). For Salvadoran and Honduran men, job offers would be focused in the areas of construction and services (waiters, kitchen assistants, bartenders, and transportation, such as cycle rickshaw operators).

With few exceptions, it has been verified that in the countries studied in this document, there have been no professional training or educational programs implemented in the official language by the respective state to facilitate refugees' access to employment. Nor do briefings take place on the topics of labor legislation and on available mechanisms to denounce exploitation in the host country. In Ecuador, significant progress has been made in recent years in relation to the right to work for asylum seekers (i.e. the elimination of work permits for access to employment) and vocational training. For example, the Ecuadorian Professional Training Service (Secap), an organization under the Ministry of Labor Relations (MRL), has included persons recognized as refugees as a focus group and guarantees them free access to training programs offered with the aim to support development, training and vocational education to meet job market demands.<sup>174</sup> Also, the Labor Ministry has initiated a process of training addressed both to their teams and to the refugee population regarding their employment rights.<sup>175</sup>

Similarly, in Brazil the Ministry of Labor and Employment (MTE) and the UNHCR signed an agreement with the aim to promote the integration of asylum seekers and refugees into the job market. This includes social and vocational training programs that take into account the psychological, cultural, gender and age-based characteristics of this population. Furthermore, it is expected to provide support for asylum seekers and refugees' business ventures, as well as their entry into the public system of employment, work and income, which includes activities and programs such as bonus salaries, policies for young workers, vocational training and microcredits.<sup>176</sup>

Another initiative implemented by the Brazilian government that contributes to the welfare of the refugee population is the extension of benefits guaranteed by social welfare programs addressed to the vulnerable local population. For example, the Bolsa Familia, a federal program of direct cash transfers to benefit families in poverty or extreme poverty. It forms part of the "Brazil without Poverty" program for which the beneficiary families must demonstrate a family income per capita below 70 reais a month (\$ 1 Day). The plan also provides specific benefits for families with children, youth up to 17 years old, pregnant women and nursing mothers. Birth aid is financial assistance equivalent to a minimum wage, aimed at low-income families that prove the birth of a son or a daughter. This benefit is granted for each child and is paid on only one occasion.

Those refugees who wish to work independently using their own entrepreneurial initiatives face the lack of access to credit, supplied in part by small grants offered by civil society organizations as an injection or startup capital. There are also cases where refugees reported having found it difficult to regulate their business due to the lack of help from local authorities. In Costa Rica, the large number of requisites and documents that are required prevents the refugee population from setting up their own businesses.<sup>177</sup> In many cases, civil society organizations have implemented supporting programs; for example, in El Salvador, the Anglican Episcopal Church, acting as an implementing agency for the UNHCR, promotes the creation of cooperatives and refugees' associations so that refugees can join forces to drive small entrepreneurial initiatives together.

174 Based on these advances, the UNHCR office in Ecuador and the Secap endorsed a cooperative agreement with the aim to advance this program on January 11, 2014. See: <http://www.acnur.org/t3/noticias/noticia/ecuadoracnur-y-secap-promueven-la-capacitacion-profesional-de-los-refugiados/> [viewed: February 3, 2014].

175 Adriana Blanco and Carmen Atkins, AAE. Cited interviews.

176 See: <http://www.acnur.org/t3/portugues/noticias/noticia/acnur-e-ministerio-do-trabalho-assinam-acordo-parapromover-emprego-e-renda-de-refugiados-no-brasil/> [viewed: January 30, 2014].

177 Gloria Maklouf, ACAI. Contextual document and cited interviews.

Also in Costa Rica, the Business Association for Development, the UNHCR, ACAI and the Directorate General of Immigration signed an agreement in 2013 by which these entities joined forces to design a Corporate Social Responsibility program that encourages the labor inclusion of the refugee population. The incorporation of the Directorate General of Immigration demonstrates the public sector's effort to clear up confusion on the part of the business sector and to reduce discrimination, lack of awareness and prejudice that adversely affect the recruitment of refugees.<sup>178</sup>

Refugees with a university degree face bureaucratic and economic obstacles to have their university degrees recognized abroad and validated. There is good practice in relation to this issue in Ecuador, where the National Department for Higher Education, Science, Technology and Innovation (Senecy) has a mechanism to recognize diplomas granted abroad. This mechanism permits the automatic recognition of university degrees or, alternatively, recognition by a committee which acts under established evaluation criteria that enable asylum seekers and refugees to register their degrees and thus become authorized to practice their profession in Ecuador (2011-02, Senecy Agreement).

### The right to health

Free access to the public national health care system is guaranteed to asylum seekers and refugees in almost all countries. That is, there exists a guarantee of primary care in the state network of health centers and, in many cases, there are also specific support programs for people with serious diseases, such as cancer, and other specific programs for people with disabilities. The following key strategies were identified:

In Mexico, refugees can access the commonly used insurance. It is a public and voluntary health insurance program offered by the Ministry of Health, which aims to provide preventive medicine, external consultations, hospitalization and surgeries for the local population without access to any social security. With this insurance, the refugee population has access to free treatment of common diseases and basic medicine for free.<sup>179</sup> Yet, in practice, the health care system is very deficient and precarious. It does not have at its disposal all services nor does it possess sufficient medicines (due financial difficulties faced by the national health system), and quite frequently the refugee population is refused service for lack of awareness regarding asylum rights.

In Soconusco, Chiapas, the State Department of Health, through the Health Jurisdiction Number VII, launched the "Health Passport" in 2008, although health centers and hospitals in the region had already started reporting statistics on care offered to the foreign population in 2007. More than eighty percent of the patients seen (from 2007 to 2010) were from Guatemala, Honduras and El Salvador. The State Department's program to treat migrants however, did not have its own budget, and services were provided with supplies and personnel from other jurisdictions. It is true that the main purpose of this health passport was to translate into numerical data the care they were already providing to migrants in transit, their destination, asylum seekers and refugees; however, since the program did not have any economic resources of its own, it began to stall. Thus activities were reduced to the provision of informative talks and concentrating on statistics. Unfortunately direct care, much less quality care for users, was non-existent. In addition, discrimination on the part of the health staff towards non-citizens was consistent.

In Costa Rica, since the early eighties, there is an agreement between the UNHCR and the Costa Rican Fund for Social Service (CCSS) by which asylum-seekers and refugees in need of medical care or facing economic difficulties

178 Asociación de Consultores y Asesores Internacionales (ACAI), Centro Internacional para los Derechos Humanos de los Migrantes (Cidehum), Hermanas Misioneras Scalabrinianas, Dirección General de Migración y Extranjería, Tribunal Administrativo Migratorio. Interviews with civil society organizations and state institutions in Costa Rica, January 2014.

179 Instituto de Salud del Estado de México, Secretaría de Salud, Seguro Popular, at <http://salud.edomexico.gob.mx/html/article.php?sid=177> [viewed: February 3, 2014].

are incorporated into a collective payroll for a minimum period of six months. This is covered by funds from the organization ACAI. Thus, the aim is to protect people who exhibit the most severe conditions of vulnerability. The refugees that have financial resources can gain access to public health services by means of a voluntary assurance as independent workers or via their employer.<sup>180</sup> This assurance is difficult for asylum seekers to acquire, given that it requires obtaining a work permit and also an assurance from their employer. Furthermore, they are forbidden from registering as self-employed or for voluntary assurance.

In addition, as previously mentioned, in Costa Rica the renewal of immigration documentation requires prior registration to the Costa Rican Social Security. If a person fails to pay social security, he/she immediately incurs a fine, and failure to pay also generates interest. Those patients that received emergency attention and are not insured acquire debt that is difficult to payback. This puts the person in a difficult situation because of their lack of refugee documentation and all that it implies. As well, the refugee is not entitled to social security.<sup>181</sup>

In Ecuador, refugees with severe disabilities or other similar circumstances have free access to the national public health care system. They can also be beneficiaries of the bonus “Joaquín Gallegos Lara”, which is offered in exceptional circumstances based on an analysis of financial resources and is then subject to authorization from the Technical Secretariat for Disabilities.<sup>182</sup>

Barriers in terms of the right to health are related to abuse from health service officials. These barriers lead to difficulties in obtaining more specialized and expensive medicines, treatments and tests, and result in longer wait times to receive care from a health care professional. Thus, for example, in border regions of Ecuador, where infrastructure is still precarious, and refugees could face obstacles such as:

In hospitals, people are asked about their place of residence and place of origin. If one answers ‘Colombian’, hospitals tell them to go to Colombia. Doctors comment that ‘there you have a system that serves you, that offers surgery and gives free medication’. A gynecologist, for example, did not want to care for me. In practice, Colombian refugees are forced to return to Colombia for hospital treatment. Doctors also say that there are not enough resources for Ecuadorians, and that they therefore cannot help Colombians.<sup>183</sup>

### The right to education

The refugee population has access to free public education in Argentina, Brazil, Uruguay, Ecuador, Mexico, Venezuela, Panama, Guatemala, El Salvador, Costa Rica and Nicaragua. In some cases they have access even during the application process of a refugee status determination. In other countries, such as Argentina, Ecuador, Uruguay and Brazil, higher education has been guaranteed.<sup>184</sup> Costa Rica also guarantees education; however, it requires either

180 Gloria Maklouf, ACAI. Contextual document and cited interviews.

181 Ibid.

182 Secretaría Técnica de Discapacidades. Resolución No. STD-019-2013: Instructivo técnico para inclusión, exclusión y bloqueo temporal de las personas con capacidad severa en situación socioeconómica crítica, de las personas con enfermedades catastróficas, raras o huérfanas en situación socioeconómica crítica y menores de 14 años viviendo con VIH/SIDA en situación socioeconómica crítica, Quito, Secretaría Técnica de Discapacidades, 2013, at: <http://www.setedis.gob.ec/transparencia/2013/Octubre/2.%202.-%20Informaci%F3n%20Legal/2.%20A2.%20Regulaciones%20y%20procedimientos%20internos/Listado%20de%20Regulaciones%20y%20Procedimientos/Resoluci%F3n%20019-2013.pdf>. [viewed: February 12, 2014].

183 Asylum Access Ecuador. Focus Groups San Gabriel, October 2013.

184 Adriana Blanco y Carmen Atkins, AAE. Cited Interviews; Pablo Asa, CELS-Argentina. Cited Interview; Gabriela Cortina, Sedhu, Uruguay. Cited interview; Rosita Milesi, IMDH, Brazil. Cited Interview.

the legalization of diplomas in the country of origin or requires them to be authenticated.<sup>185</sup>

Some difficulties are identified in terms of assigning children and youth to the corresponding level of studies. This occurs if their parents fail to submit the appropriate documents from their country of origin to establish the education grade, according to information from Venezuela.<sup>186</sup> Several countries, such as Panama, Costa Rica and Ecuador, have developed strategies such as placement tests to meet the challenge of validating previous years of study in cases where people failed to provide the respective documentation.<sup>187</sup> Organizations claim that the enrollment of children and youth in public schools is an important factor for families' social integration to host countries.

Another barrier for students is the difficulty in obtaining the appropriate certification and transcript because of the lack of an identification document recognized by the educational authorities. In addition, focus groups in Brazil report cases of teachers showing a lack of respect for the cultural origin of refugee students, as well as impatience towards them in the classroom.<sup>188</sup>

In Ecuador, according to Resolution 19 of the Ecuadorian Institute for Educational Credit and Scholarships (IECE), refugees may apply for a national bursary (grants for basic education and high school, and scholarships for the third and fourth level) to study in a foreign country based on cooperation and to supplement cooperation, as well as access to an educational loan.

In Brazil, the Catholic University of Santos (Unisantos) and the UNHCR signed an agreement to grant a comprehensive scholarship that enables refugees access to higher education. With the Sérgio Vieira de Mello Chair, the Unisantos has integrated the group of Brazilian universities associated with the UNHCR since December 2007. The above mentioned scholarship is granted to the top three ranking candidates in the annual screening test, all of whom must prove their refugee status. Recognition of status is granted by the National Council for Refugees (Conare), dependent on the Ministry of Justice, and allows access to seventeen available courses.<sup>189</sup>

In Mexico, despite the fact that free education is provided for in the Constitution, as well as in the Refugees and Complementary Protection Act, discrimination in access to education persists. In particular, the bureaucratic framework of the Secretariat of Public Education stipulates a series of requirements that are extremely difficult to meet, as well as payments, which is only compounded by the lack of awareness of refugee issues on the part of public authorities. In Soconusco, Chiapas, although a child can pursue primary education without submitting documentary evidence from other schools, given the fact they may opt for a placement test, the requirement that may in fact be an obstacle is a birth certificate. It is especially difficult for families who were obligated to flee without any identity documents from their country of origin. Parents sign a letter requiring them to submit the document before their children leave grade sixth in order to obtain their certificate. Otherwise, it will be difficult to acquire the certificate verifying their graduation from primary school, and they will therefore not be able to access secondary school. Another factor that requires attention is the lack of sociocultural inclusion of the children in schools. Inclusion is neither exercised nor promoted by the teachers and school principals in the region because of the lack of knowledge about multiculturalism, non-discrimination and languages of their countries of origin.

185 Gloria Maklouf, ACAI. Contextual document and cited interviews.

186 HIAS-Venezuela. Cited focus groups.

187 Carlos Smith, HIAS-Panamá. Cited interview; Adriana Blanco y Carmen Atkins, AAE. Cited Interviews.

188 Caritas Archdioceses of São Paulo. Focus Groups with teenagers, Centro Pastoral São José do Belém, October 19, 2013.

189 Unisantos, Bolsa Convenio Unisantos/ACNUR, at: <http://www.unisantos.br/bolsas/bolsa-conveniounisantos-acnur.html> [viewed: February 3, 2014].

In Costa Rica, there is an agreement between the University of Costa Rica and the UNHCR entitled “Strengthening International Protection for the Refugee and Migrant Population in Costa Rica”. In the agreement, students from different disciplines support the work of various counterparts in charge of providing for these populations. This is meant to create awareness and reports about international refugee law for future professionals.<sup>190</sup>

### The right to housing

In the countries analyzed, it is a challenge for asylum seekers and refugees to find affordable housing in safe neighborhoods. In the initial phase, most refugees are welcomed by acquaintances because of the difficulty of buying or renting a dwelling due to high costs. An alternative is to find accommodation in public shelters, hotels and hostels, if available, until they find a dwelling to rent. However, the refugee population in Brazil reported during a focus group great concern in terms of security. The refugee population has to share hostels with homeless people, drug addicts, ex-convicts or people with mental illness. Sometimes they are victims of robberies by the other occupants of the shelter, who usually sleep with guns or knives. Refugees often do not report these incidents because they are intimidated by threats.<sup>191</sup>

In Mexico, Panama, Venezuela, Ecuador, Brazil and Costa Rica, some of the difficulties experienced by the refugee population in gaining access to decent housing are due to high deposits, monthly rent and the request of excessive guarantees because of their nationality and/or immigration status. They also do not receive refunds of deposits under the threat of deportation or being reported to the immigration authorities. In many cases, the refugee population choose to live in areas of great socioeconomic disadvantage, putting their personal safety at risk. As one refugee woman who participated in focus groups in Costa Rica stated: “housing in the country is very expensive, therefore (obtaining) decent housing depends on the refugee’s own resources. Many times we are forced to live in unsafe places”.<sup>192</sup> In the search for housing, documentation is very important, and results in discrimination (i.e., the asylum seekers who only have a letter that certifies they have entered in the asylum process are not considered for renting).

In Nicaragua, as in other countries, this issue is linked to the national housing shortage which results in high housing costs. Therefore, the inclusion of refugees within state housing programs would resolve one of refugees’ biggest problems. It is urgent to resolve this situation, which is trying for a person who has recently arrived in the country because it is difficult to shoulder alone.<sup>193</sup>

Access to housing is also one of the major problems faced by the refugee population in Argentina. As one refugee resettled in 2011 states:

It is very complicated. The first two years of the program we have the support of HIAS but then we’ll be left adrift without any support. We’ve negotiated to pay six months’ rent in advance in order to maintain the tenancy agreement. But it is very difficult to raise the money necessary to pay in advance and cover other household expenses. It would help us if they changed the policy regarding tenancy agreements with people who have refuge [the condition of refugee] for which reason we can’t easily obtain the necessary support. [One of the difficulties that I’ve encountered regarding the access to housing are] the lack of government

190 Gloria Maklouf, ACAI. Contextual document and cited interviews.

191 Caritas Archdiocese of São Paulo. Focus Groups with men. Centro Pastoral São José do Belém, October 19, 2013.

192 Gloria Maklouf, op. cit.

193 Blanca Fonseca, CEPAD, Nicaragua. Personal interview, January 2014.

policies that benefit us. The only housing access program is the housing bidding program, but in order to register, refugees must demonstrate that they have a job agreement for at least one year, permanent residence and other requirements difficult to obtain.<sup>194</sup>

Uruguay reported lack of access to state housing plans and inflexible state housing requirements. The refugee population has minimum representation in housing programs proportionate to the local population. However, within the framework of the regional Program of Solidary Resettlement, which Uruguay has participated in since 2007, the government initiated a pilot program in 2013 that includes the settlement of families in a rural setting with access to public housing. This could be a strategy to follow based on its results.

### **Non-discrimination: A challenge in integration**

Discrimination against people under international protection is a phenomenon present in most of the surveyed countries. The citizens of host countries are unaware of the reasons that lead a person to seek asylum, and thus usually associate them with crime and political issues. In Brazil, discrimination can derive from not speaking the language (Portuguese). Also, as already mentioned, the documentation and the use of the term "refugee" itself generate discrimination. In countries facing socio-economic challenges, competition for resources, services and professional opportunities between refugees and the local population aggravates discriminatory practices. The invisibility and vulnerability of refugees is reinforced by the lack of communication campaigns to sensitize the local population.

In particular, refugees are affected by social and institutional discrimination based on gender, sexual orientation, ethnicity, disabilities or other reasons. In terms of institutional discrimination, Belize stands out among the countries analyzed with its explicitly homophobic legislation that condemns men to prison who maintain homosexual relations. It even prohibits homosexuals' entry into the country.<sup>195</sup>

In many cases, the restrictive migratory policies focus on national security rather than human rights, and deepen xenophobic prejudices against people subject to international protection. These prejudices are rooted in state institutions, the media and society in general, stigmatizing refugees as a danger to national security and to the welfare of citizens. Such discrimination constitutes a serious obstacle in access to employment, housing, health services and many other resources even when someone has documents that formally grant them the right to those resources.

The asylum seekers and refugees consulted for this report reported experiencing discrimination in Brazil, Costa Rica, Venezuela and Ecuador.<sup>196</sup> It has been observed that this discrimination often comes directly from government officials who are in charge of providing services. As reported by an interviewed person, "it is necessary to create social awareness among government officials to avoid discriminatory remarks and gestures towards the refugee population because there is a lack awareness to address this problem".<sup>197</sup>

In terms of possible measures that could be implemented to reduce discrimination and prejudice in the host countries, many refugees stated that it is critical to inform the local population about the meaning of refugee and the compelling circumstances that forced them to flee their country of origin in search of safety. "I do not know, perhaps

194 HIAS-Argentina. Surveys Cartagena, October/November 2013.

195 Enrique August, Help for Progress, Belize. Cited interview; International Organization for Migration (IOM), Diagnostic on Current Belizean Migration Trends and Migration Management Regulation, First Draft, Belmopan, 2013, p. 65-66.

196 HIAS-Venezuela. Cited focus groups; Asylum Access Ecuador. Focus groups, Quito and San Gabriel, October 2013.

197 Gloria Maklouf, ACAI. Contextual document and cited interviews.

by not publishing such bad references of Colombians. We know that many have made mistakes, but, in truth, that isn't all of us, and the rest of us pay for these few. To conclude, the publicity that we receive must be improved".<sup>198</sup> Refugees participating in a focus group in Brazil noted that an effective measure to tackle discrimination could be "to work harder and orient society about the issue of refugees and refugee status. Using things like available media, schools, and handouts, to try to impact as many people as possible".<sup>199</sup>

In Mexico in the Soconusco, discrimination towards any foreign person, including refugees and asylum seekers, is constant. People feel a sense of rejection mainly toward the population of Central American origin, and refer to them using denigrating words. There are even public spaces such as Miguel Hidalgo Park in Tapachula, Chiapas, considered "migrants areas." Discrimination in the region intersects with access to basic rights such as health, education, housing and labor, since the population is forced to live in marginal areas with poor basic services, low wages and no access to good jobs.

As an example of a good practice, Costa Rica, the UNHCR and ACAI, in cooperation with the Ministry of Public Education, regularly conduct workshops for educators of intercultural education in schools and colleges. These workshops seek to make visible the situation of refugees, inform and raise awareness of this reality, and encourage practices that enable the integration of minors in the country. It is an essential space to have an exchange and come together with peers and other people. Hence, the treatment received by minors is essential in promoting or hindering the integration process in the host country. Such workshops also extend to minors at schools and colleges as well as to university students in the areas of education and counseling as future professionals.<sup>200</sup>

### Access to permanent residence and naturalization

In terms of permanent residence and naturalization, there are several good practices in the countries analyzed:

- ▲ In Brazil, the government has recently reduced the period of time required to apply for permanent residence from six to four years. Refugees may be entitled as well. Entitlement to permanent residency allows access to a greater number of social rights. The Conare also defined the rules to extend protection to the families of refugees who have already been recognized by the government of Brazil. This commission requested the Ministry of Foreign Affairs to grant a tourist visa in order to facilitate family reunification. This condition can be extended to the spouse or partner, parents, children or other relatives financially dependent on the refugee.
- ▲ In 2012, the government of Panama approved the Law of Permanent Residence to Refugees and Exiles, a norm based on humanitarian grounds. This concedes the migrant category of permanent resident to refugees and exiles who have been entitled to such status for three years or more, and manifest an intention to reside in the territory of the Republic of Panama. The refugees must be recognized by the National Committee on Refugee Protection and registered at the National Bureau for the Care of Refugees, and exiles must be recognized by the Ministry of Foreign Affairs as well.
- ▲ In Mexico, once a person is recognized as a refugee, permanent residency is granted. The person then receives an identification card with indefinite validity. Among other good practices implemented by the

198 HIAS-Argentina. Surveys, Cartagena, October/November 2013.

199 IMDH, Brazil. Focus groups, Brasilia, October 2013.

200 Gloria Maklouf, op. cit.

Mexican State is the support provided by the Ministry of the Interior (through the Mexican Commission to Refugees Aid) to the refugee population during the process of their documentation of regular stay. The refugee population is not required to possess an identity card (such as a passport) for the immigration proceedings. This exemption granted to the refugee population is in terms of the obligation to present knowledge of Mexican culture and history in the form of a test to apply for naturalization.

- ▲ In Guatemala and El Salvador, a refugee can apply for permanent residence within two years of obtaining such status in the country.
- ▲ In Ecuador, refugees have access to naturalization after having resided in the country for at least three consecutive years in that capacity, without having to return to the country of origin to present proof of identity or marital status. Limitations to this procedure are the cost and requirements.
- ▲ In Costa Rica, after spending at least three years in the country with refugee status, a person can opt for permanent residency. It may be requested after waiving their refugee status. However, they can maintain the refugee status with the rights and duties arising from international protection. Naturalization can be obtained after officially living in the country for five years for people from a Latin American country, or seven years for other nationalities. The perception captured in focus groups is that people do not feel supported in terms of obtaining information from the Immigration General Directorate. In many cases, they are obliged to investigate other alternatives by themselves. Thus, they believe that the state failed to promote the changes that the law requires and provide the appropriate information.<sup>201</sup>
- ▲ In Argentina, any person from a member country of Mercosur with refugee status is entitled to permanent residence after two years of temporary residence. In the case of nationals of countries outside Mercosur, the period is extended to three years. Another important advancement was verified in the request for the citizenship card. Asylum seekers and refugees may (like any other foreigner) apply for citizenship after two years of continuous residence on Argentinean territory. Irregular entrance into the country is not an obstacle, nor is the failure to provide the documentation of their country of origin. This procedure is free and, although it is a legal process, there is no need for mandatory defense. If needed, free legal aid is provided by the Commission for the Comprehensive Care and Protection of Refugees and Asylum Seekers from the Office of the Ombudsman.
- ▲ In Venezuela, people can initiate the naturalization process after five years of recognition of the refugee status.

201 Gloria Maklouf, op. cit.

## 4. The situation of stateless persons in Latin America and the Caribbean

Nineteen countries in Latin American and Caribbean are signatories of the 1954 Convention relating to the Status of Stateless Persons<sup>202</sup>, and thirteen are signatories of the 1961 Convention on the Reduction of Statelessness. The aim of these conventions was to define the policies to be adopted by states to reduce the incidence of statelessness.<sup>203</sup> In this context, Latin America and the Caribbean have a long tradition of preventing statelessness. Most of the region already has laws with respect to nationality that are quite extensive in providing a combination of *jus soli* and *jus sanguinis*.<sup>204</sup> However, it is not possible to discuss the situation of statelessness in Latin America and the Caribbean without mentioning the current and historical situation in the Dominican Republic.

In the Dominican Republic, the 168-13 judgment of the Constitutional Court represents a barrier to the continuous improvement in the region with respect to statelessness. Recent steps taken by the Dominican government culminated in the expatriation of many thousands of descendants of Haitian immigrants who had been living in the country between 1929 and 2007. This has generated the most serious statelessness problem in the Americas. Before this ruling, the situation was similar to that of many other countries in Latin America,<sup>205</sup> in that being born in the Dominican Republic and having a birth certificate was sufficient proof of nationality in the country.

The problem of discrimination against Haitian people has a long history in the Dominican Republic. In September 2005, the Inter-American Court of Human Rights ordered the Dominican Republic to comply with its Constitution and guarantee the right to Dominican nationality to all people born in their territory acting under the *jus soli* judicial criteria.<sup>206</sup> The UNHCR has requested that the Dominican Republic restore nationality to the people affected by the Constitutional Court ruling that denied the nationality to direct descendants of undocumented immigrants, which particularly affects the descendants of Haitians. The Inter-American Commission on Human Rights (IACHR) visited the Dominican Republic from the 2<sup>nd</sup> to the 5<sup>th</sup> of December 2013, accepting a state invitation. The Commission identified the characteristics that the measures adopted must have in order to respond to the challenges faced by the country in terms of the Haitian people's right to nationality, in particular due to the

203 United Nations Treaty Series, Vol. 360, p. 117, at: [https://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&tabid=2&mtdsg\\_no=V-4&chapter=5&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&tabid=2&mtdsg_no=V-4&chapter=5&lang=en#EndDec). Signatories of the 1961 Convention in the Americas and the Caribbean: Bolivia, Brazil, Costa Rica, Canada, Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Uruguay.

204 Juan Carlos Murillo, "Apatridia y nacionalidad en América Latina", in *Aportes Andinos*, No. 29, Quito, Universidad Andina Simón Bolívar-Programa Andino de Derechos Humanos, July 2011, at: <http://www.uasb.edu.ec/UserFiles/369/File/PDF/CentrodeReferencia/Temasdeanalis2/apatridiaydh/articulos/murillo.pdf>.

205 William Charpentier, Menamird, República Dominicana. Cited interview.

206 Bridget Wooding, "La lucha contra la discriminación y la apatridia en la República Dominicana", in *La apatridia*, UNHCR, 2009, at: <http://www.acnur.org/biblioteca/pdf/7154.pdf?view=1> [viewed: January 10 2014].

Constitutional Court's sentence.<sup>207</sup>

As for the National Migratory and Refugee Regularization Plan, William Charpantier of Menamird in the Dominican Republic explained that civil society organizations only support the plan regarding persons of foreign descent who were not born in the country. Thus, the object Article 8 of the decree, as well as Articles 27, 28 and 29 aimed to include only the children of immigrants who were born in the Dominican Republic as a way of implementing the denationalization of Haitians' children. They demand that they restore the right to nationality as laid down in Article 18, Part 2 of the 2010 Constitution for the children of immigrants born in the Dominican Republic.<sup>208</sup>

In contrast, in recent years, progress was evident in several countries in the region in terms of recognizing and preventing statelessness. In 2010, government representatives of eighteen Latin American countries gathered in Brasilia to issue the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the American Hemisphere. The seventh point of this Declaration urges:

[...]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.<sup>209</sup>

Along the same lines, between 2011 and 2013, Honduras, Nicaragua, Panama, Ecuador, Peru and Paraguay ratified one or both of the agreements referred to above.<sup>210</sup> In 2011, Brazil also followed the recommendations of the Declaration of Brasilia and eliminated the previous requirement of residence in the country to obtain citizenship, granting the possibility of citizenship to 200,000 children who were born outside Brazilian territory and are stateless or at risk of statelessness.<sup>211</sup>

Several countries in the region have also developed mechanisms to identify cases of statelessness in order to provide legal and administrative advice to people in this condition. In 2013, Argentina, Brazil and Panama received funding from the UNHCR for programs focused on stateless people.<sup>212</sup> Uruguay is in the final stages of passing comprehensive legislation for the treatment of statelessness, which would be the first in the region based on the UNHCR'S model laws. In 2013, Costa Rica, Panama, El Salvador and Argentina also reported progress in the creation of legislation in accordance with the 1954 and 1961 conventions. In view of this trend, the UNHCR stated that the region is advancing "to eradicate statelessness."<sup>213</sup>

207 Comisión Interamericana de Derechos Humanos, CIDH, "Culmina visita a República Dominicana", UNHCR, 2013, at: <http://www.acnur.org/t3/recursos/informacion-sobre-pais-de-origen/detalle-documento-coi/cidh-culmina-visita-a-republica-dominicana/> [viewed: January 10 2014].

208 William Charpantier, Menamird, República Dominicana. Cited interview.

209 United Nations High Commissioner for Refugees (UNHCR) and Ministerio Da Justicia, Comité Nacional para Refugiados. Declaración de Brasilia sobre la Protección de Personas Refugiadas y Apátridas en el Continente Americano, Brasilia, UNHCR, 2010, at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/8133>.

210 United Nations High Commissioner for Refugees (UNHCR), "América Latina", in Actualización de los programas y estrategias del ACNUR 2013, UNHCR, at: <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=526a3ea44>.

211 Anastasia Moloney, "Brazil bill gives hope to Latin America's stateless - UNHCR", August 23, 2011, on the Thomson Reuters Foundation website, at: <http://www.trust.org/item/?map=brazil-bill-gives-hope-to-latin-americasstateless-unhcr>.

212 United Nations High Commissioner for Refugees (UNHCR), "América Latina", op. cit., p. 273-275.

213 "Los países latinoamericanos avanzan hacia la erradicación de la apatridia", UNHCR, 18 September, 2013, at: <http://www.acnur.org/t3/noticias/noticia/los-paises-latinoamericanos-avanzan-hacia-la-erradicacion-de-la-apatridia/> [last access: January 23, 2014].

## 5. Coordination between state institutions, international organizations and civil society

One of the main pillars of the international protection system is the work performed by states in coordination with international organizations and civil society. At different levels of dialogue and progress, all the analyzed countries have mechanisms at their disposal to make this coordination viable. Civil society organizations (CSOs) have been traditional actors of international cooperation. The relationship between agencies, government agencies and non-governmental organizations (NGOs) of international cooperation and civil society in Latin America and the Caribbean date back to the sixties in a time period characterized by the growing demands of citizens in social sectors like unions, teachers, farmers, students, etcetera.<sup>214</sup>

Due to the sixties' economic crises, there was a greater convergence of actors around the international cooperation of development. CSOs extended their agenda and started a thematic process of specialization; in particular, the number of organizations working in the area of development, democracy and human rights increased. However, the extent of applicability and justification of economic, social, cultural and environmental rights had to be delivered by the civil society organizations with very limited resources.

Our organizations have managed to have a greater impact in spaces of constructive dialogue and interlocution when there is debate and public policy is constructed. Also helpful are political and sensitive persons who recognize the proposals and experiences of other actors. At this historic moment of great challenges, the priority is to strengthen partnerships, recognize all the actors involved in humanitarian actions and human rights, and build action plans to address current and future problems.

In this context, it is imperative to start initiatives to formalize rules and institutional international cooperation in each country. It is very important to recognize the importance and need for a regulatory framework that provides certainty, regulation, and transparency, as well as facilitates and encourages assistance that is received or directed by states. It is necessary to implement proper databases on flows of international cooperation entering and leaving the country. There must also be sufficient knowledge about its use, how to prioritize investment, which programs are subject to prioritization and the way to channel, identify and recognize the contributions made by organized civil society. It is necessary to create barriers to prevent this information from being used improperly by some of the actors involved.

Relying on solid mechanisms of dialogue and coordination enables more agile access to strengthen the system of access to asylum and the quality of procedures. These mechanisms also help to identify and establish responses

214 Laura Becerra Pozos, "La dimensión política de la cooperación internacional", Mexico, DECA Equipo Pueblo, March 24, 2006, p. 1., at: [http://www.equipopueblo.org.mx/publicaciones/publicaciones/descargas/suipu\\_dimpolcopint.pdf](http://www.equipopueblo.org.mx/publicaciones/publicaciones/descargas/suipu_dimpolcopint.pdf) [viewed: January 23, 2014].

to bureaucratic barriers that limit the access to rights. In Central America, the Red Regional de Organizaciones Civiles para las Migraciones collaborates with the state, acting in diverse interdisciplinary spaces (public institutes, ministries related to this subject, the private sector, civil society organizations, trade unions and churches) and negotiates with various intergovernmental actors that focus on migration. The network has a close partnership with the UNHCR because several member organizations are national agencies that implement their programs. The UNHCR's role in this partnership of dialogue is key for international protection and effective integration. It promotes the participation of civil society in implementing strategies not only through implementing partners, but also by recognizing the role of civil society in communicating with governments to design and develop comprehensive programs for asylum seekers, refugees and the stateless population.

Similarly, in Costa Rica, organizations reaffirm the importance of dialogue and cooperation stating:

This partnership work has made possible significant benefits for this population and has raised the quality of the system by facilitating and creating continuous and quality training from the state, as well as improving technical knowledge of its staff and respect for fundamental principles enshrined in the system. Furthermore, in some instances, the presence of public officials to validate and expose technical aspects from an official perspective is essential.<sup>215</sup>

Additionally, the Comprehensive Immigration Policy approved in Costa Rica, on August 2013, was created through a participatory process involving various sectors of society, such as health, education, culture, employers, and others, as well as in consultation with groups of migrants and refugees from different regions in the country and civil society.<sup>216</sup>

In Brazil, there are several mechanisms. On the one hand, there is tripartite participation in the decision-making process to determine refugee status through the participation of a delegate from the Red Solidaria para Migrantes y Refugiados.<sup>217</sup> On the other, there are State Committees for Refugees, interdisciplinary spaces responsible for the design and implementation of integration programs for migrants and refugees in the state and municipalities.<sup>218</sup>

Similarly, in Venezuela, an institutional unit was created which brings together twenty-five state agencies for the formulation and coordination of public policies for the refugee population to protect their right to education, work and health. An important feature of such an initiative is the decentralization of the competent bodies in asylum and refugee matters because these government agencies are usually located in the capitals.<sup>219</sup>

215 Gloria Maklouf, ACAI. Contextual document and cited interviews.

216 Ibid.

217 The Red Solidaria para Migrantes y Refugiados consists of around 45 institutions that maintain constant communication. The functions of the organization include: offering institutions coordinated reciprocal support in actions concerning refuge, the exchange of experiences, training, debates, the presentation of proposals and information, the production of reports, as well as the joint proposal of topics, be it for the UNHCR or for the organizations themselves, that is to say, for civil society (see: [www.migrante.org.br](http://www.migrante.org.br)).

218 Between 2008 and 2013, four inter-institutional committees were created in the states of São Paulo, Rio de Janeiro, Paraná y Rio Grande do Sul, where the largest refugee populations are concentrated in Brazil. The committees' objective is to design and implement integration plans for migrants and refugees at the state and municipal levels and in social, economic, labor, cultural and educational areas, seeking the most effective participation of diverse actors – public, private and from civil society.

219 “Directora de ACNUR para América realiza visita oficial a Venezuela”, in Notitarde, June 22, 2012, at: <http://www.notitarde.com/Pais/Directora-de-Acnur-para-Am%C3%A9rica-realiza-visita-oficial-a-Venezuela/2012/06/22/114403> [viewed: January 30, 2014]

## 6. Recommendations: A new framework for international protection based on solidarity, diversity, harmonious coexistence and social justice

Based on the challenges, best practices and trends in the region discussed above, civil society organizations make the following recommendations:

- 1.** Recognize that in situations of war and widespread violence, the reasons for which people can be forced to flee are due to a well-founded fear of persecution as established in the 1951 Refugee Convention. Due to these circumstances it is implicit to move towards a comprehensive and contemporary understanding of the challenges faced by the region in international protection.
- 2.** Move forward with advocacy for legislation on asylum and statelessness in the region that strengthens the structures of protection and integration. Prioritize innovative solutions to humanitarian problems, and the contemporary needs of people who live under international protection, as well as improve mobility between countries in cases where conditions for integration into the country that granted asylum proved difficult. It is important to seriously consider the possibility of allowing people to keep their refugee status (the portability of refugee status) by recognizing that the subject of the rights bestowed is the person.
- 3.** Urgently adopt migration policies that respect human rights and that are in adherence with the Proclamation of Latin America and the Caribbean as a Zone of Peace, signed by the member states of CELAC on January 2014. For this purpose, it is necessary to improve and fundamentally democratize the migration admissions systems by creating a comprehensive, diversified and common legal framework to be able to provide answers based on the recognition of a range of non-negotiable basic rights. Given the dynamic and complex mixed migration flows, this would allow for the identification of specialized needs for protection of individuals, including asylum seekers and refugees.
- 4.** Recognize the important role of civil society in the fight for the rights of migrants, and particularly of refugees, asylum seekers and stateless persons in the region. Display coordinated efforts aimed at promoting the democratization of the evaluation and the decision-making procedure involved in the international protection of people. In this sense, the creation of a tripartite mechanism is strongly recommended to supervise compliance with goals set for the coming ten years, including assessment systems with indicators that allow assessing the degree of protection and inclusion of refugees in the political, social and cultural fields.
- 5.** Reliance on fair and efficient procedures for determining refugee status to ensure the inclusion of due process according to the provisions established by the Inter-American Court of Human Rights decision in the case *Tineo Pacheco vs. Bolivia*, such as legal representation and strengthening an independent second appeal, as well as to guarantee judicial review.

**6.** Implement in all countries of the region the Quality in Asylum Initiative Procedures (QAI), which aim to increase the procedural standards at different stages of the process (receipt, recording, interview, decision and appeal), based on the creation and standardization of reliable official statistics in each of the countries. It is important, as civil society, to ensure that the recommendations arising from this process are supported and implemented by government agencies, provided the creation and standardization of reliable official statistics in each country.

**7.** Promote dialogue and the effective participation of asylum seekers and refugees themselves to make a coordinated effort that promotes their strengthening and integration.

**8.** Set regional strategies to strengthen institutions and promote the decentralization of national commissions in charge of the refugee status determination process. Introduce systematic training of government officials on a regional scale, and share experiences to meet national and international standards in refugee matters, with the goal of full autonomy for agencies or institutions responsible for the management of migration. This is usually law focused, and generally the responsibility of ministries with a strong sense of safety responsibilities.

**9.** Full respect for the principle of non-detention for migration reasons, even as a measure of last resort. In general terms, this violates human rights and, in turn, affects the ability to claim asylum. As shown by various studies, people in detention refrain from applying for asylum to avoid spending more time in prison.

**10.** Ensure consideration of the best interests of children and teenage asylum seekers, refugees and stateless persons. Guarantee adequate and sensitive treatment of all the factors that have made their migration experience unique.

**11.** Adopt a regional policy of engagement for the issuance of identification documents for refugees, asylum seekers and stateless persons, to guarantee the exercising of rights, equal opportunities and non-discrimination. The identification must not include any reference to their legal status. The quality of the documentation is closely linked to a successful integration process, and its usefulness means it is issued promptly, accepted by all sectors of society, and accurately shows the right to be in the country.

**12.** Ensure that people entitled to international protection have equal access to programs and state benefits (health, employment, and housing). Ensure the inclusion of the entire population of asylum seekers, refugees and stateless persons to mandatory services without discrimination. Likewise, promote local integration in general (legal, socioeconomic and cultural), naturalization, voluntary repatriation and the strategic use of resettlement.

**13.** Advance strategies to improve access to employment, vocational training and support to productive enterprises (including credit) as part of government programs at its various levels and in the private sector. This allows integration and reduces the number of dangerous jobs as well as labor exploitation, which is in line with the efforts made by some governments in the region.

**14.** States have to allocate more human and financial resources and ensure the protection and care for asylum seekers, refugees and stateless persons is not deprioritized. As well, ensure that the planning and work that is conducted is done so in a collaborative manner with the government, civil society and international organizations.

**15.** Strengthen services relating to orientation, complaints due to discrimination and violations of human rights, including the incorporation of assistance and support for victims and their families, strengthening the work and role of the ombudsmen for public defense.

**16.** That states that have not already done so, consider joining and/or ratifying international instruments on statelessness, so that the American continent advances toward the eradication of this phenomenon in the next decade.

## 7. Organizers

### ORGANIZATIONS AND REGIONAL NETWORKS

#### Red Regional de Organizaciones Civiles para las Migraciones

<http://www.rrocm.org/>

RROCM is a space of networks of civil organizations and people from eleven countries in the region including Central America, the Caribbean and North America (Canada, USA, Mexico, Guatemala, Belize, El Salvador, Honduras, Nicaragua, Costa Rica, Panama and the Dominican Republic). It was created as a result of the need to articulate a united front capable of dialogue with the countries of the region. Its aim is to ensure the protection, defense and promotion of the human rights of migrants, refugees and their families, in their places of origin, transit and destination, from a comprehensive and multidisciplinary approach.

#### Organizations and participating networks

Instituto Centroamericano de Estudios Sociales y Desarrollo (Incedes, Costa Rica)

Foro Nacional para las Migraciones en Honduras (Fonamih, Honduras)

Red Nicaragüense de la Sociedad Civil para las Migraciones (Nicaragua)

Red Nacional de Organizaciones Civiles para los Derechos Humanos de los Migrantes (Rednam, Costa Rica)

Centro Internacional para los Derechos Humanos de los Migrantes (Cidehum, Costa Rica)

ACEFIN, SOLETERRE, IDHUCA y GEMIES (El Salvador)

Enrique August (Belize)

National Alliance of Latin American and Caribbean Communities (NALACC, United States)

Foro Migraciones (Mexico)

Canadian Council for Refugees (Canada)

Mesa Nacional de Migrantes y Refugiados (Panama)

Mesa Nacional para las Migraciones (Menamird, Dominican Republic)

### **International Detention Coalition (IDC)**

[www.idcoalition.org](http://www.idcoalition.org)

IDC aims to promote greater protection and respect for the human rights of detainees and raise awareness of detention policies and practices. It also aims to promote the use of international and national standards relating to the detention of refugees, asylum seekers and migrants.

IDC is comprised of organizations, academics and sixty-seven countries around the world, working to protect the rights of asylum seekers, refugees and migrants in detention through networking, advocacy, awareness, research and reporting.

### **HIAS-Regional Latinoamérica**

<http://www.hias.org/>

HIAS is a global non-profit Jewish organization, which protects refugees whose lives are in danger because of their status. Persecution, conflict and disasters have generated more than forty-three million refugees and displaced persons around the world. HIAS protects refugees, among them, women, and children, ethnic, religious and sexual minorities.

Guided by our values and history, we bring over a century of experience to our work with refugees, helping them to take control and rebuild their lives in safety and freedom, and advocating for the protection and dignity of all refugees and displaced persons. HIAS's vision is synonymous with a world in which refugees find refuge, safety and freedom. In Latin America HIAS works in Ecuador, Venezuela, Panama and Argentina, developing counseling programs, humanitarian assistance, livelihood and integration and resettlement.

### **Project Counseling Service (PCS) - Oficina regional para Centroamérica y México con sede en Guatemala**

[www.pcslatin.org](http://www.pcslatin.org)

PCS is an international non-governmental organization for accompaniment and advocacy rooted in Latin America. It contributes to building citizenship and deepening democracy, mobilizing resources, producing critical thinking, creating spaces for coordination, synergy and promoting institutional reforms, from their commitment to the integration of human rights and equality of gender and ethno-cultural relations.

## **ARGENTINA**

### **Centro de Estudios Legales y Sociales (CELS)**

[www.cels.org.ar](http://www.cels.org.ar)

CELS is a nongovernmental organization working since 1979 on the promotion and protection of human rights and the strengthening of the democratic system in Argentina. The main objectives of the institution are focused: denouncing violations of human rights; influencing the formulation of public policies based on the respect for

fundamental rights; promote legal and institutional reforms aimed at improving the quality of democratic institutions; and promote greater exercise of these rights for the most vulnerable sectors of society.

## BELIZE

### Help for Progress

<http://helpforprogress.interconnection.org>

HFP is a nongovernmental, nonprofit organization that works with community organizations to promote sustainability, dignity and hope in rural areas of Belize. It works with local and regional partners to strengthen and empower communities, assembling productive tools to empower and integrate rural society to solve their problems.

## BRAZIL

### Migrações Institute and Human Direitos (IMDH)

[www.migrante.org.br](http://www.migrante.org.br)

IMDH, founded in 1999, is a non-profit philanthropic social organization whose mission is to promote the recognition of the full citizenship of migrants and refugees, acting in defense of their rights, in socio-legal and humanitarian assistance, as well as in their social integration and inclusion in public policy, with a focus on the most vulnerable situations.

### Caritas Archdiocese of São Paulo

The Archdiocesan Caritas São Paulo, through its Centro de Acolhida para Refugiados (Center for the Reception of Refugees), is a civil society organization and has worked since 1977 in assisting asylum seekers and refugees in São Paulo. In its initial phase, its activity was driven by the Justice and Peace Commission of the São Paulo Catholic Church. In 1989, Caritas came to integrate the network of protection of the UNHCR, with the enactment of the Refugee Federal Statute (Law 9474/1997). It also came to act as a representative of civil society together with the National Committee of Refugees - the Conare.

Currently, the Caritas Centro de Acolhida para Refugiados maintains agreements with the UNHCR and Conare, in addition to other diverse partnerships that allow it to continue operating its four principle programs: legal protection, social assistance, integration and mental health.

## COSTA RICA

### Asociación de Consultores y Asesores Internacionales (ACAI)

[acaicr.wordpress.com](http://acaicr.wordpress.com)

The Asociación de Consultores y Asesores Internacionales (ACAI), established in 1991, is one of the partner agencies of the United Nations High Commissioner for Refugees (UNHCR) in implementing its programs. We are the only NGO specializing in the issue of refuge, which directs our work toward comprehensive support, and the promotion of self-reliance, knowledge, exercise and diffusion of rights in Costa Rican society.

At ACAI, we develop interdisciplinary activities in order to ensure the protection of asylum seekers and refugees

to facilitate their local integration. ACAI also promotes the development of projects to meet the needs felt and expressed by this population and identified by ACAI.

### **Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM)**

<http://www.cidehum.sitew.com>

We work on the **full and effective protection of the human rights of migrants**, especially the populations vulnerable to discrimination, abuse and xenophobia: unaccompanied minor migrants, women, refugees and persons displaced from their places of origin.

Our axes of action are: (1) **Development of advocacy** in Central and Latin American for legislation in accordance with international conventions ratified by the countries; (2) **Training, care and support for victims** of forced displacement by transnational organized crime in Central America; (3) **Training and sensitizing** of public institutions, NGOs, grassroots groups (migrants and refugees), international organizations and cooperation agencies; (4) **Research-action** orientation toward achieving feasible actions in the various areas of the migration phenomenon: Trafficking, migrant smuggling, organized crime networks, irregular migration, refuge and its psychosocial and territorial impacts on the people involved in the process of migration and seeking refuge; (5) **Support to community leaders, psychosocial care** and information campaigns; and (6) Active participation in inter-agency networks and support for the crafting of public policies related to the migration phenomenon.

### **Hermanas Misioneras Scalabrinianas**

The Hermanas Misioneras Scalabrinianas' mission in the world is to "testify to the transcendent life of all God's people, particularly to migrants, helping them discover the love that the Father has for them and the hope to which they are called" (Constitutions of the Missionary Sisters Scalabrinianas, n.7). The Congregation of the Missionary Sisters of St. Charles Borromeo, Scalabrinianas, was founded by the Blessed John Baptist Scalabrini on Piacenza October 25, 1895, and has as its co-founders Brother P. José Marchetti and Mother Asunta Marchetti. Its mission is evangelical and missionary service to migrants, especially the poor and needy. Initially it expanded into Brazil, and then into Europe in 1936, into North America in 1941 and in recent years into several countries in Latin America, Asia and Africa. It currently has a presence in twenty countries, has eight hundred sisters from one-hundred fifty-six communities. Its headquarters are located in Rome.

### **Dirección General de Migración y Extranjería**

#### **Costa Rica**

<http://www.migracion.go.cr/>

The Directorate General of Immigration is the public agency which issues immigration policy, controls the entry and exit of people into the country. It promotes the integration of foreign people in Costa Rican society, regulates their stay and also the activities of foreign persons in the country. It contributes to the fight against the crimes of human trafficking and the smuggling of migrants, through the effective management of migration flows that contribute to development and security in Costa Rica.

## **Tribunal Administrativo Migratorio Costa Rica**

<http://www.tribunalmigratorio.go.cr/>

This is the board of administrative justice specializing in the technical matters of immigration and refuge, with jurisdiction throughout the national territory in the resolution of appeals against the final decisions of the Directorate of General Migration and against resolutions issued by the Commission of Refuge and Restricted Visas. It ensures legal certainty with regards to migration, as well as prompt and fair justice for migrants and refugees in the enforcement of national and international norms.

### **ECUADOR**

## **Asylum Access Ecuador (AAE)** [www.asylumaccessecuador.org](http://www.asylumaccessecuador.org)

Asylum Access Ecuador (AAE) is a nonprofit Ecuadorian foundation, founded in 2008 driven by volunteer and independent action. AAE is part of a family of Asylum Access organizations worldwide. Our goal is to make the rights of refugees a reality in laws, policies and in practice. Using a methodology based on empowerment and social participation, we promote the ability of refugees to claim their own rights.

AAE works through legal strategies to defend and promote the rights of persons in need of international protection via a comprehensive approach to justice, human rights and gender. Its working strategies are based on: individualized legal guidance and advice, community legal empowerment, strategic litigation, political advocacy and the construction of a local, national and international movement to defend the rights of refugees.

AAE offers its services free of charge in eight Ecuadorian cities: Quito, Guayaquil, Esmeraldas, San Lorenzo, Lago Agrio, Ibarra, Santo Domingo and Tulcán.

### **UNITED STATES**

## **U.S. Committee for Refugees and Immigrants (USCRI)** [www.refugees.org](http://www.refugees.org)

The U.S. Committee for Refugees and Immigrants (USCRI) is a nongovernmental organization that was created in 1911. For over a century, USCRI has provided global leadership and has championed the rights of people who migrate voluntarily or by force, regardless of nationality, race, ideology, or social group. USCRI promotes a just and humane policy that facilitates the provision of social and professional services, as well as the full participation of migrants in their communities. USCRI works with six regional offices and multiple subsidiaries agencies. Its action areas are: 1) assistance to refugees in the resettlement and integration process; 2) services to the migrant population, such as the Legal Program for Unaccompanied Migrant Children and social services following family reunification; and 3) services and support to victims of trafficking. Each year, thousands of refugees and immigrants receive the support of USCRI to adapt to their new lives in the US.

## EL SALVADOR

### Anglican Episcopal Church of El Salvador

<http://elsalvador.anglican.org>

The Church works to provide assistance and support, especially to people seeking to love their neighbor as they love themselves. Our mission focuses on providing social support, educating, motivating, organizing and empowering people to fight for justice, peace and the protection of all God's creation through networks of people, companionship and assistance in securing the basic needs of health, housing and education.

## GUATEMALA

### Instituto Centroamericano de Estudios Sociales y Desarrollo (Incedes)

[www.incedes.org.gt](http://www.incedes.org.gt)

Incedes is a civil association that was born as an initiative of a Guatemalan group of professionals. After several years of working together, in February 2005, they launched their organization as an entity with its own legal capacity, sheltered by the laws of Guatemala. It defines itself as a non-profit social and civic association serving society and the academic community, and committed to strengthening the democratic state to act independently and in collaboration with various public and private organizations whose purposes are analogous and to promote the integration of networks of thought, exchange, discussion, dissemination and action to change the reality of migration in Mexico, Central America and the Caribbean. By furthering their knowledge, they aim to contribute to the strengthening of social capacities as well as to formulate and manage related public policies from a perspective of regional integration and to guarantee the full protection of the rights of migrants and their families who wish to work with this organization and the focus of its work. Incedes works in Mexico, Central America and the Caribbean as well as in other countries and regions that it deems necessary to achieve its purposes.

## HONDURAS

### Foro Nacional para las Migraciones en Honduras (Fonamih)

[www.fonamih.com/](http://www.fonamih.com/)

We are a permanent space for coordination, analysis and proposals concerning the phenomenon of migration that promotes structural changes at the national and international level.

Fonamih intends to contribute to building a humanistic and democratic society that has effective state policies oriented towards the protection and defense of the rights of migrants and their families. The Fonamih emerged as an initiative of the Ministry of Human Mobility in the Pastoral Social Cáritas, now the Pastoral de Movilidad Humana- Episcopal Conference, in August 1997, who convoked representatives from the Centro de Investigación y Promoción de Derechos Humanos (Ciprodeh), Asociación de Organizaciones no Gubernamentales (ASONOG), and the Comisionado Nacional de los Derechos Humanos (CONADEH) in order to share their concerns regarding the creation of a space to reflect on the reality of the rights of migrants.

## MEXICO

### Foro Migraciones

Foro Migraciones is a network of civil society organizations, academics, and activists working directly on the reality of migration. It is constituted as a space for dialogue, analysis and complaints with the goal to impact the promotion and protection of the human rights of migrants.

It has created a common platform that strengthens knowledge, the exchange of information, communication and dissemination, via which it defines proposals regarding norms and public policy that impact the protection of the human rights of migrants.

### Participating organizations

Albergue del Desierto

Caridad Sin Fronteras, A. C.

Carmen Fernández

Casa del Migrante de Saltillo

Centro de Apoyo al Trabajador Migrante

Centro de Atención al Migrante (Exodus)

Centro de Derechos Humanos Fray Matías de Córdova, A. C.

Centro de los Derechos del Migrante, Inc.

Comité de Derechos Humanos de Tabasco, A. C. (Codehutab)

Estancia del Migrante González y Martínez A.C.

FM4 Paso Libre (Dignidad y justicia en el camino A.C.)

Fundación Comunitaria del Bajío, A. C.

Fundación para la Justicia y el Estado Democrático de Derecho, A. C.

Fundar, Centro de Análisis e Investigación, A. C.

Gisele Bonnici

Gustavo López Castro

Hugo Ángeles Cruz

Iniciativa Ciudadana y Desarrollo Social, Incide Social, A. C.

Instituto de Estudios y Divulgación sobre Migración, A. C. (Inedim)

Instituto para las Mujeres en la Migración, A. C. (Imumi)

Programa de Asuntos Migratorios - Instituto Tecnológico y de Estudios Superiores de Occidente (ITESO)

José Moreno Mena

Karina Arias

La 72 Hogar - Refugio para Personas Migrantes

Manuel Ángel Castillo

Marcela Ibarra

Martha Luz Rojas Wiesner

Ofelia Woo

Por la Superación de la Mujer, A. C.

Red de Mujeres del Bajío, A. C.

Rodolfo García Zamora

Rosa Elizabeth García Ita

Servicio Jesuita a Migrantes-México

Sin Fronteras, I. A. P.

Siria Oliva

Scalabrinianas: Misión para Migrantes y Refugiados

Una mano amiga en la lucha contra el SIDA, A. C.

Voces Mesoamericanas-Acción con Pueblos Migrantes, A. C.

### **Sin Fronteras I. A. P.**

[www.sinfronteras.org.mx](http://www.sinfronteras.org.mx)

Sin Fronteras is a civil society organization created in December 1995 by a group of social activists and academics. Its legal profile is that of an institution of private assistance (IAP). Sin Fronteras is a Mexican civil, secular, non-partisan and non-profit organization that works to help to change the conditions in which international migration and asylum take place. To enable a framework of the full enjoyment of human rights on the part of international migrants, asylum seekers, refugees and their families. Our work is based on the belief that migration is an old and complex phenomenon that needs to be addressed by means of comprehensive and multidisciplinary policies. We are convinced that civil society should play a central role in the treatment of migration issues: on the one hand, by offering services to migrant populations and, on the other, actively participating in creating appropriate migration policies and programs.

### **Centro de Derechos Humanos Fray Matías de Córdoba (CDH Fray Matías)**

[www.cdhfraymatias.org](http://www.cdhfraymatias.org)

The Centro de Derechos Humanos Fray Matías de Córdoba, A. C. (CDH Fray Matías) is a civil society organization founded in 1994 that works to defend and promote migrants' human rights on the southern Mexican border.

Its purpose is to create conditions for the respect of human rights for applicants of refugee status, international migrants and their families on the southern border area of the state of Chiapas via the development and implementation of strategies and specialized work programs.

## **NICARAGUA**

### **Consejo Evangélico Pro Alianza Denominacional (CEPAD)**

[www.cepadnica.org](http://www.cepadnica.org)

CEPAD, el Consejo Evangélico Pro Alianza Denominacional, is an organization comprised of seventy denominations and churches in Nicaragua focused on assisting communities and individuals in their development.

## **PANAMA**

### **Centro de Asistencia Legal Popular (CEALP)**

[www.cealppanama.org](http://www.cealppanama.org)

CEALP was created April 21, 1986 in response to the lack of lawyers dedicated to defending the human rights of marginalized groups such as indigenous people, women, peasants, workers, and the urban poor. It aspires to be an organization that promotes and defends the human rights of all Panamanians; it strengthens the capacity of local groups to make legislative proposals to the government; and provides legal defense to marginalized groups.

## DOMINICAN REPUBLIC

Mesa Nacional para las Migraciones y Refugiados en República Dominicana (Menamird)

Menamird is a network composed of national institutions, civil society organizations and people that study, know, serve and/or accompany the migrant population, refugees and their families. Its main purpose is to influence the formulation, adoption and implementation of public policies on migration and refugees.

Menamird's mission is to contribute from a holistic and multidisciplinary approach to the protection, defense and promotion of the human rights of migrants, refugees and their families in places of origin, transit and destination. The values that guide the work of Menamird are: solidarity, gender equity, transparency, non-discrimination, social justice, and the free movement of people.

### Members of Menamird

Asociación Pro-Desarrollo de la Mujer y el Medio Ambiente (Aprodema)

Asociación Cristiana Bateyes (ACDB)

Asociación de Desarrollo Integral de la Mujer y Jóvenes (Adimjo)

Asociación de la Comunidad Migrante Dominico Haitiana, Inc.

Asociación Mutual de Servicios Solidarios

Asociación de Desarrollo de la Victoria (Amudevi)

Asociación Solidaridad, Derechos y Desarrollo de los Huérfanos

Movimiento Sociocultural para Trabajadores Haitianos

Coordinadora por la Defensa de la Dignidad Haitiana

Comisión Nacional de Derechos Humanos (CNDH)

Centro de Desarrollo de Trabajadores Agrícolas y Afines

Centro Social y Cultural de Desarrollo Dominico-Haitiano (Cescudha)

Confederación Autónoma Sindical Clasista (CASC)

Centro Cultural Dominico-Haitiano (CCDH)

Centro Ecuménico Dominicano El Buen Pastor

Asociación de los Trabajadores Sol Saliente

Departamento Nacional de Trabajadores Migrantes de la Construcción (Dentramcom)

Federación Dominicana de Organizaciones Comunitaria Independiente (Fedocomin)

Feditravanza

Fundación para el Desarrollo y Asociado Dominicano Haitiano (Fundidoh)

FUBEDHA

Fundación Étnica Integral (FEI)

Grupo de Pastores Inter-Denominaciones (GPI)

Grupo San José

Instituto para el Desarrollo Social Comunitario (Indesoc)

Movimiento de Mujeres Dominicano Haitiano (Mudha)

Organización para el Desarrollo de los Bateyes (ODB)

Observatorio Migración-Flacso

Organización OSLA

Pastoral de Derechos Humanos

Plataforma Interamericana de Derechos Humanos, Capítulo Dominicano (PIDHCD)

Sindicato de Trabajadores de la Construcción y la Madera (Sitracoma)

Sociedad Dominicana de Asistencia Jurídica (Sodaju)

## URUGUAY

### **Servicio Ecuaménico para la Dignidad Humana (SEDHU)**

SEDHU is a nonprofit foundation. Its main areas of work are: a) to provide migrants with economic assistance, obtaining documentation and regularizing their status in the country; b) to be a host agency for vulnerable Colombians; c) to be the UNHCR's implementing agency in Uruguay, therefore it is responsible for providing attention to all asylum seekers and refugees in the country. It provides asylum seekers and refugees with the necessary support to obtain Uruguayan documentation by analyzing the personal situation of each applicant, supporting them in job hunting and housing and providing them guidance and social assistance.

# APPENDIX 1. Methodology for the preparation of the report

This report was prepared based on:

## 1. Interviews with participating civil society organizations and reports produced

The interviews were based on practical experience and/or the field experience of allied organizations in the provision of services and solutions in terms of protection. Their perspective was also captured with regards to the scope of the system of protection offered to refugees, internally displaced persons in their own countries and stateless persons. Through the interviews, the following was identified: a) the greatest challenges that refugees, internally displaced and stateless persons face, both in everyday life and in the political, legal and socioeconomic spheres, and b) the innovative strategies developed by governments or civil society organizations to meet the challenges of the international protection and social inclusion of this population in the participating countries.

Most interviews were conducted via Skype and were recorded with the authorization of the respondent to facilitate its subsequent systematization. Some interviews were conducted in person in the city of Quito.

At the same time this exercise incorporated diagnostic results, reflections and similar data compiled in the reports of civil society in the region.

### Interviews with leaders of civil society organizations and government institutions:

- ▲ Pablo Asa, Centro de Estudios Legales y Sociales (CELS), Argentina. Personal interview, January 10, 2014.
- ▲ Enrique August, Help for Progress, Belize. Personal interview, December 12, 2013.
- ▲ Adriana Blanco and Carmen Atkins, Asylum Access Ecuador (AAE). Personal interviews, December 19, 2013.
- ▲ Gisele Bonnici and Elba Coria, International Detention Coalition (IDC). Personal interview, December 13, 2013.
- ▲ Kiriam Nuila Bonilla, Anglican Episcopal Church of El Salvador. Personal interview, November 11, 2013.
- ▲ Paulina Caamano, Foro Migraciones, Mexico. Personal interview, December 18, 2013.
- ▲ William Charpantier, Mesa Nacional para las Migraciones y Refugiados (Menamird), Dominican Republic. Personal interview, December 16, 2013 and February 6, 2014.

- ▲ Gabriela Cortina, Servicio Ecuménico de la Dignidad Humana (SEDHU), Uruguay. Personal interview, November 19, 2013.
- ▲ Blanca Fonseca, Consejo Evangélico Pro Alianza Denominacional (CEPAD), Nicaragua. Personal interview, January 2014.
- ▲ HIAS-Venezuela. Interview with civil society organizations, Venezuela, 2013.
- ▲ Vivian Holzacker Caritas Archdioces of São Paulo, Brazil. Personal interview, November 18, 2013.
- ▲ Diego Lorente, Centro de Derechos Humanos Fray Matías de Córdova (CDH Fray Matías), México: Personal interview, November 22, 2013.
- ▲ Sabrina Lustgarten, HIAS-Ecuador. Personal interview, November 18, 2013.
- ▲ Alejandra Macias, Sin Fronteras, IAP, México. Personal interview, December 16, 2013.
- ▲ Gloria Maklouf, Asociación de Consultores y Asesores Internacionales (ACAI), Costa Rica. Informe de contexto y entrevistas a organizaciones de la sociedad civil e instituciones del Estado en Costa Rica, January 2014 and February 18, 2014.
- ▲ Rosita Milesi, Instituto Migrações e Direitos Humanos (IMDH), Brazil. Personal interview, November 28, 2013.
- ▲ Noelia Montagud, Asylum Access Ecuador (AAE). Personal interview, February 11, 2014.
- ▲ Gustavo Peralta, Centro de Asistencia Legal Popular (CEALP), Panama. Personal interview, January 14, 2014.
- ▲ Danilo Rivera, Instituto Centroamericano de Estudios Sociales y Desarrollo (Incedes-ST), Consejo Parlamentario Regional sobre Migraciones (Coparem). Personal interview, December 4, 2013.
- ▲ Nicoletta Roccabianca, Asylum Access Ecuador (AAE). Personal interview, February 10, 2014.
- ▲ Carlos Smith, HIAS-Panama. Personal interview, November 21, 2013.
- ▲ Karen Valladares, Foro Nacional para las Migraciones en Honduras (FONAMIH). Personal interview, December 12, 2013.

## 2. Focus groups or participatory assessments of refugees, internally displaced and stateless population

Focus groups or participatory assessments were centered on the practical experience of asylum seekers, refugees and stateless persons and their families in their home country and in host communities. Also the experience from recognition of the status of refugee or stateless person by the state to the integration process as a rights-bearing person.

Focus groups or participatory assessments were developed by category, depending on the main challenges and needs identified, and ensuring the diversity of the participants in terms of:

- ▲ Age and gender groups
- ▲ Length of stay (i.e., those who spend a short amount of time or those who stay for a long period of time and those already entitled to naturalization)
- ▲ Immigration status (asylum seekers, refugees recognized or unrecognized)
- ▲ Groups with growing presence in the country, by nationality and gender

In order to develop the focus groups and participatory assessments, disclosure agreements were signed regarding data and the use of information. Further, a prioritization exercise was initiated where the participants themselves identified their greatest concerns. Some sessions were also recorded to facilitate the systematization of information.

### Focus groups:

#### ARGENTINA

##### ▲ HIAS-Argentina. Surveys Cartagena, Argentina, HIAS, 2013

Twenty-three surveys were received (forms with our suggested questions directed to focus groups, and answered individually), all of them addressed to refugees resettled in five locations (Santa Fe, Rosario, Buenos Aires, Mendoza and Cordoba). The surveys were carried out between October and November 2013.

#### BRAZIL

##### ▲ Caritas Archdiocese of São Paulo.

Focus groups with teenagers, São José Pastoral Center do Belém, 2013.

A participatory diagnosis was made in collaboration with the UNHCR.

1. Focus group with men, held on October 19 with eleven participants
2. Focus group with teenagers, held on October 19, with three females, five males and participants aged between thirteen and eighteen years old.
3. Focus group with women, held on October 19, with eleven participants from nineteen to fifty-nine years old.

##### Instituto Migrações e Direitos Humanos (IDMH). Focus groups with refugees, Brazil, 2013.

Participatory assessment completed in Brazil, in partnership with the UNHCR (demographic data unavailable).

#### COSTA RICA

##### ▲ ACAI-Costa Rica. Informe de Costa Rica sobre Cartagena + 30: Costa Rica, ACAI, San Jose, 2013

Focus groups conducted December 2013 to January 2014, compiled according to:

- Elderly group: twelve, ten with residence status and two refugees; of these, nine were women and three men.
- Group of women, three asylum seekers, three refugees and one with national.
- Group of men (the number of participants is not specified)
- Youth group

Participatory input includes the results of interviews with seven members of civil society and two members of state institutions, December 2013 to January 2014. The aim of establishing a diagnostic view of international protection in Costa Rica and determine progress and potential areas of action so as to improve the standard of living of asylum seekers, stateless persons and refugees.

## **ECUADOR**

### **Asylum Access Ecuador. Informe sobre Grupos focales con población refugiada en las ciudades de Quito y San Gabriel, AAE, Quito and Tulcan, 2013.**

Quito (held on October 9, 2013): fifteen participants (seven women/eight men, nine of the fifteen participants are between thirty-one and thirty-eight years old; thirteen of fifteen participants are Colombians; nine of the fifteen are recognized refugees, three are applicants).

San Gabriel, Carchi (performed on October 12, 2013): fifteen participants (ten women/five men; thirteen of the fifteen participants are between twenty-five and seventy-two years old; all are Colombians; eight are recognized refugees).

#### **▲ HIAS-Ecuador. Informe Cartagena +30, HIAS, 2013**

Participatory assessments were conducted at five locations: Ibarra, San Lorenzo, Esmeraldas, Guayaquil and Lago Agrio, between November 11 and 20, 2013.

Focus groups were divided taking into account age, gender, length of stay, immigration status and specific needs. Three groups of a minimum of ten and maximum fifteen people were convened: 1) Group of men; 2) Group of women; 3) Group of male and female adolescents fourteen to seventeen years old.

## **MEXICO**

### **▲ Centro de Derechos Humanos Fray Matías de Córdova A. C. Grupo focal sobre el acceso y desarrollo del proceso de refugio y dificultades para la integración social de solicitantes y refugiados/as y sus familias: Caso Tapachula, México, 2013**

Carried out in June 2013. Thirteen people from the following countries participated: seven Salvadorans, four Hondurans, two others; eight men and five women. Eleven people are from Central America, eight from urban areas. Seven people living in Tapachula. Eight are asylum seekers and two are recognized refugees.

#### **▲ Sin Fronteras-México. Focus group, country México, 2013**

Asylum seekers participated in this focus group. All were men between thirty and seventy-nine years old, from

Honduras, Colombia and Nigeria.

## VENEZUELA

### ▲ **HIAS-Venezuela. Diagnósticos con población de interés Cartagena +30, HIAS, Caracas, 2013**

During the week of November 11 to 15, 2013, meetings were held with refugees and asylum seekers in five locations (Caracas, Guasdalito, San Cristobal, Maracaibo and Machiques). There were fifty participants (forty-five asylum seekers and five recognized refugees; thirty-six women and fourteen men).

## APPENDIX 2. The Cartagena Declaration and its regional application

### Countries that directly incorporate it directly

**Argentina.** Law No. 26.165 of 2006, General Law of Recognition and Refugee Protection, Art. 4b

<http://www.migraciones.gov.ar/conare/?normativa>

**Belize.** Refugees Act, 1991

<http://www.refworld.org/docid/3ae6b4d730.html>

**Bolivia.** Act 251 of 2012, Law on the Protection of Refugees, Art. 15 (I) (b). Includes the "Public order" definition

<http://bolivia.infoleyes.com/shownorm.php?id=3863>

<http://bolivia.infoleyes.com/shownorm.php?id=4227>

**Chile.** Law 20430 of 2010, establishes provisions on refugee protection, Art. 2.2

<http://legislacion-oficial.vlex.cl/vid/235233266>

<http://www.refworld.org/type,LEGISLATION,,CHL,4bcc66112,0.html>

<http://www.refworld.org/type,LEGISLATION,CHL,4fd1b7fa2,0.html>

**El Salvador.** Decree 918 of 2002, Act for the Determination of the Status of Refugees, Art. 4c

<http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-para-la-determinacion-de-la-condicion-de-personas-refugiadas/?searchterm=None>

<http://www.refworld.org/docid/3d48f1b64.html>

[http://www.comar.gob.mx/en/COMAR/LEY\\_SOBRE\\_REFUGIADOS\\_](http://www.comar.gob.mx/en/COMAR/LEY_SOBRE_REFUGIADOS_)

**Guatemala.** Government Decision 383 of 2001, Regulation for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala, Art. 11c

<http://imprasc.net:29572/Basededatoslegal/Legislacionnacional/Documents/Guatemala/Refugiados/Regulacion20Condicion%%%202001.pdf> 20Refugiado

**Mexico.** Law on Refugee and Complementary Protection. Amending, supplementing and repealing various provisions of the General Population Act, 2011, s. 13 (II)

<http://diputados.gob.mx/LeyesBiblio/pdf/LRPC.pdf>

**Nicaragua.** Act 655 of 2008, Refugee Protection Act, s. 1c.

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/926CAAEB4ED7E15D062574BE007E2ADC?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/926CAAEB4ED7E15D062574BE007E2ADC?OpenDocument)

**Uruguay.** Law 18076, 2006, Refugee Status, Art. 2b (it should be noted that this definition includes a list of additional elements: "terrorism")

<http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18076&Anchor>

## Countries that incorporate elements of the Cartagena definition

Country - Law - Link	Legal Aspects Changed
<p><b>Brazil</b> - 4 Law no 9.474, of July 22, 1997, 'Establishes mechanisms to implement the 1951 Refugee Convention and determines other measures', Art. 1 (III)</p> <p><a href="http://www.UNHCR.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/0801">http://www.UNHCR.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/0801</a></p>	<p>Adds the ground of coercion.</p> <p>Recognizes as a refugee any person that "is obligated to flee their country of nationality to seek asylum, due to severe and widespread violation of human rights."</p>
<p><b>Colombia</b> - Decree 4513 of 2009, which modify the procedure to recognize refugee status dictating the standards according to the Advisory Commission for the Determination of Refugee Status and adopting other dispositions, Art. 1b</p> <p><a href="http://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_4503_2009.htm">http://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_4503_2009.htm</a></p>	<p>Adds the ground of coercion.</p> <p>Recognizes as refugee any person "who has reasonable grounds to believe that he/she would be in danger of being subjected to torture or other cruel, inhumane or degrading treatment in the case of refoulement to the country of origin or, in the case that one lacks nationality, the country of habitual residence."</p>
<p><b>Honduras</b> - Decree No. 208 of March 3, 2004, Immigration Act, Art. 42</p> <p><a href="http://www.migracion.gob.hn/index.php?option=com_content&amp;view=article&amp;id=48&amp;Itemid=248">http://www.migracion.gob.hn/index.php?option=com_content&amp;view=article&amp;id=48&amp;Itemid=248</a></p>	<p>It includes the element of "widespread violence" but adds that the violence must be "serious and continuous."</p> <p>It includes the element of "massive, permanent and systematic violation of human rights."</p> <p>It includes the element of "persecution by means of sexual violence or other forms of gender persecution based on violations not included in the international human rights instruments."</p> <p>It does not include the element of "circumstances that have seriously affected the public order."</p> <p>It includes definitions of "armed conflict" and "foreign aggression."</p>

<p><b>Paraguay</b> - Act 1938 of 2002, General Law concerning Refugees, Art. 1b</p> <p><a href="http://www.UNHCR.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/1565">http://www.UNHCR.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/1565</a></p>	<p>Adds the requisite of coercion.</p>
<p><b>Peru</b> - Act 27.891 of 2002, Refugee Law, Art. 3b.</p> <p><a href="http://www.trabajo.gob.pe/migrante/legislacion.php">http://www.trabajo.gob.pe/migrante/legislacion.php</a></p> <p><a href="http://www.trabajo.gob.pe/migrante/pdf/ley_refugiado.pdf">http://www.trabajo.gob.pe/migrante/pdf/ley_refugiado.pdf</a></p>	<p>Adds the requisite of coercion.</p> <p>Does not include the element of widespread violence.</p> <p>Adds the element of "foreign occupation or domination."</p>

### Countries that do not incorporate elements of the definition Cartagena

**Costa Rica** - Act 8764 of 2009, General Law of Immigration, Section V

<http://migracion.go.cr/institucion/refugio.html>

<http://www.rree.go.cr/?sec=bienvenidos&cat=entrada%20y%20permanencia&cont=429>

#### Cuba

<http://www.UNHCR.org/secciones/index.php?viewCat=79>

**Ecuador** - Decree 1182 of 2012; Regulations to apply the right to asylum in Ecuador established in Art. 41 of the Constitution of the Republic, the norms contained in the 1951 UN Refugee Convention and its 1967 Protocol (Ecuador implemented the definition of Cartagena from 1987 until 2012)

<http://decretos.cege.gob.ec/decretos/decretos.aspx?id=2009>

**Panamá** - Executive Decree 23 of 1998, to apply the Act No. 5 of October 26, 1977 approving the 1951 Refugee Convention and its 1967 Protocol relating to the Status of Refugees, repealing Decree No. 100 of July 6, 1981 and the Executive Resolution No. 461 of October 9, 1984, and new provisions are dictated in terms of temporary protection on humanitarian grounds.

[http://www.asamblea.gob.pa/APPS/LEGISPAN/PDF\\_NORMAS/1990/1998/1998\\_157\\_1146.PDF](http://www.asamblea.gob.pa/APPS/LEGISPAN/PDF_NORMAS/1990/1998/1998_157_1146.PDF)

**Dominican Republic** - Decree 2330 of September 10, 1984, Regulation of the National Commission for Refugees.

<http://www.UNHCR.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/1299>

Venezuela - Organic Law on Refugees and Asylum Seekers, September 13, 2001

<http://www.UNHCR.org/secciones/index.php?viewCat=93>