



## COMMEMORATIVE PROCESS OF THE 30<sup>th</sup> ANNIVERSARY OF THE CARTAGENA DECLARATION ON REFUGEES “CARTAGENA+30”

**Caribbean Regional Consultation**  
Grand Cayman, Cayman Islands, 10-11 September 2014

### **Discussion Paper**

#### **I. Background**

1. This document has been prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR) to inform and help structure the discussions among States and Territories, regional and international organizations, NGOs and other civil society actors, as well as academia, during the meeting for the Caribbean region to be held in Grand Cayman, Cayman Islands, in the framework of the commemoration of the 30<sup>th</sup> Anniversary of the 1984 Cartagena Declaration on Refugees (“Cartagena Declaration”).

2. This regional consultation is the fourth meeting in the Americas: including meetings in Buenos Aires, Argentina, in March for the region of Southern America; in Quito, Ecuador, in May for the Andean region; and in Managua, Nicaragua, in July for the Mesoamerican region. The regional consultations seek to identify the most significant challenges and opportunities in the field of international protection of refugees and stateless persons. The outcomes of the four *Cartagena+30* consultations will contribute to the development of a Declaration and Plan of Action for the period of 2015-2024 to be adopted at a ministerial-level meeting in Brasilia, Brazil, on 1-2 December 2014.

3. It is worth mentioning that this is the first time the Caribbean region will host its own sub-regional event surrounding the commemoration of the Cartagena Declaration. This reflects an increasing appreciation for the perspective of the Caribbean States in the wider region. As such, the Caribbean Regional Consultation can serve to launch a new decade of intensified regional cooperation and a plan of action for the Americas that will better reflect the realities, not only of larger States with land borders, but also of smaller island States in the region.

4. The Caribbean Regional Consultation will also provide important inputs for the High Commissioner’s Dialogue on Protection Challenges on the theme of ‘Protection at Sea’, which will be held in Geneva on 10-11 December 2014.

## **II. Introduction**

5. As mentioned above, the Caribbean Regional Consultation provides an important opportunity to review the specific protection challenges for asylum-seekers, refugees and stateless persons in the Caribbean, as part of the wider Americas region. It will achieve this notably by:

- Analysing the scale and impact of mixed migration movements and the challenges they present;
- Reviewing developments related to the building of asylum systems and the promotion of durable solutions for refugees and stateless persons, while considering proposals for the way forward; and
- Exploring fresh opportunities for regional cooperation, technical assistance and financial support.

6. In this regard, it is hoped that the Caribbean Regional Consultation will build upon the *Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows – Promoting Cooperation and Identification of Good Practices* (Bahamas Conference), organized by UNHCR and the International Organization for Migration (IOM) in Nassau, The Bahamas, in May 2013. The meeting brought together 98 representatives from governments, international organizations and the civil society of 24 countries and territories.<sup>1</sup> The 2013 Bahamas Conference centred upon the following main themes: 1) regional cooperation and the development of a protection-sensitive and solution-oriented approach to mixed migration management in the region; 2) the protection needs of those travelling within mixed migration flows and how to address these in a comprehensive manner, and 3) identification and sharing of good practices in managing mixed migration flows in the Caribbean.<sup>2</sup>

## **III. Mixed migratory movements in the Caribbean**

7. States and territories in the Caribbean are confronted with an increasingly complex phenomenon of mixed migration that involves persons who may be in need of international protection, including asylum-seekers<sup>3</sup>, refugees<sup>4</sup>, victims of human trafficking<sup>5</sup> and stateless

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<sup>1</sup> UNHCR's Regional Office in Washington covers 27 Caribbean countries and territories, with offices in the Dominican Republic and Haiti. This includes 15 countries (Antigua and Barbuda, Commonwealth of the Bahamas, Barbados, Belize, Commonwealth of Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Republic of Trinidad and Tobago, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Suriname), and 12 overseas territories of the United Kingdom (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands (TCI) and Montserrat), and The Netherlands (Aruba, Curacao, Sint Maarten, Bonaire, St Eustatius and Saba). The French *départements d'outre-mer* (Martinique, Guadelupe, Saint-Barthélemy, Saint-Martin and French Guyana) are covered by UNHCR Paris.

<sup>2</sup> UN High Commissioner for Refugees (UNHCR), Caribbean Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows - Promoting Cooperation and Identification of Good Practices, 23 May 2013, available at: <http://www.refworld.org/docid/51e3c0384.html>

<sup>3</sup> An asylum-seeker is an individual who is seeking asylum, whose claim has not yet been finally decided. Asylum is the grant, by a State, of protection on its territory to persons who are fleeing persecution, serious or irreparable harm, or for other reasons defined in national law. Asylum encompasses a variety of elements, including protection against *non-refoulement* and permission to remain on the territory of the asylum country, possibly with a view to local integration. The 1951 Convention, supplemented by international human rights law, lays down the standards of treatment to which refugees are entitled in the country of asylum.

persons,<sup>6</sup> along with other categories of migrants.<sup>7</sup> The States and territories in the Caribbean are source, destination and transit countries for thousands of migrants, including persons in need of international protection, each year. The region also produces refugees and is a transit gateway for refugees and asylum-seekers trying to reach North America within larger groups of migrants by land, air and sea.<sup>8</sup>

8. This poses a number of challenges.<sup>9</sup> The relatively significant arrival of persons, mostly in an irregular manner, prompts many countries and territories to view asylum safeguards as cumbersome or incompatible with immigration control and national security imperatives. At times, those who arrive irregularly in the region face negative attitudes by the host societies, and are generally perceived to be ‘economic migrants.’ This situation may adversely affect the ability of persons in need of international protection to apply for asylum, a concern that is compounded by the scarcity of national mechanisms to identify refugees within mixed migratory movements.

9. The ultimate challenge is how to manage migratory movements in a way that upholds human rights and humanitarian principles, while addressing the legitimate concerns of States regarding irregular migration. The Caribbean Regional Consultation offers an opportunity to consider how measures aimed at combating irregular migration, human smuggling and trafficking in persons can be accompanied by safeguards and measures to avoid the detrimental effects on refugees and asylum-seekers.<sup>10</sup> The fact that the large

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<sup>4</sup> A refugee is a person who meets the eligibility criteria in the refugee definition provided by relevant international or regional refugee instruments, UNHCR’s mandate, and/or national legislation. According to many of these instruments, a refugee is a person who cannot return to his/her country of origin owing to a well-founded fear of persecution or serious and indiscriminate threats to life, physical integrity or freedom.

<sup>5</sup> A victim of human trafficking is a person who is subject to the recruitment, transportation, transfer, or harboring, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of a vulnerable individual or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. See further the UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html>

<sup>6</sup> A stateless person is an individual who is not considered a national under the operation of the law of any State, either because s/he never had a nationality or because s/he lost it without acquiring a new one.

<sup>7</sup> There is no universally accepted definition of the term “migrant”. It is usually understood to cover all cases where the decision to migrate is taken freely by the individual concerned for reasons of “personal convenience” and without intervention of any coercive external factors. Migration refers to any movement of persons that is not intended to be merely of short or temporary duration, either across an international border (“international migration”) or within a State. It is often employed to include both forced and voluntary movements.

<sup>8</sup> In 2013, UNHCR identified around 250 new asylum-seekers in at least 20 States and territories in the Caribbean. This is compared to around 190 new asylum-seekers in 2012, which is an increase of nearly one third over last year. In 2013, the UNHCR Regional Office in Washington conducted refugee status determinations under Mandate for over 100 individual cases in the Caribbean and resettled around 75 individuals. Most of the asylum-seekers in the region came from Cuba and Haiti. Asylum claims were also lodged by nationals from the following countries: Afghanistan, Bangladesh, Cameroon, Colombia, Côte d’Ivoire, Democratic Republic of the Congo, El Salvador, Egypt, Gambia, Honduras, Iran, Iraq, Jamaica, Kenya, Liberia, Mexico, Nigeria, Sierra Leone, Sri Lanka, and Syria. Another notable trend in the Caribbean is the gradually increasing number of asylum-seekers originating from North Africa and the Middle East.

<sup>9</sup> These are movements in which different categories of persons are travelling together, generally in an irregular manner, using the same routes and means of transport. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation.

<sup>10</sup> Measures which restrict channels for legal migration risk exacerbating both, human trafficking and human smuggling, as well as the human rights violations which surround them. A disproportionate focus on tighter migration controls also risks exacerbating the situation further along the trafficking cycle. Studies have noted that traffickers often exploit victims’ fear of possible deportation and their irregular status to prevent victims from escaping. “It is necessary to ensure that anti-trafficking measures do not adversely affect the human rights

majority of States and territories in the Caribbean are parties to the 1951 Convention relating to the Status of Refugees (“1951 Convention”) and its 1967 Protocol already reflects a shared commitment to providing protection to refugees. Given the increasing number of persons in need of international protection<sup>11</sup> registered in the region, progress towards more rights-respecting migration and refugee protection systems could be one of the goals set during this Caribbean Regional Consultation.

10. A particularly salient characteristic of migration in the Caribbean is travel *by sea*. As part of a *Protection at Sea Initiative*,<sup>12</sup> UNHCR is urging States to undertake coordinated action to improve search and rescue, ease disembarkation, ensure protection for refugees and stateless persons as well as refrain from arbitrary detention. Additionally, mixed migratory movements *by land* take place in a small number of countries in the region,<sup>13</sup> and usually involve irregular (onwards) secondary movements of refugees and asylum-seekers.<sup>14</sup>

11. In stark contrast to the world of cruise ships and holiday travel, mixed movements by sea occurs on unseaworthy vessels, in many cases, operated by people in smuggling and human trafficking networks. They are not at all concerned with ‘passenger safety’ and instead place their passengers at high risk at exorbitant costs. As a result, deaths at sea and rescue-at-sea operations in the Caribbean are regrettably common<sup>15</sup> and critical incidents at sea have been on the rise. Many incidents go unreported and, in the absence of a comprehensive data collection system, the actual dimensions of the problem are likely to be even higher than suggested. Moreover, maritime interception, disembarkation and return procedures are often implemented without the necessary safeguards for persons with specific protection needs, with the risk of violating the principle of *non-refoulement*.

12. These incidents involve mostly Haitian, Cuban and Dominican nationals. The highest number of incidents occurred in the Mona Passage, which lies between the eastern coast of the Dominican Republic and the western coast of Puerto Rico. Asylum-seekers who have shared their experiences with UNHCR reported that, after having paid large sums of money for passage, they were left to flounder in small boats at sea or landed on uninhabited islands or were otherwise confronted with violence and threats to life.

13. In May 2014, the Inter-American Commission on Human Rights also expressed deep

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*and dignity of persons, in particular the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”* Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeila, A/HRC/23/48 of 18 March 2013, available at: <http://www.refworld.org/pdfid/51a5cfa24.pdf>

<sup>11</sup> International protection refers to the protection that is accorded to individuals or groups by the international community on the basis of international law. The State is primarily responsible for providing protection to its citizens. The need for international protection arises where such State protection is lacking either as a matter of law or as a matter of fact so that basic human rights are seriously at risk. This classically results from persecution, threats to life and personal security, armed conflict, serious public disorder or other man-made situations. Natural or ecological disasters or insecurity due to statelessness are additional causes. Frequently, these elements are interlinked. Persons who are in need of international protection and are outside their country of origin are afforded protection against *refoulement*.

<sup>12</sup> Further details on the Protection at Sea Initiative can be found at: <http://www.unhcr.org/5375db0d9.html>.

<sup>13</sup> The phenomenon of mixed migratory movement by land is observed particularly in Belize, Guyana Suriname and Hispaniola, whereas irregular secondary (onwards) movement is experienced throughout the Caribbean region.

<sup>14</sup> Irregular secondary (onwards) movement of refugees and asylum-seekers refers to such movement from a country where they have already found protection in order to seek asylum or settlement in another country.

<sup>15</sup> In 2013, UNHCR became aware of 136 reported maritime incidents in the Caribbean (high seas or territorial waters of the U.S. and/or the Caribbean countries) involving a total of 4,680 passengers, the majority of whom were Haitians (3,340) followed by Cubans (824). In the context of these incidents, 75 deaths were recorded and 33 persons missing.

concern over the increase of maritime incidents involving boats carrying migrants in the Caribbean Sea and called upon “all States that carry out operations of search, rescue and interception of migrants at sea to establish appropriate measures to identify persons who may be refugees or who, due to their vulnerable condition, may have special protection needs, such as in the case of migrant children.” The Commission also reminded States that “the principle of *non-refoulement* is absolute in international human rights law, under which it is required to be guaranteed at all times and in all places regardless of the migratory situation of persons or the applicability or not of another protection regime.”<sup>16</sup>

14. Experience in the Mediterranean and other parts of the world, where mixed migration by sea is common, indicates that control and deterrence measures set up to stop large flows of irregular migrants often operate to deny access by the smaller and manageable numbers of persons in need of international protection to established legal protection mechanisms. When irregular migration is managed exclusively through a control perspective with increased restrictions and policing, fundamental human rights and refugee principles are undermined, while leaving the mixed migratory influxes unresolved and the underlying causes unaddressed. Moreover, unilateral measures often result in ‘burden-shifting’ rather than equitable responsibility-sharing in a spirit of solidarity.<sup>17</sup> There is growing evidence that the imposition of controls has simply shifted the travel routes of both migrants and persons in need of international protection to new destinations and obliged them to resort to clandestine forms of movement, with the heightened risk of smuggling and trafficking that this entails.

15. Although mixed migration movements have existed for a long time in the region and the numbers of boat arrivals are increasing, few countries and territories have devised and adopted contingency plans. Just as many countries and territories have contingency plans that aim at preventing, mitigating and/or addressing the effects of natural hazards, there could be value in devising similar plans to address maritime arrivals, especially those that are large-scale in nature.

16. On the basis of information shared informally with UNHCR, countries and territories in the Caribbean region receive and repatriate at least 2,600 irregular migrants each year. According to statistics received from governments in the region, the affected countries and territories spend millions of dollars to receive, provide care for, detain and return irregular migrants.

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<sup>16</sup> Commissioner Felipe González, Rapporteur on the Rights of Migrants of the IACHR, signaled that, “Between 2013 and thus far in 2014, the shipwrecks of migrant boats in the Caribbean Sea have claimed the lives of some 94 migrants and another 45 are missing at sea. These deaths and disappearances highlight the level of desperation faced daily by many people who are forced to migrate because of the insecurity and lack of enjoyment of economic, social and cultural rights. These persons, who in turn are part of the groups most vulnerable, migrate assuming the extreme dangers of irregular migration routes.” The press release on deaths and disappearances of migrants at sea is available at:

[http://www.oas.org/en/iachr/media\\_center/PReleases/2014/055.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/055.asp)

<sup>17</sup> The UN Special Rapporteur on the Human Rights of Migrants noted in his Annual Report in 2008 that: “(...) *the management of migration flows depends on regional and bilateral cooperation, and many positive elements for social and economic development and enhanced security may arise from agreements between sending, transit and destination countries. The challenge remains to construct and implement such policies so that they both prevent irregular migration and protect migrants’ rights. The promotion of increased collaboration can serve to prevent irregular migration if the migration control policies are adequately evaluated and implemented with a view to their effectiveness and with adequate consideration to the protection of all migrants in all phases of the movement process.*” UN Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, 25 February 2008, A/HRC/7/12, para 23, available at: <http://www.unhcr.org/refworld/docid/47cfb2d62.html>

17. Countries and territories in the region have negotiated a series of bilateral agreements among themselves, as well as with the U.S., enabling the return of irregular migrants. While the conclusion of these agreements is commendable and is good practice in the area of migration management, the implementation of certain provisions thereof is at variance with the principle of *non-refoulement*. For example, the requirement that the countries of origin of irregular migrants be notified by the receiving country within a short period of time (normally 72 hours) makes it difficult, if not impossible, for authorities in the receiving country to adequately identify persons in need of international protection and eventually process their refugee claims without divulging asylum-seekers' identities to authorities of their countries of origin. This stringent requirement could, unwittingly, create *sur place* refugee cases.<sup>18</sup> The essence of protection-sensitive measures in the context of mixed migratory movements entails, among other objectives, better identifying persons in need of international protection so as to avoid sending these persons to a situation where their lives and/or liberty would be in jeopardy.

18. Several Caribbean countries have established national counter-trafficking task forces<sup>19</sup> and have made significant strides to strengthen their legal and institutional frameworks to combat crime and to identify and assist victims of trafficking. However, States that identify trafficked persons may inadvertently generate new risks for some victims of trafficking by failing to assess their individual protection needs or by failing to consider any risks to victims of trafficking upon return to their countries of origin. Return is often considered the only available solution for victims of trafficking, disregarding the fact that some trafficked persons may qualify for refugee status or complementary forms of protection.<sup>20</sup> Victims of trafficking have a right to be informed of their legal options, and there need to be mechanisms that provide for the referral of victims of trafficking in need of international protection to the asylum system.

19. In order to address these challenges in a comprehensive manner, UNHCR encourages States to consider establishing cost-effective systems in the region based on UNHCR's *10 Point Plan of Action*<sup>21</sup> to manage mixed migration flows in line with international human rights and refugee law standards. It is the responsibility of the State, regardless of the legal status of the migrant, to ensure that fundamental human rights norms are adhered to and that all migrants are treated with dignity.<sup>22</sup>

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<sup>18</sup> A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "sur place". A person becomes a refugee "sur place" due to circumstances arising in his/her country of origin during his/her absence or through his or her own actions.

<sup>19</sup> Jamaica, for example through its National Task Force against Trafficking in Persons, and in collaboration with non-governmental organizations, has developed trafficking indicators, protocols and referral mechanisms for agencies involved in the identification, counselling and protection of victims of trafficking. Paragraph 36, page 9 of the report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, A/HRC/20/18 of 6 June 2012, available at: [http://www.crin.org/docs/A.HRC.20.18\\_En.pdf](http://www.crin.org/docs/A.HRC.20.18_En.pdf)

<sup>20</sup> Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention and may therefore be entitled to international refugee protection. See for further details: UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: <http://www.refworld.org/docid/443679fa4.htm>

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.refworld.org/docid/4d9430ea2.html>

<sup>22</sup> UN Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, 25 February 2008, A/HRC/7/12, para. 14, available at: <http://www.unhcr.org/refworld/docid/47cfb2d62.html>

20. The 2013 Bahamas Conference highlighted the need to enhance regional cooperation and partnership towards the effective management of mixed migration flows in the region while recognizing the unique and diverse character of the Caribbean. The participating States agreed to “recommend that consideration be given to working together to establish a regional consultative process” on mixed migration.

21. While a number of countries have individually made progress in addressing mixed migration challenges in a protection-sensitive manner, the Caribbean Regional Consultation presents an opportunity for States to consider a regional consultative process to develop a responsibility-sharing mechanism and promote concerted dialogue and action on mixed migratory movements among the Caribbean countries. A regional forum of cooperation, possibly in the framework of CARICOM, could enable more effective cooperation in this area and facilitate interaction with States in other regions facing similar challenges, such as the Mediterranean, the Horn of Africa, Southeast Asia and the Pacific region.

22. Arrangements to strengthen regional cooperation in protection-at-sea emergencies involving refugees and asylum-seekers may also benefit from inclusion in broader regional processes to address irregular, mixed movements.<sup>23</sup> The Regional Mixed Migration Secretariat in the Horn of Africa and Yemen (RMMS) can serve as a reference. In its current state, the RMMS: provides support and coordination within existing frameworks in the region, produces analysis and research, and manages information and data.<sup>24</sup> Similarly, Caribbean countries and territories can join efforts to enhance measures for protection-at-sea. It is expected that other countries will demonstrate solidarity and support, particularly in funding the new Brazil Plan of Action. The exchange of information and good practices can benefit not only individual states, but the region as a whole.

23. The preparation of a Caribbean-specific Protection and Responsibility-Sharing Action Plan for adoption at the Ministerial meeting in Brazil, as part of the wider Brazil Declaration and Plan of Action for the next decade, can be a vehicle to advance the recommendations of the 2013 Bahamas Conference. Among the action points that might be considered are:

- Creation of reliable data collection and analysis systems (including disaggregated data) that are in line with international legal standards and instruments applicable to refugees and vulnerable migrants;
- Development of protection-sensitive differentiated processes and procedures enabling the early identification and referral of asylum-seekers, refugees, stateless persons, as well as vulnerable migrants, including victims of trafficking and unaccompanied and separated children;
- Elaboration of a roadmap for a regional consultative process (RCP) and the creation of a Secretariat responsible for promoting better coordination on asylum, refugee and statelessness issues in mixed migration movements;<sup>25</sup>
- Adoption of bilateral and multilateral migration agreements that incorporate international protection safeguards;
- Incorporation of migration issues in policy discussions at the regional level (e.g. through existing structures such as CARICOM, IACHR, OECS);

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<sup>23</sup> UN High Commissioner for Refugees (UNHCR), *Summary Conclusions: Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Expert Meeting in Djibouti, 8 to 10 November 2011*, 5 December 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>

<sup>24</sup> Regional Mixed Migration Secretariat, *About RMMS*, available at: <http://www.regionalmms.org/index.php?id=59>

- Elaboration of national contingency plans that address the international protection, human rights and material needs of migrants, asylum-seekers, refugees, stateless persons, victims of human trafficking and other vulnerable individuals who arrive by boat in an irregular manner;
- Establishment of multi-agency deployment team to process larger arrivals (when numbers exceed local capacities).

## 24. Discussion Questions

i. What measures can States take so that those intercepted and rescued at sea are processed on an individual basis, afforded due process, and that persons claiming to be in need of international protection are allowed to access the national asylum procedure?<sup>26</sup>

ii. How can countries in the region – and outside of the region – assist Caribbean countries and territories that are disproportionately affected by relatively large irregular migrant arrivals?

iii. A significant number of countries and territories have signed multilateral/bilateral agreements on the return of irregular migrants. What are the necessary safeguards that need to be adopted to ensure that the provisions thereof are in line with the principles of *non-refoulement* and confidentiality?

iv. Just as many countries and territories have contingency plans that aim at preventing, mitigating and/or addressing the effects of natural hazards, would there be value in devising similar plans to address maritime arrivals, especially those that are large-scale in nature?

v. While a number of countries have individually made some progress in addressing mixed migration challenges in a protection-sensitive manner, would a Caribbean regional consultative process be helpful to develop a responsibility-sharing mechanism and promote concerted dialogue and action on mixed migratory movements among the Caribbean countries? If so, could participants propose a roadmap?

## IV. Building and reinforcing asylum systems

25. The Caribbean States and territories are source, transit and destination countries for tens of thousands of migrants each year. In addition to the asylum applications lodged by persons originating from within the region of the Americas (Cubans, Colombians, Dominicans, Haitians, Mexicans, Venezuelans), the number of persons coming from other regions in the world, in particular from North Africa and the Middle East, is clearly on the rise. In the first 6 months of 2014, a total of 231 new asylum-seekers were registered in seven Caribbean countries alone.<sup>27</sup> This represents a 71 per cent increase compared to the number of new arrivals registered in the first half of 2013. The growing number of arrivals is placing a strain on the limited resources and capacities available in the small islands or coastal States.

<sup>26</sup> UNHCR, “Background note: The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by UNHCR”, 28 November 2007. See also UNHCR and International Maritime Organization (IMO), *Rescue at Sea: A guide to principles and practice applied to migrants and refugees*, September 2006 available at: [www.unhcr.org/publ/PUBL/450037d34.pdf](http://www.unhcr.org/publ/PUBL/450037d34.pdf)

<sup>27</sup> The largest number of new asylum-seekers was registered in Trinidad & Tobago, where 106 persons applied for asylum between 1 January and 30 June 2014.

26. The real constraints faced by countries in the Caribbean region are reflected by the scarcity of adequate reception mechanisms that are in a position to respond to the specific needs of (unaccompanied) children, women-at-risk, older persons or persons with health problems or disabilities. In several Caribbean countries, irregular migrants, including asylum-seekers, remain in detention for prolonged and even indefinite periods of time. The majority of States have no formal arrangements to address the situation of detained persons with specific protection needs, or to refer them to the competent authorities or to UNHCR.

27. Indeed, automatic administrative detention is widely practiced in the region as a means to deter irregular arrivals of migrants and asylum-seekers.<sup>28</sup> Detainees are commonly prevented from challenging the grounds for detention owing to any one or combination of factors: the absence of information about the asylum procedure and the grounds for detention, along with the lack of free legal counselling and the unavailability of interpreters or translation services. When irregular migrants are not given the opportunity to challenge the lawfulness of the detention measure, detention becomes arbitrary.<sup>29</sup> Moreover, research shows that immigration detention has widespread and seriously damaging effects on the mental and physical health of detainees.<sup>30</sup> Detention centres are often overcrowded and lack appropriate conditions of hygiene and security. This adds to the trauma and hardships that asylum-seekers already faced in the country of origin and during flight.

28. The 1951 Convention provides that asylum-seekers shall not be penalized for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence.<sup>31</sup> The position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic events, need to be taken into account in determining any restrictions on freedom of movement based on irregular entry or presence. Governments should always consider<sup>32</sup> completing an individual assessment and choosing the least restrictive measure, with preference to alternatives to detention.<sup>33</sup>

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<sup>28</sup> In contrast, the UN Special Rapporteur on the human rights of migrants, François Crépeau notes in his 2012 thematic report that “there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased.” See further the Report of the Special Rapporteur on the human rights of migrants, François Crépeau, A/HRC/20/24 of 2 April 2012, available at: <http://www.refworld.org/pdfid/502e0bb62.pdf>.

<sup>29</sup> OHCHR, Fact Sheet No. 26, The Working Group on Arbitrary Detention, <http://www.unhcr.ch/html/menu6/2/fs26.htm#IV>, pursuant to resolution 1991/42, as clarified by resolution 197/50.

<sup>30</sup> The UN Special Rapporteur on the human rights of migrants highlights in his 2012 thematic report that “detention systematically deteriorates the physical and mental condition of nearly everyone who experiences it. Symptoms related to depression, anxiety and post-traumatic stress disorder are common. Prolonged detention deepens the severity of these symptoms, which are already noticeable in the first weeks of detention.” Paragraph 48, page 13, <http://www.refworld.org/pdfid/502e0bb62.pdf>

<sup>31</sup> Article 31 of the 1951 Convention on the Status of Refugees.

<sup>32</sup> Research has found that over 90 per cent compliance or cooperation rates can be achieved when persons are released to proper supervision and assistance. The alternatives have also proved to be significantly less expensive than detention. See further Guideline 4.3 entitled “Alternatives to detention need to be considered” in UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>

<sup>33</sup> In the case *Velez Loo vs. Panama*, the Inter-American Court stated that “those migratory policies whose central focus is the mandatory detention of irregular migrants, without ordering the competent authorities to

29. In addition to detention, limited access to asylum is also a common issue in the Caribbean. All asylum-seekers, in whatever manner they arrive within the jurisdiction of a State, should have access to fair, efficient and effective refugee status determination (RSD) procedures. However, in many countries in the Caribbean, persons in need of international protection are not systematically given access to RSD procedures and, therefore, respect of the *non-refoulement* principle is not always ensured.

30. Despite the deficits described above, the Caribbean does present some good practices in the area of asylum that deserve to be highlighted. For instance, the majority of the Caribbean States have ratified or acceded to the 1951 Convention and the 1967 Protocol. Only five Caribbean States are not yet parties to these international refugee instruments.<sup>34</sup> Two countries (Belize and the Dominican Republic) and one territory (The Cayman Islands) have adopted enabling legislation. Another territory (Turks and Caicos Islands) is in the process of developing asylum legislation. In addition, two countries (Jamaica and Trinidad and Tobago) have adopted a specific and comprehensive refugee policy. Four States (The Bahamas, Belize, the Dominican Republic and Jamaica) have established and/or reactivated national mechanisms to determine refugee status and another State (Trinidad and Tobago) is in the process of developing RSD procedures and setting up an Inter-ministerial Eligibility Commission.

31. UNHCR is encouraged by the high rate of accessions to the 1951 Refugee Convention in the Caribbean and the various legislative actions in recent years. This indicates that there is political will in the region to address the situation of asylum-seekers and refugees in a meaningful way. While many of the solutions developed by individual States are not formalized, they are building blocks for creating functioning, sustainable asylum systems.<sup>35</sup>

32. UNHCR assists Caribbean countries and territories that have already set up refugee protection mechanisms to further develop and enhance these by providing support in the form of technical advice and capacity-building. UNHCR proposes the elaboration of a plan aimed at enhancing national and regional capacities to effectively determine refugee status. UNHCR also encourages countries in the region to develop strategies for the gradual transfer of responsibility for refugee status determination from UNHCR to the Government. As is reflected in the phased approach developed by the Government of Trinidad and Tobago<sup>36</sup>, such a transition process involves several phases from assessment and planning to transfer, implementation and consolidation, requiring a medium- to long-term perspective. Action plans can serve as platforms for the allocation of human and financial resources, including contributions from donors.

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verify in each particular case and by means of an individualized evaluation, the possibility of less restrictive measures of achieving the same ends, are arbitrary.” Judgment of 23 November 2010.

<sup>34</sup> Barbados, Cuba, Grenada, Guyana and Saint Lucia.

<sup>35</sup> The creation of a functioning asylum system often includes: (i) adopting refugee legislation; (ii) adopting decrees to establish fair, efficient and effective RSD procedures; (iii) establishing a technical secretariat (Refugee Unit); (iv) setting up a decision-making body (different models are possible: decision-making by an individual civil servant or through an eligibility committee); and (v) providing second instance decision-making (appeals).

<sup>36</sup> The refugee policy adopted by the Government of Trinidad & Tobago in July 2014 provides for a gradual approach consisting of three phases: at the initial stage UNHCR leads the RSD procedure and provides intensive training to authorities on refugee protection and RSD; during the second phase the Government establishes the national framework through the enactment of refugee legislation and the creation of an Eligibility Committee and gradually assumes responsibility for the RSD process with ongoing support from UNHCR and during the third phase, the Government implements procedures for the identification, registration and referral of asylum-seekers and sets up a Refugee Unit that will be trained to handle refugee and asylum matters.

### 33. Discussion Questions

- i. Would Caribbean countries and territories be willing to enhance protection-sensitive entry mechanisms and consider alternatives to detention?
- ii. Which additional measures can be taken to ensure the effective protection of refugees, in particular the full respect for the principle of *non-refoulement*?
- iii. In light of the diverse policy and legislative initiatives to adopt and implement international refugee protection standards, would regular meetings, regional capacity-building initiatives and exchange of information among countries in the region and beyond be considered fruitful for the further development of asylum systems?

### V. Durable solutions for refugees

34. The Caribbean Regional Consultation also provides a platform to discuss how Caribbean countries can work together with UNHCR to ensure that all recognized refugees in the territory are provided a viable durable solution.<sup>37</sup> UNHCR has been mandated to provide international protection and find “*permanent solutions to the problem of refugees*” through, *inter alia*, the facilitation of their voluntary repatriation, their assimilation with new national communities or resettlement to third countries.<sup>38</sup> The 1951 Convention codified this objective by indicating the need for cooperation among signatory States in finding solutions,<sup>39</sup> by exhorting them to facilitate the assimilation and naturalization of refugees,<sup>40</sup> and by easing the transfer of assets in case of resettlement.<sup>41</sup> Other regional instruments have equally pointed to the primary necessity of finding solutions to the plight of refugees.<sup>42</sup>

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<sup>37</sup> There are three established durable solutions for refugees – voluntary repatriation, local integration and resettlement.

<sup>38</sup> See Article 1 of the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), Adopted by General Assembly Resolution 428 (V) 14 December 1950, A/RES/428(V). The Statute explicitly mandates the High Commissioner to provide protection also by “*assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities*” (Article 8 (c)) and prompts States to cooperate in the promotion of assimilation of refugees, especially by facilitating their naturalization (Article 2 (e)). In relation to resettlement to a third country, see Article 9 of the UNHCR Statute; see also Article 2 (f) on travel and other documentation for enabling resettlement; Article 2 (g) and 8 (e) on transfer of refugees’ assets to third countries.

<sup>39</sup> See the Preamble of the 1951 Convention where it is affirmed that “*a satisfactory solution of a problem [the refugee problem ndr] of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation*”, UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>.

<sup>40</sup> See Article 34 of the 1951 Convention. For a thorough analysis of this norm, see A. Zimmermann, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, March 2011, pp. 1441-59.

<sup>41</sup> See Article 30 of the 1951 Convention. The possibility to reach permanent solutions through resettlement is additionally, contemplated in the Preamble, recommendation D. See for a commentary of Article 30 A. Zimmermann, op. cit. fn. 6, pp. 1227-43.

<sup>42</sup> See Article 2 (1) of the Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>, where it is stated that “*Member States of the OAU shall use their best endeavors[...]to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality*”, as well as Article 5 on Voluntary Repatriation and 2 (4) on Resettlement. See also paragraph II (f), (g), III (12), and IV second alinea, of the Cartagena Declaration on Refugees, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>. See Article 33 on Integration facilities and 34 on Voluntary repatriation of the Council of the European Union,

Refugee status cannot be a permanent status. Those afforded with international protection would eventually need to find a durable solution.

35. As part of UNHCR's strategic use of resettlement within a wider comprehensive solutions approach, resettlement is meant to provide a complementary and supportive role to local integration efforts of Caribbean States and territories. Whereas UNHCR acknowledges that there are various considerations that may limit the ability of States to provide durable solutions to refugees in the short-term, resettlement cannot be offered to all refugees in a given country or region.<sup>43</sup>

### **Local Integration**

36. Caribbean States might therefore give consideration to facilitating naturalization of refugees by shortening the required period of residence and reducing or waiving the fees for the process, as provided by national legislation. In certain instances, this could be combined with promotion of civil society initiatives in support of refugees. Moreover, the positive role of the diaspora as a resource to aid national development could be better tapped. By mobilizing skills, knowledge, innovation, ideas and technology, diasporas are making an important contribution to development in many parts of the world and are a specific focus of the Global Forum on Migration and Development.

37. All member States of the Caribbean Single Market and Economy (CSME) were required to remove existing restrictions on the rights of establishment, provision of services, movement of capital and movement of skills for the full implementation of the single market by 1 January 2006, or shortly thereafter. Yet, mobility remains hampered by cumbersome administrative processes, significant variations in the transposition of treaty requirements into domestic legislation (an important example is family reunion), and the absence of supportive regional instruments. Experience in other regions with comparable integration schemes has demonstrated the positive benefits of labour migration. The Buenos Aires Regional Consultation in the framework of MERCOSUR, for example, recommended exploring the use of analogous MERCOSUR provisions to formalise labour migration for refugees in the region who have benefited from integration schemes.

### **Resettlement**

38. UNHCR continues to pursue resettlement for the most vulnerable refugees in the Caribbean as a protection tool, a durable solution and as a responsibility-sharing mechanism in a spirit of solidarity. With the increasing numbers of persons in need of international protection arriving in the region, resettlement from the Caribbean is also on the rise. Since 2012, UNHCR has submitted 72 individuals for resettlement out of the Caribbean region. By 30 June 2014, a total of 45 refugee cases had departed to their new asylum countries, including the United States, Sweden, The Netherlands, France, Norway and Brazil. The more recent developments do not only reflect a steady increase in the number of submissions, but

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Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted ("EU Qualification Directive"), 19 May 2004, 2004/83/EC, <http://www.unhcr.org/refworld/docid/4157e75e4.html>.

<sup>43</sup> Voluntary repatriation to home countries is also rarely an option for refugees in the Caribbean, as most recognized refugees are fleeing from ongoing conflicts or recent persecution. Yet refugees cannot be left to languish without opportunities for employment and empowerment. Among recognized refugees, the lack of appropriate documentation makes it difficult to access public services, including public health and education. This results in legal limbo and induces economic dependence on UNHCR.

also a greater diversification of countries out of which refugees are being resettled. The countries for which resettlement submissions were presented included the following: Trinidad and Tobago (40%), The Bahamas (30%), Curacao (10%), Grenada (4%), Sint Maarten (4%), Saint Lucia (3%), Barbados (2%) and St. Kitts and Nevis (1%).

39. Resettlement options for refugees in the region are scarce and, due in part to limited awareness about resettlement needs in the Caribbean. In general, resettlement countries have tended to prioritize other geographic regions (e.g. the Middle East, Africa and Asia) or refugee profiles for resettlement that are less typically found in the region (e.g. women at risk). Refugees who are dispersed and in remote locations, such as low-populated islands, pose a special challenge to UNHCR and to potential resettlement states in terms of protection and durable solutions. Small numbers of refugees in remote locations make it difficult to attract the interest of resettlement countries in processing and the costs can be prohibitive. Only the U.S. undertakes periodic interview missions in the Caribbean. For resettlement countries that accept dossier cases (based on documentation only), there is usually a requirement that the refugee's situation is urgent or even an emergency in nature. The situation of refugees in the Caribbean islands is often characterized by the lack of local integration prospects, rather than being required on urgent or emergency basis on protection grounds.

40. This explains why resettlement opportunities for refugees in the Caribbean have remained limited. Even when resettlement is able to be undertaken, the resettlement movement can take many months, if not years, to complete. A more systematic, coordinated, and informed effort should be made to respond to these situations and address the needs of these refugees. Expanding the number of resettlement countries would help provide greater flexibility and responsiveness to refugees with protection issues or special needs that cannot be addressed in situ.

41. As a means to encourage enhancing resettlement capacity, UNHCR would like to propose the creation of a regional refugee transfer mechanism in one of the larger Caribbean island States as part of its solutions strategy. The purpose of such a mechanism would be to allow refugees from more isolated locations to be transferred to a central and easily accessible location to facilitate the interviewing of refugees and the processing of resettlement referrals. UNHCR believes with a central location for resettlement processing, more resettlement States would be able to commit to responding to resettlement needs in the region than is possible now given logistics and costs. The new mechanism, while expected to expedite resettlement and reduce the need for resettlement missions to certain locations, the need for missions to other larger refugee-receiving countries in the Caribbean will still exist.

42. Rather than establishing a physical structure, this mechanism would consist of a scheme whereby existing networks for refugee accommodation in individual apartments is widened under the coordination of one of UNHCR's implementing partners and with the full consultation of the hosting State. A similar mechanism has proven successful in The Philippines for emergency cases. In the Caribbean, the mechanism could first be tested as a pilot project with a maximum of 20 cases being processed during the first year, after which it should be evaluated and adjusted. The creation of such a regional mechanism would be a unique way to promote durable solutions for refugees within the Caribbean region. It also presents an innovative scheme for responsibility-sharing in a spirit of solidarity.

#### **43. Discussion Questions**

i. How can local integration opportunities for refugees be further increased and enhanced in the Caribbean region?

ii. Is the development of regularization and/or integration schemes an option that Caribbean States and territories may also wish to consider?

iii. Is there support to create a regional refugee transfer mechanism as a practical initiative to expedite resettlement in the Caribbean region?

#### **IV. Statelessness**

44. While the situation of statelessness is comparably less common in the Americas than other parts of the world, it is a problem that continues to affect thousands of persons in the region. The year 2014 marks the 60th anniversary of the 1954 Convention related to the Status of Stateless Persons (“1954 Convention”). In commemoration, UNHCR is launching its Global Campaign to eradicate statelessness by 2024. The Caribbean Regional Consultation provides a prime opportunity to begin identifying and better understanding the specific situation of statelessness in the Caribbean and developing a roadmap for resolving the problem over the course of the next 10 years. The conclusions from this consultation can be incorporated in a chapter on statelessness in the future Brasilia Plan of Action.<sup>44</sup>

45. In this regard, it should be noted that the General Assembly of the Organization of Americas States has encouraged member States to use the commemorations of the 30th anniversary of the 1984 Cartagena Declaration on Refugees and the 60th anniversary of the 1954 Convention to identify the challenges and the actions necessary to eradicate statelessness from the Americas, and to include a chapter on the subject in the future regional strategic framework arising from the commemorative process.<sup>45</sup>

46. There are signs that there is an increasing awareness and political will to address statelessness in the Caribbean. In the last couple of years, there have been a marked number of positive steps taken to prevent and reduce statelessness in the region. For instance, in July 2014, Suriname announced that it amended its Law on Nationality and Residency to eliminate gender discrimination in the nationality provisions and add safeguards against statelessness. In a similar fashion, The Bahamas has activated a Constitutional Reform process to address gender discrimination in the transmission of nationality. The process in The Bahamas will culminate with a Constitutional Referendum, scheduled for November 2014. It should also be noted that Jamaica acceded to the 1961 Convention on the Reduction of Statelessness in January 2013.<sup>46</sup> The Republic of Haiti is

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<sup>44</sup> The adoption of a statelessness chapter in the Brasilia Plan of Action will achieve the following: 1) define a regional agenda related to statelessness that could be reflected in national human rights policies; 2) strengthen the impact of the ongoing State initiatives to prevent, identify, protect and reduce statelessness; and 3) deepen the region’s commitment to achieve the global objective set by UNHCR to eradicate statelessness within ten years. See Discussion Paper, Mercosur Sub-Regional Consultation, Commemorative Process of the 30th Anniversary of the Cartagena Declaration regarding Refugees, “Cartagena+30,” Buenos Aires, March 2014, p. 17.

<sup>45</sup> AG/RES. 2826 (XLIV-O/14), Prevention and reduction of statelessness and protection of stateless persons in the Americas, June 4, 2014. Presented by the delegations of Colombia and Uruguay and cosponsored by Brazil, Costa Rica, Haiti, and Paraguay.

<sup>46</sup> Unlike the Refugee Conventions, for which the majority of Caribbean States are signatories, only 5 independent Caribbean States are party to the 1954 Convention and only 2 are party to the 1961 Convention. See United Nations, Treaty Series, Vol. 989, p. 175; see also, United Nations, Treaty Series, Vol. 360, p. 117.

posed to follow suit in the near future, after pledging to accede to the 1954 and 1961 Conventions in 2011.<sup>47</sup>

47. Despite these developments, there are a number of situations of statelessness that persist and merit intensified attention from individual States and the region as a whole. Below is a brief description of the most common causes of statelessness in the Caribbean:

First, several Caribbean States have ineffective civil registration and documentation systems in place. Since birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as important documentary proof to acquire the parents' nationality or the nationality of the State in which the child is born. There are indications that a significant, yet unknown number of individuals born in the Caribbean are unable to prove their nationality. Risks of statelessness may arise for these individuals, especially if their progenitors also lack identity documents or are no longer alive. Common problems include strict time limits for birth registration, high cost of birth registration/issuance of personal documentation, poor infrastructure and transportation, lack of understanding on how to ensure the application of dual nationality regulations and lack of awareness and education of parents on the need to register their children.

48. In view of this, the countries of the Latin American and Caribbean Group (GRULAC) promoted the adoption of a Conclusion on Civil Registration in 2013 that encourages States to undertake any necessary legal and practical measures to overcome difficulties in civil registration, including through establishing or strengthening existing institutions responsible for civil registration, building their capacity and ensuring the safety and confidentiality of their records.<sup>48</sup>

49. Another factor that places persons at risk of statelessness in the Caribbean is the absence of birth right citizenship (*jus soli*<sup>49</sup>) combined with a lack of safeguards to grant nationality to those who would otherwise be stateless.<sup>50</sup> This most commonly affects children born to parents who are not lawfully residing in the country or who do not possess valid identity documents. Even when safeguards do exist to prevent statelessness, there are often administrative barriers and discriminatory practices that prevent persons from acquiring a nationality.

50. A third notable cause of statelessness in the Caribbean continues to be gender discrimination with regard to the conferral of nationality. While this problem has been largely resolved in the region, there are a few Caribbean States, specifically The Bahamas<sup>51</sup>

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<sup>47</sup> Pledges 2011, Ministerial Intergovernmental Event on Refugees and Stateless Persons, Geneva (7-8 December 2011), UNHCR, 2012, p. 80.

<sup>48</sup> Conclusion on Civil Registration, No. 111 (LXIV) – 2013, UNHCR's Executive Committee, 17 October 2013.

<sup>49</sup> Generally, nationality can be established at birth by a person's place of birth (*jus soli*) and/or bloodline (*jus sanguinis*) or can be acquired through naturalization.

<sup>50</sup> Article 1 of the 1961 Convention on the Reduction of Statelessness does not oblige the State to grant their nationality to all children born on the territory, but simply requires States to do so if the child would otherwise be stateless. Similarly, Article 20(2) of the American Convention on Human Rights provides that "[e]very person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality." Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969.

<sup>51</sup> According to Article 8 and Article 9(1) of the Constitution of The Bahamas, only children born to Bahamian fathers receive citizenship at birth. Children born legitimately to Bahamian mothers outside The Bahamas must submit a registration application after age 18, but before age 21. Furthermore, children born to Bahamian mothers must renounce citizenship to any other country prior to registration, preventing acquisition of dual citizenship.

and Barbados,<sup>52</sup> whose laws continue to prohibit women from conferring nationality to their children on equal footing with men. Children born to women who are nationals of these countries may be left stateless if born outside their State's borders and unable to acquire nationality from their fathers (e.g. because the father is stateless or due to limitations on *jus sanguinis*<sup>53</sup> conferral of nationality under the nationality law of the State of nationality of the father).<sup>54</sup>

51. The causes of statelessness discussed above are not necessarily unique to the Caribbean. The Cartagena+30 commemorative process and the 10-year campaign to eradicate statelessness will provide new opportunities for the Caribbean States to address these challenges in concert with other countries in the Americas and with the support and assistance of UNHCR, and the international community.

52. In this light, it should be noted that during the sub-regional consultations in Argentina (for the region of Southern America) and in Nicaragua (for the region of Mesoamerica) that occurred earlier in 2014, the participating Latin American countries agreed on the importance to develop a regional framework to end statelessness that is structured under the pillars of prevention of future cases of statelessness, the protection of stateless persons, and the resolutions of the existing cases of statelessness.<sup>55</sup>

53. Concerning prevention, Latin-American countries have proposed to: 1) promote ratification and/or accession to the 1961 Convention; 2) address possible gaps in nationality laws; 3) reinforce civil registration, in line with Executive Committee Conclusion N° 111 (2013). Regarding protection of stateless persons, the States have recommended to: 1) promote ratification or accession of the 1954 Convention; 2) the enactment of national frameworks to ensure the rights of stateless persons and; 3) the establishment of statelessness determination procedures. Finally, as regard the resolution of cases of statelessness, Latin-American countries have suggested to: 1) facilitate the naturalization of stateless persons; 2) promote the confirmation of nationality and; 3) the restoration of nationality, when appropriate.

54. Given the constructive recommendations the Latin American countries have provided, and in view of the space for dialogue and political coordination that has been created in the

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<sup>52</sup> The Government of Barbados amended its Constitution in 2002 to eliminate gender inequality from its nationality provisions. However, the discriminatory language remains in Barbados' nationality legislation.

<sup>53</sup> See footnote 49

<sup>54</sup> In its 2012 report to the Universal Periodic Review, the Bahamas acknowledged that: "However, separate Constitutional Provisions concerned with the transfer of nationality from parent to children and to the award of nationality to foreign born spouses of Bahamian citizens accord privileges to Bahamian men that are not afforded to Bahamian women." See Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Bahamas, Doc A/HRC/WG.6/15/BHS/1, 8 November 2012. UNHCR submitted observations on this issue and recommended amendment of the Constitution and relevant laws to remove inequality. See Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Doc. A/HRC/WG.6/15/BHS/2. In its concluding observations from 2012, the Committee on the Elimination of Discrimination against Women recommended that the Bahamas "a) Raise awareness among the population on the equal rights of women and men with regard to transmission of nationality; b) Amend its Constitution and relevant domestic laws to grant Bahamian women equal rights with men regarding the transmission of their nationality to their children or to their spouses of foreign nationality; c) Withdraw its reservation to article 9 (2) of the Convention [...]." See Committee on the Elimination of Discrimination against Women, Concluding observations, Bahamas, Doc CEDAW/C/BHS/CO/1-5, 27 July 2012.

<sup>55</sup> Conclusions and Recommendations, Mercosur Sub-Regional Consultation, Mercosur Sub-Regional Consultation, Commemorative Process of the 30th Anniversary of the Cartagena Declaration regarding Refugees, "Cartagena+30," Buenos Aires, March 2014, p. 8.

Community of Latin American and Caribbean States (CELAC) with the aim of promoting a better integration of both regions in the international arena,<sup>56</sup> UNHCR would like to respectfully suggest to consider these recommendations as a starting point for the Caribbean sub-regional consultation.

55. These recommendations were not only built upon the consensus and guidelines for the Brasilia Plan of Action and OAS's resolutions on statelessness, but could be regarded as a preliminary identification of common challenges and goals, and areas of coincidence that will enable both Latin American and Caribbean countries to move forward in the integration process of the region with the goal to end statelessness within the next ten years.<sup>57</sup>

**56. Discussion Question**

Do Caribbean States and territories agree to join the commitment of the Latin-American countries to develop a regional framework to eradicate statelessness within the next decade by preventing future cases of statelessness, protecting stateless persons, and resolving existing cases of statelessness?

**UNHCR**  
**Regional Office in Washington, D.C. for the Caribbean**  
**Bureau for the Americas**

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<sup>56</sup> Havana Declaration, II CELAC Summit, Havana, 28-29 January, 2014.

<sup>57</sup> *Id.*