



## Concept Paper

(Updated January 2014)<sup>1</sup>

### I. INTRODUCTION

The year 2014 marks the **30<sup>th</sup> Anniversary of the 1984 Cartagena Declaration on Refugees** (hereinafter “the Cartagena Declaration”). Over the past thirty years, regional cooperation and solidarity – of which the Cartagena Declaration is one example – proved to be effective in addressing longstanding and new situations of forced displacement throughout the Americas.

In 2004, on the occasion of its 20<sup>th</sup> Anniversary, twenty Governments in Latin America and the Caribbean adopted what became known as the *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America*, which served as the common strategic framework for governments, UNHCR, civil society and the international community over the last ten years.

UNHCR invites Governments and civil society to once again use the pragmatic and flexible framework provided by the Cartagena Declaration to respond to the challenges of the next decade and strategically advance our work in favor of persons in need of international protection – including refugees and asylum-seekers, stateless and internally displaced persons. Likewise, this year is an opportunity to reiterate the commitment of the region towards international protection, the importance of regional instruments and their contribution to the universal asylum regime and to reaffirm the centrality of the 1951 Refugee Convention within the asylum systems in this hemisphere.

The “*Cartagena +30*” commemorative process is not an occasion to endorse once again the text of the Cartagena Declaration; rather its objective is for States in the region to adopt a **new strategic framework** allowing protection and durable solutions for the coming decade to be promoted in the region.

This document is an update of the concept paper shared with governments and civil society in May 2013 maintaining the core of the original document and including the main inputs from the initial consultation process.

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<sup>1</sup> This Concept Paper will not be the subject of further updates. Comments provided by governments or other participants in 2014 will be included, as required, in the respective Discussion Papers of Sub-regional meetings and/or their Agendas.

## II. BACKGROUND ON 30 YEARS OF REGIONAL CONVENINGS

This section offers a historical overview of UNHCR led regional cooperative convening in the hemisphere in the last 30 years. Beginning in 1984, a group of governmental experts from Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Venezuela adopted the Cartagena Declaration on Refugees, a non-binding regional instrument. Its production was the direct result of a Colloquium on International Protection of Refugees in Central America, Mexico and Panama, which was held in Cartagena de Indias, Colombia, and which focused on the legal and humanitarian problems affecting Central American refugees.

The United Nations (UN) and the Organization of American States (OAS) have reiterated the importance of the Cartagena Declaration as a regional protection tool. This regional instrument builds on the generous practice of asylum in the Americas, and reiterates important norms and principles of International Refugee Law. While the Cartagena Declaration establishes a series of recommendations for the humanitarian treatment of and durable solutions for those in need of international protection, it is best known for its recommendation on the enlarging of the refugee definition applicable in the region, which has been included in the national legislation of fourteen countries<sup>2</sup>.

The relevance and validity of the Cartagena Declaration were reaffirmed in 1994 on the occasion of its 10<sup>th</sup> Anniversary. This event led to the adoption of the *San José Declaration on Refugees and Internally Displaced*, which analyzed the importance of the Cartagena Declaration as a protection tool, but also referred to the need to address the plight of internally displaced persons in the region.

In 2004, the commemoration of its 20<sup>th</sup> Anniversary resulted in the adoption of the *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America*, which not only reaffirmed important protection principles but, for the first time, created a regional Plan of Action that introduced innovative “solidarity programmes” that have furthered protection and the attainment of solutions for those in need.

In 2010, eighteen countries gathered in Brazil to mark the sixtieth anniversary of the 1951 Refugee Convention and the fiftieth anniversary of the 1961 Statelessness Convention, adopted the *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*. This event opened a commemorative process that culminated, in December 2011, in a Ministerial Meeting in Geneva. The meeting gave states the opportunity to make concrete pledges of commitment to address specific forced displacement and statelessness issues, as well as broader, forward-looking recommendations. The Brasilia Declaration recommends the application of the **Mexico Plan of Action** as a regional framework to respond to the new challenges facing the region, such as protection in the context of mixed migratory movements and statelessness.

Finally, in 2012, at the occasion of the First Meeting of the Refugee National Commissions of the member and associate States of the MERCOSUR bloc, participating countries supported the organization of a commemorative event to celebrate the 30<sup>th</sup> Anniversary of the Cartagena Declaration “with the aim to adopt a new Declaration and Plan of Action to address the new

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<sup>2</sup> Argentina, Belice (using the OUA's wording), Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Mexico, Paraguay, Peru and Uruguay

challenges in the international protection of refugees in Latin America and the Caribbean in the future decade.” In addition, they decided to organize, in partnership with UNHCR, regional consultations with the aim of jointly analyzing current challenges and lines of action to the international protection of refugees and stateless persons.

### **III. REGIONAL CONTEXT**

The Americas has a long tradition of asylum and protection of human rights. Refugee legislation and protection standards are generally high. However, despite the overall strengths, the implementation of fully effective protection mechanisms for persons in need of international protection continues to pose challenges, notably in relation to: the access to asylum; the quality of the asylum procedures; the access to livelihood opportunities and to the effective enjoyment of rights in asylum; and the attainment of sustainable and durable solutions.

In addition, States’ legitimate concerns for their national security and the perceived incompatibility with their international protection obligations remain a challenge, which requires vigilant dialogue and regional collaboration. The region is also faced with new situations that are having a humanitarian impact on the population and, in an increasing numbers of cases, lead to forced displacement. At the same time, recent political processes could yield new solutions to longstanding challenges.

Transnational organized criminal activity, particularly in Honduras, Guatemala and El Salvador, is causing the displacement of populations who are victims of these groups’ criminal violence. Some countries, such as the United States of America, Costa Rica and Nicaragua, to name a few, are witnessing a dramatic rise in claims of refugee status for these reasons, affecting women, boys, girls and adolescents disproportionately.

In response, UNHCR is organizing the *Cartagena +30* process as a forum to analyze these situations, foster dialogue amongst the affected governments, and together with other key stakeholders, generate new ideas. This discussion does not aim to broaden UNHCR’s scope of activity nor to overstate the humanitarian impact of a phenomenon that States are trying to contain or reduce through security bodies and national and international actions and policies developed to that effect. However, some specific situations should also be analyzed from a humanitarian and protection view, within a regional perspective, through regional and international cooperation and North-South and South-South dialogue amongst States in the Americas.

### **IV. BROAD CONSULTATIONS**

Cartagena +30 represents an opportunity for the countries of Latin America and the Caribbean to conduct a review on the progress made and the protection challenges facing the hemisphere, and to tackle them in a pragmatic and innovative manner, based on the results and advances of the 2004 Mexico Plan of Action. This review process, directed by governments, involves civil society, national human rights institutions, academia, the international community and persons in need of international protection.

The **Government of Brazil** has confirmed its willingness to host the final ministerial meeting in Brasilia in early December 2014. In addition, Brazil has generously offered a financial contribution for the event, and for the implementation of protection projects and solutions, which are clearly framed within the priorities signaled by countries during the initial consultation process.

Based on the concept paper shared in May 2013, UNHCR carried out **initial consultations** with governments and civil society and collected important inputs. A thoughtful assessment of the systemic achievements and impact of the Mexico Plan of Action will serve as a pillar upon which to build the new regional plan as well as the recognized need to strengthen international cooperation and regional solidarity.

Since the adoption of the Cartagena Declaration and the establishment of national mechanisms for determining refugee status by States in the region major systemic advances were realized at the national level. There is support for continuing the efforts to ensure that the highest standards of protection at regional level in terms of eligibility, boys, girls and adolescents and women, resettlement, integration, natural disasters (e.g. Nansen initiative) and forced displacement caused by new forms of violence.

In this respect, UNHCR recognizes the effort and benefits of capacity-building and training programmes throughout the region. Costa Rica, Mexico, Panama, Argentina and Brazil have engaged in a system-wide Quality Assurance Initiative (QAI). MERCOSUR member states and associates, for example, have established a forum through which the Presidents of CONARE (National Refugee Commissions) share refugee protection practices and information and host exchange opportunities for each other. This broadened forum could in the future become a regional center for coordination, cooperation, exchange of good practices and development of protection policies and solutions for refugees and stateless persons, including the establishment of a regional protection mechanism, harmonization of national legislation and alignment of the quality of the national systems for determining refugee and statelessness status.

Likewise, it is suggested that CONAREs should be given the responsibility for determining statelessness and for launching, on the occasion of **Cartagena +30** and the **60th anniversary** of the 1954 Convention Relating to the Status of Stateless Persons, a regional campaign for the eradication of statelessness and for the universal accession/ratification at the sub continental level of international conventions on the subject.

A cross-cutting concern is to ensure international protection in the context of mixed migratory flows, through mechanisms that guarantee the identification of refugee claimants and their access to eligibility procedures, and respect for the principle of non-return. It is proposed to give special attention to the victims of trafficking and to unaccompanied or separated children needing international protection, as well as the study of alternatives to detention for refugee claimants. In this sense it is necessary to improve the reception conditions for unaccompanied or separated boys, girls and adolescents, guaranteeing their non-detention for migratory reasons. Also, understanding and support is requested for States' legitimate national security concerns, always within a framework of respect for human rights and their international protection obligations.

Governmental and Latin American civil society experts are in the vanguard of the reflection on and analysis of the humanitarian impact of violence caused by transnational organized crime; a phenomenon that both in the region and in other continents is growing and requiring enormous efforts from governments, causing forced displacement and inflicting a high level of human suffering. It is recognized that the phenomenon does not affect the whole region, and that even in those countries that are affected it expresses itself in different ways. In addition, there is awareness of the complexity of the subject and of the diverse possible approaches.

It is confirmed that the political will exists for States to recognize the humanitarian impact of this violence and to provide protection to displaced persons, including international protection to victims who have no other alternatives. At the same time, the challenges as a result of cross-border mobility of armed criminal agents is noted and it is requested that a debate should take place about regional cooperation to guarantee the safety of internally displaced persons, of refugees and of receiving communities. In this context, it is considered that “*Cartagena +30*” can be a useful forum to calmly and scientifically analyze the magnitude of the humanitarian impact of this phenomenon and to debate the possible ways to reduce it and provide protection and solutions to its victims, who are often boys, girls and adolescents and women.

In the framework of solutions, it is considered opportune to expand and consolidate initiatives of the Mexico Plan of Action, such as solidarity resettlement, local integration through the establishment of regional standards and the reinforcement of the solidarity cities programme, with programmes and initiatives that promote sustainable ways of life and local integration; also to explore the perspectives for naturalization and permanent residency for refugees opened by the continent’s legislation and migratory policies. Together with the improvement of these programmes for traditional durable solutions, proposals have arisen to develop new alternative solutions through migratory formulas arising from MERCOSUR’s accords on human mobility (4th solution).

The negotiation process for the Colombia peace accords opens new perspectives for the achievement of lasting solutions for refugees and internally displaced Colombians over the next 10 years, in a spirit of solidarity and cooperation. In the main countries of asylum and in Colombia, governments, international humanitarian actors and civil society are debating strategies for integrated medium- and long-term solutions that allow the prospect of a gradual reduction in the number of persons needing international or national protection, and of transforming assistance programmes into development initiatives. All of this is stated without denying the inherent challenges of any political process of such as scale and taking into account the protection needs of the most vulnerable populations in any post-conflict scenario.

While the majority of the countries of the region enshrine the principles of *ius sanguinis* and *ius solis* for the acquisition of nationality at constitutional level, there are also some gaps in legislation and in state practice to effectively prevent statelessness. At the same time, several countries in the region have pending accession to or ratification of the 1954 Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. The recent accessions on the part of Colombia, Honduras, Nicaragua, Panama, Paraguay and Peru demonstrate the growing interest of States in supporting the constitution of the Latin American region as a space of solidarity for the protection and prevention of statelessness in the continent. Likewise, we underline the advances made by several countries in the region in the adoption of national mechanisms for determining

statelessness in the continent. It is hoped to advance in the comparative revision of countries' nationality laws to guarantee their harmonization with international conventions on statelessness.

Finally, we have observed a growing interest on the part of the region in international forums on refugees, as well as the increasingly important role that several countries play in these forums and through international and bilateral cooperation. It is for this reason that *Cartagena +30* should include a reflection on the role and contribution of the region in the international humanitarian sphere, both as an exporter of novel, quality practices and through solidarity with countries and populations afflicted by humanitarian emergencies.

## V. INCLUSIVE PROCESS

All the countries of continental Latin America have expressed unanimous support for the *"Cartagena +30"* process. Governments of various countries have expressed the need for *"Cartagena +30"* to be an inclusive forum and that they would therefore enthusiastically welcome the countries of the Caribbean agreeing to be co-protagonists of the process.

It is further proposed that Canada and the United States of America, as countries interested and implicated in the dynamics of human mobility in the region, should participate actively. It is also considered opportune to invite as observers other countries that traditionally cooperate with the region: Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, the United Kingdom and the European Union, among others.

There is consensus on the importance of framing the formal consultations within the region's supranational institutions (UNASUR, MERCOSUR, SICA and CARICOM). In addition, all the governments consulted have underlined the valuable contribution of civil society: nongovernmental organizations, academia and research centers on human rights, human mobility and social affairs, as well as national human rights institutions. The Norwegian Refugee Council (NRC) has confirmed its decision to associate itself with the *"Cartagena +30"* process and to facilitate the participation of civil society and national human rights institutions in Latin America and the Caribbean in sub regional consultations and in the ministerial meeting that will close the commemorative process.

NRC will also facilitate preparatory meetings for civil society, including the participation of national human rights institutions, prior to the sub regional consultations, in this way allowing the greatest possible number of actors to contribute and these important inputs to be shared with governments with sufficient notice, without prejudice to representatives of civil society and national human rights institutions participating in the sub regional consultations.

As well as civil society organizations, research centers and academia have enthusiastically taken up the challenge of *"Cartagena +30"* and are preparing to stage a series of thematic events with the participation of experts and specialists who will doubtless bring information, reflection and quality to the debates and therefore to the final products.

*"Cartagena +30"* will give a major space to the Organization of American States (OAS) and the institutions of the Inter-American Human Rights System and other regional and international bodies, including some UN agencies and other international organizations with which UNHCR works closely

in the region, such as UNDP, OHCHR, UNICEF, IOM and ICRC. The best way of giving voice to persons in need of protection has also been discussed. Together with civil society, options are being considered, including by means of video-testimonies that could be presented over the course of the consultations.

An account of all these contributions and developments will be published on the ***Cartagena +30 webpage***, which is currently being prepared, and through an information bulletin that UNHCR will publish starting from the official launch of the “*Cartagena +30*” process, which will take place in Geneva in mid-February 2014.

## **VI. SUBREGIONAL CONSULTATIONS**

As a result of the initial consultations, the initial plan for sub regional consultations has been modified and the schedule adapted. Furthermore, at the request of the governments the meetings will take place under the auspices and within the institutional frameworks of the region’s supranational entities.

In this way, the still-preliminary schedule would be the following:

MERCOSUR sub regional consultation: Buenos Aires, 18-19 March, under the pro-tempore presidency of Argentina and within the MERCOSUR framework. Participants: Governments and civil society/national human rights institutions of all the member countries and associates of MERCOSUR, a delegation from Mexico as host country of “*Cartagena 20*” and as observers, other observer countries<sup>3</sup> and regional and international bodies.

Thematic meeting “Solutions for Colombian refugees and displaced”: Ecuador (venue to be determined), mid-May. Participants: Governments and civil society from Colombia, Ecuador and Venezuela; delegations from Argentina, Brazil and Mexico, other observer countries and regional and international bodies.

MESOAMERICA sub regional consultation: Under the auspices of the Government of Nicaragua and the Central American Information System (SICA), mid-July in Managua, Nicaragua. Participants: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Dominican Republic and Mexico; delegations from Brazil, other observer countries and regional and international bodies.

CARIBBEAN sub regional consultation: A specific concept paper is being prepared to initiate consultations with the countries of the region. It is likely to take place at the end of July under the auspices of CARICOM.

UNHCR, with the collaboration of experts<sup>4</sup>, will prepare a discussion paper for each of the sub regional consultations, recognizing the cross-cutting subjects that will be discussed in all of them,

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<sup>3</sup> To be determined in consultation with governments through the government of the host country.

<sup>4</sup> A group of renowned experts will provide guidance and advice to UNHCR throughout the commemorative process. In addition, governments, UNHCR and NRC will facilitate contributions by other experts, researchers and academics.



but also specific subjects in each sub region that deserve to be addressed in separate documents. These documents will be available and distributed to all participants at least a month before each meeting.

Likewise, together with the formal notice and invitation, the government of the host country and UNHCR will share a provisional agenda at least two months before the meeting to enable amendments and the preparation of documents and presentations by delegations and panelists.

## **VII. NEW DECLARATION AND PLAN OF ACTION**

The future Brasilia Plan of Action, as well as containing valuable proposals on the new challenges in the area of international protection in the region, must be realistic, feasible and of course have a positive impact on the lives of refugees, internally displaced persons and stateless persons. But above all it must be a product that has the commitment of the governments of the region, who are principally responsible for its execution with the support of the international community.

Taking into account that the conclusions and recommendations adopted in the sub regional consultations will be the fundamental inputs in preparing the draft future Declaration and Plan of Action, it is vitally important that the delegations of participating governments should have the power of decision.

It is recommended that the draft of the consolidated document with the conclusions and recommendations of the sub regional consultations should be subject to a dissemination process so that it is discussed prior to its validation and adoption in the final ministerial meeting. Therefore it is most important that the schedule for the sub regional meetings should be respected, finishing at the end of July so that the draft future Declaration and Plan of Action can be circulated in September 2014, thus permitting a process with sufficient time for discussion and consensus. In this respect, it has been recommended that the **GRULAC** in Geneva should be the forum for discussion and consensus of the draft Declaration and Plan of Action, through which the Permanent Missions should transmit their comments to governments to UNHCR.

Furthermore, it is suggested that there should be a mechanism for follow-up or monitoring and evaluation at national and regional level so that the Plan of Action is implemented correctly. To this end it would be convenient for the document to be drafted in such a way as to allow analysis of objectives attained in the short, medium and long term over the course of the next 10 years, as well as its real impact.

We hope that the future **Brasilia Declaration and Plan of Action** is approved by an even greater number of countries of the region than its predecessor, that it faithfully reflects the commitment of the region to international protection and the innovative search for solutions, and that it clearly establishes priorities in such a way that its execution is a verifiable reality.

**UNHCR – Bureau for the Americas**  
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