



CARIBBEAN CIVIL SOCIETY AND ACADEMIA POSITION PAPER IN THE FRAMEWORK OF CARTAGENA 30+ COMMEMORATION

Grand Cayman, September 9th, 2014

On the occasion of the 30th Anniversary of the 1984 Cartagena Declaration on Refugees we would like to thank UNHCR and Caribbean States and territories for providing the space for civil society to voice its perspective on current and emerging challenges affecting persons in need of international protection, including, but not limited to, refugees, asylum-seekers, stateless and internally displaced persons.

During the Caribbean Regional Consultation process, the undersigned civil society organizations and members of academia met to discuss the most pressing issues and to develop specific recommendations in the context of these international protection challenges. Although common protection challenges exist across the Americas, the Caribbean faces significant constraints that are complex and unique to the region. Our geographic configuration and location make our region prone to mixed-migratory flows that involve persons who may be in need of international protection, including asylum seekers, refugees, stateless persons and victims of human trafficking, along with other groups of migrants.

Relatedly, due to its maritime environment, migration in the Caribbean is largely characterized by movement at sea. Such movement often occurs in unseaworthy vessels, which are filled beyond capacity and operated by human smuggling and trafficking networks. This leads to deaths at sea, as well as to incidents of violence that pose high risks to vulnerable populations, in particular women and children.

Beside these migration-specific constraints, Caribbean States and territories also face challenges in guaranteeing equal treatment before the law without discrimination based on sex, origin, color, ethnicity, language, age, sexual orientation, or other grounds. Additionally, significant gaps in the law, and the way in which such law is implemented, allow for the discriminatory treatment of vulnerable populations in contravention of international human rights standards.

Taking into account these challenges, we commend Caribbean States for the national and regional efforts that have already been undertaken to address these particular issues and we express our support and willingness to work together to find innovative solutions for the protection of human rights in our region. However, en route to the future adoption of the Brasilia Declaration and the development of an effective plan of action, we encourage Caribbean States to adopt laws and public policies, in line with international human rights and refugee law, that effectively guarantee the fundamental rights of all migrants, and address the special needs of refugees, asylum seekers and stateless persons. In this light, we also encourage States to share the responsibility for protecting these vulnerable populations by engaging in greater cooperation and developing comprehensive regional strategies and solutions to the protection challenges we face.

A. MIXED MIGRATION FLOWS

Ensuring protection for Persons in Need of International Protection (PINP) and other vulnerable migrants continues to be a challenge in the Caribbean region as States have demonstrated varying levels of commitment to advancing policies and procedures that ensure such protection. A clear need thus exists to respect international and regional human rights protection standards, while taking into account the legitimate security concerns of States.

Particular attention should be paid to the special needs of vulnerable groups when managing mixed migration flows. States should therefore develop the appropriate institutional capacity to identify PINP and refer them to protection systems so that the different categories of vulnerable persons can be effectively protected. In this light, solidarity and cooperation at the regional level on protection systems is necessary to arrive at a more equitable responsibility-sharing scenario.

Finally, as PINP travel alongside other categories of migrants, they could be affected by the widespread use of detention practices in the region. In accordance with international protection standards, however, States should never detain or deprive asylum seekers, refugees and other PINP of their personal liberty.

Recommendations

In order to increase capacity building, States should:

- Establish protection-sensitive and differentiated processes and procedures to address the mixed flow phenomenon.
- Provide government officials at ports of entry and at sea with human rights, cultural sensitivity and language training
- Adopt regional and international jurisprudence and recommendations for all operations of search, rescue and interception, in line with guidelines developed by UNHCR.
- Develop a multi-stakeholder national task force to respond to mixed migration issues and to strengthen protection mechanisms for vulnerable groups.

In order to promote data collection, information sharing and management, States should:

- Establish reliable data collection and analysis systems (including disaggregated data) that are in line with international legal standards and instruments applicable to refugees and vulnerable migrants.
- Improve information sharing among key stakeholders, ensuring confidentiality measures are followed.
- Identify and share best practices with key stakeholders at the regional and national level, including civil society.
- Conduct a mapping exercise on capacities at the national and regional levels.

In order to strengthen early response and access to PINP during maritime interception, States should:

- Create an Early Response Protocol (ERP) for the identification and prescreening of PINPs. The ERP should include transfer to a place of safety, individual risk assessment, the initiation of the case management process and referral to applicable protection systems.
- Guarantee easy access to relevant civil society service providers and protection systems.
- Adopt a presumption against detention and *refoulement* for PINP and other vulnerable groups.
- Guarantee information to all migrants, including PINP, on their rights and their entitlement to protection procedures and access to protection systems.

In order to promote regional solidarity and coordination, States should:

- Develop a regional task force to facilitate responsibility sharing and to address the challenges and opportunities posed by mixed migration flows. Within this task force, a cadre of regional experts should be established that can be deployed in any emergency situation.
- Establish a regional fund that aims to alleviate the challenges arising from mixed migration flows, the funds of which could be used in the deployment of trained regional professionals, the provision of emergency supplies, etc.
- Revisit bilateral agreements on fast-track repatriation to establish safeguards against the repatriation of PINP and to protect their identity.
- Establish and prioritize regional forums for dialogue and the exchange of best practices in migration policies.
- Follow the guidelines provided by UNHCR on interception at sea.

In order to respect the fundamental rights of liberty and security of person, States should:

- Not place asylum seekers, refugees or PINP in detention or deprive them of their personal liberty.
- Eliminate the use of detention or any deprivation of liberty as a punishment for immigration infractions.
- Consider and implement alternatives to detention in the first instance for asylum seekers, refugees and other PINP. Alternatives must include case management for the coordinated delivery of information, as well as access to legal counsel, social services and protection for those whose who are awaiting decisions on their cases.
- Identify and build upon existing best practices within the region, and consider the conversion of Immigrant Detention Centers into open-door reception centers/ shelters.

B. REFUGEE STATUS DETERMINATION

Most Caribbean States lack effective national asylum procedures and enabling legislation for refugee status determination (RSD). Such limitations severely affect a State's ability to respond to the specific protection needs of asylum seekers, refugees and other vulnerable individuals.

Too often States legitimate national security concerns undermine international protection obligations. However, existing international and regional human rights and protection frameworks are clear regarding States' responsibilities to guarantee and uphold the principles of *non-refoulement* and non-discrimination, while protecting the right of persons to seek asylum and to not be penalized for irregular entry. States must also guarantee the right to due process, liberty and security of person, and freedom of movement.

An urgent need exists for Caribbean States to effectively develop legislation and institutional frameworks to carry out RSD according to international standards. Those States that do not have an existing enabling legal framework could accomplish this through a phased approach in collaboration with civil society and international organizations. Those States that already have an enabling legal framework can prioritize the standardization of said procedures.

In order to ensure effective protection, RSD procedures should:

- Be non-discriminatory, carried out in a reasonable time frame, communicated in a language and manner that is comprehensible to addressees, while ensuring their access to legal counsel and respecting their confidentiality throughout the process.
- Take into account the special needs associated with each individual's age, gender, sexual orientation, race, ethnicity and/or other similar characteristics.
- Always prioritize the best interests of the child.
- Include standard operating procedures that clarify the roles and responsibilities among the State, civil society and international stakeholders.
- Include revision of detention, RSD and removal decisions by an inter-institutional committee.

C. DURABLE SOLUTIONS

Local integration is not only about providing social services, but also about encouraging integration and community participation in a discrimination free context.

In the Caribbean, most refugees have difficulties accessing public services, such as healthcare and education, which results in high levels of economic dependence on UNHCR and civil society organizations' assistance programs, when the latter do exist. Moreover, most Caribbean States do not have established local integration policies, which results in socioeconomic exclusion for recognized refugees. The most common integration barriers are language and a lack of government-issued documentation, although individuals also suffer from discrimination by State authorities and society at large.

Integration policies are necessary to guarantee refugees' rights, and are also part of a State's responsibility to fulfill international protection obligations. Thus, States must develop and effectively implement public policies that specifically address local integration.

Finally, States must ensure that those in need of resettlement to third countries do not suffer from long delays, and are not subject to legal, social and economic limbo.

Recommendations

In order to promote the integration of refugees, State should:

- Ensure that refugees have non-discriminatory access to social services and other public programs.
- Issue proper documentation in a timely and efficient manner so that refugees are able to enjoy their rights to an education, work, healthcare and adequate housing, among others, on par with citizens.
- Ensure access to economic opportunities that encourage self-reliance such as the provision of special permits or work permits and the removal of barriers to equal participation in the workforce.
- Ensure recognition of refugees existing qualifications and professional skills, for instance through standardized testing, equivalency exams and trainee programs, to facilitate the contribution of refugees to local economies.
- Facilitate residency and naturalization by streamlining and simplifying processes; reducing wait times and waiving fees.
- Lead advocacy and awareness raising efforts to encourage solidarity and cultural diversity.

In order to address refugee resettlement in situations where local integration is not a viable option, States should:

- Facilitate a refugee transfer mechanism to expedite resettlement procedures to third countries.
- Actively express their willingness to participate in such resettlement programs.
- Consider, in the spirit of regional solidarity, the expansion of resettlement programs under the Brazil Plan of Action to other nations throughout Latin America.

D. STATELESSNESS

Political, social and economic factors can make it difficult to prevent and reduce statelessness and address the needs of stateless persons. In the worst cases, governments have taken nationality away from their citizens for political reasons. In other cases, governments simply lack the capacity to officially recognize and document their citizens or have yet to address gaps in citizenship laws and procedures. Systematic discrimination may also render people stateless.

Unfortunately most of these situations currently exist in the Caribbean and result in an unknown number of individuals being rendered, or placed at risk of being rendered, stateless. This, in addition to the largely invisible and unaddressed nature of the problem, has a detrimental impact on these people's ability to enjoy their fundamental human rights.

In order to address these situations, we must highlight three clear international legal obligations that regulate nationality matters: (1) the prohibition against racial discrimination; (2) the prohibition against statelessness; and (3) the prohibition on arbitrary deprivation of citizenship.

Recommendations

In order to eliminate statelessness, States should:

- Guarantee the right to a nationality to any person in their territory who is at risk of statelessness; particular attention should be paid to those groups who are placed in a highly vulnerable situation when stateless, such as women, children, refugees, undocumented migrants, etc.
- Refrain from producing nationality regulations or engaging in nationality practices that are discriminatory or have a discriminatory effect.
- Protect against the arbitrary deprivation of nationality and the retroactive application of nationality legislation that adversely impacts individuals' access to nationality.
- Eliminate gender discrimination in nationality laws and practices.
- Facilitate naturalization and restore nationality, when appropriate.

In order to provide proof of nationality, States should:

- Ensure that every child's birth is registered and implement public information campaigns to promote the importance of, and procedures to obtain, birth registration and nationality identification documents.
- Promote non-discriminatory, accessible and uniform procedures for issuing nationality documentation.
- Reform laws, policies and procedures to ensure that those entitled to nationality documentation under the law actually acquire said proof of nationality.

In order to identify stateless persons and provide them protection, States should:

- Establish statelessness status determination procedures. Several Latin American States have already entered pledges to establish statelessness status determination procedures (Brazil, Costa Rica, Peru, and Uruguay). This is a welcome step that we encourage all Caribbean States to take.
- Create fair and efficient procedures for identifying stateless persons located within their borders, including undertaking data collection, research and other efforts to increase knowledge about statelessness in the region. States should actively encourage the participation of civil society and academia in this endeavor.
- Ensure that stateless persons are entitled to a secure legal status, access to employment, education, healthcare and other vital human rights, without discrimination. Additionally, States should operate under the presumption against detention and removal proceedings during the statelessness status determination process.
- Ensure the right to judicial review, legal assistance, and remedy when it comes to nationality or statelessness status determination decisions for individuals at risk of statelessness, including the right to appeal and a legal explanation should they be denied citizenship.

- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and ensure their full implementation.
- Strengthen regional cooperation and collaboration with regional human rights monitoring bodies.

For countries in the Caribbean, their inclusion in the Brazil Plan of Action represents an important first commitment in addressing challenges and identifying common solutions related to the protection of migrants, refugees, stateless and other vulnerable groups, from a regional perspective. In order for the objectives in the Plan of Action to be realized, it is essential that they be followed by national legislation and practice that is in line with the Cartagena Declaration. We reiterate our willingness to collaborate in these processes and emphasize the essential role civil society organizations should play in the implementation, monitoring and evaluation of the Plan of Action. Such multi-stakeholder collaboration is necessary for the effective protection of asylum seekers, refugees, stateless and other persons in need of protection both at the regional and national level.

Grand Cayman, September 9th, 2014

This Caribbean Civil Society and Academia Position Paper is the result of a consultative process facilitated by the Norwegian Refugee Council (NRC) among six countries in the region: The Bahamas, Belize, Curaçao, Dominican Republic, Haiti and Trinidad and Tobago. This process culminated in a regional meeting held in Grand Cayman on September 8th and 9th, 2014, which 11 representatives from civil society organizations and academia attended. They all agreed on this position paper, which marks the commemoration of the 30th anniversary of the Cartagena Declaration on Refugees.

The civil society organizations and academia present in the Caribbean Region Consultation Meeting were:

The Bahamas

Bahamas Crisis Center

Belize

Help for Progress

Puerto Rico

Caribbean Institute for Human Rights (ICADH)

Curaçao

Red Cross

Haiti

Citizen Action for the Abolition of Torture

Trinidad and Tobago

Living Water Community

From International CSO and Academia:

Human Rights Center, University of Dayton, Ohio

International Detention Coalition (IDC)

Open Society Justice Initiative