



**COMMEMORATIVE PROCESS OF THE 30th ANNIVERSARY
OF THE CARTAGENA DECLARATION ON REFUGEES
“CARTAGENA +30”**

**MERCOSUR Sub-regional Consultation
Buenos Aires, 18-19 March 2014**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. Introduction

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

During the two days of discussion, the consultation addressed key challenges in the field of international protection for the South American region, based on the achievements and progress made in the implementation of the Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America in 2004 (“Mexico Plan of Action”) during the last decade and the new situations that prevail in the region (for more information see the consultation Agenda in Annex). Pragmatic and innovative actions were recommended to address the major challenges identified in order to strengthen international protection and achieve durable solutions in the next ten years.

All participants approved *in-situ* a document prepared by the Rapporteurship, which served as the basis for the preparation of this document, along with the notes provided by the technical secretariat, the presentations of the panelists and other documentation provided for the consultation. Participants and other stakeholders can access the documentation through the website of the *Cartagena+30* process: www.acnur.org/cartagena30.

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

PART I

INTERNATIONAL PROTECTION

II. Institutional and legal frameworks for the protection of asylum-seekers, refugees and internally displaced persons

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

As part of the discussions, the participants recommended to:

1. Consolidate the space of discussion of policy and exchange of best practices, in the field of international protection of refugees among the States participating in MERCOSUR, through the meetings of CONAREs' Presidents or equivalent of the States parties of MERCOSUR and associated States, in order to harmonize standards, procedures and public policies.
2. Consolidate the **national refugee status determination systems**, through the effective application of the high standards of **due process** established by both the Inter-American system of Human Rights and national legislations, in all refugee status determination procedures, including accelerated or differentiated procedures. In particular:
 - Ensure effective access to the procedures for the determination of refugee status, especially at borders, airports and ports, while respecting the principle of *non-refoulement*;
 - Provide free legal representation to asylum-seekers and refugees and suitable interpreters or translators;
 - Respect the right of asylum-seekers to obtain a duly reasoned and motivated decision about their case within an appropriate time;
 - Establish instances of independent administrative appeal and judicial review.
3. Strengthen **institutional capacities** to support quality asylum systems through quality management mechanisms, such as the *Quality Assurance Initiative* (QAI), identifying the necessary additional human and financial resources and the implementation of regional training programs under the South-South cooperation perspective, such as the Regional Course on International Refugee Law and the Introduction to the International System of Refugee Protection's Course in the scope of MERCOSUR and its associated States.
4. Improve **inter-agency coordination**, also with the civil society and other stakeholders, and increase **bilateral and regional cooperation** for the consolidation of national asylum systems.
5. Disseminate **guidelines and instructions** for the interpretation and application of the extended refugee definition included in the Cartagena Declaration, in order to facilitate the work of

determination and proper legal framework of cases for those countries that have incorporated the regional definition as part of their domestic legislation.

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

III. Mixed migratory movements and international protection of refugees and other persons in need of protection

Migratory movements in South America are mainly characterized by intra-regional movements and include "mixed" movements, some very complex and comprising a variety of people, many of whom belong to particularly vulnerable groups. The Declaration and the Mexico Plan of Action recognized the existence of mixed migratory movements, within which there are people who may qualify as refugees and must be identified as such. They also recognized the need to strengthen the mechanisms for refugee status determination and the technical assistance to those countries that still do not have refugee legislation. The Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas in 2010 ("the Brasilia Declaration") reaffirmed the importance for countries to adopt mechanisms for the identification of differentiated protection needs, and of referrals.

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

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

protection of persons involved in these movements, thus improving the effective implementation of the care protocols.

14. Increase **international and regional cooperation** with the participation of civil society to deal with mixed migratory movements.
15. Promote **accession and/or ratification**, as appropriate, to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the Conventions on Statelessness.
16. Ensure the effective implementation of the **Palermo Protocols** to prevent, suppress and punish trafficking in persons and the smuggling of migrants by land, sea and air.

IV. Border Protection

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

In this regard, participants recommended to:

17. Strengthen the development of supporting policies for the refugee population and the host communities in border areas, as well as ports and airports by **evaluating the program of borders of solidarity** of the Mexico Plan of Action, aimed at consolidating the programme and define additional actions to integrate them in the future Action Plan to be adopted in Brasilia, so border areas can be seen as integration spaces.
18. Guarantee **access to refugee status determination procedures** and competent institutions by means of adequate border, identification or referral mechanisms, reinforcing the presence of the CONAREs or other duly trained bodies to receive and channel requests for asylum and identify persons with protection needs.
19. Analyze and implement practical formulas that allow the establishment of a balance between States' legitimate **security concerns**, especially in border areas, and a **rights-based approach** to ensure the identification of international protection needs, access to territory and adequate attention to differentiated protection needs.

PART II

THE DIFFERENTIATED APPROACH BASED ON AGE, GENDER AND DIVERSITY

V. Strengthen the incorporation of the differentiated approach based on age, gender and diversity

The region is at the forefront ensuring the incorporation of a comprehensive and differentiated approach of age, gender and diversity (EGD) both in its regulatory and legal framework as in the implementation of public policies. It is important to continue moving forward in the response to the population under this approach to ensure the equitable assistance of all persons in need of protection. Among the challenges is the effective protection, prevention, identification and response

mechanisms to victims and survivors of sexual and gender violence, and the development of specific programmes under a framework a rights and a community-based approach, taking into account the needs of children, adolescents, women, men, Afro-descendants, indigenous, lesbian, gay, bisexuals, transgender and intersex persons (LGBTI).

In this regard, the participants recommended to:

20. Reinforce the **differentiated approach** of age, gender and diversity in the protection and assistance to the refugee population and other people in need of international protection, both in the refugee status determination procedure, and also on the decisions relating to family reunification requests. Continue to deepen a cross-cutting application through the allocation of more human and financial resources, better inter-institutional coordination and greater efforts in educating and training officials.
21. Update national refugee legislation in the MERCOSUR countries that have not yet done so, to include provisions on specific protection needs based on age, gender, and diversity.
22. Develop and implement **differentiated procedures** to meet the different needs of protection, in particular for victims of trafficking, separated or unaccompanied children, or victims of physical or sexual and gender-based violence.
23. Consider replicating in other countries the **good practice** developed in Argentina of a *Protocol for the protection, assistance and durable solutions for children seeking asylum who are unaccompanied or separated from their families*.
24. Adopt regulations and internal procedures in line with the international obligations of States in international human rights law and adapt their **internal legislations** to a progressive development of an interpretation of the Convention of Belém do Pará on the Prevention, Punishment and Eradication of Violence Against Women, the Convention on the Rights of the Child, as well as the normative advances in the combat against trafficking in persons.

PART III

THE SOLUTIONS

VI. Challenges in durable solutions for the benefit of refugees

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

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

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

VII. Promotion of local integration

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

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

VIII. Strategic use of resettlement

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

34. Recognize the value of the **regional solidarity resettlement programme** as a concrete example of responsibility sharing and evaluate its continuity and/or expansion, according to the possibilities and experiences in the respective countries, in terms of quotas, the inclusion of extra-regional refugees and more State resources in financing.
35. Urge countries in the region to discuss the possibility of **joining the regional resettlement programme**, and encourage traditional resettlement countries to continue resettling refugees from the region, mainly in those Latin American countries that continue to receive a high number of refugees.

36. Re-evaluate **the design** of their **solidarity resettlement programmes** for those countries that deem it appropriate, including profiles, the scope of support and development of local integration processes, considering its adaptation to the regional specific realities.
37. Consider carrying out **awareness campaigns** addressed to the host population for the purpose of facilitating the integration of refugees and promoting greater cooperation from local officials and support from the civil society.
38. Take into account the States, UNHCR, civil society and the **resettled refugees themselves** in the evaluation of regional solidarity resettlement programmes, so that resettlement is a sustainable long-term solution.
39. Reduce the **gaps** between the assistance provided to spontaneous refugees and those resettled.

IX. Other solutions or alternatives based on regional migration frameworks

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

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

PART IV

STATELESSNESS

X. Protection of stateless persons and the prevention and reduction of statelessness

South America, like no other region of the world, can join efforts to eradicate statelessness in the next ten years. Although recently there have been remarkable advances, important challenges remain for the MERCOSUR countries in the field of prevention, identification, protection and reduction of statelessness. In general, countries enjoy appropriate norms for the acquisition, loss, renunciation and deprivation of nationality. Despite the generous regulations on nationality and the existence of some safeguards for prevention, the occurrence of cases of statelessness has not been

eliminated entirely. In this context, lack of adherence to international treaties is a central issue, as well as the universal birth registration to prevent cases of statelessness. The development of national protection standards, the establishment of procedures for stateless status determination and assistance for the naturalization of the small number of stateless people are key to protect stateless persons and eradicate statelessness.

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

43. Promote the **eradication of statelessness**, in line with the overall goal of eradication encouraged by UNHCR. It is recommended to include a chapter on statelessness in the future Plan of Action, which could be divided into three pillars (prevention, protection and reduction), the identification of statelessness being a guiding principle of the pillars.
44. Encourage States that have not yet done so to consider **accession and/or ratification**, as appropriate, to international conventions on statelessness.
45. Review and adapt national legislation to international standards, as required, to eliminate the possibility of cases of statelessness, recognizing that the generous combination of the principles of *jus solis* and *jus sanguinis* are not sufficient for this purpose.
46. Improve systems of birth registration and those for granting identity documents.
47. Adopt appropriate measures, as necessary, to **confirm the nationality** of persons with undetermined citizenship, or **restore nationality** to those who have lost it as a result of an act of renunciation or deprivation incompatible with the norms of international human rights law or those relating to the prevention of statelessness.

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

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

Buenos Aires, March 19, 2014