

## **Guiding principles for a regional framework on migration and protection in the Americas**

From June 6 to 10, 2022, the United States will host the [Ninth Summit of the Americas](#) in Los Angeles, California. In remarks before a meeting with Colombian President Duque on March 10th, President Biden [announced](#) that countries from across the Americas will sign a regional declaration on migration and protection at the Summit. Additionally, in the context of the Summit, the US government [affirmed](#) that it will work to secure commitments and government actions to address the root causes of migration.

A regional framework provides the opportunity for the US and countries throughout the Americas to take a new collaborative regional approach that prioritizes respect for the rights of migrants, asylum seekers, and refugees through increased protection pathways and complementary legal pathways as well as humanitarian assistance, and access to justice. However, this approach must come as a complement to restoring and maintaining access to asylum at the US southern border, or else it could serve to [externalize obligations](#) under domestic, regional and international law, and existing agreements.

Systematic, inclusive stakeholder consultation during development and implementation is crucial to the success of any regional compact or framework. Ahead of the Summit, we urge the U.S. government and governments from around the region to consult key stakeholders on migration and protection issues, including civil society organizations and international organizations. As countries from across the Americas move forward in developing the regional framework as well as bilateral/multilateral agreements, the following principles should be upheld:

- 1. Uphold existing obligations under domestic, regional and international law and agreements by respecting non-refoulement and access to territory*

Existing domestic, regional, and international laws and agreements guarantee individuals' right to seek asylum. A regional framework must uphold this right in addition to the primacy of human rights, non-discrimination, assistance and protection from harm, and the principle of non-refoulement.<sup>1</sup> Furthermore, a regional framework should maintain access to territory across borders throughout the region for those seeking refuge, and guarantee the right to leave any country, including one's own. In particular, countries should not consider any safe third country or asylum cooperation agreement

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<sup>1</sup> The principle of non-refoulement prohibits governments from returning asylum seekers to a country where they may be persecuted or tortured, or sending asylum seekers to a third country that would potentially return them to another country where they may be persecuted or tortured.

that aims to block access to asylum at the US southern border for most individuals. Countries also should not consider any agreement, formal or informal, to send or receive third-country nationals where individuals have not had access to appropriate screenings for international protection needs, or where insufficient safeguards exist against chain refoulement in the receiving country.

### *2. Ensure responsibility sharing instead of responsibility shifting*

There has been a lack of sufficient national<sup>2</sup> and international funding to effectively respond to the humanitarian and protection needs of migrants, refugees, and asylum seekers across the region, at times leaving host governments and civil society organizations to disproportionately shoulder the costs. This is an opportunity for governments across the region, international, multilateral and regional organizations, and the private sector to step in and do their fair share, both in funding for refugee responses and in offering solutions such as resettlement, humanitarian admissions, and other safe and legal protection pathways to effectively share responsibility. New partners and models are needed to address the soaring needs throughout the region, instead of relying on past flawed approaches from other regions.<sup>3</sup>

### *3. Center on protection pathways and complementary pathways in addition to humanitarian assistance along the migratory route*

A regional framework should prioritize humanitarian assistance to migrants, refugees and asylum seekers along the migratory route throughout the Americas without discrimination of any kind. Moreover, such an approach should also foster the expansion of protection pathways and complementary pathways, including for individuals displaced by climate change and disasters.<sup>4</sup> This should occur through strengthening asylum systems in the region<sup>5</sup> and increasing access to work visas, regularization, and protected status.

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<sup>2</sup> As a complement to international funding, funding from governments throughout the region is necessary to ensure sustainability and buy-in.

<sup>3</sup> The Dublin Regulation, for example, has failed to facilitate equitable responsibility sharing across European countries and cannot provide a model for the context of the Americas, a region with countries that have vastly differing legal frameworks as well as economic and security conditions.

<sup>4</sup> For example, the Nansen Initiative prepared guidance for the member countries of the Regional Conference on Migration on the '[Protection for persons moving across borders in the context of disasters](#)', which should be considered by governments in the Americas to extend access to protection to climate-displaced individuals.

<sup>5</sup> This should include not just additional resources for asylum systems but also improving the efficiency and quality of adjudication processes to prevent backlogs and delays, and increasing resources for the integration of individuals who are granted protection.

While imperfect and insufficient, some countries in Latin America already have taken creative measures to offer legal pathways and protection to a significant number of Venezuelans.<sup>6</sup> A regional agreement should build on these efforts for migrants and asylum seekers of diverse nationalities,<sup>7</sup> provide pathways for long-term regularization, mitigate increasing xenophobia, and cease restrictionist approaches. Furthermore, governments in Latin America and the Caribbean should consider adopting and/or strengthening the application of the 1984 Cartagena Declaration, a regional instrument that broadened the 1951 Refugee Convention definition of a refugee,<sup>8</sup> in order to enable a greater number of displaced individuals to qualify for protection.

In addition to restoring access to asylum at the U.S. southern border, access to U.S. protection from the region must be expanded through existing and new pathways. This should occur through increasing the allotment in U.S. refugee resettlement programs for Latin America and the Caribbean, the Central American Minors (CAM) Program, the special parole program for Cuban and Haitian families, the Protection Transfer Agreement (PTA), as well as creating new refugee resettlement pathways. The Canadian government should also increase its allotment for refugee resettlement.

#### *4. Prioritize protection needs and human rights in border management instead of enforcement measures*

Protection-sensitive entry systems at international borders are required to identify needs, protect against refoulement, and ensure access to asylum procedures. The [United Nations Refugee Agency 10-Point Plan of Action](#) on Refugee Protection and Mixed Migration lays out a roadmap to achieve this. Border guards and immigration authorities must benefit from additional training and procedures in human rights, humanitarian principles, early identification and handling of specific protection needs, responding to asylum requests, and referrals to protection actors, including civil society, humanitarian organizations, and national authorities providing health, social, and legal services. Governments across the region should also commit to creating collaborative national and regional initiatives to jointly investigate and prosecute human rights violations and crimes against migrants, refugees, and asylum seekers, search for disappeared migrants, and promote access to justice.

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<sup>6</sup> The Colombian government, for example, announced in February 2021 that it would [grant temporary protected status](#) to over 1.7 Venezuelans in the country to regularize their stay for ten years and ensure their access to basic services.

<sup>7</sup> The Inter-American Commission on Human Rights resolution, "[Protection of haitians in human mobility: Inter-American solidarity](#)" from November 2021 provides recommendations on how governments throughout the Americas can best respond to Haitian migration and support the rights of Haitian migrants.

<sup>8</sup> The Cartagena definition includes individuals forced to flee due to generalized violence, foreign aggression, internal conflicts, massive human rights violations, and other circumstances that have seriously disturbed public order.

The increasing reliance on enforcement in the region, including through interdiction measures and visa requirements, [threatens the ability of individuals fleeing persecution to access safety and protection](#). These measures can also incentivize individuals seeking protection to migrate along more dangerous routes and rely on smugglers, further increasing vulnerability and the risk that their rights will be violated. In addition, the [increasing militarization of immigration forces](#) in the region has led to crackdowns, arbitrary detention without due process, and human rights violations.

*5. Initiate substantive and sustained stakeholder engagement*

In negotiating any migration agreements or other arrangements, systematic, inclusive stakeholder consultation during their development and implementation is crucial. In discussions on a regional declaration on migration and protection, participating governments should ensure substantive stakeholder engagement, including with civil society organizations, legal service providers, international organizations, and migrants and refugees themselves, among others, as well as transparency about the aims and proposed contents of an agreement. A lack of transparent consultation with relevant stakeholders could impede the successful implementation of a migration and protection agreement.

*6. Model transparency regarding bilateral and multilateral arrangements, agreements, and migration policy changes*

Opaque, informal arrangements or agreements make it impossible to ensure accountability and to give accurate and timely information to people on the move throughout the Americas. In addition to transparent engagement with civil society, signatory states should model transparency on migration policy by making the texts of binational and multinational arrangements or agreements publicly available. These documents, as well as any policy changes and information on how to access protection pathways should be published in multiple local languages, including Spanish, Portuguese, Haitian Creole, and indigenous languages. Displaced people require access to accurate sources of information on available services, protection risks, and safe routes of travel. The lack of quality and vetted information makes these groups vulnerable to third parties, including smugglers and traffickers.

Additionally, U.S. enforcement has come to rely heavily on foreign data sharing in order to push people, including asylum seekers, into the detention and deportation process. Transnational data sharing in the region is one prominent aspect of [border externalizing enforcement actions](#), and involves a web of information sharing agreements and biometrics data collection programs. A regional framework must protect the rights of asylum seekers and refugees by placing safeguards on any regional bilateral

intelligence sharing agreements, which have often had opaque parameters and operations, and ensure such agreements do not violate rights of asylum seekers or are not used for family separations.

*7. Address the rights and needs of children and youth, women, families, Indigenous, Black, LGBTQIA+ and internally displaced populations*

The regional framework should center the specific needs of particular populations, including Indigenous, Black, women, and LGBTQ migrants, refugees, and asylum seekers who face gendered/racialized violence, discrimination, racism (particularly against Haitians and other Black migrants), and homophobia along the migrant journey and in receiving countries, in addition to challenges regarding language access and the procurement of services. Governments should work to keep migrants safe from rampant sexual and gender based violence (SGBV), especially along commonly-traveled migrant routes such as the Darien Gap in Colombia and Panama. Countries should also create new mechanisms to support the protection needs of internally displaced populations.

A regional framework on migration and protection must prioritize family unity and the [best interests of the child](#). Signatories should collaborate to prevent the separation of families and the expeditious reunification of families who are separated. As much as possible, the definition of “family” utilized should be flexible enough to allow for culturally-sanctioned understandings of family that go beyond the nuclear family, to include extended family and common-law unions.

*8. Facilitate the integration of new arrivals and returnees*

A regional approach to migration should include state commitments to a whole-of-government approach to integrating returnees and new arrivals that will support their social and economic integration.

New arrivals face steep barriers to integration including uncertainty around immigration status, lack of understanding of systems, lack of access to resources, potential vulnerability to bad actors, danger, and discrimination, and a need for wrap-around services. A holistic approach for social and economic integration includes support in navigating pathways to legal residency or citizenship, work authorization, access to quality education including language classes, healthcare, employment or training opportunities, and housing. This should be complemented by anti-discrimination efforts in the wider communities.

For returnees, who face some of the same challenges, integration efforts must go beyond reception centers, to include a longer-term case management approach that

includes access to documentation including for foreign-born children, quality education and validation of previous studies, healthcare, and employment or training opportunities.

*9. Build upon existing regional protection frameworks, such as the Comprehensive Refugee Response Framework (CRRF), known as MIRPS by its Spanish acronym*

The CRRF is an important initiative for galvanizing regional cooperation throughout the arc of crises - from countries of origin, transit, and destination. Although the framework has resulted in some host country commitments to violence prevention, protection, and durable solutions for people on the move, it requires more complete national, international, and multilateral support and buy-in to have a profound impact.

Center for Democracy in the Americas (CDA)

Center for Gender and Refugee Studies (CGRS)

Center for Justice and International Law (CEJIL)

Latin America Working Group (LAWG)

Human Rights Watch (HRW)

Instituto para las Mujeres en la Migración (IMUMI)

Oxfam

Refugees International (RI)

Washington Office on Latin America (WOLA)

Women's Refugee Commission (WRC)