



## **CIVIL SOCIETY POSITION PAPER FROM THE ANDEAN REGION IN THE FRAMEWORK OF THE CARTAGENA+30 COMMEMORATION**

**Quito, 6th of June 2014**

The civil society organizations from the Andean region welcome the invitation from the States to honour the Cartagena Declaration in its 30th anniversary, a regional mechanism that facilitated the protection of victims of Central American conflicts. Currently this Declaration continues to be fully applicable and valid for the events that affect our region, and it is a timely moment to apply it to the emerging needs of protection that arise from new situations of violence and forced migration flows.

Invoking the position of international solidarity assumed by the Cartagena Declaration, as well as the Mexico Plan of Action that followed it, we appreciate our participation in this space in which we celebrate that our proposals reach the States and UNHCR with the goals of strengthening the right to asylum in our region and of broadening the possibilities of protection for forced migrants and internally displaced persons, supported through coordinated regional actions that guarantee integrated assistance for victims.

There are many challenges that we are facing and will face in the next ten years, and it is for this reason that we should contemplate regional protection mechanisms for asylum seekers, refugees, internally displaced persons and forced migrants in the framework of contemporary migration trends that broaden citizenship, strengthening the guarantee of rights.

We acknowledge the important progress that has been achieved in the area of protection in the Andean region during the last few years and we urge the States to continue to promote and strengthen the broader definition of refugee included in the Cartagena Declaration, as well as all of the international instruments in the area of Human Rights, International Humanitarian Law and International Refugee Law, including Conventions on Statelessness.

### **I.- DURABLE SOLUTIONS**

#### **LOCAL INTEGRATION**

In the Andean region it is necessary that the States implement effective and timely actions that guarantee the right of the refugee population to local integration. The relevant public entities don't always develop coordinated policies, plans and programs that favour the integration of refugees.

We highlight concerns regarding integration for asylum seekers that face difficulties in accessing their rights due to delays in recognising their status.

In the majority of the countries in the region, the lack of participation and involvement in the construction of public policies that guarantee effective local integration among refugee population, civil society and local government is extremely common.

## **Recommendations**

1. Strengthen the public entities that are responsible for providing services to refugees, developing local and national inter-sectorial actions that work to achieve the integration of refugees. These actions should take into account differentiated criteria of age, gender and diversity in order to ensure the upholding of standards in relation to accessing their fundamental rights (work, education, health, housing, among others) and be timely and effective to achieve local integration.
2. Guarantee integrated health care, including mental health services, unrestricted access to all levels of education, language courses in the host country, access to dignified housing, training for employment, access to dignified work and to financial services, regardless of an individual's migratory condition, achieved through targeted plans, programs and services.
3. Ensure the ratification and adoption of international instruments and always respect the principle of progressiveness in terms of social policy, as well as guaranteeing the inclusion of the population in need of international protection and vulnerable migrants.
4. Provide appropriate documentation from the beginning of the procedure. The format should be the same as for the rest of the population and should not mention refugee or asylum seeker on it.
5. Guarantee the right to work for asylum seekers in all of the countries in the region.
6. Guarantee that refugees can access permanent residency. Also ensure the right to citizenship for those who desire it through flexible and accessible procedures.
7. Facilitate family unity processes, respecting culture, cosmovision, life stories and sexual and religious diversity of the affected people.
8. Allocate sufficient and adequate budgets for the implementation of public policies for local integration.
9. Reinforce actions that encourage intercultural dialogue in order to minimize discriminatory attitudes towards the population in need of protection and migrants.

## **The specific problem of INTERNAL DISPLACEMENT**

Situations of internal forced displacement are observed in different countries from the Andean region and are due to different causes: armed conflict, generalized violence, socio-political violence, megaprojects, natural disasters, national and transnational organized crime and gender-based violence. Associated with these causes are phenomena such as human trafficking, migrant smuggling, the recruitment of children, adolescents and young people for criminal purposes, social and territorial control exercised by armed actors and groups and hired murderers, among other violent situations that force people from their places of origin and oblige them to seek international protection.

The country in the region that has the highest number of people that have been internally forcibly displaced is Colombia. More than five million people have been forced to abandon their homes and many of these are not yet living in situations in which they can overcome their vulnerability. Subsequently, internal forced displacement in Colombia continues to be one of the events with the greatest impact on the humanitarian crisis faced by the country. It is an emblematic case in the region that can be taken into account as an example of all of the challenges that must be addressed in the new protection agenda in the Americas.

Internal forced displacement affects in a differentiated manner people based on their gender, ethnicity, race and age. This is related to the causes that generate displacement, the discrimination that victims have traditionally suffered and the traditional roles assumed by families, communities, organizations and work environments.

The internal Colombian legislation has made progress towards the recognition, attention, assistance and reparation by the State of the victims of the armed conflict, including the victims of forced displacement. But neither this recognition nor the negotiation process between the Colombian Government and the FARC guerrilla group have been able to prevent the continuous increase in the number of internally displaced people in Colombia. . This trend responds to new actors, flows and scenarios where there is a lack of protection, that is shared in some cases by other countries from the region: 1) the groups that have inherited paramilitary structures or drug-trafficking groups are managed by criminal networks and exercise pressure on populations while having a local, national and transnational presence; 2) the urbanization of the armed conflict or the presence of violent actors that can coerce populations in the cities and generate intra-urban displacement; 3) anthropogenic causes (mega projects and extraction of natural resources, etc.); 4) increase in the human trafficking and migrant smuggling with different goals (sexual or labour exploitation) in border areas.

All of these factors impede the real local integration of the internally displaced population.

### **Recommendations**

1. Recognise the new actors that generate internal forced displacements in the region.
2. Recognise that some causes of forced displacement have greater effects on women, children and adolescents, rural and ethnic populations and LGBTI people. Assistance and reparation policies should take into account these particularities and attack the causes that generate displacement.
3. Incorporate and make effective, in legal regulations from the States, standards for the provision of assistance and reparations to victims of internal forced displacement that take into consideration the Guiding Principles on Internal Displacement, the framework of durable solutions from UNHCR, the principles of reparations from the International Criminal Court and the recognition of a differential approach to gender, ethnicity and age by the Colombian Constitutional Court. For this reason, UNHCR can be developed as a dynamic leader of the process to consolidate standards through advocacy, monitoring, evaluation and facilitation of communication between the actors involved (victims, community-based organizations, civil society organizations and State institutions).
4. Share experiences and good practices relating to protection, assistance and reparation of internally displaced people by national governments with international recognised protection standards.
5. Design and execute policies that fulfil the social, economic and cultural rights of host communities as a vehicle to guarantee the special protection of the internally displaced people that arrive to these communities.

### **A. RESETTLEMENT**

In the current worldwide context, each day there are more people in need of resettlement and the places available are insufficient. In addition, the solidarity resettlement programs are financed in large part by the international community through UNHCR with a limited contribution from the States of the region.

A reduced number of refugees have access to resettlement and there are challenges in identifying the cases that are eligible for these programs, given that many don't comply with the established vulnerability criteria. There is also a lack of information exchange and coordination regarding resettlement processes and local

integration of families that are resettled in the third settlement country.

### **Recommendations**

1. Review the eligibility criteria, in terms of vulnerability, that determine the participation of refugees in resettlement programs and their acceptance in the third settlement country.
2. Provide adequate information to the population regarding resettlement programs and acceptance in the third host country.
3. Guarantee that joining the resettlement program doesn't result in the loss of an individual's right to appeal again for protection from the first host country.
4. Guarantee the integrity of the family unit in the resettlement programs, independent of the nationality or migratory status of family members, which involves an unconventional approach to the concept of family.
5. Promote access to rights and local integration in the first refuge country as an initial response, in such a way that resettlement isn't perceived as the only long-term solution.
6. Guarantee a flow of information exchange between the first host country, the third host country and the organizations involved in the resettlement process to achieve an effective monitoring of the integration process of the person in their final destination.
7. Achieve a better commitment from the States in the region in complying with the agreements from the Resettlement Solidarity Programme included in the Mexico Action Plan through the conformation of a common fund that guarantees continuity and broadening of the programme, increasing the current available places for refugees both within and outside of the region.

## **B. REPATRIATION AND VOLUNTARY RETURN**

Currently in the region there are no minimum, indispensable protection and safety minimum standards for the implementation of possible repatriation processes or the return of victims that seek protection. It is necessary to carefully evaluate any program or related measure involving returns and repatriations.

### **Recommendations**

1. Guarantee that a possible return/repatriation is based within an informed, voluntary, safe, dignified, accompanied and assisted process and sustained in an information synthesis of a range of sources (international organizations, civil society, press, previous visits, etc.) regarding the security conditions and the possibilities of reinsertion in the country of origin.
2. Don't force repatriation through the immediate termination of refugee status, considering that a successful result for the end of the armed confrontation between the Colombian government and the FARC guerrilla won't necessarily guarantee an end to violence.
3. Use contrasting sources of information for the evaluation of risks associated with returning based on security and living conditions. This procedure doesn't only consider refugee situations as the cause of armed conflicts but also forced migrations associated with human trafficking, migrant smuggling, victims of generalized violence or other situations of violence or displacement caused by megaprojects.
4. Accompany voluntary repatriation processes through tri-party commissions (States, civil society, UNHCR) in such a way that data on the situation of the country of origin is exchanged and discussed at a trans-national level in a neutral manner. This mechanism will mean that decisions related to people in need of international protection are taken in an informed and voluntary manner. These processes

should be projected through mechanisms that monitor the situations of those who have been repatriated to guarantee their rights.

### **C. ALTERNATIVE MIGRATION WITH PROTECTION SAFEGUARDS**

The existence of migration alternatives that comply with protection safeguards, both at the national level as well as at the regional level, could constitute a pragmatic solution for people in need of international protection that haven't been able to access the procedure or are recognised as refugees, especially those that have been displaced by new causes of violence. However, these alternatives shouldn't decrease awareness of the need for international protection and the right to seek asylum, nor represent a step backwards in relation to international protection standards and access to respective procedures.

#### **Recommendations**

1. Provide, through authorities located in the ports of entry, reliable, neutral and complete information about the existing migration alternatives in the country, as well as access to refugee procedures.
2. Guarantee effective access to existing alternative migration laws. Adapt the costs, requirements and procedures according to the real capacities/profiles of the populations that migrate to the region. There should not be a requirement of having a regular migration status in order to access a migration alternative.
3. Contemplate, both at national level as well as a regional one, migration alternatives for people in need of international protection, complying with protection safeguards (no-return, no criminal or financial sanctions) considering the new causes of forced migration and guaranteeing unrestricted access to rights and services.
4. Incorporate the principle of extra-territoriality of the Convention into regional integration instruments, with the goal of achieving adherence to the principles of no-return, no-sanctions and ensuring the integrity of family units throughout these processes.
5. Guarantee the continuity of a person's refugee status and the international protection that this entails, independent of the migratory status alternative that the person chooses in the host country.

#### **Victims' Law**

The Victims' Law in Colombia constitutes an important progress in terms of recognition of the armed conflict in the country and of the humanitarian consequences suffered by the civilian population. Even if this doesn't constitute a durable solution in itself, it is relevant in this framework.

This initiative of transitional justice is designed as an institutional mechanism of reparation, both for the people affected that have remained in Colombian territory, as well as for those who have left the country seeking international protection.

However, given that the armed confrontation hasn't ceased, there are still situations of violence that threaten reparation processes, particularly in the land restitution process. There are also concerns about specific elements within the law, such as for example the declaration that status as a vulnerable person ends once ten years have passed since the displacement occurred. There is a sub-registration in this process due to the distrust that victims have of public institutions, limitations in the format for making declarations that

don't allow for the identification of urban migration flows and mass expulsions, as well as problems in the assessment process which doesn't recognise victims from other situations of violence.

The processes that victims should follow to access mechanisms of assistance and reparations are slow and in many cases difficult to access. The humanitarian assistance that is available is extremely limited and doesn't provide the minimum necessary circumstances to survive in dignified conditions. The monetary amount of the compensation offered is very small. Access to rights such as health, housing and nutrition are precarious. There is a sharing of responsibility between the national government and territorial governments, which imposes unsustainable workloads on both territorial entities and public ministries. There is also a lack of communication between the symbolic memory mechanisms and administrative entities and there are no guarantees of no-repetition of victimization in most areas of the country. Furthermore, the law has become paternalistic, given that it doesn't have the capacity to facilitate reparations as the conflict continues to produce victims.

Finally, the way in which the land restitution process has been conceived, restricts access for the majority of dispossessed and displaced victims. The criteria of macro-focusing and micro-focusing by those responsible for dividing land that will be returned in restitution processes, strongly reduce the possibility that legal processes are used to determine the land restitution.

To summarise, the Victims' Law has generated valid expectations with regards to assistance and reparations, however the problems in its implementation have generated delays and obstacles that don't satisfy expectations, which has produced a revictimization.

## **Recommendations**

1. Maintain the backing of the peace process developed between the FARC guerrilla and the Colombian State in La Havana, Cuba and guarantee that the rights, needs and proposals of the internally displaced and refugee populations in the region are taken into account in these negotiations.
2. Recognise that the agreements that arise from this negotiation peace process, even though they represent significant progress in the road towards peace, will not necessarily imply a significant and immediate reduction to the violations of human rights in the country. On the contrary, it is necessary to be prepared for the acceleration of other elements of the conflict. It is imperative that high protection standards are maintained for those who are forcibly displaced and seek international protection during an eventual scenario of post-conflict agreements.
3. Urge the States from the region to declare that they recognise the Victims' Law as a reparation mechanism and not a protection mechanism.
4. The Colombian State should share appropriate, timely and relevant information with the host countries regarding the reparations process for the Victims' Law, its limits and scope.
5. Facilitate, between host countries, access to assistance services and the integrated reparation process, which includes compensation, restitution, meeting of needs, rehabilitation and guarantees of non-repetition, as well as the right to truth and justice as defined in the Victims' Law.
6. Generate in the Colombian consulates appropriate mechanisms for non-revictimization, such as privacy, confidentiality, legal and psychosocial accompaniment, as well as ensuring that victims can choose the gender of their interviewer through the adoption of a differential approach. In particular, we request that awareness raising and training processes are implemented for the public officials that are responsible for attending to this population.

## **II.- PROTECTION GAPS**

### **A. BORDERS**

The border zones and ports of entry from the region are complex scenarios that haven't been attended correctly by the States. This has led to the creation of precarious conditions that affect people in need of international protection, as well as the population that have settled in border zones.

Many of the border zones have become trafficking routes for drugs, weapons and people and have been affected by delinquency and crime, generating contemporary forms of violence caused by the presence of illegal groups and actors. The situation is complex, given that these are the same routes in which there are mixed migration flows, as well as a large number of people in need of international protection. The presence of institutions in the border areas is weak, with a focus on security while there is insufficient assistance to guarantee and protect human rights.

The application of security and migration policies by authorities at border points and the lack of knowledge and non-provision of information regarding international protection and/or the possibility of applying for refugee status represent a risk to the people in need of international protection present in these areas. In some cases refugees and asylum seekers report rejection, unjust treatment and extortion, carried out by security and migration authorities.

In some countries, legislative discussions have begun regarding laws relating to human mobility and border zones. This highlights the need to strengthen proposals to develop sustainable and long-lasting integration actions, as well as to provide adequate assistance to people in need of international protection and migrants.

Civil society considers important to continue with the impetus and strengthening of 'solidarity borders' in which a human rights approach is applied. This implies an understanding of a country's own border dynamics, the provision of special assistance to vulnerable groups, using a differential approach, and integrated access to rights, both for the mobilized population as well as for the local population.

#### **Recommendations**

1. Guarantee the protection of human rights in the border territories. Enable mechanisms for the investigation and prosecution of violations of human rights to guarantee justice and reparation for the damage caused to people in the border zones. The States are responsible for the integrated protection of all people in their territory, independent of their migratory status.
2. Increase the presence of institutions and relevant authorities in the border zones with a greater emphasis on rural and remote zones to guarantee access to rights and basic services.
3. Incorporate protection safeguards in internal legislation related to border security for people in need of international protection and outline the specific competencies of security, protection, social services and migration authorities, among others, that are involved in border processes and territories.

4. Ensure the application of differentiated processes of reception and assistance for people in need of international protection, observing the principles of no-return, no-detention, no-punishment and family unity. This also includes no-detention, no-deportation and no-expulsions related to migration<sup>1</sup>.
5. Strengthen the border presence of consular institutions and public authorities of the host country with the goal of providing the necessary administrative facilities to access protection, migration and civil procedures, without generating risks of further mobilization or return to the country of origin.
6. Generate bi-national initiatives to clarify the situation in cases of double birth registration, in which the *pro-homine* principle of interpretation is considered, without generating administrative, financial or penal consequences for people that are in this situation. Guarantee that people in need of international protection with double birth records aren't impeded from continuing with the procedure of applying for refugee status.
7. Consolidate bi-national committees located at borders that involve governmental institutions, regional and international organizations with relevant mandates and civil society representatives. These committees, through the monitoring and analysis of territories and border dynamics, could generate early warning systems, identify population groups that are especially vulnerable and support the development of border plans and programs. It is recommended that the State assume leadership and coordination of this space through Ombudsman's Offices and that their initiatives have a binding authority.

## **B. DUE PROCESS**

It is important to guarantee and protect, in an integrated and effective manner, the right to apply for refugee status in the region. The national legislation relating to this area doesn't always include the broadened definition contained within the Cartagena Declaration and the *sûr place* concept as it relates to refugees. The existing procedures for the determination of refugee status present gaps in terms of guaranteeing due process. As a result of this, a number of people seeking international protection don't have their status as refugees recognised, and remain in the host country with an irregular status, which seriously affects their possibilities of local integration.

### **Recommendations**

1. Incorporate and apply the broadened definition of refugees from the Cartagena Declaration, as well as the *sûr place* definition of refugees in the refugee status determination.
2. Revoke possible deadlines for the presentation of the application for refugee status determination.
3. Guarantee, through duly motivated decisions, the right to legal defence for those applying for refugee status. Apply, through the allocation of resources, the same deadlines as ordinary administrative legal proceedings.
4. Apply the principle of good faith in the presentation of evidence.

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<sup>1</sup> The Inter-American Court of Human Rights has stated that while the States can begin actions when a person does not comply with a national law in the area of migration, the States should respect the human rights of the people without any form of discrimination, taking into account that "*in the framework of international law certain limits to the application of migration policy have been developed that impose, in procedures of expulsion or deportation of foreigners, a strict following of the guarantees of due process, legal protection and respect for human dignity, with independence on the legal or migratory status of the migrant*". Inter-American Court of Human Rights (CIDH) – Case of the Pacheco Tineo Family vs. The Plurinational State of Bolivia. OEA, 2013, Available at: [http://www.corteidh.or.cr/docs/casos/articulos/resumen\\_272\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_272_esp.pdf).



5. Strengthen the technical and financial capacities of the CONARES or their equivalent so that the procedure for refugee status determination can be expedited.
6. Guarantee appropriate training for public officials regarding the refugee status determination, especially those present in ports of entry and border controls, with the goal that they can transmit quality information about the procedure.
7. Guarantee that the CONARES or equivalent entities maintain administrative coverage in a permanent manner in the zones where there is the highest flow of people in need of international protection and provide mobile assistance in zones where there are relevant situations.
8. The commissions for the refugee status determination should have a tri-party structure with the participation of public officials, members of civil society and UNHCR. The people that form the eligibility commissions, as well as their officers, should be competent, independent and impartial and come from a number of different disciplines.
9. Determine in the legal framework of the criteria used to review applications for refugee status determination. Guarantee due notification and the opportunity to appeal if a person's refugee status is cancelled.
10. In the legal framework covering the refugee status determination procedures, specifically define what are "reasons of national security or public order" that would require the expulsion of a refugee or asylum seeker to their country of origin in accordance with Article 32 of the 1951 Convention. Guarantee respect, the right to be listened to, the right to appeal, as well as the right to have time to apply for legal entry to another country.
11. Guarantee, in the case that there is no permission to leave the country of origin by the father/mother, access of children and adolescents to the refugee status determination procedure, without this affecting the investigation by competent authorities of the reasons why they haven't been able to obtain this permission.

### **C. HUMAN TRAFFICKING**

Among the diverse migration movements that are produced in the region, there are cases of human trafficking and sexual exploitation that mainly affect children, adolescents and women. These situations can lead to a need for international protection when: a) these people are refugees or asylum seekers and, for a range of reasons, are in human trafficking situations: b) they are victims of trafficking and as a result are in need of international protection.

In the region there are deficiencies in terms of policies, institutional frameworks, legislation and sufficient resources to combat the trade and trafficking of people. While the legal framework for refugees doesn't contain a specific mention of the victims of human trafficking, it could be broadened to include them, in accordance with the interpretative guidelines offered by UNHCR. There is less information about the people that are the objects of trafficking and as a result the response is very weak.

The invisibility of the problem of human trafficking, together with the lack of knowledge among staff that attend to victims about the possibility for them to seek asylum implies that victims don't have access to the refugee status determination procedure.

## Recommendations

1. Incorporate in national and regional public policies, as well as in policies related to cross-border security: a) the strengthening of programs and services that provide differentiated and specialized assistance to the victims of human trafficking; b) guarantee their right to seek asylum, establishing minimum criteria and standards
2. Guarantee the principle of no-return for victims or potential victims of crimes such as human trafficking through procedures that ensure an evaluation of the risks associated with return and access to refugee status procedures.
3. Ensure that staff responsible for refugee status determination procedures refers suspected victims of human trafficking to protection specialists and assistance mechanisms.
4. Include the victims of human trafficking that are in need of international protection as priority cases for resettlement.
5. Promote an investigation implemented by the United Nations System and the States regarding the phenomenon of human trafficking and migrant smuggling in the region, with the goal of generating guidelines for their protection.

The Brasilia Action Plan should include goals, responsibilities, timelines and monitoring mechanisms. It is recommended that a tri-party monitoring mechanism (governments, UNHCR, and civil society) be established to facilitate the monitoring of the commitments that have been assumed.

Quito, 6th of June 2014

This position statement document from the civil society organizations in the Andean Region is the result of a process of consultations, facilitated by NRC – Norwegian Refugee Council, carried out in 5 countries from the Andean Region: Bolivia, Colombia, Ecuador, Peru and Venezuela. This process culminated with a regional meeting that took place in Quito on the 5th and 6th of June 2014 in which 15 civil society organizations gathered to represent the civil society organizations from their respective countries. During this meeting the representatives reached a consensus regarding their region's position in the framework of the commemoration of Cartagena+30.

The civil society organizations that were present in the regional event were:

### **Bolivia**

Pastoral de Movilidad Humana - PMH

### **Perú**

Comisión Andina de Juristas

### **Colombia**

Servicio Jesuita a Refugiados- Colombia

Corporación Humanas

CODHES

Universidad Javeriana

Iniciativa de Mujeres por la Paz -IMP

### **Ecuador**

Asylum Access Ecuador - AAE

Fundación Esperanza (Ec)

Servicio Jesuita a Refugiados – SJR (Ec)

Fundación Ambiente y Sociedad – FAS

Misión Escalabriniana

### **Venezuela**

Servicio Jesuita a Refugiados – SJR Ven

Universidad Católica del Táchira

RET - Venezuela

The above organizations represented the civil society organizations that participated in the national meetings, including:

**Bolivia:**

Servicio Jesuita de Migraciones -SJM  
Asociación de Refugiados Peruanos- ARPEBOL  
Instituto de Terapia e Investigación Contra la Tortura  
Universidad Salesiana de Bolivia  
Mesa Técnica de Migraciones

**Ecuador:**

Federación de Mujeres de Sucumbíos  
CODHES-Ecuador  
HIAS Ecuador  
RET Ecuador  
PRODEM-GIZ

**Perú**

Comisión Católica Peruana de Migraciones  
Instituto de Democracia y DDHH (IDEHPUCP) de la Pontificia Universidad Católica de Perú  
Encuentros (Conferencia Episcopal)  
Pastoral de Movilidad Humana (Conferencia Episcopal)

**Colombia:**

Universidad Nacional de Colombia  
Comisión Colombiana de Juristas- CCJ  
Project Counselling Services -PCS  
Instituto Pensar  
Plataforma Multiagencial DIAL

**Venezuela:**

Centro DDHH Univ. Católica Andrés Bello  
HIAS - Venezuela