

Declaration by Academia within the framework of Cartagena +30

- Declaration on the Integral Protection of Refugees and Other Forced Migrants and for the Construction of an Effective Humanitarian Space -

In 2014, within the framework of the 30th anniversary of The 1984 Cartagena Declaration on Refugees, the Academia seeks, once again, to contribute to assuring protection of these persons in a humane and humanitarian nature in the region.

Accordingly, and in light of the intensification and diversification of the migratory dynamics which impact Latin America and the Caribbean, including the persistence of forced displacement movements and of migration due to development issues, the increased vulnerability of specific migratory groups, the fact that climate change is expected to produce more forced migration processes, and the emergence of new migratory groups and migration flows, the Academia seeks to contribute to the consolidation of the region as an effective humanitarian space, by adopting this Declaration.

Recalling the prevalence of the protection of human dignity and of human rights as guidelines for action;

Recalling the convergence of the various branches¹ of the protection of human beings and the several dimensions of human rights;

Highlighting the progress in Latin America and the Caribbean in terms of protection of refugees and displaced populations, either collectively and/or by the internal legislation of States;

Remembering and commending the tradition of the right of asylum in the Americas;

Remembering the important role of the Academia in creating the 1984 Cartagena Declaration on Refugees;

Considering the fundamental role of the Academia in the creation, implementation, development and interpretation of International Refugee Law in general, the 1984 Cartagena Declaration on Refugees in particular, and of International Humanitarian Law and International Human Rights Law; and also the central role of the Academia in the analysis of the complexities and of the constant transformation of the nature and the regional impacts of migratory flows and the following legal bases;

Considering the will and the need to effectively establish an expanded humanitarian space of protection in Latin America and the Caribbean;

Considering the existence of challenges posed by migration flows and the imperative necessity of balancing states' interests and the need for protecting human beings in facing those

¹ The expression "branches of Protection" is the translation to the Portuguese expression "vertentes de proteção". This has consolidated itself in relations to the international Protection of human beings. There are 3 branches of Protection: International Humanitarian Law, International Refugee Law and International Human Rights Law. Recently it has been put forward that International Criminal Law should be regarded as a 4th branch, albeit of a punitive approach.

challenges;

Considering that environmental issues – either natural and/or caused by human activity - generate forced displacement of migrants, and also considering that the legal lacunae in this regard leave these groups of people unprotected, given that the possible impacts on the countries of origin, countries of transit and communities or countries of reception are not dealt with;

Remembering that the standard of legitimacy of states' actions must be human rights for all people, regardless of their legal status, citizenship status and nationality;

Considering that the migrant population in Latin America and the Caribbean still faces major challenges in terms of recognition, reception, protection, integration and respect of their rights in host States;

Highlighting the continuing importance of The 1984 Declaration of Cartagena on Refugees and its processes of revision, as well as the fact that the present document by the Academia does not intend to replace any other produced under Cartagena +30 but rather aims to add in the efforts for the protection of forced migrants in Latin America and the Caribbean;

And considering the urgent need for legal and political developments and progress in respecting human beings in crisis situations that have a migratory effect, the Academia proposes the **FOLLOWING RECOMMENDATIONS** as guidelines and approaches to be adopted in the definition, adoption, implementation, and interpretation of migration policies by the American States:

1. That human rights, solidarity and cooperation, already established as normative principles of international law, should be the guidelines for all actions on migration policies;
2. That the aim of migratory actions, rules and policies should be the implementation of integral protection of the migrant population in regards to their civil, political, economic, social, and cultural rights as well as people's rights. , i.e. the totality of their human rights;
3. That International Refugee Law should be respected in its entirety, and should be applied in conjunction and integrated with other rules of International Law, particularly International Human Rights Law, International Humanitarian Law, International Criminal Law and International Environmental Law;
4. That States adopt all the necessary measures to accomplish the mentioned integral protection - including capacity building of all stakeholders - governmental or not - involved in the procedures of access to documents and access to rights, making resources (personal and documentary related) available in languages understood by the migrant population, strengthening civil society networks, and adopting a humane and humanitarian perspective in all their practices, including the search of alternatives to the detention of migrants due to their migratory statuses and the abolition of detention of asylum seekers and children and adolescents in the circumstance of migration;
5. That *non-refoulement* is understood as *jus cogens* and is respected in its totality, not being

violated by policies of border closing, including for security reasons. In this event alternatives that balance States' concerns and needs of human protection ought to be sought, with primacy to the respect of human rights always being respected;

6. That the phenomenon of mixed migratory flows do not restrict migrants' access to safe territories and that the possibility of applying for asylum/refugee status is always respected;

7. That the concept of "gross and generalized violations of human rights"², posited by the 1984 Cartagena Declaration on Refugees, is incorporated as a basis for the recognition of refugee status in domestic law by all States in Latin America and the Caribbean, and that it is interpreted properly in light of the hermeneutic human rights norms of securing the greatest protection of victims of violations and the prohibition of setbacks;

8. That "gross and generalized violations of human rights" should be interpreted to include disregard for violations of any human rights, not only civil and political rights, and that it also encompasses situations in which human rights cannot be fully exercised or guaranteed;

9. That all interpretation of International Refugee Law should be made adopting a broadening and inclusive approach, as opposed to a selective or restrictive one, aiming at the full protection of asylum seekers and refugees, and that the specific circumstances of individual cases should be considered whenever they can engender greater protection;

10. That new agents of persecution are recognized in the analysis of asylum applications, taking into account the particularities of human rights violations in Latin America and the Caribbean, such as the "*maras*", paramilitary groups, militias, criminal groups, and groups that preach hate speech, prejudice and intolerance and other groups that violate human rights;

11. That the States of Latin America and the Caribbean establish, either individually or collectively, other of humanitarian migratory statuses to protect crisis migrants that are not encompassed in the International Refugee Law regime;

12. That such humanitarian migratory status ensure the right of residence in the territory of the granting State as well as the enjoyment of human rights, going beyond mere entry clearance authorizations; i.e. going from the mere granting of humanitarian visas to, at least, the granting of residence permits due to humanitarian reasons;

13. That the States of Latin America and the Caribbean establish, either individually or collectively, forms of protection for environmentally displaced persons, either by broadening the regional definition of the concept of refugees, by understanding environmental circumstances as also human rights issues and, therefore, encompassed in situations of gross and generalized violations of human rights, or by creating specific migratory status for environmental displaced

² The idea of "gross and generalized violations of human rights" is the one present at the 3rd conclusion of Cartagena by which Refugees are understood to also be "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

persons which are permanently displaced, or by creating specific migratory status for environmental displaced persons which are temporarily displaced, or by a combination of one or more of these recommendations;

14. That the States in the region adhere to the international conventions on statelessness (Convention Relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961) and adopt internal procedures for determining statelessness status in order to protect stateless population through identification, prevention and reduction of statelessness, granting of documentation, access to human rights and the facilitation of naturalization;

15. That States undertake to respect all the protective developments of International Refugee Law, particularly with regard to the transversal issues of gender, age and diversity;

16. That a gender perspective is applied transversally in all policies and official documents that are developed in the regional level, so as to that the needs of all different migrants, i.e. men, women, children (boys and girls), adolescents and the LGBT population, are respected; and that the specificities of sexual orientation and gender identity, due to age, and other diversities (such as of indigenous populations and of people with disabilities) are respected;

17. That special protection is granted to children (of all genders) and adolescents in the circumstance of migration, respecting the principle of the best interests of the child as the basis of any standard of conduct and that this principle prevails over other interests (including security);

18. That the protection granted is even more substantial when dealing with unaccompanied minors (children and adolescents) in the circumstance of migration;

19. That States remember that the situation of being “undocumented” that affects a large portion of the migrant population is a cause of serious vulnerability which can be understood as being in itself a violation of human rights. And that accordingly they adopt measures to minimize such violations and the violations resulting from that situation, considering that often documentation is instrumental for access to other rights;

20. That States evaluate and review the current programs and processes of reception, protection and integration of asylum seekers and refugees and effectively advance in enforcing the Mexico Plan of Action's initiatives, especially in relation to its solidarity elements (Solidarity Resettlement, Borders of Solidarity and Cities of Solidarity), as well as encouraging the participation of civil society (including the Academia) in the processes of protection and integration of migrants;

21. That Latin America and the Caribbean advance in building an international regime for the protection of internally displaced persons (IDPs), promoting the minimum international standards of rights within the internal legal order of States;

22. That the States undertake to adopt a regional system of migration governance based on human rights, as well as the creation of a regional agency specializing in migration, that

cooperates directly with the United Nations High Commissioner for Refugees and that takes into account the specificities of migration in the region in their actions;

23. That a basic paradigm of this regime is the treatment of migrants by civilian agencies and not by bodies primarily connected to the police or related with security issues; and that, in the case of collaboration of said organs in the reception, attention or any dealing with migrants, human rights are adopted as guidelines for action;

24. That States undertake the commitment of registry and creation of statistical data that allow for the elaboration of public policies for the migrant populations, as well as the adoption of said policies based on human rights, be it by the creation of specific public policies, by the facilitation of inclusion and/or by the access of migrants to the existing public policies;

25. That migrants have all their rights respected, starting from the minimum standards set out in the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the Convention Relating to the Status of Refugees, the International Convention on the Elimination of all forms of Racial Discrimination, the International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, the Protocol to the Convention on the Status of Refugees, the American Convention on Human Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment, the Declaration on the Right to Development, the Rio Declaration on Environment and Development, the Vienna Declaration on Human Rights, the Universal Declaration on Cultural Diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and in the Rio Declaration on Sustainable Development, and all other documents that constitute the minimum core of human rights' protection, or that ensure protection of the juridical reflexes of human dignity;

26. That the States of Latin America and the Caribbean conform effectively with the documents of International Human Rights Law in general and protection of migrants specifically, by proceeding to signing, ratifying and implementing them; and that said commitment includes documents of soft law such as declarations and recommendations, deriving from such organizations as the UN, OAS, IOM and ILO;

27. That migrants have access to quick and effective regional and national remedies as guarantees to their rights, including access to Justice and to the judicial system and a closer relationship with the InterAmerican Human Rights System due to the convergence between International Refugee Law and International Human Rights Law;

28. That all these recommendations are applied mainly to crisis migrants, humanitarian migrants and forced migrants, but that are also implemented regarding migrants in general, with the fundamental goal of ensuring the maximum respect of dignity and human rights to all people;

29. That States ensure and guarantee the basic social structure of reception (access to the territory, respect of rights, reception and appropriate referrals) to all migrants, especially crisis migrants, humanitarian migrants or forced migrants, by promoting the integration and independence of these human beings;

30. That human dignity and human rights are guaranteed to all migrant population in all phases of the migratory processes.

São Paulo, 10/31/2014.