

## 5. Mixed migration: regional context and trends

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This chapter explores the development of identification mechanisms of vulnerable persons within mixed migration movements in Central America, and related protection mechanisms at the national and regional levels. The complex nature of mixed migratory flows in the region poses many challenges for states in protecting vulnerable groups while managing migration. Particular attention will be paid here to regional developments in identifying and protecting victims of trafficking within such flows by means of national legislation and policy as well as regional protection initiatives.

An analysis is also included of whether the main developments for the protection of other vulnerable groups – such as asylum-seekers and refugees, unaccompanied and separated children and, in some cases, extra-continental migrants – allow regional authorities to identify and provide safeguarding measures and assistance to persons within mixed flows. This especially applies to trafficking victims, who belong to more than one vulnerable group.

Mixed migration has commonly been defined as complex population movements of persons with different profiles (economic migrants, asylum-seekers and refugees, unaccompanied and separated children and trafficking victims)<sup>1</sup> who have different motivations, characteristics and needs, but often travel irregularly along similar routes and using similar means of transit.<sup>2</sup> It is common, however, to encounter persons presenting multiple ‘profiles’, for example, a refugee child who has been trafficked and identified as unaccompanied in the destination country.

Persons that belong to more than one vulnerable group present greater complexity in that they are entitled to different rights and protection mechanisms under international and national law.<sup>3</sup> Responding to these cases requires precise, technical identification mechanisms and coordination between

1 See IOM, ‘Irregular migration and mixed flows’.

2 UNHCR, ‘Refugee protection and mixed migration: a 10-point plan of action’.

3 Although this meaning is not always included in documents when referring to mixed migration, some guidelines for the analysis of the rights of refugees who are also victims of trafficking or belong to vulnerable groups are: UNHCR, ‘Guidelines on international protection no. 7’; and UNHCR, ‘Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum’.

government authorities.<sup>4</sup> This chapter adopts an understanding of mixed migration that includes persons with different profiles travelling together and persons presenting multiple profiles, but with a focus on the latter.

The prevailing argument made here is that Central American countries and regional fora have advanced considerably in protecting vulnerable groups within mixed migration management by means of legislation enactment, regional guidelines and mechanisms, as well as capacity building. However, many of these provisions continue to treat different vulnerable groups in isolation, both formally and in practice, heightening the vulnerability of persons with more than one protection need. Furthermore, many of these developments are recent and their applicability and effectiveness are yet to be tested.

The first section of this chapter provides context on the Central American region, migration and trends. The second part analyses the specific legislative and policy responses to the protection of vulnerable persons within mixed migratory flows in the region, with a special emphasis on trafficking in persons, while the third summarises the conclusions.

## **Contexts and trends on mixed migration in the region**

Central America is the region comprised of Guatemala, Belize, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. It extends over 524,000 square kilometres and had a population of 43.67 million in 2011.<sup>5</sup> Although there are important differences between these countries, 40 per cent of the Central American population earns less than the minimum wage and has little access to education, social security or pensions.<sup>6</sup>

It is a region known for significant inequality gaps between socio-economic groups; overall poverty is at 47 per cent and 18.6 per cent live in extreme poverty. Eighteen per cent of Central American young people do not study or work. Honduras is the poorest country in the region, with 61.1 per cent of its population living in poverty, while Guatemala has the highest inequality levels with a Gini coefficient (the most commonly used measure of inequality) of 0.590.<sup>7</sup>

Central America is also the most violent region in the world – if those experiencing armed conflicts are discounted. The regional rate of homicides

4 See concerns on the failure to recognise trafficking victims' international protection needs in the region in UNHCR, 'Refugee protection and mixed migration', p. 35.

5 Programa Estado de la Nación, 'Cuarto informe estado de la región en desarrollo humano sostenible'.

6 Programa Estado de la Nación, 'Estado de la región (estadísticas 2013) en desarrollo humano sostenible', p. 34.

7 Ibid.

virtually doubled over the last decade, from 22 to 40 per 100,000<sup>8</sup> persons between 2000 and 2011; with approximately 168,000 homicides, of which 87 per cent occurred in the northern triangle's three countries (Guatemala, Honduras and El Salvador). Honduras is the country with the highest homicide rate in the world, reaching a record high of 86.5 homicides per 100,000 inhabitants in 2011.<sup>9</sup> The UN Secretary-General highlighted that in the region's countries as many as one out of every 50 males aged 20 will be murdered before they reach the age of 32.<sup>10</sup>

Historically, migration in Central America occurs as both south-north and south-south flows. Since the mid 20th century Central America and Mexico have gradually become a region of transit and emigration of migrants on their way to the northern part of the continent.<sup>11</sup> The most important intra-regional migration channels are Nicaragua–Costa Rica and Guatemala–Belize.<sup>12</sup> Migration in the region has been on the rise since 2000: remittances went from 4.7 per cent of regional GDP in 2000 to 7.7 per cent in 2011, Honduras having the highest share of remittances (15.8 per cent of GDP in 2011).<sup>13</sup>

Although it is hard to find specific migration figures for the number of Central American migrants transiting the region and Mexico en route to the USA due to the clandestine nature of the flows,<sup>14</sup> it is estimated that half a million undocumented migrants cross Mexico's southern border every year. Most are Central Americans trying to reach the USA or Canada.<sup>15</sup> Between 2000 and 2010, Central American immigrants were the fastest-growing segment of the Latin American immigrant population in the USA, reaching nearly 3.1 million in 2011 and representing close to 8 per cent of all immigrants.<sup>16</sup> Although most of the region's more recent migration flows have been economic migrants (once forced displacement due to the Central American conflicts ceased), increasing crime and violence have also increased irregular migration, particularly from Central America.<sup>17</sup>

8 As a parameter to consider, the World Health Organization (WHO) believes that rates higher than ten for each 100,000 demonstrate a public health problem, *ibid.*, p. 59.

9 *Ibid.*

10 UN, 'Top UN officials underscore need to combat organized crime in Central America', p. 2.

11 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years'.

12 Programa Estado de la Nación, 'Estado de la región (estadísticas 2013)', p. 36.

13 *Ibid.*

14 'States have responded to the challenges of these irregular mixed migratory movements principally by increased control measures, oftentimes without incorporating sufficient protection safeguards' (IOM, UNHCR and OAS concept note, 'Regional conference on refugee protection and international migration in the Americas').

15 *Ibid.*

16 Stoney and Batalova, 'Central American immigrants in the United States'.

17 Ribando Seelke, 'Trafficking in persons in Latin America and the Caribbean', p. 3.

Furthermore, studies and regional migration fora have acknowledged how irregular migrants transiting the region to North America have become increasingly vulnerable to human trafficking and other abuses. Clandestine entry by land or sea poses especially great risks for individuals.<sup>18</sup> In the USA the number of deaths of migrants crossing its southern border rose from 241 in 1999 to 472 in 2005, with a total death toll of 2,397 victims within this period. This included deaths in the desert due to extreme conditions as well as border-related violence perpetrated against migrants, such as assault and robbery.<sup>19</sup> Some groups are particularly vulnerable to abuses along the migration route. Amnesty International reported in 2010 that six out of every ten Central American women transiting through Mexico were raped during their journey.<sup>20</sup> Participants in the 2009 Regional Conference on Refugee Protection and International Migration in the Americas identified 'the normalisation of violence in border regions, including the kidnapping of refugees and migrants in the border regions of Mexico for the purpose of extortion and persisting gang-related violence in several countries in Central America' as the main challenge in the region.<sup>21</sup>

Violence-induced displacement in the region has been linked to an increase of asylum-seekers from the northern triangle, mainly to the USA, Mexico and Costa Rica. A United Nations High Commissioner for Refugees (UNHCR) Global Trends report estimates that in 2012 there were 8,170 Salvadorian refugees (and 1,635 asylum-seekers), 6,386 Guatemalan refugees (and 1,332 asylum-seekers) and 2,613 Honduran refugees (and 810 asylum-seekers) in the world.<sup>22</sup> Requests for asylum in the USA have nearly quadrupled in the last five years, mostly due to claims from El Salvadorian, Honduran and Guatemalan nationals, with more than 19,119 asylum requests up to the end of May 2013 (two-thirds comprising nationals from these three countries).<sup>23</sup> Mexico saw 860 asylum claims from January to August 2013, of which 70.71 per cent were Central American nationals.<sup>24</sup> Asylum claims from nationals of these three

18 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 5. See also CIDEHUM, 'Diagnóstico: desplazamiento forzado y necesidades de protección por nuevas formas de violencia y criminalidad en Centroamérica'.

19 United States Government Accountability Office, 'Illegal immigration: border-crossing deaths have doubled since 1995'.

20 Amnesty International, 'Víctimas invisibles: migrantes en movimiento en México', p. 15.

21 IOM, UNHCR and OAS, 2009 summary report of 'Regional Conference on Refugee Protection and International Migration in the Americas Protection Considerations in the Context of Mixed Migration', p. 4.

22 UNHCR, Table 2, 'UNHCR global trends 2012: displacement, the new 21st-century challenge', p. 45.

23 Associated Press, 'USCIS news: correction in asylum request'.

24 Claimants comprised 335 Hondurans, 201 Salvadorians and 33 Guatemalans. See Secretaria de Gobernación et al., 'Estadísticas 2013'.

countries are on the rise compared to 2011 and 2012.<sup>25</sup> A similar trend can be seen in Costa Rica, which received 353 asylum claims from Central American nationals in 2012, a significant increase from 73 claims in 2011.<sup>26</sup>

After the mass refugee flows generated by the Central American conflicts in the 1980s and 1990s, the countries of the region have had small refugee populations – currently reporting a total of 15,294 recognised refugees, and a further 18,691 persons in refugee-like situations. Costa Rica has the greatest number of refugees in the region (12,629) and Belize is the country with the smallest number (28). Panama has the highest difference between recognised refugees and persons in refugee-like situations (2,419 recognised refugees out of 17,429).<sup>27</sup>

There has been an increase in unaccompanied and separated children from Central America entering and being detected in the USA and Mexico. During fiscal year (FY)<sup>28</sup> 2012 the USA experienced an unprecedented increase in referrals, doubling the programme's size over the previous eight years, which had previously averaged 6,775 referrals per year. In 2012, the top three nationalities were Guatemalan (34 per cent), Salvadorian and Honduran children (27 per cent each).<sup>29</sup>

The region has also experienced an increase in mixed extra-continental migration flows over the past decade.<sup>30</sup> Extra-continental persons<sup>31</sup> who arrive are mainly composed of groups of men travelling alone. The average age range is 20–40 years<sup>32</sup> with the majority coming from Eritrea, Somalia, Ethiopia, Nepal, Bangladesh, China, India, Iraq and Sri Lanka.<sup>33</sup>

25 In an email dated 7 Nov. 2013, L.D. Obando, an associate legal officer in UNHCR's American Regional Legal Unit, reports that, in 2012, 272 Hondurans, 200 Salvadorians and 54 Guatemalans claimed asylum and 181 Salvadorians, 168 Hondurans and 69 Guatemalans did so in 2011.

26 According to email correspondence, dated 6 Nov. 2013, with V. Leandro, UNHCR Costa Rica legal officer, from Jan. to Sep. of 2013 a total of 177 claims had been received from Central American nationals, that is, one out of every four individuals claiming asylum were from this region.

27 El Salvador has 45 refugees, Guatemala 159 and Honduras 16. See UNHCR, 'UNHCR global trends 2012'.

28 The United States federal government's fiscal year begins on 1 Oct. and ends on 30 Sep. of the next calendar year.

29 Office of Refugee Resettlement, Division of Children Services, Unaccompanied Alien Children programme at [www.acf.hhs.gov/programs/orr/programs/ucs/about/](http://www.acf.hhs.gov/programs/orr/programs/ucs/about/) (accessed 8 Jan. 2015).

30 Although no detailed information is available at a regional level, Mexican authorities provided statistics confirming this trend. See Latin American School of Social Sciences, 'Assessment of the current situation, trends, and protection and assistance needs of extracontinental migrants and refugees in Mexico and Central America', p. 11.

31 Extra-continental migration flows are mixed and come from specific African and Asian countries to the Americas. *Ibid.*, p. 5.

32 *Ibid.*, p. 12.

33 *Ibid.*, p. 13.

Going beyond the challenges associated with mixed flows, persons of extra-continental origin possess characteristics that differentiate them from other regional groups in terms of migration management and the protection scenarios they pose. They often travel without any documentation, the region lacks interpreters to ensure communication with migration authorities – making profiling and processing particularly difficult – and there is a lack of facilities (detention centres or shelters). Moreover, services to meet their religious and cultural needs are practically non-existent, and there is a lack of diplomatic or consular missions from their countries of origin in Central America.<sup>34</sup> Among other vulnerabilities, these persons

suffer deterioration in physical and psychological health as a result of the uprooting processes, long periods of travelling, having to face national authorities and other agents every day who are not familiar with the reasons that drive them to migrate and, in some cases, long periods of detention and the ensuing uncertainty. Upon their entry into countries in the region, extra continental migrants and refugees face abuse by some persons who take advantage of their irregular migration status, lack of knowledge of the context, and language difficulties.<sup>35</sup>

Once identified by the authorities, many claim asylum as a way of evading administrative detention related to their irregular migration status. They often have no real intention of settling in Central America or Mexico and continue their trip to the USA or Canada as soon as they are released.<sup>36</sup> This has contributed to increased concern in the region about possible abuse of the asylum system and detection of so-called ‘fake’ asylum-seekers, which can in the long term undermine asylum and access to refugee status determination (RSD) procedures.<sup>37</sup>

Victims of trafficking form another important group of vulnerable persons within migration flows. The countries in the region represent a corridor for human trafficking, as well as being countries of origin and destination for human trafficking purposes. International and internal trafficking is prevalent in them all, the internal figures having increased due to the growth of the sex tourism industry.<sup>38</sup>

Little data exists on how many victims of trafficking move within and from Central America – statistics from previous studies are incomplete due

34 Permanent Council of the OAS, Special Committee on Migration Issues, ‘Extra-regional illegal migration in the Americas’, p. 2.

35 Latin American School of Social Sciences, ‘Assessment of the current situation’, p. 14.

36 Permanent Council of the OAS, ‘Extra-regional illegal migration in the Americas’, p. 3.

37 UNHCR, ‘Refugee protection and international migration in the Americas’, paras 59 and 90.

38 UNODC, ‘Proyecto regional contra la trata de personas diagnóstico de las capacidades nacionales y regionales para la persecución penal’, pp. 19–27.

to the difficulties involved in obtaining such information.<sup>39</sup> The US State Department has estimated that at least 100,000 Latin Americans are trafficked internationally each year. In the fiscal year 2012 primary countries of origin for foreign trafficking victims certified as eligible to receive USA assistance included Mexico, Honduras and Guatemala.<sup>40</sup> All Central American countries figure in Tier 2 of the US State Department Report on Human Trafficking 2013, although Honduras is on the Tier 2 watch list.<sup>41</sup>

During 2007–10 most victims of trafficking identified in North and Central America were Central Americans or people from the Caribbean, although some Eastern Asians were also detected<sup>42</sup> (27 per cent of the victims identified in North America, Central America and the Caribbean).<sup>43</sup> Most of the victims detected in Mexico were Guatemalan, whereas Guatemala reported its victims were mainly from El Salvador and Nicaragua, and El Salvador found that most of its victims came from its neighbouring countries, Guatemala and Honduras.<sup>44</sup>

Contrary to the case of North America, where trafficking for labour exploitation was significant, Central America and the Caribbean reported exceptionally high proportions of victims trafficked for sexual exploitation. A limited number were trafficked for forced labour.<sup>45</sup> Central America also detected more children among the victims than adults during the same period<sup>46</sup> and that women and girls formed the large majority of victims of trafficking.<sup>47</sup>

It is difficult to give an accurate total of trafficking victims for the Central American region. From 2007–10, 6,000 victims were officially registered in the Americas.<sup>48</sup> Some Central American countries reported an increase in identification of and assistance to trafficking victims in recent years: by July

39 Save the Children, 'Violencia y trata de personas en Centroamérica: oportunidades de intervención regional'.

40 Ribando Seelke, 'Trafficking in persons', p. 2.

41 US State Department, Office To Monitor and Combat Trafficking in Persons, 'Tier placements, trafficking in persons report 2013'. Tier 1 includes countries whose governments fully comply with the US Trafficking Victims Protection Act's (TVPA) minimum standards; Tier 2 comprises countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to do so; and Tier 3 includes countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

42 UNODC, 'Global report on trafficking in persons', 2012, p. 64.

43 *Ibid.*, p. 65.

44 *Ibid.*, p. 64.

45 *Ibid.*

46 *Ibid.*, p. 62.

47 *Ibid.*, p. 61.

48 *Ibid.*

2012 Costa Rican authorities had assisted 80 victims, while the Nicaraguan authorities had assisted 77 (2011–12).<sup>49</sup>

## **Law and policy to protect vulnerable persons within mixed migration movements in Central America**

This section critically assesses national and regional developments in keeping vulnerable persons safe within mixed flows, focusing on the development of a protection framework for victims of trafficking and briefly covering developments for safeguarding other vulnerable groups as they relate to the protection of trafficking victims when a person belongs to more than one category. A list of the main regional organisations and fora dealing with migration issues is enclosed in Annex I with a brief overview.

Currently the protection of vulnerable migrants and refugees in the region is framed by governments and organisations within the context of mixed migration flows at regional migration fora such as the Conferencia Regional sobre Migraciones (Regional Conference on Migration – RCM).<sup>50</sup> Although the RCM's aim is to improve migration management cooperation between member states, safeguarding vulnerable persons has substantially informed regional developments. Since its creation, the RCM has worked on keeping vulnerable persons safe within mixed migration flows, although not explicitly using this terminology.

Defining human rights protection as one of its core priorities, the RCM has produced regional policy and mechanisms for safeguarding children, women and other vulnerable groups.<sup>51</sup> On the issue of irregular migration, the RCM has developed various protocols on migrant return aimed at the orderly, expedited and safe repatriation of Central American migrants, which encourage migratory control based on human rights principles.<sup>52</sup>

Other guidelines were developed which had a specific protective nature, such as the 'Regional guidelines for the protection of the human rights of migrants

49 Presentation given by E. Isaba, Regional Coalition against Trafficking in Persons, July 2012.

50 Today the RCM member countries are: Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama and Dominican Republic.

51 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 19.

52 For example, the 'Memorandum of understanding between the governments of Mexico, El Salvador, Guatemala, Honduras and Nicaragua for the orderly, expedited, and safe repatriation of Central American migrants by land' (2006) and the 'Memorandum of procedures manual for the dignified, orderly, expedited and safe repatriation of Central Americans from El Salvador, Guatemala, Honduras and Nicaragua at disposal of the Mexican Migration Authorities'. These were further expanded in 2010 and 2011. For other agreements see RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', pp. 22–4.

in situations of immigration status verification, detention, deportation, and reception', which was initially proposed by the Regional Network for Civil Organizations on Migration (RNCOM) in 2001. Due to the high number of regional migrants transiting through and migrating to Mexico, the RCM also cooperates regularly with the consular authorities of Guatemala, El Salvador, Honduras, Nicaragua and the Dominican Republic on providing consular protection and humanitarian aid to nationals from those countries.<sup>53</sup> In 2004, working to these guidelines, the RCM established a 'Reserve fund for the assistance of intraregional migrants in highly vulnerable situations'.<sup>54</sup> It also developed guidelines on safeguarding mechanisms for specific vulnerable groups, such as trafficking victims and unaccompanied and separated children, which will be discussed in upcoming sections.

Even though some actions to protect vulnerable groups within mixed migration had previously been carried out,<sup>55</sup> a strong regional awareness-raising process on this issue gained strength with the 2009 'Regional Conference on Refugee Protection and International Migration in the Americas – Protection Considerations in the Context of Mixed Migration', organised by the International Organization for Migration (IOM) and the UNHCR.<sup>56</sup> The conference aimed to enhance the response to mixed movements in the Americas in a protection-sensitive manner, on both the national level and through increased use of existing regional migration processes and human rights mechanisms.<sup>57</sup> More than 200 representatives from 20 states, academia and civil society were attracted to the conference, which among its recommendations suggested establishing a joint regional task force led by IOM and UNHCR to develop standard operating procedures to respond to the protection and assistance needs of different groups<sup>58</sup> as well as creating standard profiling questionnaires.<sup>59</sup>

In response to these recommendations, IOM and UNHCR launched a three-pronged regional project to enhance the identification, assistance

53 This is the 'Memorandum of understanding between the republics of Guatemala, El Salvador, Honduras, Nicaragua, and the Dominican Republic to establish a network for consular protection and humanitarian aid for nationals from Central America and the Dominican Republic in Mexico' (2008), *ibid.*, p. 31.

54 *Ibid.*, p. 35.

55 In August 2008 the governments of Canada and Costa Rica organised 'Protection and durable solutions within mixed migratory flows'. See UNHCR, 'Refugee protection and international migration in the Americas', p. 41.

56 This was part of the follow-up on the implementation of the UNHCR's '10-point plan of action on refugee protection and mixed migration', published in 2007.

57 UNHCR 'Refugee protection and international migration in the Americas'.

58 *Ibid.*, p. 6.

59 *Ibid.*, p. 50; IOM, 'Irregular migration and mixed flows: IOM's approach'; UNHCR, IOM and OAS, summary report for 'Regional Conference on Refugee Protection and International Migration in the Americas' held in 2009, p. 8.

and safeguarding of vulnerable persons within mixed migration flows. The first component consisted of national workshops in Honduras, El Salvador, Nicaragua and Costa Rica that assessed each country's needs and trained key institutions in profiling, referral and protection needs of vulnerable persons within mixed migration flows. The second component developed training modules on protection within mixed migration to be used in training of trainers' sessions in the region. The last development was a regional workshop that saw the drafting of the 'Regional guidelines for the preliminary identification of profiles and referring mechanisms of migrant populations in vulnerability conditions' (Regional profiling and referral guidelines).

The governments of Honduras, El Salvador, Nicaragua and Costa Rica presented these guidelines to the Regional Consultation Group on Migration (RCGM), which formally approved them in June 2013. They were approved by RCM Vice-Ministers in Costa Rica on June 27–28 June 2013.<sup>60</sup>

### *The protection of victims of trafficking in persons*

This section pays special attention to recent legislative and policy developments on trafficking in Central American countries. It includes a brief introduction of general issues such as the definition and government structures dealing with trafficking in the region, and focuses on victim identification, protection and assistance measures as well as durable solutions for trafficking victims in the region.

In Central America anti-trafficking measures are concentrated on strengthening legal-institutional care for victims, i.e. prevention – especially for groups or persons at risk – and punishment of perpetrators.<sup>61</sup> All Central American states are party to the main international human rights instruments and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol).<sup>62</sup>

Belize, Guatemala, Honduras, Costa Rica and Panama have enacted specific legislation against trafficking recently, in 2011, 2012 and 2013.<sup>63</sup> Belize's law is the oldest, dating from 2003, and has received criticism from civil society

60 RCM, 'Meeting of the Regional Consultation Group on Migration (RCGM) of the Regional Conference on Migration (RCM), recommendations for the vice-ministers'.

61 Save the Children, 'Violencia y trata de personas en Centroamérica: oportunidades de intervención regional', p. 10.

62 For a detailed analysis of states' obligations regarding trafficking in persons found in human rights instruments see: IOM and UNICEF, *Trata de Personas y Tráfico Ilícito de Migrantes en Centroamérica y México*, p. 286.

63 These laws are: Belize, Trafficking in Persons Prohibition Act, 2003; Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Decreto no. 9, 2009; Honduras 'Ley contra la trata de personas', Decreto no. 59, 2012; Costa Rica, 'Ley contra la trata de personas y creación de la Coalición Nacional Contra el Tráfico Ilícito de Migrantes y la Trata de Personas (CONATT)', Ley no. 9095, 2013; and Panama, 'Ley contra la trata de personas y actividades conexas', no. 332, 2011.

because it failed to include internal trafficking, among other issues.<sup>64</sup> El Salvador presented a law proposal for approval in July 2013 and Nicaragua has regulated trafficking within its Criminal Code and its Law against Violence against Women.<sup>65</sup> Most national expedients prior to this regional legislative effort followed the main aspects of the Palermo Protocol through enactment of criminal legislation, national trafficking policies and protection programmes.<sup>66</sup>

Recent national anti-trafficking laws identify as objectives the prevention and sanction of trafficking, the design of public policies and plans on combatting trafficking, the definition of legal protection and assistance frameworks for victims, and international cooperation.

Most countries follow the exact wording of the Palermo Protocol definition (such as Costa Rica, Honduras and Panama) although Panama modifies it when defining the criminal classification within their criminal legislation.<sup>67</sup> Guatemalan law removes the element of means from the definition for all individuals.<sup>68</sup> El Salvador's Criminal Code adds the element of 'economic benefit' to the definition, which could prove an obstacle when analysing evidence during prosecution. It defines a trafficker as a person

that alone or as a member of a national or international organisation and for the purpose of economic benefit recruits, transports, transfers, harbours or receives persons, within national territory or outside, to perform any sexual exploitation activity, to keep them in forced labour or services, or in slavery-like practices, or for organ extraction, fraudulent adoptions or forced marriages.<sup>69</sup>

Nicaragua's definition also differs from that of the Palermo Protocol in various elements: it includes as traffickers persons who finance, direct, organise, promote, facilitate or induce the acts. It also eliminates the element of consent for adult victims and does not require the means for the crime's constitution, but as an aggravating factor:

The person who finances, directs, organises, promotes, facilitates, induces or by any means executes the proposition, capture, recruitment, hiring, transportation, transfer, retention, harbouring or reception of persons, in

64 Save the Children, 'Violencia y trata de personas en Centroamérica: oportunidades de intervención regional', p. 87.

65 Nicaragua, 'Ley integral Contra la Violencia hacia las Mujeres y de Reformas a la Ley no. 641 no. 779', 2012.

66 For a detailed analysis of previous trafficking legislation see: IOM, 'Comparative matrix of the legislation in member states of RCM relating to trafficking in persons'; Save the Children, 'Violencia y trata de personas en Centroamérica', pp. 86–114; UNODC, 'Proyecto regional contra la trata de personas diagnóstico de las capacidades nacionales y regionales para la persecución penal del delito de trata de personas en América Central'.

67 Panama, 'Ley contra la trata de personas', preamble.

68 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 202.

69 El Salvador, 'Codigo Penal', Decreto no. 1030, 1997, Art. 367(b).

order to subject them to: sexual exploitation, servile, forced or simulated marriage, prostitution, labour exploitation, forced labour, slavery or slavery-like practices, servitude, organ removal of trafficking or illegal adoption, in order to be executed inside or outside the national territory, even with the consent of the victim.<sup>70</sup>

All states in the region have an entity or body that defines and regulates legislation, public policy and national plans on trafficking. In Panama the National Commission against Trafficking in Persons is a technical and administrative organ depending on the Ministry of Public Security.<sup>71</sup> In Costa Rica the National Coalition against the Illegal Smuggling of Migrants and Trafficking in Persons<sup>72</sup> is an independent interinstitutional body, its Technical Secretariat being the General Directorate of Migration.<sup>73</sup> Honduras created the Inter-Institutional Commission against Commercial Sexual Exploitation and Trafficking in Persons, a deconcentrated organ of the State Secretary within its Justice and Human Rights Bureau.<sup>74</sup> Guatemalan law created the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons, which depends on the Republic's Vice President.<sup>75</sup> Nicaragua created the National Coalition against Trafficking in Persons in 2004, which is formed by various state institutions and NGOs.<sup>76</sup> El Salvador had an inter-institutional committee in 2005, which was replaced in 2011 by the National Council against Trafficking in Persons.<sup>77</sup> International organisations can in some instances act as observers.<sup>78</sup>

Panamanian and Honduran laws define a victim as any person suffering damages due to the crime of trafficking or related activities and extend this status to the individual's dependants and relatives.<sup>79</sup> They both emphasise that the status is independent of whether or not a judicial procedure has

70 Nicaragua, 'Ley integral contra la violencia hacia las mujeres', Art. 59.

71 Panama, 'Ley contra la trata de personas', chapter 4.

72 Costa Rica, 'Ley contra la trata de personas', chapter 2. The Coalition was created in 2005 and later modified in 2007 and 2009. See Save the Children, 'Violencia y trata de personas en Centroamérica', p. 89.

73 Costa Rica, 'Ley contra la trata de personas', Art. 14.

74 Honduras, 'Ley contra la trata de personas', Art. 7.

75 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 4.

76 Nicaragua, 'Coalición nacional contra la trata de personas, acuerdo de colaboración', Feb. 2004.

77 Save the Children, 'Violencia y trata de personas en Centroamérica', p. 106.

78 In Panama they can attend the meetings upon invitation and in Costa Rica the law predefines that the IOM, UNHCR, UNICEF and the International Labour Organization (ILO) can attend Coalition meetings as observers. Panama, 'Ley contra la trata de personas', Art. 17; Costa Rica, 'Ley contra la trata de personas', Art. 11.

79 Panama, 'Ley contra la trata de personas', Arts. 33 and 34; Honduras, 'Ley contra la trata de personas', Art. 24.

been opened against the perpetrators, and regardless of whether the victim has participated in the judicial procedure.<sup>80</sup> This definition is also adopted by Costa Rican law but does not extend the victim status to dependants or family members.<sup>81</sup> Guatemalan law does not define victims of trafficking specifically but includes the category as a type of victim within the broader definition of any person who is a victim [as a result] of any offence according to criminal legislation. It also extends this victim status to family members or dependants who have a direct relationship with the primary victim, and to those who have suffered harm in assisting the victim or in preventing victimisation.<sup>82</sup>

The responsibility of identifying trafficking victims within broader migration flows varies between the countries. In Panama, the National Commission establishes the mechanisms for identifying victims of trafficking and individuals in vulnerable situations,<sup>83</sup> which will be implemented by a technical unit.<sup>84</sup> In Costa Rica, the Equipo de Respuesta Inmediata (Immediate Response Team – ERI) is responsible for victim identification. Created in 2009, it is supervised by the Coalition’s Technical Secretariat.<sup>85</sup> The ERI is comprised of various institutions and, depending on the victim’s profile, different institutions will be called for identification, accreditation, protection and assistance purposes.<sup>86</sup> The ERI has become a regional good practice, with Honduran law replicating it.<sup>87</sup> In Costa Rica and Honduras accreditation by the ERIs is necessary for the victim’s access to safeguarding and assistance measures. This accreditation does not depend on the verification of the victim’s personal information (such as nationality). In Costa Rica a seven-day limit applies to notify the case to the ERI.<sup>88</sup>

Regarding migratory protection and status of trafficking victims, Panamanian,<sup>89</sup> Costa Rican<sup>90</sup> and Honduran<sup>91</sup> laws incorporate the Palermo Protocol’s Article 7 provisions by giving the victim information on their legal

80 Panama, ‘Ley contra la trata de personas’, Arts. 33 and 34; Honduras, ‘Ley contra la trata de personas’, Art. 24.

81 Costa Rica, ‘Ley contra la trata de personas’, Art. 7 (aa).

82 Guatemala, ‘Ley contra la violencia sexual, explotacion y trata de personas’, Art. 10.

83 Panama, ‘Ley contra la trata de personas’, Art. 13(8).

84 *Ibid.*, Art. 28(2).

85 Costa Rica, ‘Ley contra la trata de personas’ Art. 19. See Save the Children, ‘Violencia y trata de personas en Centroamérica’, p. 89.

86 Costa Rica, ‘Ley contra la trata de personas’, Arts. 20, 21 and 24.

87 Honduras, ‘Ley contra la trata de personas’, Art. 18.

88 Costa Rica, ‘Ley contra la trata de personas’, Arts. 24 (d) and 40; Honduras, ‘Ley contra la trata de personas’, Arts. 29 and 30.

89 Panama, ‘Ley contra la trata de personas’, Art. 35 (5 and 8).

90 Costa Rica, ‘Ley contra la trata de personas’, Arts. 37 (d, f and i).

91 Honduras, ‘Ley contra la trata de personas’, Art. 25 (3).

and migration status and free legal representation. They even go beyond the Article in providing victims with leave to remain. Panamanian law also incorporates the principle of no sanction in the case of illegal entry for victims of trafficking.<sup>92</sup> Guatemalan law includes the right to stay in the country only during the assistance process.<sup>93</sup>

Upon identifying trafficking victims, Panamanian, Honduran and Costa Rican laws grant a temporary permit for a minimum of 90 days for the victim to recover physically and emotionally, and to decide on whether they wish to participate in criminal proceedings.<sup>94</sup> After this initial period, Panama gives trafficking victims a minimum six-month residency permit, regardless of participation in criminal proceedings.<sup>95</sup> Although Costa Rican law does not mirror this, its General Migration Law gives these victims a special migratory condition to stay in the country<sup>96</sup> and includes reintegration in the country of origin as a durable solution for trafficking victims.<sup>97</sup> This special migratory condition will be regulated in the law's bylaw.<sup>98</sup> Honduran law provides for victims of trafficking to receive special leave to remain for a maximum of five years after the initial period when other solutions are not appropriate.<sup>99</sup>

There is no specific mention in the trafficking legislation of Panama and Costa Rica of victims' right to seek asylum, although it is implicit in their migratory protection dispositions of Articles 35 (8) and 37(i) respectively and in their international obligations related to the Palermo Protocol.<sup>100</sup> Honduran law includes the principle of *non-refoulement*<sup>101</sup> and specifically mentions the option available to such victims of claiming asylum.<sup>102</sup> Guatemalan law focuses strongly on the repatriation of trafficking victims, but without prejudice to the right to claim asylum.<sup>103</sup> It also establishes their right to be informed of the asylum procedure, the search for their family and the situation and risks in

92 Panama, 'Ley contra la trata de personas', Art. 36.

93 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 11.

94 Panama, 'Ley contra la trata de personas', Art. 47 and Costa Rica 'Ley contra la trata de personas...', Art. 37(f); Honduras, 'Ley contra la trata de personas', Arts. 27 (2) and 31.

95 Panama, 'Ley contra la trata de personas', Art. 48.

96 Costa Rica, 'Ley general de migración y extranjería', Ley no. 8764, Aug. 2009, Art. 94.

97 Honduras, 'Ley contra la trata de personas', Art. 27 (3).

98 Costa Rica, 'Ley contra la trata de personas', Arts. 48–50.

99 Honduras, 'Ley contra la trata de personas', Art. 39.

100 UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 15 Nov. 2000, Art. 14.

101 Honduras, 'Ley contra la trata de personas', Art. 3(9).

102 Ibid., Art. 31.

103 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 16.

their country of origin.<sup>104</sup> Some refugee protection legislation in the region also has specific provisions regarding trafficking victims' cases, which are included in the next section.

Implementing Article 46 of the Panamanian law and Article 30 of the Honduran law, which relate to trafficking victims with international protection needs, could cause problems. Under these provisions, migration and diplomatic authorities must cooperate in identifying the victims in the absence of documentation. A combination of the lack of a specific provision in Panamanian law on the right to asylum of trafficking victims and poor implementation of profiling mechanisms, leading to a failure in identifying a victim's international protection needs in a timely manner, potentially endangers such individuals when they contact diplomatic or consular authorities from their countries of origin.<sup>105</sup> On this tenet, Guatemalan law – which is older and has a weaker protection focus than more recent ones – states that 'if the victim is a foreign person, the competent authority must immediately notify the appropriate consular agency'<sup>106</sup> adding that the victim will be 'delivered' to consular authorities under their protection.<sup>107</sup> Although the law mentions that this will be without prejudice to the possibility of claiming asylum, the immediacy of the contact with consular authorities could lead towards premature repatriation without the victims' identification as a possible refugee and access to RSD procedures.<sup>108</sup>

The matter of durable solutions for trafficking victims is particularly important when analysed within the context of mixed migration movements. Weak profiling mechanisms that fail to identify a possible risk or threat could be fatal should the victim be returned to her/his country of origin. Panamanian law stresses the state's obligation to facilitate the repatriation of foreign victims, yet fails to mention instances in which such an act would be detrimental to or might go against *non-refoulement* commitments.<sup>109</sup> Costa Rican law also focuses on repatriation but mentions that risk of return will be assessed and that integration and resettlement are possible solutions.<sup>110</sup> Honduran law includes durable solutions as part of what it calls the 'process of reintegration': an 'orderly, planned and consensual process with this victim, which supports her/his integral recovery in the long term and the full restitution of her human rights in

104 Ibid., Art. 2(h).

105 Panama, 'Ley contra la trata de personas', Art. 46; Honduras, 'Ley contra la trata de personas', Art. 30.

106 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 15.

107 Ibid., Art. 16.

108 See UNHCR, 'Refugee protection and mixed migration', p. 30.

109 Palermo Protocol, Art. 14.

110 Costa Rica, 'Ley contra la trata de personas', Arts. 48 and 29.

society.<sup>111</sup> Within this process, the law includes repatriation, resettlement and asylum.<sup>112</sup> Guatemalan law states that repatriations will be aided by diplomatic authorities, without prejudice to the right to seek asylum or apply for residency. However, it stresses that in the event it is safe for trafficking victims to return to their country of origin, repatriation will be carried out without undue or unreasonable delay. Although Guatemalan law does not require the victim's agreement to effect a return,<sup>113</sup> it mandates the discussion of a Protocol for repatriation that takes into account the victim's wishes.<sup>114</sup>

Informed and efficient profiling mechanisms must include a good understanding of international protection needs before exploring solutions such as repatriation. This is fundamental from the moment of first identification and certification as a trafficking victim. The risk of repatriating such a victim due to an inefficient profiling mechanism is high. Some trafficking cases in the region that have been presented as having been subjected to best practice in victim protection and assistance administration reveal that a worrying situation is developing. Such is the case made by a documentary in which a Nicaraguan victim expresses her gratitude for having been rescued in Guatemala and returned to her country and community of origin, but subsequently describes living in fear of retaliation from her traffickers, who also live in her community. She describes how this situation limits her possibilities of leaving her house, affecting her mental health and economic survival.<sup>115</sup> It is a sobering illustration of the weakness of national trafficking safeguarding mechanisms in identifying cases where victims also present international protection needs.

Moreover, the number of trafficking victims in the region who have been recognised as refugees is extremely low: only one of them has ever been recognised as a refugee in Guatemala<sup>116</sup> and four in Costa Rica.<sup>117</sup> Considering the difficulties that Central American national authorities encounter when protecting their nationals from threats, violence and crime, and the currently increasing figures of Central Americans seeking asylum in neighbouring countries, the low recognition rate raises questions and concerns.<sup>118</sup> Civil society organisations have called for countries in the region to respond to

111 Honduras, 'Ley contra la trata de personas', Art. 6 (14).

112 Ibid., chapter 7.

113 Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 17.

114 Ibid., Art. 19.

115 This example occurs in the testimony given by the first victim highlighted in the documentary *El Engaño*, which was produced in Nicaragua. See [www.camilafilms.com/realizaciones.es?idrealizaciones=17](http://www.camilafilms.com/realizaciones.es?idrealizaciones=17) (accessed 12 Jan. 2015).

116 Email correspondence with R. Cenalmor, associate legal officer for UNHCR, Central America, 11 Nov. 2013.

117 V. Leandro, email correspondence, 11 Nov. 2013.

118 CIDEHUM, 'Diagnostico'.

human trafficking by taking into account the general context of the increasing violence due to actions of organised crime and to deal with trafficking within the broader security problems affecting the most vulnerable groups in Central America.<sup>119</sup>

The decision to return a trafficking victim to their country of origin should include expert analysis of the case and a full explanation to that person of the process objective and incorporating the risks to their security and well-being upon return. It is not uncommon for victims to be unaware of these risks and they might not even know of the person who is the first link in the trafficking ring (the recruiter), which is usually someone in their community.

On other relevant protection issues, Costa Rican, Honduran and Panamanian law guarantees assistance and physical safeguarding when a threat is present to the victim's integrity and security, even when that person has decided not to participate in judicial proceedings.<sup>120</sup> Nicaragua's bylaw to its organised crime legislation also provides for protection of persons at risk or under threat.<sup>121</sup>

Regarding regional measures, most anti-trafficking initiatives have been developed within the framework of the RCM's Liaison Officers Network to Combat Migrant Smuggling and Trafficking (RCM Trafficking Network), composed of coordinators and technical secretaries of Central American countries' national committees.<sup>122</sup> During every RCGM and RCM meeting, member states report on actions to combat people trafficking and migrant smuggling and a regional report is issued,<sup>123</sup> providing statistics on the identification and assistance of victims. Unfortunately these reports are not public and their impact remains unknown outside of the RCM Trafficking Network.

The RCM Trafficking Network has produced documents and guidelines such as the 2007 'Regional guidelines for special protection in cases of repatriation of child victims of trafficking' and a comparative 'Matrix of legislation against trafficking in persons and migrant smuggling in member states of RCM'.<sup>124</sup> Currently, a communication strategy for trafficking prevention has been launched in five countries and the Regional Network

119 Save the Children, 'Violencia y trata de personas en Centroamérica', p. 16.

120 Costa Rica, 'Ley contra la trata de personas', Arts. 45–7; Honduras, 'Ley contra la trata de personas', Art. 38; Panama, 'Ley contra la trata de personas', Arts. 33 and 34; Honduras, 'Ley contra la trata de personas', Art. 40.

121 Nicaragua, 'Reglamento de la ley de prevención, investigación y persecución del crimen organizado y de la administración de los bienes incautados, decomisados y abandonados', Decreto no. 70, 2010, La Gaceta no. 223, Nov. 2010, Art. 46.

122 Save the Children, 'Violencia y trata de personas en Centroamérica', p. 100.

123 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 28.

124 Ibid.

is working on a project to produce indicators of compliance with Palermo Protocol obligations.<sup>125</sup>

Most RCM guidelines on the subject formally recognise the need to adhere to international protection and the principle of *non-refoulement*. These tenets are supported by both IOM and UNHCR and have been discussed in RCM working groups and conferences. However, the general perception that asylum systems could be abused by ‘fake’ asylum-seekers and, to a certain extent, the treatment of refugee protection in isolation from the safeguarding of other vulnerable groups has led to the absence of the issue of refugee protection in important regional trafficking fora. The Regional Trafficking Coalition, in which IOM plays a predominant role, but does not invite UNHCR to participate, is a case in point.

It is clear that regional and national actions have been directed towards the identification, protection and assistance of trafficking victims in Central America. Legislation has in some cases exceeded standards set by international instruments such as the Palermo Protocol. However, since most reports provided by RCM Trafficking Network member states are not made public, it is difficult to assess the impact of these measures in terms of cases identified. Some victims receive other types of protection (such as the recognition of refugee status or special protection for unaccompanied and separated children), while anti-trafficking mechanisms have also been referred to other protection bodies or departments.

Furthermore, the lack of integration of national refugee protection authorities and UNHCR within regional anti-trafficking mechanisms (such as the Regional Trafficking Coalition) seems to indicate that the possibility of a victim being granted refugee status is merely a formal recognition. As the region’s governments face increasing challenges in protecting their nationals from violence – increasingly causing displacement within and outside Central America – the absence of a strong coordination between the different bodies dealing with the protection of trafficking victims and refugees seems to increase their vulnerability in the region exponentially.

### *Refugee protection*

For much of the 20th century, the protection of asylum-seekers and refugees in Latin America was advanced through the regional political and diplomatic asylum frameworks.<sup>126</sup> Central American countries ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Refugee

125 E. Isaba presentation, Regional Coalition against Trafficking in Persons, July 2012.

126 These are the Convention on Asylum (Havana, 1928), the Convention on Political Asylum (Montevideo, 1933), the Treaty on Asylum and Political Refuge (Montevideo, 1939), the Treaty on International Penal Law (Montevideo, 1940), the Convention on Territorial Asylum and Convention on Diplomatic Asylum (Caracas, 1954) and Inter-American Convention on Extradition (Caracas, 1981). See also Cantor and Trimiño Mora, ‘A simple solution to war refugees? The Latin American expanded definition and its relationship to IHL’.

Convention) at different times, with Panama and Costa Rica doing so in 1978, Guatemala and El Salvador in 1983, Belize in 1990 and Honduras in 1992.<sup>127</sup>

Providing international protection to the displaced in the region became a bigger challenge with the South American crisis of the 1970s and the Central American conflicts of the late 1970s and 1980s, which were characterised by massive refugee flows.<sup>128</sup> Refugee protection was included in all peace negotiations in the region, for example Acta de Paz del Grupo Contadora up to Esquipulas II.<sup>129</sup> Yet applying the 1951 Convention refugee definition of the term persecution (and its discriminatory nature) to Central Americans fleeing from the indiscriminate effects of conflict and violence proved difficult for legal experts and practitioners as well as for regional governments.<sup>130</sup>

After first proposing it in the 1981 Tlatelolco Colloquium, the region adopted a broader refugee definition, which was also inspired by that of the African Refugee Convention and informed by the Inter-American Commission of Human Rights. The broader definition was part of the 1984 Cartagena Declaration on Refugees,<sup>131</sup> which had a broader objective of setting a regional framework for refugee protection and assistance and was a first step in the long process of institutionalising refugee protection in Latin America.<sup>132</sup> The expanded version protects

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.<sup>133</sup>

The current application and interpretation of the broader refugee definition has been a matter of many studies and discussions in the region and elsewhere.<sup>134</sup> Currently 14 Latin American states have variations of it incorporated into their legislation.<sup>135</sup>

127 These dates correspond to the 1967 Protocol's dates of ratification.

128 UNHCR, 'La situación de los refugiados en América Latina', p. 21.

129 UNHCR, 'Declaración de Cartagena, 10 años después', p. 45.

130 Franco 'Diez años de la Declaración de Cartagena Sobre Refugiados en América Latina'.

131 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 Nov. 1984, [https://www.oas.org/dil/1984\\_Cartagena\\_Declaration\\_on\\_Refugees.pdf](https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf) (accessed 12 Jan. 2015).

132 UNHCR, 'La situación de los refugiados en América Latina'; and Franco and Santistevan de Noriega, 'La contribución del proceso de Cartagena al desarrollo del derecho internacional de refugiados en América Latina'.

133 Cartagena Declaration on Refugees, conclusion no. 3, [https://www.oas.org/dil/1984\\_Cartagena\\_Declaration\\_on\\_Refugees.pdf](https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf) (accessed 12 Jan. 2015).

134 For further analysis on the interpretation of Cartagena's broader refugee definition see Cantor and Trimiño Mora, 'A simple solution to war refugees?'

135 *Ibid.*, p. 9.

States in the region regulate asylum issues such as RSD and refugee rights differently through national legislation. In Central America, the following countries have specific refugee protection legislation: Costa Rica,<sup>136</sup> El Salvador,<sup>137</sup> Guatemala<sup>138</sup> and Nicaragua.<sup>139</sup>

Costa Rica's General Migration Law specifically includes a temporary leave to remain for trafficking victims with international protection needs.<sup>140</sup> Its refugee protection bylaw also mandates a differentiated approach when analysing asylum cases, making it compulsory to take into account the considerations and individual needs of stateless persons, unaccompanied and separated children, trafficking victims and those who have suffered gender-based violence.<sup>141</sup> This bylaw also specifically describes referral mechanisms that should be implemented between the refugee and trafficking departments<sup>142</sup> and defines departmental responsibilities towards the protection of trafficking victims which are also part of RSD procedures.<sup>143</sup>

It is important to note that other countries have included provisions for respecting the principle of *non-refoulement* in their trafficking legislation, as outlined in the previous section. However, coordination between asylum and anti-trafficking authorities only seems to reach the stage of formally recognising trafficking victims' international protection needs in both anti-trafficking and asylum legislation, while there is an evident need to strengthen the operational coordination of the bodies or departments mandated with the protection of refugees and trafficking victims.

#### *Unaccompanied and separated children*<sup>144</sup>

The protection of unaccompanied and separated children has been developed increasingly in Central America, both nationally and regionally. In 2007,

136 Costa Rica, 'Reglamento de personas refugiadas', Decreto no. 36831-G, 2011.

137 El Salvador, 'Ley para la determinación de la condición de personas refugiadas', Decreto no. 918, 2002, and 'Reglamento de la Ley para la determinación de la condición de personas refugiadas', Decreto ejecutivo no. 79, 2005.

138 Guatemala, 'Reglamento para la protección y determinación del estatuto de refugiado en el territorio del Estado de Guatemala', Acuerdo Gubernativo no. 383, 2001.

139 Nicaragua, 'Ley de protección a refugiados', Ley no. 655, 2008.

140 Costa Rica, 'Ley general de migración y extranjería', Art. 107.

141 Costa Rica, 'Reglamento de personas refugiadas', Decreto no. 36831-G, 2011, Art. 10.

142 Ibid., Art. 19.

143 Ibid., Art. 123.

144 Separated children are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. Unaccompanied children (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. See UNICEF, 'Inter-agency guiding principles on unaccompanied and separated children', p. 13.

the RCM developed 'Regional guidelines for special protection in cases of repatriation of child victims of trafficking' and, in 2009, 'Regional guidelines for the assistance of unaccompanied migrant children in cases of repatriation'.

The 2007 guidelines expressly focus on respecting the principle of *non-refoulement* and establish the non-return of child trafficking victims in those cases where the 'state providing protection has reasonable grounds to conclude that the repatriation carries a serious risk for the victim or his or her family'. It also offers guidance to states on offering legal and/or temporary protection or permanent humanitarian alternatives to repatriation, including ensuring access to asylum procedures.<sup>145</sup> The 2009 guidelines expressly include a safeguard for returns not to be implemented when children have international protection needs.<sup>146</sup>

In 2010, the Mexican government offered to develop capacity in Central American states, replicating their Child Protection Officers programme<sup>147</sup> (specially trained migration officers who manage cases of unaccompanied and separated children under a strong protection mandate).<sup>148</sup> The programme continued with a second phase of trainer training in 2012 and is at various stages of implementation in the Central American countries, with at least 419 migration officers trained in Guatemala, El Salvador, Honduras, Nicaragua and Dominican Republic.<sup>149</sup> The UNHCR and IOM participated in this process and the different protection needs of very young refugees and child trafficking victims were included in the modules, along with training on states' obligations to safeguard them.<sup>150</sup>

An RCM Workshop on Migrant and Refugee Children in 2012 focused on strengthening child protection systems in the region, including the identification and documentation of unaccompanied and separated children; analysis of the child's situation in the country of origin and any risks upon return for trafficking victims or other cases; mechanisms of protection

145 RCM, 'Regional guidelines for special protection in cases of repatriation of child victims of trafficking', Art. 14.

146 RCM, 'Regional guidelines for the assistance of unaccompanied migrant children in cases of repatriation'.

147 For an analysis of this programme and the return of children from Mexico to Central America see: Ceriani Cernadas, *Niñez Detenida*.

148 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 36.

149 Instituto Nacional de Migración: [www.inm.gob.mx/index.php/page/opis\\_capacitacion](http://www.inm.gob.mx/index.php/page/opis_capacitacion) (accessed 12 Jan. 2015). For more information on the model see also [www.inm.gob.mx/index.php/page/objetivo\\_general\\_opis](http://www.inm.gob.mx/index.php/page/objetivo_general_opis) (accessed 12 Jan. 2015).

150 RCM, 'Meeting of the Regional Consultation Group on Migration of The Regional Conference on Migration', Panama, Dec. 2012, conclusion 15. See also [www.inm.gob.mx/index.php/page/opis\\_capacitacion](http://www.inm.gob.mx/index.php/page/opis_capacitacion) (accessed 12 Jan. 2015).

for children with special needs; and durable solutions such as return, local integration or reintegration.<sup>151</sup>

One of the initiatives the workshop promoted was the appointment of an individual tutor or representative for unaccompanied and separated children, following Argentina's model responding to the protection needs of extra-continental unaccompanied and separated children, mainly from Africa. The additional protection needs of the majority of these children presented an increased challenge to migration management procedures.

The Argentinian system of representation for unaccompanied and separated refugee children was presented as a model of good practice and cooperation, and some countries are considering replicating it.<sup>152</sup> Most legislation in the Central American region mandates the childhood protection institution to exercise this representation<sup>153</sup> at an institutional level, but not on a personal basis. The Argentinian model includes the appointment of a tutor responsible for representing children in all administrative proceedings including RSD procedures. It also comprises a team of social workers funded by the City Council who maintain regular communication with the child, periodically checking on their accommodation and interacting with those who manage their living arrangements. They also orient the child in how to integrate into the country and accompany them when financial and administrative procedures affecting them are taking place.<sup>154</sup>

Other initiatives considered as good practice in the region are: the joint protocols of Costa Rican migration and child protection authorities on assistance and safeguarding of unaccompanied and separated children, which focus on determining the child's best interests as a collaborative process that involves different authorities; the *Oficiales de Protección a la Infancia* (OPIs), initiated in Mexico, together with the creation of an interinstitutional round table to define a best interest determination procedure (BID) for cases of unaccompanied and separated children in the country (currently being developed); and the Salvadorian programmes on reintegrating returned unaccompanied and separated children from Mexico and the USA (they include social work, education and vocational training for returned children).<sup>155</sup>

151 RCM, 'Workshop on Migrant and Refugee Boys, Girls, and Adolescents, Report', p. 2.

152 *Ibid.*, p. 4.

153 Panama, 'Ley contra la trata de personas', Art. 51.

154 Ministerio Público de la Defensa, Programa de Tutela, Representación Legal y Acompañamiento de Niños, Niñas y Adolescentes Refugiados y Solicitantes de Refugio: <http://200.5.235.239/defenpo3/def3/direcciones/comisiones/refugio.htm> (accessed 15 Jan. 2015).

155 Central American states include the principle of best interest of the child in their legislation but do not have a procedure for its determination, RCM, 'Workshop on Migrant and Refugee Boys, Girls, and Adolescents', p. 2.

The majority of recent trafficking laws in the region have included provisions on the special needs of trafficked children, especially unaccompanied and separated children, on issues such as considering the best interest of the child when analysing repatriation, the rights of the child, the presumption of childhood when in doubt,<sup>156</sup> and the child's legal representation.<sup>157</sup> Due to their age and immaturity children run a higher risk of ignoring the dangers upon return exhibited by trafficking victims with international protection needs, especially when a family member has taken part in the trafficking situation or when a smuggling situation facilitated by the child's parents develops into a trafficking one. These considerations should be especially addressed when dealing with unaccompanied and separated children who have been trafficked. Considering that Central America detected more child trafficking victims than adult victims in the period 2007–10,<sup>158</sup> it is crucial for asylum authorities and organisations to get involved in national and regional developments for the protection of unaccompanied and separated children and trafficking victims within mixed migration flows.

#### *Extra-continental migrants and refugees*

Extra-continental migration has received attention within the RCM for years now, mainly within broader discussions on irregular migration. In 2004, the 'General framework for execution of the multilateral cooperation programme for the assisted return of extra-regional migrants stranded within member states of RCM' was approved.<sup>159</sup> The framework defined a mechanism through which member states can work with the IOM to facilitate the return of extra-continental migrants who have irregular status or who have been detained in international waters – in accordance with the procedures set forth in Article 8 of the Protocol against the Smuggling of Migrants by Land, Air, and Sea. The framework specifically excludes those individuals with international protection needs in accordance with the principle of *non-refoulement*.<sup>160</sup> It also includes a mandate to evaluate the special needs of vulnerable persons, such as victims of trafficking, and assist them until they make their return.<sup>161</sup>

156 Costa Rica, 'Ley contra la trata de personas', Art. 42 (b); Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 2(d).

157 Honduras, 'Ley contra la trata de personas', Arts. 26 and 31; Costa Rica, 'Ley contra la trata de personas', Art. 42; Guatemala, 'Ley contra la violencia sexual, explotación y trata de personas', Art. 2(d); Panama, 'Ley contra la trata de personas', Arts. 35, 53.

158 *Ibid.*, note 48.

159 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 24.

160 RCM, 'General framework for execution of the multilateral cooperation program for the assisted return of extra-regional migrants stranded within member countries of the Regional Conference on Migration (RCM), or Puebla Process, 2004', para. 1.3.

161 *Ibid.*, para. 3.2.

The recent increase in these flows resulted in more attention devoted to the issue by regional bodies and multilaterals, such as the Regional Conference on Refugee Protection and International Migration in the Americas of 2009 and the Workshop on Extra-continental Migration in the Americas held on April 2010 by the Organization of American States (OAS). Both of these aimed at coordinating migration management of extra-continental migrants through a protection lens, given that the special circumstances of their travel and the characteristics of these groups in the region increased their vulnerability.

In 2010, the RCM also addressed Central American Commission of Immigration Directors (OCAM) member states' concerns about the increase in extra-regional migration flows and associated challenges. It asked the UNHCR and IOM to develop a proposal for building capacity that would address these developments while adopting the 2009 Conference proposals.<sup>162</sup> In response, both agencies developed the three-pronged project explained above and which concluded in the proposal made in the 'Regional profiling and referral guidelines'.

In December 2011, the RCM created the Ad Hoc Working Group, coordinated by El Salvador and Mexico, to discuss, analyse and define objectives on the topic of extra-continental migration flows in the region.<sup>163</sup> The working group has met with the Troika of the South American Conference on Migration (SACM) and representatives of countries of origin<sup>164</sup> and is currently analysing a proposal for a 'Mechanism for the return of extra-regional migrants that having legally entered the region, were intercepted in irregular status by a country different than the one of entry', submitted by OCAM.<sup>165</sup> It remains to be seen how this mechanism will differ from the 2006 General Framework.

At the national level, the challenges posed by the extra-continental arrivals were a catalyst for national initiatives on mixed migration management, as extra-continental flows exemplified the challenges posed by profiling and referral within large groups, flooded detention centres and stretched national capacities. In Costa Rica, migration authorities formed a profiling team that included migration officers, UNHCR and IOM staff. Joint profiling interviews were carried out and referrals issued to corresponding authorities and departments.

162 RCM, 'Meeting of the Regional Consultation Group on Migration of the Regional Conference on Migration', Tapachula, Mexico, May 2010, decision 4.

163 RCM, 'Meeting of the Regional Consultation Group on Migration of the Regional Conference on Migration', La Romana, 2011, decision 4.

164 RCM, 'Summary of the "Dialogue meeting between member states of RCM and some countries of origin of irregular extra-continental migration flows"', Sep. 2012.

165 RCM, 'Meeting of the Regional Consultation Group on Migration (RCGM) of the Regional Conference on Migration (RCM), Conclusions', San Jose, Costa Rica, 25–26 June, 2013.

This initiative generated a first detection instrument or questionnaire that was later adapted by migration authorities and used by a newly formed Equipo de Situaciones Migratorias Especiales (Special Migratory Situations Team – ESME). This team has since instituted this profiling questionnaire at all borders to be given to all persons arriving irregularly. When a specific protection need is identified, migration officers must refer the person to the ESME, which will conduct a deeper profiling exercise and refer the individual to the corresponding authorities for safeguarding and assistance. The Costa Rican experience, along with the joint IOM-UNHCR regional project on profiling and referral, was fundamental in putting together the ‘Regional profiling and referral guidelines’, approved by the RCM on 26–27 June 2013.

Although these groups of extra-continental persons represent only a small percentage of migrants in the region, their characteristics and the challenges they presented to authorities were the best example of the importance of identifying the specific needs of individuals within mixed movements. The developments they catalysed at national and regional levels will surely benefit vulnerable persons travelling in both intra-regional and extra-regional flows.

## Conclusion

Central America presents complex population movements and a fragile security situation. The identification and protection of vulnerable groups within mixed migration flows in the region is of utmost importance due to governments’ inability to safeguard their inhabitants from the violence in the region, which continues to cause displacement and affect those in transit.

Although the protection of vulnerable persons is not new to the region and important developments have been made in safeguarding victims of trafficking, refugees and migrant children, the recent nature of specific trafficking legislation and the treatment of these issues within the context of mixed and extra-continental migration flows in the RCM makes this a time of change and new initiatives.

However it remains to be seen how legislation, policies and regional protocols and guidelines will be implemented and whether they will actually benefit vulnerable persons within regional migration movements, especially those with more than one protection need. It is crucial for these developments on safeguarding vulnerable groups to be coordinated to respond to the two manifestations or meanings of mixed migration flows; as the implementation of most initiatives seems to be limited to the first meaning (groups of people travelling together, but with different needs and profiles) and not to the second one (the possibility of an individual having more than one ‘profile’ or protection need).

Better coordination is needed between government authorities, NGOs and multilaterals dealing with safeguarding different groups (for example, refugee or asylum departments, trafficking coalitions or commissions, child protection authorities), not only in strengthening the mechanisms to identify and protect the group under their mandate, but to respond together and effectively when an individual belongs to more than one of these groups.

As it stands today, the treatment of mixed migration in Central America is still greatly focused on separating different profiles and referring them to the relevant departments. Cases of people presenting more than one protection need (for example, trafficking victims who are also refugees) thus receive much less attention. This increases these persons' vulnerability in many ways, such as by being directed towards a durable solution that is contrary to their rights and international law principles (for example, the return of a trafficking victim protected by the principle of *non-refoulement*, or the return of an unaccompanied and/or separated child to his/her country of origin when it is contrary to their best interests).

Although the protection of trafficking victims has received increasing attention in the region and there is also a strong awareness of the violent trends and the threats migrants are exposed to,<sup>166</sup> return continues to be regarded as the main solution for such victims in Central American countries.<sup>167</sup> In a region that is facing difficulties in providing protection for its nationals due to the increasing levels of violence, organised crime and incipient victim and witness protection systems, it is of the utmost importance that trafficking victims (including those detected within other vulnerable groups, such as unaccompanied and separated children and extra-continental migrants) are guaranteed all their rights, including the right to seek asylum.<sup>168</sup>

Regional statistics on the identification and protection of trafficking victims, as well as data on the implementation of regional guidelines and mechanisms developed within the Regional Trafficking Coalition should be made public, and include an analysis of how the different protection needs of individuals were considered. The same applies for statistics on assisted unaccompanied and separated children, asylum-seekers and refugees. If the treatment of vulnerable groups is being framed within mixed movements in the region, data on its response and statistics should also reflect this fluid nature.

Another common challenge Central American governments face is the lack of resources for the effective implementation of national policies and protocols at all levels, both human and financial resources. For the recent

166 CIDEHUM, 'Diagnóstico'.

167 UNHCR, 'Refugee protection and international migration in the Americas', p. 35.

168 For more on the right of asylum in the Americas see Cantor and Barichello, 'Protection of asylum-seekers under the Inter-American human rights system'.

national measures on the identification and protection of vulnerable groups to trickle down from central authorities to remote migration offices, capacity development, monitoring and evaluation are essential. Projects piloted by multilaterals such as the IOM and UNHCR should include monitoring and evaluation and build on these results to ensure adequate implementation of guidelines and programmes. In the case of the protection of trafficking victims and unaccompanied and separated children these actions need to surpass migration authorities and include other institutions, such as health and education authorities.

## **Annex I: Regional fora for cooperation on migration issues**

1. The OCAM was one of the first regional fora to focus on migration issues; within the Sistema de la Integración Centroamericano (Central American Integration System – SICA) in 1990. It has mostly focused on actions for the collection and processing of migration statistics, training of migration officials, modernisation of migration management, standardisation of migration procedures, the return of migrants and combating smuggling and trafficking.<sup>169</sup>
2. In 1996 the RCM (also known as the Puebla Process) was established as a multilateral mechanism for coordinating policies and actions on migration in 11 member states including all Central American countries plus Canada, the Dominican Republic, Mexico and the USA. It aims to exchange information, experiences and best practice, and promote regional cooperation on migration issues.<sup>170</sup> Comprising eight international organisations with observer status<sup>171</sup> and the RNCOM, composed of various NGOs, it has participated actively in RCM since 1998.<sup>172</sup>
3. The Meeting of Vice-Ministers is the RCM's executive decision-making body.<sup>173</sup> The RCM was created to implement and monitor political agreements and represents the technical and operational level of the

169 See [http://costarica.iom.int/es/oim\\_y\\_ocam](http://costarica.iom.int/es/oim_y_ocam) (accessed 15 Jan. 2015).

170 RCM, 'Regional Conference on Migration (RCM) or Puebla Process, 15 years', p. 4.

171 From 1996 until the present the IOM has comprised the Economic Commission for Latin America and the Caribbean/Latin American and Caribbean Demographic Centre (since 1996), the UNHCR (since 1997), the Inter-American Commission on Human Rights (since 2000), the Central American Integration System (since 2003), the United Nations Special Rapporteur on the Human Rights of Migrants (since 2003), the United Nations Population Fund (since 2006) and the Ibero-American General Secretariat (since 2007). See *ibid.*, p. 6.

172 *Ibid.*

173 *Ibid.*, pp. 14–17. See also [www.rcmvs.org/descripcion.htm](http://www.rcmvs.org/descripcion.htm) (accessed 12 Jan. 2015).

- Conference. It updates the RCM's Plan of Action, which includes the exchange of information and activities on three main themes: management and migration policies, human rights, and migration and development. It also reviews and approves the work plans of the RCM Trafficking Network and the Liaison Officers Network for Consular Protection.<sup>174</sup>
4. The OAS adopted the Inter-American Programme for the Promotion of the Human Rights of Migrants, Including Migrant Workers and Their Families with the aim of mainstreaming the issue of migrants' human rights.<sup>175</sup> The Migration and Development Program (MIDE) was launched in 2008 as the technical support arm for the Special Committee on Migration Issues (CEAM).<sup>176</sup>
  5. The Inter-American Commission on Human Rights (IACoHR) created the Rapporteurship on Migrant Workers and Members of their Families in 1996 in response to the multiple challenges of human mobility in the region. On March 2011, it broadened its mandate to include the rights of migrants and their families, asylum-seekers, refugees, complementary protection seekers and beneficiaries, stateless persons, trafficking victims, internally displaced persons and other vulnerable groups. The Rapporteurship currently identifies its role as the promotion and protection of human rights within the context of mixed migration flows.<sup>177</sup> The IACoHR also has important jurisprudence on migration and international protection issues.<sup>178</sup>

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- 177 IAHR, 'Rapporteurship on the rights of migrants'.
- 178 For details on jurisprudence see Unidad Legal Regional de la Oficina para América del ACNUR, 'El Sistema Interamericano de Derechos Humanos y el desplazamiento forzoso', pp. 43–64.

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