

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



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1. INTRODUCTION

This report was prepared by a research team from the Latin American School of Social Sciences (Facultad Latinoamericana de Ciencias Sociales – FLACSO) upon request of the Regional Office for Central America and Mexico of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), with the purpose of gaining a better understanding of extracontinental migration flows existing in Central America and Mexico and originating in Asia and Africa. The objective of the report is to provide information about the phenomenon and promote the development of public policy, strategies, and programs to provide protection and assistance to extracontinental migrants and refugees. The report was developed in response to a request made by governments within the framework of the Regional Conference on Migration (RCM) and reiterated in the recommendations of the Regional Conference on Refugee Protection and International Migration in the Americas, held in November 2009¹. The Conference, organized jointly by UNHCR, IOM, and the Organization of American States (OAS) and sponsored by the Government of Costa Rica, took the UNHCR 10-Point Plan of Action for Refugee Protection and Mixed Migration as a substantial contribution to the process of analyzing and strengthening institutional response.

Mixed extracontinental migration flows have emerged as one of the current migration trends in Central American countries² and Mexico. These types of migration flows include persons migrating for financial reasons and, to a lesser degree, refugees, asylum applicants, and other groups of persons, including identified victims of trafficking in persons and migrant smuggling coming from specific African and Asian countries. Many of the above-mentioned persons are forced to travel in an irregular manner. However, irregularity does not always appropriately define each particular situation, since many of these persons have specific needs and rights in terms of protection and assistance.

The hazards that affect extracontinental refugees and migrants originate from various factors in countries of origin, transit, and destination. The most relevant factors, according to information collected through interviews with migrants, relevant officials, and NGO staff, include the defining qualities of each individual (age, gender, cultural diversity, etc.) and other characteristics linked to routes and the means of transportation used to travel in an irregular manner, which have an impact on travel times and costs. In addition, these factors could be considered risk factors which increase the possibility of suffering abuse or accidents that threaten the physical integrity and even the lives of individuals. In this regard, the perception exists that a growing number of migrants and refugees are vulnerable, in addition, to being victims of murder, abduction, extortion, theft, violence, and deception by migrant smuggling networks and multiple other

¹ “UNHCR and IOM should undertake a joint study on the magnitude, trends, and protection considerations of extracontinental refugees and migrants”, p.16.

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=biblioteca/pdf/7701>

² The countries included in the region known as Central America are Guatemala, Belize, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama.

individuals and authorities, and could also suffer sexual abuse, in the case of women, boys, girls, and adolescents, as stated by the above-mentioned informants. Furthermore, extracontinental refugees and migrants are even more vulnerable due to their origin, skin colour, language, and customs, since they could be subject to xenophobic and racist aggression in countries of transit and destination.

The extracontinental migration flows analyzed in this document are concurrent in time and space with migration flows from other regions, such as those that originate in Central or South America. Therefore, individuals from both migration flows could use the same migration routes on their northward bound journey across the continent and, eventually, could receive physical assistance by persons collaborating with international migrant smuggling networks at a local level. This increases the level of complexity for the analysis, development, and implementation of public policy.

Authorities from several Central American countries have expressed their increasing concern for the magnitude and characteristics of this phenomenon. Their concerns are derived not only from the increase in migration flows that has been observed in recent years but also, from the difficulties of institutions to meet the protection and assistance needs of extracontinental migrants and refugees.

The relevance of mixed extracontinental migration flows has led to meetings and actions to exchange information and seek cooperation, such as the Regional Conference on Refugee Protection and International Migration in the Americas, held in San José, Costa Rica, on November 19-20, 2009, or the Workshop on “Extracontinental Migration in the Americas”, held on April 6, 2010 and sponsored by OAS, with the objective of discussing the background, magnitude, and impact of extracontinental mixed irregular migration flows, sharing experiences on actions implemented by different countries and international organizations to address these flows within and outside the region, and promoting dialogue and cooperation among Member States of OAS on this matter. The conclusions and recommendations of this meeting include the proposal of “reiterating the request by IOM and UNHCR to undertake a study on the magnitude and trends of extracontinental migration in the Americas”. Furthermore, references exist of a study that is currently being conducted in countries of the Southern Cone.

1.1. Theoretical/Methodological and Operational Considerations

It is essential to take the exploratory nature of this study into account; that is, little is known about mixed migration flows originating somewhere in Asia or Africa and transiting through different Central American countries and Mexico. What little knowledge is available is relative, incomplete, and unsystematic. This is explained through the following aspects:

- 1) Social processes in each involved country that establish differences with neighbouring countries;
- 2) Different legal traditions in different countries – even more so in Belize, since it comes from a different legal tradition;
- 3) Implementation of international contributions and instruments and inclusion of relevant standards in local legislation;

- 4) Government structures, trained staff, programmes, infrastructure, and unequal and different human resources;
- 5) Concepts, practices, and development of migration policy; given that countries are different and sovereign new social challenges for national, bi-national, and multinational action are faced;
- 6) Different capabilities of different governments to address new situations, and a different sense of time regarding public action.

Research and field work was carried out in conducting the study. Research included consulting with relevant national authorities and reviewing documents and websites from governmental institutions and international organizations; and field work included field visits and 122 interviews. 53 of the interviewed persons were migrants and the others were qualified informants in all eight countries included in the study (detailed information on the interviews is included in the Annexes). Local researchers – some of them based in the country and others based in neighbouring territories – provided support in all eight countries.

The data collected through interviews are qualitative in nature and do not pretend to provide in-depth information on the extracontinental migration flows that were analyzed. On the contrary, data only reflect that which governments have been able to systematize from mixed migration movements, which are characterized by irregular migration of groups of persons (although usually migration is regularized in the first country of entry). Therefore, in general, this information only reflects a fraction of the total universe of the above-mentioned migration flows.

It is still not possible to establish statistic trends, determine a higher or lower presence of women, estimate numbers of boys, girls, and adolescents, or carry out longitudinal analyses by nationality, age group, etc. This is because little progress has been made in terms of coverage, disaggregation, and timely systematization of collected data, or because the available data do not allow conducting this type of analysis.

The interviews with migrants were aimed at collecting socio-demographic data about them, as well as information on the migration routes used by them, migration background, transportation costs, whether they participated or not in migrant smuggling networks, their relationship with and opinions about the actions of government authorities, and reasons for migration, among other aspects. Information about these aspects is included in relevant sections of the report. Semi-structured guidelines were followed regarding the topics to be addressed during all interviews. In addition, a common questionnaire was used to interview government representatives.

<i>Tabla N1</i> <i>Relación de entrevistados, lugar de entrevista, país de residencia del entrevistado y cargo del entrevistado</i>			
Pais donde se realizó la entrevista	Número de Migrantes entrevistados	Funcionarios entrevistados	Miembros de organismos civiles o internacionales
Belice	10	3	1
Costa Rica	3	6	1
El Salvador	5	11	3
Guatemala	-	6	2
Honduras	9	8	2
México	19	3	3
Nicaragua	-	9	2
Panamá	7	7	4
Total	53	51	18

[Translated text of Table 1:

Interviewed Persons, Location, Country of Residence, and Positions of Interviewed Persons

Country where the interview was carried out

Number of interviewed migrants

Number of interviewed government officials

Civil or international organization officers

Belize

Costa Rica

El Salvador

Guatemala

Honduras

Mexico

Nicaragua

Panama

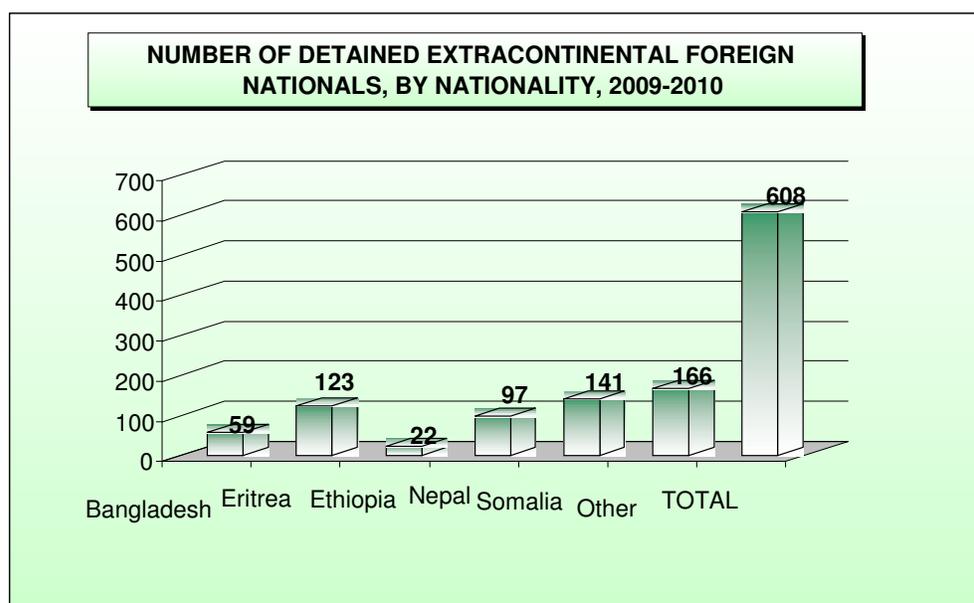
Total]

The countries of origin of interviewed migrants include the following: Bangladesh, Cameroon, Congo, China, Eritrea, Ethiopia, Ghana, India, Ivory Coast, Nepal, Nigeria, Pakistan, Sri Lanka, Taiwan, and Zimbabwe.

2. CONTEXT, CHARACTERISTICS, AND CONDITIONS OF EXTRACONTINENTAL MIGRATION FLOWS

2.1. Magnitude of the Phenomenon

In the past few years, mixed extracontinental migration flows have increased in volume and proportion in the region of Mexico and Central America. Recent official data show the diversity of countries of origin and the high numbers of African and Asian nationals travelling toward the northern part of the American continent. Graph 1 shows the number of persons that have been identified in the Central American subregion in the past two years within the framework of these flows.



This graph includes data on El Salvador, Guatemala, Honduras, Costa Rica, and Panama.

Source: OCAM, working paper. 2010.

Official records of persons coming from Africa and Asia have been kept since 2008 in all the countries. In 2008, records of persons coming from African and Asian countries began to be noteworthy, and have been recurrent in the past three years (2008, 2009, and 2010). In Guatemala, records of the presence of persons coming from Africa and Asia exist since 2005 (See Table 1, Legal Annex).

Given that Mexico is a neighbouring country of the United States which, together with Canada, is one of the two countries of destination of extracontinental migrants, various mixed extracontinental flows are arriving in Mexico first, even without having been recorded in Central American countries. In Mexico, institutional records show a presence of persons of Asian and African origin since the beginning of this decade. The tables included below and Graph 3 show the increases in these flows.

<i>Cuadro 1. Eventos de detenciones de asiáticos y africanos por el INM, según continente, 2000-2010</i>			
Continente de origen/Año	Asiáticos	Africanos	Total
2000	540	83	623
2001	736	78	814
2002	497	65	562
2003	738	100	838
2004	686	171	857
2005	1062	353	1233
2006	754	296	1050
2007	524	460	984
2008	326	658	984
2009	381	823	1204
2010	1047	1282	2329
Total	6671	4369	11064

Fuente: www.inm.gob.mx

[Translated text of Table 1:

Number of Asian and African Nationals detained by INM, by Continent, 2000-2010

Continent of Origin/Year

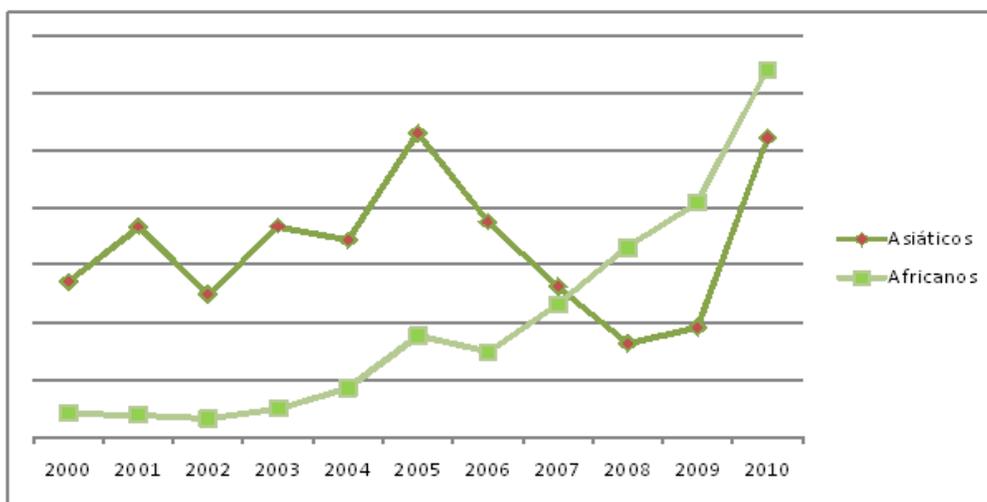
Asia

Africa

Total

Source: www.inm.gob.mx]

Gráfica 1. Eventos de detenciones de asiáticos y africanos por el INM, según continente, 2000-2010



Fuente: www.inm.gob.mx

[Translated text of Graph 1:

Graph 1. Number of Asian and African Nationals detained by INM, by Continent, 2000-2010

Asian Nationals

African Nationals

Table 1 and Graph 1 illustrate the following: 1) The presence of Asian and African nationals has systematically been recorded in the past 10 years; no data or incomplete data exist for previous years; and 2) in general, a trend toward an increase in the presence of Asian and African nationals has been observed and has grown in recent years. It should be emphasized that migrants had been arriving from Asia long before African migrants started to arrive, and the dynamics of Asian migration flows are different to those coming from Africa. In recent years, Asian flows have shown a decreasing trend, while African flows have significantly increased.

However, no detailed information is available at a regional level that could be applied to the entire geographic region in question, since the data that have been made available to the research team have been classified into very different categories. Furthermore, it is not possible to compare these data against data from Mexico. In addition, statistics only reflect the number of persons that have had any contact with authorities or institutions and that, therefore, have been recorded in a systematized manner. The records are incomplete, as mentioned above, and do not include the total number of extracontinental migrants and refugees moving through the region. If only these figures were taken into account, the magnitude of the flow could seem less significant – at least for the years 2008-2010, for which information is available – compared against the total number of persons travelling from and through the region.

Moreover, the information is not accurate since certain data may be duplicated in various categories, such as detained persons who have applied for refugee status, etc. In

addition, data could be duplicated if several countries receive and record the same person that has passed through several territories. These types of duplications reveal the unsystematic nature of information management and the absence of mechanisms to exchange information between governments of different countries.

<i>Cuadro 2. Personas africanas y asiáticas detectadas en los países de Centroamérica^a 2008-2010</i>			
	Asiáticos	Africanos	Total
Año			
2008	32	48	80
2009	193	156	349
2010	49	121	170
TOTAL	274	325	599

^a/ This table summarizes information on Asian and African nationals provided to the research team by various sources. Information on personal characteristics such as gender, age, or migration status of each person was not available in all cases.

[Translated text of Table 2:

Table 2. African and Asian nationals identified in Central American countries, 2008-2010

Year

Asians

Africans

Total

TOTAL]

2.2. Key Socio-demographic and Legal Characteristics and Particularities of Extracontinental Migration Flows

Persons arriving in the Mesoamerican region are mainly, but not exclusively, groups of men who usually travel without their families, as was identified during a visit to detention centres and through interviews with relevant authorities³. Few cases of women and unaccompanied boys, girls, and adolescents have been reported. The average age of recorded persons is within the range of 20-40 years, with higher numbers of persons aged 20-30 years; that is, persons of productive age and young persons.

³ Julio Aragón, Director of the Detention Centre of the General Directorate of Migration and Immigration of Costa Rica. Interview No. 18.

Young persons (mainly those under 30 years of age) from some African countries tend to be better prepared, have higher education, and speak a second language, even though they do not acknowledge that they speak another language when they first come into contact with authorities in transit countries, due to distrust and resistance. These persons have stated that they have studied Economics, Engineering, Computer Science, or Education and that they are unable to work as professionals in their countries of origin because of the socio-economic situation and the high levels of violence that affect some of the countries.

The information obtained through interviews with migrants does not show a high presence of women, and few cases of unaccompanied boys, girls, and adolescents have been reported; the cases that have been identified through interviews refer to women and under-age persons travelling with their families. Only one under-age person travelling with an “acquaintance” that was not a relative was mentioned in the interviews. In addition, statistics report very few cases of women, although no information disaggregated by gender is available in most information sources. Some particular situations with women were mentioned in interviews with public authorities, which will be addressed later on. In Nicaragua, for example, officials from the Ministry of Family (MIFAMILIA) reported that they had identified the arrival of citizens of Zimbabwe, a country where the rights of women and children are being seriously violated.

Migrants usually carry money with them on their travels. While relevant authorities have stated that the amounts of money are not high, these migrants have access to mechanisms to make withdrawals along the route, enabling them to have money as required to pay migrant smugglers. When being intercepted and detained by immigration authorities, some of them request permission to use automated teller machines and/or money transfer offices where they can withdraw money sent to their name by family members in the US or in their country of origin. In some cases, they have stated that they carry money with them (an average of US\$10,000) which enables them to continue travelling until they reach their country of destination, although they do not carry all the cash with them due to security reasons⁴.

Administrative records of persons detained by governments show that the majority of persons from extracontinental migration flows come from Eritrea, Somalia, Ethiopia, Nepal, Bangladesh, China, India, Iraq, and Sri Lanka, which are countries where the political, economic, and social situation becomes the driving factor for migration.

2.3. Vulnerability Factors Affecting Extracontinental Migrants and Refugees

In general, extracontinental migrants and refugees 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

⁴ Sara Cotto, Manager of the Centre for Comprehensive Assistance to Migrants of the General Directorate of Migration and Immigration, El Salvador, Interview No. 26.

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, extracontinental 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, according to statements from migrants or NGO staff that were collected for this report. One migrant was told by the person who brought him from Sri Lanka that this person would take him to the US for the amount he had paid, but was left stranded in Panama once he had paid the second half of the fee⁵.

Other vulnerability factors are associated to the actions of migrant smuggling networks that take part in the movement of extracontinental migrants and refugees. The networks smuggling extracontinental migrants and refugees usually do not make use of the humanitarian infrastructure providing assistance to migrants in Central America and Mexico. The reasons for this are unknown, but it could be assumed, based on several interviews, that they avoid them in order to avoid competing with others who are already involved in this area; to avoid unwanted encounters with other actors prowling around those places; to avoid being identified since extracontinental migrants and refugees are recognized by their language; to avoid the attention of the general public; because they have access to an infrastructure of resources and collaboration which ensures their clandestine operations; because they transit through the same migration routes by land, but under different modes, and not in trains and buses, etc.

Although it is not possible to generalize, migrant smuggling networks charge high amounts of money (US\$15.000-20.000, on average, according to information obtained through interviews) to take migrants to their country of destination. Frequently, migrant smugglers abandon migrants and refugees once they are in close proximity to points of entry into transit countries. These areas are characterized by difficult topographic conditions and the presence of persons that are a potential danger to the lives of migrants and refugees: armed groups, gangs, common criminals, smugglers, etc.

The risk and vulnerability factors threatening the security and human rights of extracontinental migrants and refugees increase once they are close to border crossings. If difficulties arise upon entering, if migrants are identified and therefore, are forced to move to another border crossing or hire another migrant smuggler, if they need to stay in territories close to the borders for longer periods of time – all these factors increase the probability that they are victimized by actors involved in common crime or transnational crime, and even police officers.⁶

Another factor which increases vulnerability are the risks associated to sexual and labour exploitation by trafficking networks, with the alleged consent of victims of trafficking who, in practice, are subject to some type of exploitation. This situation is more common in women and boys, girls, and adolescents. In this regard, women are

⁵ Stated by a migrant who was interviewed during field research.

⁶ Some interviewed persons expressed that, on average, they had given different persons involved in their journey \$35-\$40 per day to cover transportation and accommodation costs, as well as fees for passing through border checkpoints. The recipients of the money included police officers, in some cases.

subject to specific vulnerable situations since they are exposed to sexual and economic blackmail by the persons who transfer them along their route.

Undoubtedly, the limited access of extracontinental migrants and refugees to information about their rights and possible migration solutions from the moment when they are intercepted by authorities affects their understanding of the processes that could benefit them, either in integrating into the country of transit, continuing to travel toward their intended country of destination, or considering the possibility of returning.

Finally, difficulties to obtain legal assistance are an additional factor that increases the vulnerability of extracontinental migrants and refugees, together with the limited consular representation of their countries of origin; in fact, one of the primary problems facing all the countries in the region regarding this type of migration is the fact that migrants and refugees are coming from countries with no diplomatic or consular representation in the region and, therefore, the capacity to communicate between governments or institutions is nearly inexistent.

2.4. Causes and Factors Driving Extracontinental Migration Flows

The main causes of out-migration from Africa and Asia to different regions around the world include poverty, inequalities and human rights violations in countries of origin, precarious living conditions, armed conflict – in some countries of origin as well as traditional transit countries – and various types of persecution, among others. Furthermore, an increase in restrictive immigration policies has been observed in Europe, aimed at stemming the flow of irregular migration through strengthening border controls in transit and destination countries. The combination of reasons driving migration and the stricter border control actions in traditional receiving and transit countries has led to the search for new countries of destination and migration routes.

Efforts to identify the motives driving extracontinental migrants and refugees that travel through Central America and Mexico necessarily involve gaining a better understanding of current related events in other countries, with the aim of understanding migration processes and the actors involved in the last leg of the transcontinental journey; that is, understanding the entire migration process from beginning to end.

2.4.1 Economic Factors

The average age of the persons involved in these types of migration flows is 20-40 years, that is, persons of productive age. However, information based on records as well as persons identified in detention centres shows that most of them are 20-30 years of age and that the number of migrants and refugees decreases as the age increases.

When asked why they travelled to this continent and not to Europe, some extracontinental migrants and refugees stated the following: “visa restrictions exist for some groups in some European countries”, “opportunities are more limited”, “we have family members that will help us find a job”, etc.

2.4.2 Individual Factors

a) Family Reunification

In some cases, family members await migrants and refugees in countries of destination and even participate in organizing the journey, as stated by some interviewed migrants. In addition, interviewees expressed that their relatives had travelled before them, had settled in the country of destination, and had supported them before and while they were planning the entire journey, providing information about routes and paths, higher- or lower-risk locations, contact persons and institutions for migrants during their journey, guidance on potential jobs or activities that migrants could engage in once they had arrived at their final destination, etc.

b) Human Rights Violations

Out-migration occurs as a result of violations of the human rights of individuals and members of their families. Freedom of religion, political orientation, institutional abuses, as well as socio-political conflicts that occur in some regions in Africa and Asia limit the exercise of the rights of individuals, driving them to leave their countries of origin. Such situations have been recorded in reports from human rights organizations in the region, such as the Office of the Human Rights Ombudsman of the Republic of Panama.

2.4.3 Political and Religious Factors

a) Persecution due to Political Reasons and Ethnic Conflict

Situations of this type specifically occur in countries characterized by political instability and internal armed conflict, including inter-ethnic conflict, as in Somalia and Eritrea.

Furthermore, some persons stated that they had been persecuted due to the activities they carried out in their countries of origin. This was the case for a group of migrants from Bangladesh who were interviewed in Costa Rica and expressed that they were political leaders of the opposing party and that they had received threats to their lives by the official party in their country. This situation had forced them to leave their country of origin, in an attempt to travel to another region where it would be difficult to identify them and where they could access systems that ensured protection of their physical integrity and other basic rights.

In some countries with mandatory military service, this becomes a reason to leave the country, especially for young persons who believe that their future will be jeopardized in this manner.

b) Persecution for Religious Reasons

Several interviewed migrants stated that one of the primary causes for leaving their countries of origin is persecution for religious reasons. The decision of practicing a religion that is different to the “official” religion is sufficient motive for persecuting some persons, thus limiting their right to employment and financial income.

2.5. The Region as an Area which Favours Extracontinental Migration Flows

The primary motivation for extracontinental migration flows to transit through Mesoamerica is the geographic location of this region, which establishes it as a bridge toward the final destination of migrants and refugees (USA and Canada).⁷

Migration dynamics within and outside the region favour the transit of persons and networks that make up these migration flows. Specifically, Mexico and the northern part of Central America – together with other regions in Central America – have become a threshold in the South-North movement of irregular migration flows.⁸

The geographic, administrative, social, institutional, and legal factors that turn the region into a transit area for extracontinental migration flows are described below.

2.5.1 Geographic Factors

a) Geographic Location of the Central American Region

The geographic location of Central American countries facilitates the movement of migrants from the region or from countries outside the region to Canada and the United States. This is the main characteristic that explains why the region has been established as a strategic point of entry and a threshold to countries of destination. Migrants need to transit through the region to be able to reach their final destination, and the participation of migrant smuggling and transporting networks is essential in enabling migrants to achieve their goal.

On the other hand, geographic aspects such as the existence of ports along the Caribbean coast in countries such as Costa Rica, Honduras, and Nicaragua as well as the extensive communication between these countries and the Caribbean islands favour the transit of the migration flows in question.

b) Area of the Territory

The limited size of the Central American territory facilitates the ongoing movement of migrants on their journey toward their countries of destination. While many borders exist between national territories, their porosity does not pose a major obstacle to migration flows; national territories are characterized by varying topography, which makes it difficult to control the flow of groups of migrants.

⁷ *“The region is accessible for foreign nationals travelling in an irregular manner. Not all the borders are covered completely, many blind spots exist, and this facilitates the movement [of irregular migrants] through the region”.* (Carlos Amílcar Sánchez Colindres. Head of the Department of International Migration, General Directorate of Migration and Immigration, Honduras, Interview No. 49)

⁸ *“These are networks that are not autonomous; that is, a network working in the area of Tijuana probably has networks in the southern part of Mexico, and those networks probably have networks and connections with Guatemala and El Salvador. So I would say that this is a transnational phenomenon which affects the entire American continent”* (Miguel Huezo, UNDP, El Salvador, Interview No. 34)

In addition, the fact that it is possible to traverse the region by land – practically from Panama to Mexico – through a network of roads and the Pan-American highway connecting the different countries facilitates the movement of extracontinental migrants and refugees through the region.

2.5.2 Network Operations

The existence of different support networks or migrant smuggling networks helps determine the routes, channels, and mechanisms through which extracontinental migrants plan to travel through the region with the aim of reaching their countries of destination.

a) Support Networks

Networks of this type can be identified as autonomous networks providing support. It can be said that these networks are less useful to extracontinental migrants than to other migration flows.

However, extracontinental migrants have expressed a complete lack of knowledge about operations of humanitarian organizations (NGOs, groups providing aid, representatives from churches or shelters) that provide assistance to continental migration flows, for example, in some countries.

b) Migrant Smuggling Networks

As a result of the operations of migrant smuggling networks, routes have been established in areas close to entry points to different countries – either by land, through uncontrolled “blind” border crossings, or by sea, through routes that are also being used for illegal business such as drug trafficking in the region.

Furthermore, interviewed migrants and refugees mentioned the absence of groups such as gangs in some countries as one of the reasons for using these countries as transit countries on their journey toward their final destination. The countries in question include Nicaragua, Costa Rica, and Panama.

The interviews with migrants showed that some of the migrants had access to contact persons in transit countries (persons close to their families or citizens of the same country of origin as the migrants themselves) who provided financial support and information about the routes as well as assistance relating to the logistical aspects of travelling. It is possible that some of the networks that were mentioned are migrant smuggling networks, although the interviewed migrants did not mention it openly.

2.5.3 Institutional Factors

The above-mentioned border porosity, together with insufficient immigration control actions, facilitate the movement and entry of migrants and refugees.

In general, the region is characterized by deficient infrastructure at border checkpoints and lack of control and monitoring of the performance of officers working at border checkpoints between the countries in the region. This facilitates the movement of persons that are in transit between countries.

In addition, the migration legislation presents legal difficulties, in some cases, since protection procedures other than procedures to grant refugee status have not been established. Therefore, persons who do not request refugee status remain “stranded” in a kind of legal limbo, since they can neither be deported nor stay in the country in a regular manner.

Another significant factor is the awareness of migrants and refugees of the lack of financial resources and lack of personnel to implement repatriation processes.

2.6. Routes, Conditions, and Variations

In regard to migration routes, the first aspect that should be highlighted is that migrants and refugees usually do not provide specific information about the routes they have used since the beginning of their journey. The reasons for this reluctance to provide relevant information may include security reasons, suspicion and distrust of immigration authorities, or even threats from migrant smuggling networks.

The journey of extracontinental migrants and refugees takes approximately six months from the moment when they leave their countries of origin. As a result of factors such as climatic conditions, costs, border controls, etc. no consolidated, fixed routes exist but rather, multiple migration platforms and intermediate locations, as described below:

1. **Exit Platforms:** The countries of origin of migrants. For the cases being addressed in this study, different Asian and African countries are the exit platforms.
2. **Entry Platforms:** Areas where groups of migrants arrive, find shelter, regroup, and leave. Two types of platforms exist: maritime, including islands such as Cuba; Corn Island and Little Corn Island in Nicaragua; and San Andrés Island in Colombia; and air platforms – airports as ports of entry – which include Argentina, Brazil, Venezuela, Ecuador, Panama, and Nicaragua.
3. **Places of Transit:** Transit locations through which migrants pass but where they do not stay or stay only for a short period of time. For extracontinental migrants and refugees, all of Central America and Mexico are transit countries. This study exclusively addresses different aspects and processes that occur in the above-mentioned transit countries.
4. **Points of Arrival:** The intended final destination of migrants; in this case, the United States and Canada.

3. ASSISTANCE AND PROTECTION NEEDS OF EXTRACONTINENTAL MIGRANTS AND REFUGEES

Extracontinental migrants and refugees often have the same protection needs as persons from other types of mixed migration flows in the region of Mexico and Central America. In the case of Asian and African nationals, however, specific considerations exist which generate additional risks that are not faced by other groups. The risks are mainly linked to cultural barriers, especially language barriers, and the lack of proximity of family or community networks which could provide support and protection in case of abuse or danger.

3.1. General Needs of Migrants and Refugees

Frequently, extracontinental migrants and refugees arrive in Central America without any valid travel documents. However, they do carry immigration documents when arriving on the American continent by air, but upon entering the continent through Ecuador, Brazil, and Venezuela, for example, a series of occurrences begins (assault, robbery, criminal actions by migrant smugglers) that lead to loss of identity documents.⁹ Thus, the irregular situation of extracontinental migrants is one of the primary problems faced by these groups, since they become more vulnerable and exposed to potential human rights violations. Most of them enter different territories in an irregular manner, with assistance from migrant smugglers or “Coyotes”.

According to information gathered in interviews with civil servants and migrants, cases have been reported of persons that are forced to abandon vessels and jump into the ocean because of fear – real or unfounded – due to the proximity of authorities. Considering that a significant number of extracontinental migrants and refugees travel by sea, this situation constitutes a real risk of suffering accidents endangering their lives or physical integrity. In addition, the terms agreed with migrant smugglers can be abusive in themselves and lead to situations of trafficking in persons, when associated to cases of exploitation or debt bondage.¹⁰

While little information exists on the number of citizens of countries outside Central America and Mexico that have in fact been victims of crimes, many interviewed persons stated that their money had been stolen during the journey. Upon their arrival in

⁹ “From Africa, they arrive on ships in Brazil, Colombia, or Panama travelling as stowaways, or even by air in Panama, with false visas and passports. Then they continue their journey by land, from Panama to Honduras. They use Coyotes from the beginning of their journey by land. They also identify blind spots at all the borders that facilitate border crossing.” (Police Sub-Inspector Mario Rolando Carranza, Head of the Immigration Police Division. Honduras. Interview No. 47)

¹⁰ “The manner in which they are transported is precarious, endangering them even more. They arrive in canoes made of synthetic material that have a maximum load limit, but they overload them. They traverse the Caribbean sea and, in some cases, great waves have turned the vessels over. The journey, the means of transportation are highly precarious. Sometimes they even hide in trucks driving through Central America that transport some kind of load and are not appropriate for carrying passengers on this type of journey. They travel as stowaways and risk suffocating.” (Javier Morazán, Director. Attorney General’s Office, Nicaragua. Interview No. 85)

transit countries, this situation makes access to certain services – private legal assistance, health care, communication – difficult for them.

As for variables of an administrative nature, some interviewed persons mentioned the need for timely and comprehensible information on administrative and immigration procedures in different countries. This becomes even more important for detained persons. Many of them are not informed about their situation and are not familiarized with procedures or their rights relating to immigration matters and therefore, become highly vulnerable. Access to legal assistance is another requirement that was mentioned by extracontinental migrants and refugees – not only regarding relevant procedures but in terms of knowledge of legal aspects relating to their migration status and processes to regularize their migration status.

In regard to acceptance and reception of extracontinental migrants and refugees, immediate and emergency actions are usually required to meet their basic needs for food, clothes, health care, and shelter. In many countries, however, resources and infrastructure are not available to appropriately meet such needs. This situation is particularly serious in border regions.

Furthermore, specialized psycho-social assistance services are required to address specific needs, since some persons need to talk about their situation, their experiences, or difficult situations they faced on their journey or upon entry to the transit country. The absence of this type of assistance limits resolving issues relating to exhaustion, depression, and mood changes, which are aggravated by conditions of detention. Frequently, the only contact persons are police authorities or other officers who sometimes support migrant smuggling networks. Neither of them are qualified to provide the above-mentioned assistance.

In addition, extracontinental migration has been counteracted through increased use of administrative detention due to irregular entry, as well as interception at sea and in transit countries. In general, the conditions in detention centres are inadequate, since centres are not prepared to receive groups with specific needs such as those addressed in this report. In general, the infrastructure is deteriorated and hygiene conditions are not optimal.

The absence of protection mechanisms other than procedures to grant refugee status generates a separation between refugees and non-refugees in terms of treatment by authorities. As a result, for example, the protection needs of victims of trafficking or unaccompanied boys, girls, and adolescents are often overlooked and victims do not receive the required assistance. Except for the sporadic use of humanitarian visas for persons who are not refugees but who have other protection needs, migrants usually face a legal vacuum and great obstacles to the enjoyment of their human rights in the transit country.

The opposite situation occurs as well: cases where all individuals with any type of protection needs are treated as potential refugee status applicants, although their needs are not linked to situations of international protection of refugees and protection in face of *refoulement*. This leads to additional pressure for refugee protection systems to address situations that are not linked to the refugee status stipulated in the 1951

Convention relating to the Status of Refugees and its 1967 Protocol or in the Cartagena Declaration on Refugees of 1984.

On the other hand, as a result of the absence of embassies and consulates of countries of origin of extracontinental migrants and refugees and the weakness or absence of communication and coordination mechanisms between those countries and transit countries, extracontinental migrants and refugees do not have access to protection or consular assistance. In many cases, this hinders the issuance of documents or processes to verify their identity.

3.2. *Specific Needs of Extracontinental Refugees*

Persons who flee from persecution and armed conflict need to be appropriately identified to be able to benefit from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Given that extracontinental migration usually occurs in an irregular manner, the legal actions implemented by authorities to reduce irregular migration could have a negative impact on the possibility of individuals receiving protection as refugees, especially when the above-mentioned actions are applied to everyone indiscriminately, without assessing the specific circumstances of each individual. This is particularly serious when authorities pay more attention to the manner of entry of persons from mixed migration flows than to identifying who is the person and what are the needs of this person. This has led to an assumption in Mexico and Central America that every person entering in an irregular manner is *always* a migrant for economic reasons, and *never* a refugee.

Furthermore, the mode of entering a territory has sometimes had a negative impact on the access of persons to relevant procedures that enable them to be identified as refugees. In fact, sometimes authorities have restricted the access to relevant procedures to apply for refugee status if a person has been intercepted at sea or has been assisted by a migrant smuggler. In other cases, access to this protection procedure has been conditioned to collaboration by this person with law enforcement authorities (police, Attorney General's Office, judges, etc.). Moreover, cases have been reported where authorities consider *prima facie* that applications submitted by extracontinental migrants are fraudulent, without examining each specific case.

In regard to persons arriving from countries outside the region, general actions are commonly implemented for all of them based on nationality or on the fact that they shared the same means of transportation to enter a given country, without conducting an individual analysis of the specific situation of each person. This situation poses serious risks for persons who have a well-founded fear of persecution, since the risk exists that their specific protection needs are not identified and addressed.

While direct deportation to the country of origin is not commonly applied – for several reasons – to extracontinental migrants in Mexico and Central America, a risk of *refoulement* still exists, through a *chain* of deportations carried out by different transit countries. In the same manner, if a regional framework is not in place that clearly establishes the responsibility of each country of admitting refugees and asylum applicants that have transited through their territories, the risk exists that refugees are not formally

admitted and granted permission to stay in *any* country at all, as a result of irregular migration. This would be to the detriment of the effective possibility for applicants to obtain documents that enable them to enjoy the most basic rights of every individual.

Furthermore, incorrect enforcement of Article 31 of the 1951 Convention relating to the Status of Refugees (on the non-punishment of irregular entry or stay) may erode the willingness and capacity of national authorities to grant protection to persons who are genuinely eligible for refugee status. The understanding that non-punishment for irregular entry automatically applies to any person requesting refugee status, merely because of having requested refugee status and without assessing if the person meets the criteria to be granted refugee status could, in effect, be counterproductive in the efforts to ensure the integrity of asylum systems. In addition, the risk would exist that such systems are used for purposes other than the humanitarian objectives established in the 1951 Convention relating to the Status of Refugees.

The collective consideration of refugee status applications without conducting individual interviews with each applicant generates the risk that the particularities and specific needs of each person are not taken into account when determining relevant actions to be implemented by States. Therefore – and this is an aspect that was repeatedly mentioned by various persons interviewed within the framework of this study – individual interviews should be carried out with each applicant by staff that has been appropriately trained on human rights and international refugee law.

While in practice, effective contact is rarely established with consular authorities from countries of origin of extracontinental migrants and refugees, the potential risk exists to disregard the fact that a refugee needs international protection, and not consular protection, given the situation of persecution that characterizes the exit of his country of origin. The generalized practice of States to automatically attempt to establish contact with consular representatives of the country of origin of the refugee, as if he were a migrant for economic reasons, may lead to additional risks for the refugee or even for the members of his or her family who stay in the receiving country. The right to consular assistance or protection does not apply to refugees.

3.3 *Specific Needs of Victims of Trafficking in Persons*

Extracontinental migrants and refugees that are victims of trafficking should be appropriately identified and assisted. The difficulties to communicate with the victims and other cultural barriers pose significant challenges for the countries in the region. In addition, the almost generalized perception that trafficking in persons exclusively refers to processes related to sexual exploitation stands in the way of identifying other modes, such as trafficking for the purpose of labour exploitation, among others.

Without an appropriate identification of profiles, the risk exists that national authorities treat victims in the same way as other irregular migrants (who are usually arrested), thus re-victimizing them and ignoring their assistance and protection needs. Once a victim of trafficking has been identified, he or she should be sheltered in appropriate venues to avoid exposure to new risks of abuse. In addition, procedures should be carried out to assess each case individually and provide solutions and

alternatives, with the aim of ensuring the personal security of each individual in the future.

Countries in the region report that protocols exist for institutional and inter-institutional actions to address the phenomenon of trafficking in persons, including extracontinental migrants. However, in practice such mechanisms are usually disregarded given that extracontinental migrants and refugees frequently arrive in groups in countries in the region and therefore, processes to identify and address each individual case are often diluted since the legal framework is more focused on border control procedures than on the needs of migrants. This was stated, for example, by a Director of Immigration.¹¹

Furthermore, the connection between trafficking networks and other types of criminal networks – for example, drug trafficking and migrant smuggling networks – is an additional matter of concern. Proof exists that the same routes are shared and that collaboration exists in many cases. In addition, the trend exists for some of the criminal networks to “diversify” their actions with the purpose of increasing revenue. While these topics were addressed during the interviews, some authorities suggested that no specific information should be provided since this is a topic of police investigation.

Moreover, most of the identified cases of victims of trafficking from Asian countries such as China, Vietnam, Indonesia, and the Philippines are victims of trafficking for the purpose of labour exploitation that have been involved in judicial actions.

3.4 *Specific Needs of Women in Extracontinental Migration Flows*

Although the recorded number of women participating in extracontinental migration flows is low, most of them travel through the region in an irregular manner. Therefore, they are exposed to the same hazards as other female irregular migrants, rendering them particularly vulnerable to gender-based violence and sexual abuse or other forms of violence. Female migrants are often victims of sexual abuse along the migration route, without the possibility for them to denounce such actions and receive legal and psychological assistance.

The study shows that women that are deprived of their liberty due to their irregular migration status have very little privacy and lack of access to appropriate personal hygiene conditions and supplies – which, if they are available, are provided by support organizations and networks. Seldom are efforts made to ensure assistance and communication with other women to enable identifying potential situations of trafficking or sexual abuse or gender-based violence.

¹¹ Venancio Cervantes. Director General of Migration and Immigration. Honduras. Interview No. 48.

3.5 *Specific Needs of Boys, Girls, and Adolescents in Extracontinental Migration Flows*

Boys, girls, and adolescents in extracontinental migration flows share the same vulnerabilities with other under-age migrants and refugees, since they can be victims of exploitation by trafficking and migrant smuggling networks. In addition, they are particularly vulnerable to sexual abuse and violence by gangs in the border regions. Therefore, boys, girls, and adolescents need protection and should be referred to supporting institutions, in compliance with national legislation and international instruments to protect their rights. While mechanisms are in place in some countries to allow boys, girls, and adolescents that are accompanied by their families to stay with their families, shelters for groups are inappropriate – insalubrious and unsafe – in some cases. In some places, children are even placed in the same detention centres as adults.

On the other hand, limitations exist in the treatment of unaccompanied boys, girls, and adolescents. Although the limitations have not been numerous, they reveal the lack of institutional mechanisms to address the needs of unaccompanied boys, girls, and adolescents relating to communication, individualized assistance, repatriation or return to their families, etc. In this regard, implementing national mechanisms or international instruments to establish the Child's Best Interest should continue being a priority.

4. INSTITUTIONAL RESPONSES TO EXTRACONTINENTAL MIGRATION: LEGAL FRAMEWORK AND CAPACITIES, PUBLIC MANAGEMENT OPPORTUNITIES AND NEEDS

4.1. *Legal and Institutional Framework for Public Action*

In regard to signing and ratifying international human rights agreements and conventions, it can be said that while not all the countries signed the agreements immediately, they did ratify them later on. Panama and Costa Rica are the exceptions – they have not signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); and the ILO Convention 97 on Migrant Workers (1949), which has been signed but not ratified by Mexico and which has been ratified only by Guatemala and Belize. ILO Convention 143 on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers has only been signed, but not ratified by Mexico. It is important to consider the legal framework for migrant workers, since some of them stay for long or short periods to work in countries in the region. In particular, significant numbers of nationals from countries such as China and India work in Central America and Mexico, although no accurate figures are available; but even if only a few of them worked in the region – even one – international protocols apply.

At a regional level, a history exists regarding adherence to international human rights instruments on matters relating to migrants in general, and migrant workers and asylum seekers and refugees in particular, that goes back to the 1950s. While a certain irregularity exists in regard to the first instruments, it should be noted that the most recent instruments (such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, 2000) have been ratified by all the countries. The same can be said for the Vienna Convention on Consular Relations (Articles 36.1b, 36.1b, 36.1c), the American Convention on Human Rights (Articles 2, 6, 14, 50, and 64.1), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Articles 9.1 & 15.1), the General Recommendations No. 21 & 24 of the CEDAW Committee, the Convention on the Rights of the Child and its Facultative Protocols, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, or Convention of Belém do Pará, among others. Therefore, the groundwork has been laid to advance toward developing regional spaces for dialogue and agreements that enable harmonizing the implementation of universal dictates addressing, at the same time, the particular situation of the Central American region. The incorporation of legal regulations into daily actions of government institutions needs to be stimulated and strengthened.

In regard to Inter-American human rights instruments, the ratification status is – as in the case of international instruments – relatively homogeneous, except for Belize, that has not signed the American Declaration on Human Rights or the Additional Protocol to the American Convention on Human Rights on matters of economic, social, and cultural rights – San Salvador Protocol –¹² Honduras, that has neither signed nor ratified the San

¹² It should be noted that Guatemala did not recognize the independence of Belize until 1973, and that it was not until 1981 that Belize consolidated its independence from the United Kingdom. While no signing

Salvador Protocol, and Costa Rica and Panama, that have not incorporated the regional definition of refugee proposed by the 1984 Cartagena Declaration on Refugees into internal regulations. In regard to the Convention of Belem do Pará, it should be noted that 7 countries in the region signed, ratified, and submitted it practically on the same dates.

a) National Legislation in Countries in the Region

<i>Countries that have Incorporated the Expanded Definition of Refugee of the Cartagena Declaration on Refugees (1984) into National Legislation¹³: Belize, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua</i>		
Country	National Regulations	Year of Incorporation
Belize	Refugees Act	August 16, 1991
Costa Rica	General Migration and Immigration Law	March 1, 2010
El Salvador	Decree No. 918	August 22, 2002
Guatemala	Government Agreement No. 383-2001	September 14, 2001
Honduras	Immigration Law	December 31, 2003
Mexico	General Population Act Law on Refugees and Complementary Protection	1990, Reform to the General Population Act January 26, 2011
Nicaragua	Law No. 130 on Refugee Protection	July 9, 2008
Panama	Executive Decree No. 23, leading to the enactment of Law No. 5, October 26, 1977 which ratifies the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Decree No. 100 of July 6, 1981 and Executive Resolution No. 461 of October 9, 1984 are abolished and new provisions are established on matters of temporary protection for humanitarian reasons.	February 10, 1998

Source:

crmsv.org/documentos/MatricesTT/MATRICES/MATRIZ%20TRATA%20DE%20PERSONAS%20CRM%2009SEGUGRUPO.htm

or ratifying could take place prior to the independence of Belize, the country could have used other figures to become a part of the Agreement (adhesion, acceptance, approval) after being consolidated as an independent State.

¹³ Developed by the Regional Legal Unit of the UNHCR Office for the Americas. Updated to April 2010.

Countries that have Incorporated the Expanded Definition of Refugee of the Cartagena Declaration on Refugees (1984) into National Legislation¹⁴. Regulatory Statement

Country	National Regulations
Belize	<p>Refugees Act: 4. Subject to the provisions of this section, a person shall be a refugee for the purposes of this Act if –</p> <ul style="list-style-type: none"> a. owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or b. not having a nationality and being outside the country of his former habitual residence, he is unable or, c. owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or c. owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place or habitual residence in order to seek refuge in another place outside his country of origin or nationality.
El Salvador	<p>Decree Nº 918/ 02: Whereas: [...]</p> <p>II. In accordance with provisions from Article 12, Paragraph 1 of the Convention and Paragraph III of the Protocol, mentioned above; in the principles contained in the American Convention on Human Rights and the Cartagena Declaration on Refugees, it is necessary to establish relevant national legislation to ensure enforcement of the above-mentioned international instruments;</p> <p>Article 4.- For the effects of enforcing this Act, the following persons shall be refugees:</p> <ul style="list-style-type: none"> a) Every person who, owing to a well-founded fear of being persecuted for reasons of race, ethnicity, gender, religion or belief, nationality, membership of a particular social group, or political opinions, is outside the country of his nationality and is unable, owing to such fear, or is unwilling to avail himself of the protection of that country; b) Every person who, not having a nationality and being outside the country of his former habitual residence, owing to a well-founded fear of being persecuted for reasons of race, ethnicity, gender, religion or belief, nationality, membership of a specific social group, or political opinions, is unable or, owing to such fear, is unwilling to return to it; and c) Every person who has fled his country of origin because his life, security, or liberty have been threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have seriously disturbed the public order.
Guatemala	<p>Government Agreement No. 383-2001: Whereas The Political Constitution of the Republic recognizes and grants the right to asylum in accordance with international regulations, principles, and practices.</p> <p>Article 11. Refugees. The following persons shall have the right to be granted Refugee Status, in accordance with provisions from these rules:</p> <ul style="list-style-type: none"> a) Every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinions is in the country and is unable or, owing to such fear, is unwilling to avail himself of the protection of his country of nationality; b) Every person who, not having a nationality and being outside the country of his former habitual residence, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a specific social group, or political opinions, is unable or, owing to such fear, is unwilling to return to it; c) Every person who has fled his country of origin because his life, security, or liberty have been threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have seriously disturbed the public order; and d) Every person being persecuted through sexual violence or other forms of gender-based persecution based on human rights violations established in international instruments.
Honduras	<p>Immigration Law /03: Article 42. Granting Refugee Status. Refugee Status shall be granted to a person who:</p> <ul style="list-style-type: none"> 1. Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social or political group, or opinions, is outside the country of his nationality and, owing to such fear, is unable or unwilling to avail himself of the protection of his country of nationality; 2. Not having a nationality and for the reasons included above, is outside his former habitual country of residence and is unable or unwilling to return to it; 3. Has fled his country of origin because his life, security, or liberty have been threatened by any of the following: <ul style="list-style-type: none"> a) Serious and ongoing generalized violence; b) Foreign aggression, understood as the use of armed forces by a State against the sovereignty, territorial integrity, or political independence of the country of origin; c) Internal armed conflict between the armed forces of the country being fled, and armed forces or groups; d) Massive, ongoing, and systematic human rights violations; and e) Being persecuted through sexual violence or other forms of gender-based persecution based on human rights violations established in international instruments
Mexico	<p>General Population Act/74 (and its reforms): Article 42.- Non-Immigrants are foreign nationals who, with permission from the Secretariat of the Interior, enter the country in a temporary manner within any of the following characteristics: [...]</p> <p>VI.- REFUGEE.- To protect his life, security, or liberty, when they have been threatened by generalized violence, foreign aggression, internal</p>

	conflict, massive human rights violations, or other circumstances that have seriously disturbed the public order in his country of origin and have forced him to flee to another country. [...]
Nicaragua	Act No. 130 on Refugee Protection/ 08: Article 1. Definition of the term “refugee”. For the purposes of this Act, a refugee shall be every person whom relevant competent authorities grants this status when any of the following circumstances is present: a) Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership of a particular social group, or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of his country; b) Not having a nationality and for the reasons included above, is outside his former habitual country of residence and is unable or, owing to such fear, is unwilling to return to it; or c) Has fled his former habitual country of residence because his life, security, or liberty have been threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have seriously disturbed the public order.

Source: www.acnur.org/biblioteca

4.2. *Refugee Protection Systems*

Today, it can be verified that eight countries in the region included in this study have ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In addition, with the recent passing of the Law on Refugees and Complementary Protection in Mexico, internal regulations are in place in all the countries that implement the international obligations contained in the above-mentioned instruments on refugees and establish procedures to determine refugee status. In addition, six of the eight countries have incorporated the regional definition of refugee contained in the 1984 Cartagena Declaration on Refugees.

However, results from the research show that no country included in the study has formally adopted a policy on asylum and refugee protection. This means that authorities have not developed comprehensive actions to benefit refugees and often only make decisions relating to eligibility for refugee status without considering the need to be self-sufficient and find a lasting solution for these persons. Traces still persist of the mistaken perception that it is incumbent upon international organizations, and not the State – through its legal and administrative structure – to grant refugee protection.

Furthermore, a central authority is in place in all the countries included in the study that receives, processes, and makes decisions about granting refugee status. However, the level of development and technical knowledge of such authorities is not uniform in all the countries. A limited amount of resources are allocated by governments to refugee status eligibility procedures, mainly in terms of trained staff and technical equipment to issue documents and develop data bases. As a result, it becomes difficult to make appropriate decisions relating to refugee status applications in accordance with international standards. For example, some authorities are used to receiving a relatively low number of requests (20-40 requests). Therefore, the arrival of groups of refugee status applicants within the framework of extracontinental migration flows generates an additional workload and more resources requirements, which authorities are not always able to address.

The lack of knowledge by national authorities regarding the context and current socio-political and human rights situations in African and Asian countries makes it more

difficult to appropriately review refugee status applications. In addition, language barriers exist in the majority of countries which hinder an effective communication with refugee status applicants in a language that is understood by them. This reduces the possibility of clearly determining why a person left his country and if he has the need for international protection as a refugee.

In view of some of the above-mentioned factors, it can be said that States in the region are not always able to determine in a timely and fair manner who is a refugee and who is not, especially given the arrival of groups of persons, within the context of mixed migration flows, requesting refugee status. This is further reflected, for example, in the reduced number of decisions relating to extracontinental migrants compared with the total number of applications received from African or Asian nationals. The lack of decisions relating to such applications precludes determining if the persons are eligible to benefit or not from a specific type of protection established in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, mainly regarding matters of non-punishment of irregular entry and *non-refoulement*. This situation has a negative impact on the perception of the general public regarding the effectiveness of systems to grant refugee status; if no distinction is made between refugees and non-refugees, this leads to confusion regarding the validity and legitimacy of the system. In addition, questions could arise regarding compliance of the system – or lack thereof – with the humanitarian purposes for which it was established.

Moreover, the fact that a significant number of extracontinental migrants who have requested refugee status decide to tacitly abandon the procedure and leave the country in a clandestine manner has led to the perception, by some authorities, that the asylum granting system is being misused or even, that the asylum granting system *is*, in fact, the problem behind the arrival or groups of extracontinental migrants aided by migrant smugglers. In this regard, States are not always aware of the following:

- Refugee status identification systems have been in place in Mexico and Central America for several years and were established prior to the recent trend of extracontinental mixed migration flows;
- According to human rights instruments, every person has the right to request asylum and, therefore, the normal exercise of a right should not be considered an abuse by the applicant;
- Submitting an application for refugee status provides temporary protection to the applicant, such as *non-refoulement* to the country of origin. However, this protection should be either permanent or temporary, depending if the person is in fact granted refugee status by relevant authorities through fair and efficient procedures. If the required criteria for being granted refugee status are not met, general immigration regulations apply; and
- Furthermore, if the applicant is formally granted refugee status, authorities should not only implement actions – including judicial actions – against migrant smuggling networks but in addition, actions could be implemented against the person in question, provided that the principle of *non-refoulement* and the other guarantees established in the 1951 Convention are honoured. This means, for example, that relevant authorities could take actions to discourage the irregular

movement of refugees through *refoulement* to a previous transit country, provided that readmittance of the person into the country is guaranteed and that he continues to be effectively protected as a refugee.

At the same time, it should be noted that positive experiences exist in terms of identifying protection needs within the framework of mixed migration flows. Such experiences may be useful to other countries in the region. One of them is Costa Rica, where an inter-institutional team has been established, with participation of international organizations, to interview and establish the profiles of extracontinental migrants in an expedited manner. While this effort still needs to be further consolidated, it already has had a positive impact since it facilitates addressing the specific needs of each person. For example, it is possible to determine if the person has a genuine need for international protection as a refugee, if evidence exists which suggests that this person has been a victim of trafficking in persons, or if the migrant is an unaccompanied boy, girl, or adolescent requiring special protection.

On the other hand, the study has revealed the absence of mechanisms to exchange information and coordinate actions between authorities in charge of granting refugee status in countries in the region. This has an impact on the capacity of authorities to verify the identity of refugee status applicants and determine if they have transited through and requested refugee status in another country in the region or even, if these persons are refugees that have formally been recognized by other relevant authorities within or outside the region. Therefore, countries are conducting an *ex novo* analysis of refugee status requests and are not drawing on the potential knowledge of other authorities regarding such requests, which would expedite decision-making.

In regard to migrant and refugee reception and acceptance arrangements, it has been observed that authorities have often been unable to provide such arrangements when groups of 40 or 50 persons arrived at the same time. In this regard, contingency planning and timely contact with various actors, such as faith-based organizations and civil society organizations, could help improve the level of preparedness and the capacity of relevant authorities to address the basic needs of extracontinental migrants and refugees.

4.3. *Data Collection and Analysis Methods*

Data collected through field work show a generalized insufficiency in countries in regard to records of extracontinental migration flows. Information management is a key factor in appropriately determining the magnitude of such migration flows, identify their characteristics, and plan actions to address needs and challenges. However, significant obstacles exist regarding data collection and processing, including the following: lack of a culture of systematization; absence of computer systems to support the collection of data on entry and exit flows; weaknesses in information management at border checkpoints; limited harmonization of data on migration movements between countries in the region; and lack of information exchange in real time, within institutions and between institutions and countries.

The contents of the information that is systematized are very basic and heterogeneous in different countries. The situation that exists between Mexico and

Guatemala is an example: while Mexico presents information on extracontinental migrants and refugee status applicants, disaggregated at least by nationality, since 2008, Guatemala only includes global indexes of deported persons on the website of its Institute of Migration.

Since 2008 Honduras, El Salvador, and Nicaragua provide data, disaggregated by nationality of deported citizens of Central American countries, without including data on Asian or African nationals who have been deported, nor the age, nationality and point of entry and detention of the deported persons. In regard to refugee status applicants, isolated figures exist on the number and nationality of persons that have been deported since 2002.

Furthermore, the status of installed capacity (equipment, software, entering data into data bases) shows weaknesses relating to capacity building in institutions assessed within the framework of this study. Without the appropriate technical skills and adequate computer equipment, little can be done to improve the collection of data on migration in the region. In some countries, data are collected manually and computer systems are not in place that provide online information on aspects relating to extracontinental migration flows. However, some current initiatives should be mentioned such as, for example, the Statistical Information System on Migration for Mesoamerica (SIEMMES) of the National University of Costa Rica, established by IOM within the framework of the Regional Conference on Migration (RCM), which constitutes an opportunity for systematizing and analyzing information on migration flows in the region.

The limited information exchange and coordination between transit countries in regard to the management of migration flows has been identified as a weakness in developing, designing, and implementing warning systems for the arrival and impact of extracontinental migration flows. In addition, the limited capacity to establish cross-control mechanisms between borders from different countries restricts the process of establishing prevention systems at a national and regional level.

4.4. Analyzing Capacities, Opportunities, and Needs relating to Public Actions to Address the Needs of Extracontinental Migrants and Refugees

The study enabled identifying a series of elements relating to institutional actions to address the needs of extracontinental migrants and refugees. The elements can be divided into two spheres: opportunities and institutional needs or challenges.

In the area of opportunities, efforts oriented toward coordinating and promoting intervention strategies should be highlighted (in the absence of policies or systematic frameworks for action and the presence of financial situations that preclude following up appropriately on the impact of extracontinental migration flows at a national and regional level).

Some of the intervention strategies have been initiated in all countries as a result of efforts implemented by IOM and UNHCR to mobilize institutional capacities; efforts by Human Rights Ombudsman's Offices and institutions from sectors such as health, women, children, family, etc. in some countries should be highlighted. Given their specific interests, such institutions go beyond the purely formal and administrative

elements of the act of migration carried out by extracontinental migrants and seek to provide protection and address the specific needs of migrants. However, the study revealed that a coordinated framework for action is not in place at a national or regional level.

Actions to safeguard the needs of extracontinental migrants and refugees and to establish them as subjects with rights are being implemented by various institutional actors that have had to adjust their frameworks for action and daily practices in order to address the needs of migrants and refugees without being prepared to do this. In this regard, most actions could be defined as a first response (addressing the need for food, health care, communication, emergency response in crisis situations, interpreters, etc.). To achieve this, different institutional resources are being mobilized that, despite being limited in quantity and quality, enable addressing the needs of extracontinental migrants. Inter-institutional mechanisms have been implemented in several countries to meet such needs. This is a good example of the fact that States are facing a situation that calls for concerted actions. While this is a topic that is new to governments, a proactive attitude exists toward improving response actions and registration processes and gaining a better understanding of the significance of extracontinental migration flows in the region.

On the other hand, the development of inter-institutional accompaniment processes including civil society organizations to monitor the conditions of migrants in detention centres and their legal and psycho-social assistance needs, among other aspects, should be considered within the framework of inter-institutional actions to address the needs of these populations. Civil society organizations oriented toward promoting and protecting the rights of persons and relevant leading institutions in charge of enforcing obligations relating to this matter could participate in these efforts.

In the area of institutional needs, the obvious lack of comprehensive policy regarding this matter is affecting the development of institutional response actions. Such policy is required to guide actions and give more meaning to relevant efforts. Furthermore, the resources required for implementing such efforts need to be available as well.

This study has identified various needs linked to financial resources, the absence of specific budgets to address the needs of extracontinental migrants and refugees, lack of human resources training, and deficiencies in the infrastructure of detention centres to provide appropriate shelter, food, and individualized health care and psychological assistance to address the specific needs of each person.

The topic of financial resources was highlighted by different interviewed authorities as the primary limitation. The meagre budgets allocated to immigration institutions in the region allow little margin to address the short-term and medium-term challenges posed by extracontinental migration flows. The assistance and protection needs of these populations are often only partially met due to the limited financial resources of relevant institutions. However, this is frequently used to justify the lack of response to the challenge in question. The above-described situation limits implementing comprehensive and immediate actions and finding alternative solutions; for example, the costs involved in repatriating extracontinental migrants to their countries of origin are very high and have neither been programmed nor budgeted in the operative plans of

relevant institutions. Implementing this type of repatriation would cause significant budgetary problems.

Finally, the countries in the region are a part of a migration system that is characterized by intense movements (entry and exit of persons through various immigration points and border checkpoints in a regular and irregular manner). From a general migration management perspective, deficient systems are in place in most countries in the region to meet the needs and demands generated as a result of extracontinental movements. Lack of sufficient staff, resources, infrastructure, and computer equipment, the absence of updated equipment to record data on the persons entering and leaving different countries and, above all, the lack of training to enable human resources to address the specific characteristics of these particular migration flows, make the situation even more difficult.

5. FINAL CONSIDERATIONS AND RECOMMENDATIONS

5.1 *On the Context and Conditions of Extracontinental Migration Flows in the Region*

Despite stricter policies on granting visas and the use of significant resources to detain and return irregular migrants, efforts to discourage irregular migration have not been successful. The above-mentioned policies have unintentionally promoted a parallel market of migrant smugglers, as well as the use of this market by underprivileged social sectors, either for services that enable them to reach their country of destination, or as various actors providing a wide array of services and/or smuggling migrants, or by participating in more sophisticated and coordinated international criminal networks, which thrive as a result of migrant smuggling and include this activity into other criminal actions. That is, they include migrant smuggling in actions which affect public security and have a negative impact on national security in two ways: 1) international, transcontinental coordination in the case of Asian and African migrants; and 2) generating common areas that are shared with criminal networks involved in other actions, such as trafficking in persons, drug trafficking, and migrant smuggling.

Most migration flows on this continent are oriented toward the United States, which is one of the primary countries of destination worldwide. The highly protected borders of the United States have weak points that enable smuggling all kinds of products and generating income through such actions. The porosity of the southern border of the United States makes it attractive, and it is widely used for commercial purposes – legal or illegal. Thus, the search for and coordination of actions favouring trade, including trafficking in persons for any purposes, have spread toward the southern part of the continent.

Not all migrants and refugees are the same or encounter the same conditions to embark on their journey. As a result, different types of migrant smuggling networks or different areas shared between different criminal networks exist. Central American migrants from countries of the CA-4 region, for example, are able to reach the border between Guatemala and Mexico without much difficulty without resorting to migrant smugglers on that part of their journey. However, they need to rely much more on migrant smugglers on their journey between the southern and northern Mexican border. On the contrary, migrant smugglers working with Caribbean nationals (especially Cubans), Asians, and Africans necessarily have to begin working in the countries of origin of future migrants coming from those regions.

Migrants and refugees of Asian and African origin experience situations of higher vulnerability due to various factors such as language, skin colour, culture, clothes, absence or remoteness of various referents – even geographic referents, not to mention social referents. This makes it more difficult for them to blend in or find helping hands. A wide array of social elements render them much more vulnerable than other migrants that enter and transit through the northern part of Central America and Mexico. Asian and African nationals are the populations that depend most on migrant smugglers, many of whom are invisible even to migrants, since they work through electronic or various other means. In fact, interviewed migrants and qualified informants stated that it is

common for Asian and African migrants to carry a cellular phone with them on their journey or try to communicate by telephone with a contact person or, if they are detained by government authorities – especially in the case of immigration officers – they immediately request access to a telephone or the Internet and soon receive assistance, guidance, or legal assistance that enables them to regain their liberty. As mentioned above, networks smuggling extracontinental migrants and refugees frequently work through electronic means, thus reducing costs and in addition, reducing physical or any other risks they may face.

In summary, the study shows that the primary difficulties facing Central American countries and Mexico include the following: (1) Difficulty to establish appropriate reception mechanisms for groups of more than 10 persons arriving in national territory; (2) difficulty to promptly determine individual identities, profiles, and protection needs of irregular migrants and refugees arriving in groups; (3) a real impossibility to deport extracontinental nationals; (4) absence of inter-State coordination and cooperation mechanisms to send persons to a previous transit country; (5) difficulty or impossibility to identify consular authorities from countries of origin of extracontinental migrants in order to document and deport migrants; and (6) difficulty in addressing cultural differences and integration barriers, for the same reasons.

5.2 *Recommendations*

Different recommendations on specific areas are presented below. The recommendations will be useful to States in the region in their efforts to achieve an effective management with full respect of the human rights of extracontinental migrants and refugees. In general, it is important to develop mechanisms and policies oriented toward addressing extracontinental migration flows in an expedited and effective manner. To achieve this, a combination of strategies complementing each other are required at a national and regional level. Individual uncoordinated actions could lead to deterioration in the populations that are to be protected, in an open contradiction to the explicit intentions of such actions.

5.2.1 *Data Collection and Detection Mechanisms*

It is essential to improve processes to collect and systematize information and record the entry and exit of persons, establishing links between various recording systems. We recommend developing a system that provides more spaces to record data, with the aim of collecting accurate, immediate, and timely data that can be linked to immigration systems in order to obtain information on the entry and exit of persons and different types of interdictions and warnings issued by immigration services.

If all States adopt similar systems, or systems with standardized criteria, the statistical data bases of all eight countries in the region could complement each other, provided that all of them collect data on the same items, have the same reference time periods, etc.

We recommend that efforts be implemented toward establishing a regional data base with the required updated technology to record data on migrants, refugee status

applicants, and extracontinental refugees. The data base should determine the transit countries of these persons, if they have previously had access to national procedures to grant refugee status, if they enjoy effective protection, and if they can be readmitted to countries where they have previously requested or received international protection.

To follow up on the Workshop on Protection and Lasting Solutions for Mixed Migration Flows held within the framework of the Puebla Process in Costa Rica on August 11-13, 2008, we recommend to continue supporting the exchange and availability of information on the prevailing conditions in countries of origin, as an essential element of mechanisms to grant refugee status. Furthermore, we recommend reactivating the initiative of sharing the Country of Origin Information System, developed by the Research Directorate of the Immigration and Refugee Board of Canada.

5.2.2 Identifying Profiles and Referral/Channelling Mechanisms

Actions need to be taken to enable an improved interaction and the development of improved management tools, summary procedures, or information systems that enable determining identities and profiles with the purpose of addressing the needs of each person more effectively.

Given the above, profiles and referral/channelling mechanisms need to be established through systems based on the specific needs of each person, since each person requires access to different assistance and protection procedures.

To strengthen, integrate, and harmonize existing mechanisms to identify profiles and refer/channel cases in countries in the region, international organizations should be requested to carry out specialized workshops. It is recommended, for example, to explore the possibility of developing a common regional or subregional questionnaire to identify profiles and refer/channel cases. National institutions involved in promoting the protection of human rights and civil society organizations should participate in such activities, in addition to institutions involved in migration matters.

To be able to effectively implement the profile identification tools and referral/channelling mechanisms, training relevant officers is indispensable; we recommend that technical assistance from international organizations such as UNHCR and IOM should be obtained. Training efforts should address specific topics in depth, such as effective access to national mechanisms for refugee status applicants or for migrants with other types of protection needs, such as victims of trafficking and unaccompanied boys, girls, and adolescents. The training workshops should be oriented toward officers from legislative institutions as well as officers providing primary assistance and establishing direct contact with migrants and refugees. Special attention should be paid to officers involved in determining eligibility for refugee status and immigration officers in border regions, since they are the ones who establish first contact with the above-mentioned populations.

We recommend adopting procedural instruments that enable prioritizing and processing refugee status applications in a more efficient manner, as suggested in the 10-Point Plan of Action to address mixed migration, developed by UNHCR. This would enable, for example, differentiating between requests that are expressly unfounded,

abusive, or fraudulent and those where in fact a real need for international protection is identified, without detriment to maintaining the established terms and due process in administrative procedures.

5.2.3 Protection and Assistance Needs

We recommend that efforts be made by States to sign and ratify the international conventions and protocols on protection and assistance for migrants and refugees that still have not been signed by them.

The study does not identify clearly how States incorporate their international commitments into their internal legal system. Apparently, a wide margin for interpretation and discretion exists in this regard; this does not always favour the migrants that require protection and assistance.

Although international protocols have been signed and binding legal provisions exist at an internal level, some countries have yet to establish government institutions to address refugee applications in a timely manner. Moreover, some States do not grant refugee status because local institutions are not in place to process applications, while others choose not to grant refugee status to the majority of applicants, with little possibility for applicants to respond to this.

Furthermore, we recommend strengthening protection mechanisms other than procedures to grant refugee status (for example, humanitarian visas or residence permits for victims of trafficking or unaccompanied boys, girls, and adolescents), with the purpose of closing the existing gap in the protection options for persons who are not eligible for refugee status.

It is important that countries in the region establish clearly defined protocols, procedures, and guidelines that are essentially standardized and applicable in cases of irregular migrants that cannot be returned due to operational, logistical, or budgetary difficulties. The need for persons to resort to international networks involved in trafficking in persons, abduction, and migrant smuggling could be reduced through the establishment of immigration alternatives. To achieve this, the fact that immigration regulation is a shared responsibility of States of origin, transit, and destination should be considered. A potential action would be to establish regional funds for voluntary return and reintegration programs.

Given that extracontinental migrants and refugees arrive in the region without any identity documents stating their nationality or with false or fraudulent documents, we recommend developing mechanisms to issue preliminary identity documents or, at least, personal documents.

Language barriers and the absence of consular representatives of countries of origin of extracontinental migrants in the region hinder communication, data verifying efforts, health service provision, identifying the needs of such migrants and refugees, and managing these types of migration flows. Therefore, permanent, temporary, or online staff needs to be available to communicate with the above-mentioned populations and act as interpreters.

In addition, appropriate solutions need to be found to address logistical challenges in managing extracontinental migration flows and provide assistance and protection, with the aim of ensuring access of migrants and refugees to shelter and food, updated information, national health services, education, the legal system, etc. Moreover, we recommend strengthening contingency planning processes in order to increase the level of preparedness of relevant authorities to address the arrival of groups of extracontinental migrants and refugees.

5.2.4 Migration Management

Coordinated efforts between government institutions involved in migration management (police, border immigration officers, eligibility officers, staff from detention centres, the judicial power, etc.) are required to ensure the provision of more coordinated and formalized assistance. The participation of international organizations such as IOM and UNHCR would help address migration situations more efficiently.

It is important that States consider the country of origin of the person in question when determining which procedures will be followed in each case, since procedures are different for persons for whom an orderly and safe return can be ensured than for persons from countries where they cannot return for various reasons. Within this context, more updated information should be available on the conditions that prevail in the countries of origin.

The importance of legal interventions in situations of potential criminal actions by migrant smuggling or trafficking networks is undeniable. Relevant information campaigns and training programs on this topic should also be oriented toward judges, defence lawyers, and public prosecutors.

Furthermore, we recommend using communication instruments to have an impact on the public opinion and change the perception associating migration and the situation of refugees to public insecurity or other social problems. This could be achieved through interventions carried out at different levels; for example, training schoolteachers and directors to transfer knowledge to students, implementing communication campaigns through the media, and widely disseminating publications, especially in entry and transit areas of migrants.

5.2.5 International Cooperation within the Region and with Countries of Origin

The renewal of the commitment of Member States of RCM with the enforcement of international law, international human rights law, and international refugee law is imperative. Furthermore, multilateral dialogue should be strengthened as a strategy to advance toward migration management that ensures full respect of the human rights of migrants and refugees. To this effect, we recommend strengthening cooperation on matters relating to migration between RCM and other relevant international organizations, with the aim of potentiating the implementation of comprehensive efforts on this matter.

Moreover, regional cooperation between States in regard to readmission agreements is important in ensuring that the profiles of extracontinental migrants are identified and the specific protection needs of each individual are assessed. Thus, it will be possible to avoid that the persons requiring international protection as refugees are returned to their countries of origin, and enable them to access relevant procedures to be granted refugee status.

The embassies and consulates of the States of origin play an essential role in providing timely assistance to migrants. This is not the case with refugees or refugee status applicants. It is understandable that the cases of extracontinental migrants are more complex, perhaps due to the remoteness and the limited consular and diplomatic representation of some Asian and African countries, as well as the high costs involved in a potential return. However, the current advances in technology and communication systems could help establish mechanisms and means to expedite communication and coordination between countries, with the potential participation of international organizations, to address extracontinental migration flows.

Furthermore, international cooperation needs to be strengthened between transit countries. This is the best way to address the challenges posed by international migration flows – through information exchange and issuance of warnings to relevant authorities. Based on this, appropriate instructions could help preclude migrant smuggling networks from using the differences in regulations and procedures to their advantage to enter countries in the region. The isolated response by one State alone is insufficient; a regional response is recommended. In addition to strengthening cooperation between Member States of RCM, it would be important to include other South American countries through which migrants transit. Such cooperation could be implemented through the South American Conference on Migration¹⁵.

Finally, cooperation with transit countries is required to combat migrant smuggling networks and address the protection and assistance needs of persons that resort to these networks. The objective is to prevent and punish migrant smuggling, and multiple concurrent procedures and coordinated actions should be implemented by Central American countries and Mexico to address the matter.