EXECUTIVE SUMMARY

MIGRANT SMUGGLING

1. **Prevention**

**1. Human Development.** With respect to human development that can prevent the proliferation of migrant smuggling, two functional tools are proposed. First, a *national-level mapping* of the causes of irregular migration assisted by smugglers, based on interviews with migrants. This will in turn serve as a basis for designing two profiles: a *migrant profile* and a *vulnerabilities profile*. The former will help to determine who is migrating with the assistance of smuggling networks (by nationality, ethnic group, age range, profession, occupation, economic level, religion, culture, geographical location in their country or region, etc.). The latter will help to determine why they are migrating with the help of these criminal groups (the driving and/or expelling factors). These tools can be used to obtain ‘first-hand’ information to facilitate decision-making, especially for the formulation of public polices of a social nature (education, employment, health, etc.) and tools aimed at communication (information provided to the general population regarding the dangers of irregular migration in general and specifically when using a smuggling network). Profiles of countries or regions are developed frequently, but not profiles of the migrants who seek out smuggling networks. This population has its own characteristics and requires an individual or group analysis. The best way to find out why they migrate (some repeatedly) with the help of smugglers is through interviews. These profiles can generate important information for designing national policies that favor human development on specific themes, as well as for orienting information programs with more accurate messages.

**2. Information Dissemination.** An ongoing and permanent social communication program is proposed, focusing on two main themes: differentiated messages aimed at the populace regarding the dangers of irregular migration in general and specifically in the hands of smugglers, and differentiated messages aimed at the general population regarding ‘why I should stay in the country.’ The base information for designing this program is the migrant and vulnerabilities profiles obtained through the domestic mapping exercises. What is commonly done is to alert the populace regarding the dangers of irregular migration with general messages disseminated through campaigns of limited duration transmitted by way of mass media. No structured, permanent programs have been designed with differentiated messages (based on sex, age, educational level, etc.) that are transmitted directly to persons in their communities, schools, workplaces, etc. Personal contact can be much more effective in this sense.

**3. Training.** Two structured, permanent training programs are proposed. The first would be aimed at public officials *related in one way or another to crime prevention and prosecution and assistance and protection for smuggled migrants*. The second program would be aimed at teachers, community leaders, and other institutional or civil actors who can provide useful and updated information to the population regarding migrant smuggling. The objective of the proposal is that the programs be permanent and form part of the professional formation received by public officials and the training received by community leaders. As before, the existing programs are random and transitory, and current training efforts are aimed more at public officials than civil society actors, when the latter can achieve more direct contact related to migrant smuggling in their communities, schools, and workplaces, thus supporting prevention efforts with greater criteria.

**4. Identification of Potential Cases.** Creation and implementation of a *Regional Plan of Action* for the detection of potential situations related to migrant smuggling (persons, means of transport, locations, routes, etc.), with the use of two instruments: *mapping* (tactical or strategic), and the *design of profiles* that can provide the information needed to create an *Early Warning System* that could enable a *margin of anticipation* with respect to the criminal activities of smuggling groups. Effective detection mechanisms allow the *proactive* organization of public and migratory security measures related to organized migrant smuggling activity, and provide greater elements to criminal investigation agencies when dealing with specific cases. The fact of the matter is that ever more frequently we seem to be *‘one step behind’* these criminals. The two proposed tools could generate an anticipatory space at the regional level (migratory routes) to facilitate the work of migration authorities and criminal investigators.

**5. Organizational Aspects.** The first recommendation is to *establish differentiated bodies to separately deal with trafficking in persons and migrant smuggling* at the national level. The two issues are very different in their origin and evolution, although many criminal organizations carry out both activities. The coalitions or committees against trafficking and smuggling are functional, but do not establish a clear difference between the two issues.

The second recommendation is to *create or strengthen the anti-migrant smuggling police and prosecution units* such that police and prosecutors throughout the region have specialized counterparts in each country with whom they can coordinate operations and/or judicial collaborations or other procedural formalities. Most of the countries currently have anti-trafficking/smuggling police and prosecutorial units. This is due to the fact that the issue of migrant smuggling has been given more attention during the past three years, with the first response being to assign anti-smuggling efforts to the existing anti-trafficking units. The difference between the two crimes, however, requires a separation of personnel and resources, or at least that the personnel in said units be specialized in both issues.

The third recommendation is to create a *Permanent Commission for Combatting Migrant Smuggling at the regional level* in order to coordinate regional efforts to address this crime and establish proposals to harmonize legislation and procedures based on good practices and proposals from the countries. Among other functions, this Commission would facilitate information exchange, international penal cooperation, and migrant assistance and protection. The Commission could form part of the RCM or else the Regional Coalition against Trafficking in Persons, which apparently is also addressing the issue of migrant smuggling.

Finally, request that the Presidency of the Regional Coalition against Trafficking in Persons and Migrant Smuggling include representatives from similar bodies from the United States and Canada as regional guests and/or observers, based on the provisions of Items 5.2 and 5.4 of the Coalition’s Action Guidelines. The appointees could be the same representatives of those countries before the RCM. Currently Canada and the United States are represented in the RCM but not in the Regional Coalition.

**6. Prosecution**

**a. Conceptual Development.** It is recommended that the concept of and focus on *migrant smuggling* be harmonized in order to improve the development of new legislation, especially with respect to the design of criminal sanctions *(penal definitions)*. The concept currently has various interpretations, such as ‘illegal entry,’ ‘illegal entry and exit,’ ‘promotion of illegal entry,’ and ‘irregular entry,’ among many other versions.

**b. Development of Legislation.** It is recommended that regional parameters be established to harmonize both criminal and procedural provisions related to: evidentiary procedures, statutes of limitations, attempted criminal acts, aiding and abetting, organized criminal activity, pre-trial evidence, and compensation for damages, among others, based on a list that can be agreed upon by prosecutors in charge of investigating these crimes. One of the principal aspects of a regional agreement should be the harmonization of a *penal definition* with similar elements, especially regarding the various forms of criminal conduct and the related sanctions.

Finally, the creation of a **digital statutory library at the regional level** with duly updated texts and other provisions concerning migrant smuggling. The key term here is ‘updated,’ which implies the inclusion of the current versions of all documents related to migrant smuggling (laws, regulations, plans, strategies, protocols, etc.). Currently it is very difficult to obtain such information in the terms proposed herein, despite the existence of various locations where this information can supposedly be found (observatory websites, IberRed, OAS, UNODC, etc.).

**7. Investigation and Processing**

The following recommendations are made regarding this aspect:

a) Encourage and establish communication and training processes to **harmonize techniques and processes in the field of criminal investigation at the regional level** through the sharing of experiences. The levels and techniques for investigating this crime are recent and quite varied. The sharing of experiences can help to harmonize these procedures and facilitate the joint growth of all investigative units.

b) Establish permanent procedures for the **exchange of police information regarding migrant smuggling** through rapid, reliable, and secure channels at the regional level. It is important to define communication channels for handling confidential information. Currently, media such as Gmail, Hotmail, and WhatsApp are used frequently.

c) Establish standardized procedures at the statutory and operational levels for carrying out **joint investigations** in specific cases. This is a very important tool for establishing regional operations, but the level of statutory and operational development is quite varied among the different countries. This does not mean that such operations are not being carried out, but they would function better if based upon harmonized statutes and procedures throughout the RCM Region.

d) Analyze the possibility of creating **joint migratory stations** between neighboring countries to facilitate border patrolling, case investigation, and migrant assistance. This practice observed along the Ecuador-Peru border has produced good results based on mirror facilities on both sides of the border and work groups comprised of police and border officials from both countries that facilitate border control and patrol efforts, as well as cross-border coordination when cases involving migrant smuggling or similar crimes are detected.

e) Establish permanent, standardized procedures for **requesting reciprocal legal assistance** regarding migrant smuggling. This includes the harmonization of the specialized international penal cooperation units that operate in each country under the respective Public Ministry or Attorney General’s Office, with respect to procedures, communication channels, sharing of evidence, response times, etc. Most of the RCM Region’s countries have international cooperation units, but work remains to be done to fine-tune the procedures that can facilitate and reduce response times when one country requests legal assistance from another in a specific case. (Legal assistance is understood to mean the response to a request for evidentiary elements that are in the custody of another country and are required for a local investigation.)

**8. Assistance and Protection**

The following recommendations are made regarding this aspect:

a. Create or strengthen a **risk appraisal and handling program** for smuggled migrants at the local and regional levels. The main objective of this program is to detect potential risks for both smuggled migrants and the population of the country where the former are detected. This includes the establishment of procedures, action protocols, and multi-disciplinary work teams equipped with all the technical and logistical resources needed to handle potential emergencies (see the related provisions of PaSM Articles 15.1 and 16.2). The protocols for biosecurity and identification of potential criminals and terrorists within continental and extra-continental migratory flows have yet to be standardized.

b. Create or strengthen **programs for assisting, protecting, and referring smuggled migrants at the local and regional levels**. The assistance and protection programs should act in a coordinated fashion between the region’s countries, and thus should share common elements regarding procedures and external links. Migrants are frequently left ‘stranded’ at border stations or zones due to a lack of joint assistance efforts.

c. Create a **migratory identification card** (digital and biometric) to gather information on migrants detected in transit who may be involved in irregular migration conducted by criminal networks. The card containing personal data, photograph, and fingerprints would form part of a common database used to identify repeat irregular migrants and potentially disappeared persons along the migratory routes. This mechanism could also allow more efficient control of nationalities, ages, sex, and other characteristics that determine the profile of the migrants who travel through the region using smuggling networks. It is possible that the same migrants pass through several times without our knowing, or they disappear along the route and there is no reference of them.

d. Create a **common database** with on-line information on migrants, smugglers, vehicles, locations, etc., that facilitates queries regarding migrants, locations, suspicious vehicles, *modus operandi*, etc. Access to this database should be restricted to only duly authorized officials.

e. Standardize the procedure for the **migratory inspection and interviewing of smuggled migrants**. Currently such procedures are diverse and disperse. This makes it difficult to obtain information that is relevant and consistent for purposes of intelligence and criminal investigation. It is suggested to consult the formats established by Costa Rica’s General Directorate of Migration and Foreigners for its Special Migratory Situation Team (ESME), among other regional initiatives.

f. Establish regional agreements and procedures for the **process of repatriating smuggled migrants to their country of origin or residence**. Regardless of each country’s domestic legislation, the return process requires an action framework for the domestic entities involved and for the necessary links with the return countries (see the related provisions of PaSM Article 18).

g. Establish a **standardized integration procedure** for migrants who, due to various reasons, have to remain in a given country. In the absence of such an integration process, a stranded migrant can fall into the hands of criminal groups or end up indigent.