

GUIDANCE NOTE ON INTERNATIONAL PROTECTION CONSIDERATIONS FOR VENEZUELAN – Update I

May 2019

1. This note updates and supersedes the [Guidance Note on the Outflow of Venezuelans of March 2018](#).¹
2. Since the issuance of the Guidance Note on the Outflow of Venezuelans, the security and humanitarian situation has worsened in Venezuela, causing outflows to neighbouring countries, other countries in the region, and countries further afield to reach 3.7 million people.² Given the deteriorating circumstances in Venezuela, UNHCR reiterates its call to States receiving Venezuelans to allow access to their territory and highlights the critical importance of ensuring access to asylum procedures or to group-based protection arrangements with adequate safeguards.
3. Based on reports received by UNHCR and its partners, as well as reliable information in the public domain from a wide range of sources about the situation in Venezuela, UNHCR considers that for a number of profiles, international protection considerations are likely to arise under the 1951 Convention/1967 Protocol relating to the Status of Refugees depending on the circumstances of the individual case. Such risk profiles can be made available by UNHCR to eligibility commissions of interested host countries.
4. The magnitude of the current outflows poses complex challenges and may lead to asylum systems being overwhelmed. Where this is the case, a State may recognize refugee status through group-based determinations.³ UNHCR is ready to provide to interested States the required technical assistance and operational support to enhance government capacities to respond appropriately to a mass influx of refugees and to determine their legal status effectively. UNHCR encourages States to rely on regional instruments as a basis for the elaboration of group-based responses.
5. For States that have incorporated the refugee definition contained in the Cartagena Declaration into national law,⁴ or for States that apply this definition in practice, following the guidelines of the Inter-American Court of Human Rights,⁵ UNHCR considers that the majority of Venezuelan nationals, or stateless persons who were habitually resident in Venezuela, are in need of international protection under the criteria contained in the Cartagena Declaration on the basis of threats to their lives, security or freedom resulting from the events that are currently seriously disturbing public order in Venezuela.⁶

¹ UNHCR, *Guidance Note on the Outflow of Venezuelans*, March 2018, www.refworld.org/docid/5a9ff3cc4.html.

² <https://r4v.info/en/situations/platform>. The outflow from Venezuela comprises both Venezuelan refugees and others on the move, as well as refugees from other countries (Colombia in particular) who had sought refuge in Venezuela.

³ UNHCR, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status*, 24 June 2015, HCR/GIP/15/11, www.refworld.org/docid/555c335a4.html.

⁴ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, www.refworld.org/docid/3ae6b36ec.html. Although the Cartagena Declaration is a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws. At the time of writing, the Cartagena refugee definition has been incorporated into the national laws of Argentina, Belize (the OAU refugee definition), Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

⁵ Inter-American Court of Human Rights, *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, 19 August 2014, www.refworld.org/docid/54129c854.html, para. 79; Inter-American Court of Human Rights, *The Institution of Asylum, and its Recognition as a Human Right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights)*, Advisory Opinion OC-25/18, 30 May 2018, www.refworld.org/docid/5c87ec454.html, para. 123.

⁶ Contrary to the sequential approach generally recommended by UNHCR, the broader refugee criteria contained in the Cartagena Declaration may be examined directly when this is more practical and efficient in group situations or specific contexts, as long as the

This approach does not apply to individuals for whom the events that are currently seriously disturbing public order in Venezuela do not pose a threat to life, security or freedom, such as individuals who help to perpetuate these very circumstances, members of organized criminal groups and persons who benefit materially from the circumstances seriously disturbing public order.

6. To ensure protection coherence and the harmonisation of State responses, UNHCR is available to advise and support States to bring the current range of protection-sensitive arrangements,⁷ including under international human rights law⁸ and temporary protection or stay arrangements,⁹ in line with the minimum standards set out below.
7. As mentioned in UNHCR's Guidance Note of March 2018, in all circumstances, the following minimum standards need to be guaranteed:
 - a. **Legality:** The requirements and procedures for obtaining such arrangements would need to be defined and articulated under national law. UNHCR calls on States to ensure that persons benefiting from such arrangements are issued with an official document recognized by all government authorities.
 - b. **Accessibility:** The relevant arrangements would need to be accessible to all Venezuelans, irrespective of their date of entry into the host country. This would mean that there should be no or minimal costs associated with applying for such an arrangement, and that applications would be accepted in various locations across the territory to ensure that transportation costs are not prohibitive. Further, neither irregular entry/presence nor the lack of identity documents would be viewed as a valid reason for denying access to such an arrangement.
 - c. **Access to basic rights:** Protection-based arrangements would importantly guarantee access to basic services and fundamental rights in line with UNHCR's Guidelines on Temporary Protection or Stay Arrangements.¹⁰ These rights include: 1) access to health care;¹¹ 2) access

1951 Convention standards of treatment apply. UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, www.refworld.org/docid/583595ff4.html, paras 86-88.

⁷ See for example, Migration Policy Institute, *Creativity Amid Crisis: Legal Pathways for Venezuelan Immigrants in Latin America*, January 2019, www.migrationpolicy.org/research/legal-pathways-venezuelan-migrants-latin-america.

⁸ For example, Art. 22(8) of the 1969 American Convention on Human Rights, www.refworld.org/docid/3ae6b36510.html. For further guidance on non-return please see, Centro por la Justicia y el Derecho Internacional, *Ficha Técnica Sobre el Derecho a la No Devolución y No Expulsión, Convención Americana sobre Derechos Humanos Arts 22.5, 22.8 y 22.9 y Convención Interamericana para Prevenir y Sancionar la Tortura Art. 13*, www.cejil.org/sites/default/files/ficha3.pdf. See also Art. 3 of the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, www.refworld.org/docid/3ae6b3a94.html; Art. 7 of the *International Covenant on Civil and Political Rights*, 16 December 1966, www.refworld.org/docid/3ae6b3aa0.html; Art. 33 of the 1951 *UN Convention relating to the Status of Refugees*, www.refworld.org/docid/3be01b964.html; Conclusion 5 of the 1984 *Cartagena Declaration on Refugees*, www.refworld.org/docid/3ae6b36ec.html; Art. 16 of the *International Convention for the Protection of all Persons from Enforced Disappearance*, www.refworld.org/docid/47fdfaeb0.html.

⁹ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, www.refworld.org/docid/52fba2404.html, in particular paras 13, 16-18. Such standards include: appropriate reception arrangements; recognized and documented permission to stay; protection against arbitrary or prolonged detention; access to housing, education, health care and other basic services; freedom of movement, except as may be warranted by national security, public order or public health considerations; the registration of births, deaths and marriages; physical security, including protection against sexual and gender-based violence and exploitation; special care for separated and unaccompanied children, guided by the best interests of the child; respect for family unity and tracing, and opportunities for reunification with separated family members; particular attention and special arrangements for persons with special needs, including persons with disabilities; self-sufficiency or work opportunities; and access to UNHCR and, as appropriate, other relevant international organizations and non-governmental organizations and civil society.

¹⁰ See footnote 9.

¹¹ *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* ("Protocol of San Salvador"), 16 November 1999, A-52, www.refworld.org/docid/3ae6b3b90.html; UNHCR, *Principles and Guidance for Referral Health Care for Refugees and Other Persons of Concern*, December 2009, www.unhcr.org/protection/health/4b4c4fca9/unhcrs-principles-guidance-referral-health-care-refugees-other-persons.html; Art. 12 of the *Universal Covenant on Economic, Social and Cultural Rights* of 1966, www.refworld.org/docid/3ae6b36c0.html.

to education;¹² 3) family unity;¹³ 4) freedom of movement;¹⁴ 5) access to shelter, and 6) the right to work.¹⁵ These rights would be guaranteed on an equal and non-discriminatory basis.

8. UNHCR and IOM have conducted a joint analysis of good practices on protection sensitive arrangements designed by governments in the Americas to respond to the outflows of Venezuelans. The analysis examines the extent of their alignment with the minimum standards and aims at reinforcing the protection dimension and coherency of responses. Drawing from this, UNHCR and IOM stand ready to support States.
9. Persons originating from Venezuela who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the Qualification Directive (recast) if there are substantial grounds for believing that they would face a real risk of serious harm in Venezuela.
10. In view of the current situation in Venezuela, UNHCR calls on States to ensure Venezuelan nationals, stateless persons or individuals who were habitually resident in Venezuela will not be deported, expelled, or in any other way forced to return to Venezuela in accordance with international refugee and human rights law. This guarantee would need to be assured either in the official residence document issued to Venezuelans or through other effective means, such as clear instructions to law enforcement agencies.
11. In view of the challenges that host countries are facing, international responsibility-sharing in the spirit of the Global Compact on Refugees¹⁶ is key. Such an approach would build on the partnership established between UNHCR and IOM, engaging their respective mandates, roles and expertise.
12. In line with the Secretary-General's guidance, UNHCR and IOM have been coordinating closely in response to the outflow of Venezuelans since 2018, when Inter-Agency Coordination Platforms were established at regional level and in main host countries.

¹² Art. 13 of the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, www.refworld.org/docid/3ae6b36c0.html; see also UNESCO, *The Right to Education Law and Policy Review Guidelines*, 2014, www.right-to-education.org/resource/right-education-law-and-policy-review-guidelines; Art. 26 of the *Universal Declaration of Human Rights*, www.refworld.org/docid/3ae6b3712c.html.

¹³ Organization of American States, *American Convention on Human Rights, "Pact of San Jose, Costa Rica"*, 22 November 1969, www.refworld.org/docid/3ae6b36510.html, Art. 10. See also, UNHCR, *Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons in Need of International Protection*, 4 December 2017, Expert Roundtable, www.refworld.org/docid/5b18f5774.html; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, www.refworld.org/docid/5a9029f04.html; UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, www.unhcr.org/5a8c413a7.pdf; Recommendation B of the *Convention and Protocol Relating to the Status of Refugees*, <http://www.unhcr.org/3b66c2aa10>.

¹⁴ Organization of American States, *American Convention on Human Rights, "Pact of San Jose, Costa Rica"*, 22 November 1969, www.refworld.org/docid/3ae6b36510.html, Art. 22. See also Art. 26 of the *Convention relating to the Status of Refugees*, www.unhcr.org/3b66c2aa10; Art. 12 of the *International Covenant on Civil and Political Rights*, www.refworld.org/docid/3ae6b3aa0.html; and Art. 13 of the *Universal Declaration of Human Rights*, www.refworld.org/docid/3ae6b3712c.html.

¹⁵ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man*, 2 May 1948, Art. XIV, www.refworld.org/docid/3ae6b3710.html; Organization of American States, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)*, 16 November 1999, A-52, www.refworld.org/docid/3ae6b3b90.html, Art. 6(1); *Brazil Declaration and Plan of Action*, 3 December 2014, www.refworld.org/docid/5487065b4.html. See also, Art. 23 of the *Universal Declaration of Human Rights*, www.refworld.org/docid/3ae6b3712c.html; Art. 6 of the *International Covenant on Economic, Social and Cultural Rights*, www.refworld.org/docid/3ae6b36c0.html; UN Human Rights Council, *Resolution 28/15 "The Right to Work"*, www.refworld.org/docid/558ab4ea4.html.

¹⁶ *Global Compact on Refugees*, www.unhcr.org/gcr/GCR_English.pdf, para. 12; *Joint Letter from IOM and UNHCR on the Collaboration Between the two Organizations*, 25 January 2019, www.refworld.org/docid/5c519a614.html.