

Alternative Protection Pathways in the Americas

Research Paper

November 2021

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North and Central American
Task Force on Migration



Acknowledgements

This research paper of the North and Central American Task Force on Migration is published by the World Refugee & Migration Council (WRMC) through a partnership with the Center for U.S.-Mexican Studies, El Colegio de México, the Migration Policy Institute and the Inter-American Dialogue. It was written by **Jennifer Bond**, Founder and Managing Director of the [University of Ottawa Refugee Hub](#). She is also Chair of the [Global Refugee Sponsorship Initiative](#); and a Board Member and Refugee Fund Advisor with [Airbnb.org](#). She holds degrees in law, literature, and business and has been called to the Bars of Ontario and British Columbia. She completed her graduate work at the Yale Law School as a John Peters Humphrey Fellow in International Human Rights Law and clerked at the Alberta Court of Appeal and the Supreme Court of Canada.

This research paper reflects the analysis of the author and not necessarily that of North and Central American Task Force on Migration members. World Refugee & Migration Council publications do not necessarily reflect the views of Council members.

North and Central American Task Force on Migration research has received financial support from Global Affairs Canada and Immigration, Refugees and Citizenship Canada. The World Refugee & Migration Council is supported through a partnership with Cuso International.

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North and Central American Task Force on Migration

The [North and Central American Task Force on Migration](#) is a non-governmental forum of academics, civil society and business leaders, and former policymakers in dialogue with current government officials created to facilitate a broadly driven solution dialogue among the countries involved in the crisis of migration and forced displacement in the region.

Initiated by the World Refugee & Migration Council with the Center for U.S.-Mexican Studies, El Colegio de México, the Migration Policy Institute and the Inter-American Dialogue, the task force will issue concrete recommendations for collective, regional action based on evidentiary research to promote responsibility sharing across North and Central America.

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Introduction

There is an urgent need to expand and improve protection pathways for displaced populations from Northern Central America (NCA). Forced displacement in the region has reached crisis proportions, with horrific effects on human security and broad implications for all countries in the region. There are approximately 550,000 refugees and asylum seekers from the NCA region worldwide including nearly 127,000 in Mexico,¹ and 318,000 internally displaced in Honduras and El Salvador. These challenges are compounded by broader migration and displacement trends, including large numbers of Haitians, Venezuelans, Nicaraguans, Cubans – and an increasing number of extracontinental migrants – on the move.

On paper, there are a number of government-facilitated protection options available for NCA nationals seeking durable protection in North American countries. In practice, accessing these pathways can be nearly impossible. Above all, the scale of the protection need far exceeds available protection opportunities via existing pathways, which have well-documented challenges that hinder their efficiency and efficacy.

This disparity between protection objectives and outcomes stems mainly from two factors. First, policy development often fails to consider operational realities and constraints, and pathways designed for a particular protection objective thus consistently fall short because of barriers to successful implementation. Significant protection gains can be made by more explicitly embedding operational considerations in the policy design process for both specific protection pathways and across systems.

Second, there is a lacking of coordinated policy and implementation strategy to explicitly address proactive approaches to pathway development from the NCA. This results in a lack of coherence across protection pathways that further exacerbates operational challenges. It also creates a major opportunity to achieve efficiencies and scale in pathway design and implementation by exploring collaborations between Canada, the United States and Mexico – including in the context of the MIRPS (Comprehensive Regional Protection and Solutions Framework) support platform.

In recent years, the primary regional response to Central American displacement has been a strategy of containment, with dire consequences for both individual protection seekers and regional migration management.² New political commitments by the United States and Canada to engage constructively

¹ This includes refugees, asylum seekers and others of concern to UNHCR at the end of 2020. The total number of internationally displaced persons in Mexico was nearly 285,000, including refugees, asylum seekers, Venezuelans displaced abroad, and others of concern.

² Despite accounting for a growing proportion of asylum claims and border apprehensions for both the United States and Canada, Central Americans make up a tiny proportion of resettlement to both countries. Canada resettled 195 citizens of NCA countries from January 2015 to July 2021 (IRCC 2021), and only about 3,000 refugees were resettled from the NCA countries to the United States from FY 2017 through FY 2020 – about 3% of total United States resettlement (Selee and Ruiz Soto 2020, 18). There is precedent for higher levels of admission to Canada: between 1982 and 1987, Canada admitted 15,877 refugees from Central America (including 11,251 Salvadorans), and a further 4,444 family members under a special program: see Garcia 2006. Central Americans are identified as a priority category in the Biden Administration's 2022 refugee admissions plan, with 15,000 spaces allocated to Latin America as a whole and up to 10,000 expected to be from the NCA countries: US Department of State 2021b, 30-31.

with displacement issues in the region, together with recent positive steps by Mexico (including strengthening its asylum system), also open opportunities for progress.

Seizing these overlapping windows of opportunity will require protection pathways that respond to region-specific drivers and dynamics of displacement, as well as the unique context of resulting protection needs (White House 2021). Significant causes of displacement include gang violence, extortion, gender-based violence, LGBT+ hate crimes, political repression, and megaprojects, as well as climate change, natural disasters, and poverty and inequality. Those most affected are low-income and less educated families who live in marginalised urban or poor rural areas, as well as families with low-middle incomes. Displacement patterns in the region are 'atomized', meaning displaced people do not concentrate but rather flee for individual reasons and in a dispersed manner (IDMC/Knox, 2018 & 2019).³ In situations of extreme insecurity and threat, displacement must occur extremely quickly – those at the highest risk may need to leave home countries within hours or days. Because of security concerns and/or a lack of funds and assistance, people may resort to self-containment or limit their local movement.⁴

These patterns have direct implications for the design and operation of protection pathways in the region. First, eligibility criteria to access pathways must be broad enough to encompass those at a heightened risk, including those fleeing gang violence and gender-based violence. Second, operational infrastructure must be improved to both ensure delivery of key policy objectives and to respond more quickly and effectively to needs on the ground. Operational improvements could include expanded referral partnerships with NGOs and the use of remote processing techniques. Third, a more coherent and cohesive regional approach is needed to meet the needs of a dispersed population in need of protection. Faster and more coordinated policy and operational responses can leverage improved collaboration between the United States, Canada, and Mexico. Innovative approaches to specific pathways – including named sponsorship, student pathways and expanded use of family reunification – should be implemented to increase protection spaces in a sustainable way.

In addition to developing pathways that reflect and respond to region-specific displacement dynamics, region-specific assets should also be considered and leveraged. These assets include extensive networks of civil society organizations who have been engaged in protection work (both formal and informal) for decades, and large diaspora communities in North American countries (the United States in particular) that can be mobilized as sponsors, allies, and enablers for protection pathways.

³ Factors such as social capital, economic resources and the highly individualized nature of a safe place, whether within or outside the country all play a role in the nature of an individual's displacement experience.

⁴ The term 'self-containment' (*autoencarcelización* or 'self-imprisonment') has been used to describe the need to go into hiding due to persecution by gangs and the lack of effective state protection. It refers to a situation where someone confines themselves to a room or house for their own safety. Self-containment can happen before or after internal displacement, prior to external flight or after being returned or deported to the country, and is a form of forced immobility: see IDMC/Knox 2018 & 2019.

Recommendations

Recommendation 1: Review Eligibility Criteria Across All Protection Pathways

To address protection gaps and improve efficiency, governments in the region – in particular the United States and Canada – should conduct a thorough review of the eligibility criteria for all protection pathways available to Central Americans, including refugee pathways, complementary protection, parole and other forms of temporary protection.

This review should consider whether the criteria are broad and flexible enough to meet protection needs on the ground; which forms of admission are best suited to different circumstances; and the post-arrival consequences of these forms of admission.

With respect to refugee categories of admission, the review should result in clear guidance on the treatment of gender-based and gang violence under both the refugee definition and other eligibility categories, including the nexus to persecution based on membership in a “particular social group.”

The review should also consider whether current protection categories adequately address forced displacement due to climate change, including extreme weather events and slow onset changes.

Recommendation 1: Background

One significant barrier to protection for NCA nationals is the narrowness of protection criteria, particularly for those seeking protection in the United States (Medrano 2017; Keyes 2017). Some of those experiencing forced displacement do not meet the criteria of the 1951 Refugee Convention and its 1967 Protocol, and restrictive interpretations applied by the United States further limit who is able to access pathways to protection.

Many NCA refugee claims involve a fear of persecution by gang members or of gender-based violence. However, despite the well-established lack of access to effective state protection from these threats, such dangers are often dismissed as ordinary criminal acts, with no nexus to a ground for refugee protection. Claims grounded in gang- or gender-based violence would be more likely to succeed if interpretations of refugee protection grounds applied in the United States were aligned with international standards. In particular, there is a need for greater recognition that gender and family relationships can ground a claim of membership in a particular social group, and that resistance to criminal gangs may be linked to political opinion (e.g., UNHCR 2010; Jastram and Maitra 2020).⁵

Even with these clarifications, however, some of those forcibly displaced in the NCA region will still fall outside of the refugee definition, and addressing their needs will require broader and more flexible protection categories (Keyes 2017). This may include a combination of permanent and

⁵ The 16 June 2021 United States Justice Department announcement vacating the legal rulings known as *Matter of A-B-* and *Matter of L-E-A-* (issued by former Attorney General Jeff Sessions) is a step in the right direction, but the definitional barriers cited above pre-date those decisions (see Manuel 2014) and will not be fully resolved by their vacation. Further progress may result from President Biden’s Executive Order of February 2, 2021, which directed the Department of Homeland Security and the Attorney General to prepare joint regulations on when a person should be considered a member of a particular social group for the purposes of United States asylum law (The White House 2021, Sec. 4(c)(ii)).

temporary forms of protection depending on the individual's circumstances, provided that temporary solutions offer adequate protection, dignity and opportunities (see Grandi 2021).

For example, in the United States, humanitarian parole can facilitate the admission of a broader range of at-risk individuals and has the potential to be a flexible policy tool for complementary pathways. However, parolees sometimes experience more upfront costs (e.g., DNA testing and funding their own travel), less support and fewer services after arrival, and a lack of opportunities for adjustment to a more durable status if return is not feasible when the period of parole expires. These limitations should be closely examined when reviewing current protection categories and criteria.

On paper, Mexico's asylum legislation (*Ley sobre Refugiados, Protección Complementaria y Asilo Político*) provides some of the strongest, most comprehensive protection categories in the world,⁶ however, gaps between law and practice persist, largely due to geopolitical pressures, capacity and implementation issues, and the recent arrival of large numbers of refugees to Mexico (Chavez and Voisine 2021).

Canada's *Immigration and Refugee Protection Act* (IRPA) also includes grounds of protection that are broader than the 1951 Refugee Convention definition. For example, the Country of Asylum Class allows the resettlement of persons "in similar circumstances to those of a Convention refugee" where they are outside all of their countries of nationality and habitual residence and are "seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries."⁷ Other provisions that allow for Ministerial exemptions from certain requirements of the Act and/or the granting of temporary or permanent residence for public policy or protection reasons have provided flexibility in the past to respond to humanitarian emergencies and urgent protection needs, and could be used with increasing consistency and regularity to allow greater scale.⁸

The 1984 Cartagena Declaration on Refugees arguably addresses the circumstances of most people displaced from NCA countries (Medrano 2017),⁹ but its expanded refugee definition has notably not been widely implemented and is unlikely to be politically feasible across the region in the near-term.¹⁰ While region-wide implementation of the Cartagena Declaration is a worthy long-term objective, in the immediate term, a comprehensive review of protection categories and criteria could avoid a divisive debate about adaptation of the Cartagena Declaration and go a long way toward addressing

⁶ Notably, Mexico's asylum legislation includes gender as a ground for protection in addition to the five Convention grounds.

⁷ *Immigration and Refugee Protection Regulations (IRPR)*, SOR/2002-227, s. 146(1).

⁸ See IRPA s. 25.2, which enables the Minister of Citizenship and Immigration to grant permanent residence or exemptions from requirements of the Act based on public policy considerations. In addition, taken together, IRPA s. 24(1) (temporary resident permit) and IRPR s. 151.1 (protected temporary resident class) allow temporary residence to be granted for protection reasons with a potential path to permanent residence.

⁹ The Cartagena Declaration's refugee definition includes not only those persecuted based on the five grounds enumerated in the Refugee Convention, but also "people who have fled their home countries because their life, security, or freedom has been threatened by widespread violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disrupted public order."

¹⁰ Mexico currently applies this expanded definition, and has granted a significant number of claims to Salvadorans and Hondurans on this basis since 2018, but typically not to Guatemalans (see Schmidtke and Escobedo 2021). Canada and the United States do not use this definition for protection purposes.

current and emerging protection gaps, including those relating to the growing impacts of climate change.

A comprehensive eligibility review should also acknowledge the reality that effective protection pathways for NCA nationals will often need to start in the country of origin. Those in need of international protection fall primarily into two categories: those displaced (or at high risk) in their country of origin; or those who have fled to another country through irregular means (predominantly to Mexico). If one objective of alternative protection pathways is to reduce irregular migration and its attendant dangers, avenues to protection may need to be more directly accessible from countries of origin – a reality that challenges traditional notions of refugee protection. Existing pathways such as the Central American Minors program (CAM) and the Protection Transfer Arrangement (PTA) implicitly acknowledge this reality: processing for both programs occurs in the country of origin. Other pathways (including new pathways) should consider the need for in-country policy allowances and processing capacities as well (see Hipsman and Meissner, 2015), and the operational challenges that have plagued existing processes to date will need to be resolved (see below).

Recommendation 2: Address Operational Gaps That Hinder Protection Pathways

Governments of receiving countries – working closely with international organizations, NGOs and other partners – should both ensure key policy decisions can be efficiently operationalized as part of the design process and improve existing processing infrastructure to facilitate scale.

Specific areas to consider include:

- a. Further developing a network of qualified NGOs within the region to assist in identifying individuals in need of international protection, and working collaboratively to develop an efficient process for referring those individuals to a range of protection pathways.
- b. Increasing capacity and streamlining procedures for in-country processing under CAM, PTA and other pathways that may require it, so that individuals at risk in their country of origin do not have to choose between prolonged uncertainty or dangerous irregular journeys.

Recommendation 2: Background

The review of eligibility requirements in recommendation 1 aims to strengthen policy alignment. It needs to be accompanied with a strengthening of operational infrastructure so that policies can be implemented with greater efficiency and scale.

The existing capacity for identifying, referring, and processing cases from NCA is fragile and unable to support either a large scaling of existing protection pathways or the addition of new ones. NGO partners should be part of the solution, including as referral partners for a range of protection pathways.

National and local NGOs in the NCA region and Mexico have decades of accumulated expertise working with at-risk populations and solving immediate protection problems. Some have operated safe houses and/or underground networks of activists providing informal support to individuals fleeing danger (IDMC/Knox 2018 & 2019).¹¹ In the context of the PTA, UNHCR designated 11 local

¹¹ Examples are networks that support professionals such as human rights defenders, journalists and trade unionists and a regional network that supports LGBT+ network that spans the region and even as far as Spain.

NGOs as referral partners, supported by a wider network of trusted institutions, organizations and community representatives (Diehl 2018, 20). This nascent network can be strengthened and expanded.

Both the United States and Canada already have agreements with NGO partners to provide referrals for resettlement that can also be leveraged. The United States has signalled a desire to expand its NGO referral mechanisms, including for direct referrals to the USRAP (US Department of State 2021b; White House 2021a, Sec. 3(l)). Additionally, NGOs play a pivotal role in operating resettlement processing centres around the world, and their experience as screening partners can also make a key contribution to strengthening operational systems in the NCA.

While NGOs are a critical source of capacity, expertise, local knowledge, and reach, they have faced challenges effectively engaging as partners in protection pathways, as the experience of the PTA illustrates. In that case, a high proportion of NGO referrals were later screened out, leading to inefficiencies, high costs for referral partners, frustrations on the ground, and arguably protection gaps (see Annex 2). This is partly due to the complexity of the criteria and the screening tools provided, as well as a lack of adequate training and feedback (Diehl 2018) – issues that will need to be resolved as referral networks are expanded.

Ideally, NGO partners should be able to refer individuals to multiple pathways across several destination countries, both for efficiency and to increase protection opportunities. However, this will also increase the complexity of the process. To solve this, it may be appropriate to design a two-stage NGO referral process, leveraging the expertise of local NGO partners for initial identification of individuals at risk, while also leveraging the expertise of pathway-specific NGOs for screening and referral to states across multiple pathways. Both components would need to be adequately resourced to move quickly and efficiently – especially in relation to cases involving urgent protection needs.

As noted above, creating operational capacity dedicated to in-country processing may be a particularly necessary aspect of scaled protection pathways from NCA (White House 2021b), but current programs that use in-country processing have been plagued by delays and inefficiencies. This requires dedicated consideration from both a policy and operational perspective.

Most notably, the PTA and CAM programs are intended from a policy perspective to offer urgent international protection. However, neither pathway has met its potential, due in part to operational and eligibility barriers that have not yet been fully addressed (CDA 2021, 22; KIND 2020). The identification, referral, and initial screening process can take many months (the median is 8 months for PTA), with many steps required before at-risk individuals are authorized for departure. This undermines the underlying purpose of these programs and erodes their ability to scale. To increase effectiveness and ensure people at risk can leave in a safe and timely manner, adequate capacity must be put in place and innovative approaches implemented to expedite processing at all stages, including the potential use of video interviews, electronic documents and travel documents.¹² States

¹² Faster, more efficient processing need not be an illusory goal. For example, Mexico has introduced simplified procedures for certain Honduran and Salvadoran asylum claims (amongst others) that have dramatically reduced processing times (see Schmidtke and Escobedo 2021), and programs such as Canada's Urgent Protection Program provide responses within hours or days – albeit at a small scale (see Annex 2).

should also consider the potential relevance of in-country processing for other existing and new pathways, as this responds to a critical dynamic central to protection needs in NCA.

Recommendation 3: Leverage Opportunities for US-Canada-Mexico Collaboration

Canada, the United States and Mexico should seek opportunities for collaboration to increase the availability, efficiency, and effectiveness of protection pathways. This collaboration should be multi-sectoral in nature (involving public and private actors) and should include both policy and operational collaborations. Such a partnership could be advanced under or alongside the MIRPS Support Platform, and could include the following types of actions, amongst others:

- Joint assessment of protection needs and gaps;
- Holistic review to identify potential synergies between pathways and opportunities for greater efficiency and scale;
- Development of joint infrastructure and/or exploration of opportunities for mutual leverage; and
- Joint piloting of new programs, technologies and partnerships.

Recommendation 3: Background

Canada and the United States are global leaders in resettlement and complementary pathways¹³ and have recently agreed to work together on regional solutions for Central America. Canada is the current chair of the MIRPS Support Platform, and the United States is expected to be the next chair. This presents an important opportunity for a more coordinated and effective response to forced displacement in the NCA region. Mexico is also past chair of MIRPS and is bearing considerable responsibility for responding to displacement from the NCA region. Collaboration between these countries will maximize the potential of protection pathways in the Americas.

Protection pathways in the region are impeded by two major “collaboration gaps.” First, there has been little collaboration between these countries on the design and implementation of protection pathways. Each has its own suite of priorities and programs and operates its own processing infrastructure. With very few exceptions, this is the accepted mode of operation for all resettlement countries globally,¹⁴ but the duplication inherent in this approach is ripe with inefficiency.

Second, even within each country’s refugee protection programs, there is frequently a disconnect between policy and operations. Too often the two are considered in isolation, and pathways designed for a particular protection objective fall short because of operational barriers. This is

¹³ Canada resettled more refugees than any other country in 2018 and 2019. The United States resumed its position as the top resettlement country in 2020 (albeit at a historically low level due to Covid-19) and is set to significantly increase resettlement under the Biden Administration, which has announced an increase in the refugee admissions target to 125,000 per year. Canada’s Private Sponsorship of Refugees program is the largest and longest-standing complementary pathways program in the world and supports several innovative and world-leading pathways initiatives such as the Student Refugee Program operated by World University Services Canada. Canada has also exhibited leadership in creating the largest pilot program for the admission of refugee workers (the Economic Mobility Pathways Program).

¹⁴ One exception is the joint processing centre in Turkey operated by the EU’s European Asylum Support Office (EASO): see Fratzke *et al* 2021, 8-9.

apparent in the NCA context, where, despite laudable protection objectives, pathways such as CAM and PTA have underperformed (see Annexes 2 and 4).

A regional strategy focusing on protection pathways could be of significant benefit to closing these gaps. Such a strategy could focus specifically on identifying and experimenting with new ways for Canada and the United States (and various private sector partners) to share or jointly leverage capacity, expertise, and infrastructure on the one hand, while fostering a closer connection between policy design and operational design on the other.

There is also an inherent connection between the design of protection pathways to the US/Canada and Mexico's role providing protection to NCA nationals. In response to consistent and significant growth of asylum seekers on its territory in recent years, Mexico, with the support of UNHCR, continues to expand and strengthen its asylum system, hosting capacity, and an integration and relocation program (UNHCR 2021b). Further, Mexico has been granting protection to increasing numbers of NCA nations under the broader Cartagena definition. The Mexican government faces simultaneous pressure to stem migration flows at its southern border and to host many migrants and asylum seekers turned back from the United States. Thus, Mexico is both a significant contributor to international protection in the region, and deeply impacted by changes to protection pathways to the north. Moreover, its differentiated asylum procedures, which include simplified Refugee Status Determination procedures; simultaneous processing for asylum and complementary protection; and the pilot *merged asylum procedure* that provides expedited processing for certain NCA (and other) claimants and can determine asylum decisions in just one day; may offer valuable lessons for others in the region (Schmidtke and Escobedo 2021). As such, Mexico can be an essential partner as the US and Canada seek to scale and innovate around protection pathways.

Other partners also have a role to play, including via multi-sectoral partnerships that can serve as a crucial source of capacity and support for protection pathways. Canada and the United States both have experience working closely with such partnerships to advance refugee protection, with Canada's [Global Refugee Sponsorship Initiative](#) (GRSI) and the recent launch of the [Welcome.US](#) platform being two notable examples. The near-term objective could be a new multi-sectoral partnership dedicated to advancing policy and operational innovations around protection pathways from NCA.

Recommendation 4: Expand and Improve Existing Pathways and Introduce New Ones

In addition to the cross-cutting recommendations above, expanding avenues for protection will also require pathway-specific improvements and innovations. An overview of a number of pathways are presented in the accompanying Annexes, and some recommendations for growth and enhancement of each are included in the table below.

Pathway Type	Recommendation:
<p>1. Named Sponsorship</p>	<p>Building on infrastructure that already exists in Canada and is being rapidly developed in the US, as well as strong diaspora connections to the NCA region, a dedicated partnership/initiative could be assembled to mobilize and facilitate named sponsorship of NCA nationals at risk. This could include both civil society partners (for sponsor mobilization, training, mentorship, and north-south civil society collaboration, as well as potential screening of named cases) and national governments (to ensure efficient processing and undertaking any necessary policy and regulatory changes).</p>
<p>2. Urgent Protection Pathways</p>	<p>Prioritizing the creation of a new strategy for urgent protection cases in the NCA region. The Protection Transfer Arrangement (PTA) could be redesigned and re-negotiated to be fit for purpose, and other pathways that do not rely on a transit country – such as Canada’s Urgent Protection Program – could be utilized, replicated, and scaled. The US, Canada, and Mexico could also jointly consider the development of a standing emergency evacuation mechanism, offering immediate temporary protection and the opportunity to apply for more durable protection. Eligibility criteria for each of these pathways must be re-examined to ensure those at highest risk (including victims of gang violence) are not screened out. Given the ongoing risk to people during in-country processing, civil society could be financially and practically supported to provide housing and other forms of immediate protection in-country until solutions are identified, and processes for remote (i.e. virtual) screening and identification could be implemented to ensure accessibility.</p>
<p>3. Temporary Protection</p>	<p>Learning from examples in South America and elsewhere, MIRPS Support Platform countries could carefully consider the role that temporary protection could play in responding quickly to mixed movement and dynamic protection needs in the NCA. Flexible temporary protection mechanisms could help meet a range of urgent humanitarian and protection needs, though any consideration of these options in the context of pathways needs to proceed with caution, ensuring that both meaningful protection and the availability of a more durable solution post-arrival are prioritized and systemically incorporated.</p>

4. Family Reunification	Conducting a review of existing family reunification programs and exploring new opportunities as a pathway to protection is important in the NCA given the number of tied cases. This should include consideration of further expanding eligibility criteria for the United States Central American Minors Program (CAM) and providing a mechanism for adjustment to permanent status for minors who arrive through parole, as well as relaxing restrictions on pathways that facilitate family reunification based on derivative status. Expansion of named sponsorship with appropriate policy gates can also be a part of a family reunification strategy.
5. Student Pathways	Building on existing infrastructure, developing education pathways that are appropriate and accessible for those at risk – including vocational and technical education pathways and professional conversion programs. These could align with skills shortages in host countries and build upon in-country mechanisms for the transfer/redeployment of professionals at risk (e.g., teachers, medical staff), adult or further education centres for people at risk, and aid-funded vocational and technical courses. Expansion of named sponsorship with appropriate policy gates can also be a part of a students-at risk strategy.

Pathway Specific Annexes

ANNEX 1: Named Sponsorship

Community-based refugee sponsorship (often called “private sponsorship” or “community sponsorship”) has significant potential to address protection needs of Central Americans – especially in Canada and the United States. The characteristic feature of sponsorship is that it empowers groups of ordinary individuals (rather than governments or professionalized agencies) to lead in welcoming, supporting, and integrating refugees (Bond and Kwadrans 2019, 88). As such, it significantly expands the resources available to support resettlement and complementary pathways.

Since its inception in 1979, Canada’s private refugee sponsorship program has offered protection to more than 327,000 refugees. One distinctive feature of this program is that it allows sponsors to select (or “name”) the refugees to be resettled (Van Haren 2021; IRCC 2019). Experience has shown that this results in significant mobilization of diaspora communities, as a high proportion of cases involve family links or other ties between sponsors and sponsored newcomers (Lehr & Dyck 2020). Sponsorship can also dramatically increase the number of communities involved in welcoming those in need of protection: while approximately 40 communities welcomed Syrian refugees to Canada through government-assisted resettlement, over 400 communities did so through sponsorship (IRCC 2020).¹⁵ A planned United States program may have a similar broadening effect, particularly since government-resettled refugees must currently be settled within a 100-mile radius of a resettlement agency’s office (La Corte 2021).

The Biden Administration has announced plans to create a private sponsorship program in the United States by early 2022 (La Corte 2021) and has created a new Priority 4 (P-4) category under the United States Refugee Admissions Program (USRAP) to provide for the referral of privately sponsored refugees (US Department of State 2021a). The P-4 category includes both a “matching component” (to match sponsors with refugees who already have access to USRAP) and a naming (or “identification”) component, allowing sponsors to identify refugees and apply to sponsor them (US Department of State 2021b, 18).

Argentina’s sponsorship program, initiated in 2014, also includes the ability for sponsors to “name” the refugees to be resettled (Bond and Kwadrans 2019, 92-3). To date, the program has been used exclusively to welcome Syrian refugees, though a proposed legislative amendment would open the program to refugees from around the globe.¹⁶

In addition to the legal infrastructure outlined above, leveraging the potential of named sponsorship requires significant civil society mobilization and coordination. This infrastructure is well-developed in Canada (though the focus on Central America could be increased) and is quickly emerging in the United States on a significant scale.

¹⁵ The public mobilization associated with this program is substantial. Survey data indicates that 7% of Canadians (close to 2 million people) were directly involved in sponsoring refugees as part of Canada’s Syrian refugee resettlement effort (2015-2018): Environics 2018, 34-35.

¹⁶ The economic situation in Argentina limits the number of citizens able to consistently raise the funds necessary for a sponsorship. Thus, there is a need to consider alternative/innovative funding models to increase the viability of sponsorships to Argentina.

Engaging the Central American diaspora in North America through sponsorship could significantly increase the protection spaces offered. As of 2019, there were nearly 3.8 million Central Americans living in the US, 86 percent of whom came from the NCA countries (Babich and Batalova 2021).

The diaspora in Canada is smaller (just over 73,000 as of the 2016 census: Statistics Canada 2017), and sponsorship levels from the NCA countries are currently low.¹⁷ To increase levels, certain policy barriers would need to be addressed – including the requirement, for most sponsorships, that UNHCR has already completed a Refugee Status Determination (RSD).¹⁸

The practical reality is that financial transfers from family members in North America are currently financing many irregular and dangerous journeys, often including significant payments to smugglers (IDMC/Knox 2018 & 2019). Redirecting these resources to regularized protection channels could have significant benefits in terms of migrant safety and regional migration management.

ANNEX 2: Urgent protection / heightened risk

The causes of displacement in Central America – including gang violence, threats and extortion – sometimes require urgent protection to save lives, including quick relocation out of the country of origin. If protection cannot be offered with sufficient speed, individuals may feel forced to flee on their own, increasing their own risk and vulnerability, as well as the systemic pressures associated with irregular movement.

The Protection Transfer Arrangement (PTA) is intended to offer urgent international protection in the NCA region but has arguably fallen short of its lifesaving objectives. Created in 2016, it involves temporary relocation to Costa Rica (the transit country), pending permanent resettlement to a third country (primarily the US, though Canada, Australia, Uruguay, and Brazil have also participated). It is viewed as an essential protection tool in the region, but requires improvements to reach its potential (CDA 2021, 22).

The PTA model relies on three essential components: identification and referral of persons at heightened risk; spaces available in a destination (resettlement) country; and a transit country that can offer temporary protection during processing (Diehl 2018, 10). Identification and referral are conducted by local partner organizations designated by UNHCR, who work with populations at risk. Costa Rica's commitment as the transit country is capped at 600 individuals per year, and no more than 200 individuals at a time (for a maximum of six months). In practice, the full transit capacity has never been used (Diehl 2018).

The PTA is complemented by an In-Country Process resettlement stream (ICP) for cases requiring additional vetting (especially for security concerns). If approved, these individuals travel directly to the US. The same front-end identification process is used for PTA and ICP (Diehl 2018, 23).

A 2018 Evaluation conducted for UNCHR identified several challenges that have hampered the PTA's effectiveness. First, the program involves complex definitions and criteria that make the referral

¹⁷ Only 30 refugees arrived in Canada through sponsorship between January 2015 to July 2021: IRCC 2021.

¹⁸ If the refugee has not been formally recognized by UNHCR through an RSD, they can only be sponsored by a Sponsorship Agreement Holder (SAH); however, sponsorships by SAHs are subject to annual caps.

process complex, time consuming and mis-aligned with the realities of risk in the region. These include seven inadmissibility criteria applied by the United States and six prioritized profiles of risk, each with a three-layered definition (UNHCR, Costa Rica, US). As a result, a very high proportion of NGO referrals are ultimately screened out (Diehl 2018, 15-17, 23-24). Risk identification is completely reliant on resettlement countries' criteria, which frequently do not reflect who is most at risk or even at "heightened risk" (Diehl 2018, iv, 23). Amongst other issues, the United States' approach to the "particular social group" analysis and its nexus to persecution creates complexity for many gang-related claims (CDA Blueprint 2020). Moreover, consideration of violence by non-state actors in NCA as 'individual acts' fails to acknowledge the enabling role of states in widespread and systematic violence by their failure to meet their responsibility for protection.

Second, there are several processing stages prior to relocation to Costa Rica, including file review and interviews by the UNHCR country office; review by the UNHCR regional office in Panama (ROPAN); review by the resettlement country, including a pre-screening interview by IOM (contracted as the Resettlement Service Centre); and security checks and gang vetting. Only then does IOM arrange travel to Costa Rica (see Diehl 2018, 18-20). Thus, while intended for urgent protection, the process can take many months (the median is 8 months). Many applicants abandon the process due to delays, in some cases undertaking dangerous journeys on their own. These delays also increase the burden on civil society partners who provide support during processing (safe houses, food, shelter, medical and psychological supports) and are not adequately resourced to do so (Diehl 2018, vi, 31).

A fundamental limitation of the PTA is the need for pre-approval by a resettlement country before travel to Costa Rica. This means that the bulk of processing occurs in the country of origin.¹⁹ This avoids the risk that Costa Rica will need to provide permanent protection but significantly limits the utility of the model.

The same limitation has hampered other emergency resettlement schemes to varying degrees. Describing several such arrangements collectively referred to as Emergency Transit Facilities (ETFs), UNHCR notes that to avoid having resettlement refusals jeopardize the ETF scheme as a whole, "any transfer to an ETF is pre-conditioned upon a resettlement country *agreeing to undertake further resettlement processing* in the ETF, even if no guarantee of acceptance is provided" (UNHCR 2011, 3, emphasis added).

However, global experience has shown that the degree of processing prior to travel to the transit country has varied from one program to another. Those with more basic screening (e.g., prima facie eligibility and security checks) have offered faster protection but have sometimes experienced bottlenecks in the transit country, as in the case of Niger (Moreno-Lax 2019, 71-75). The International Bar Association has concluded that "only schemes that do not entail full processing prior to departure have proven effective in responding to the concrete necessity of a rapid transfer" (Moreno-Lax 2019, 79). The resulting risk of excessive burdens on transit countries could be partially

¹⁹ While there is a final selection interview in Costa Rica (via "circuit rides"), the UNHCR Evaluation found a 100% approval at this stage: Diehl 2018 at 20.

managed by including trip wires in hosting agreements based on defined thresholds (e.g., number of resettlement refusals or overstays in the transit country).²⁰

Importantly, though, the transit-country model embodied by the PTA is not the only option for urgent protection. Some states have emergency resettlement programs that offer expedited resettlement directly to the destination country for a small number of urgent cases, typically on a dossier basis (i.e. without a face-to-face interview).²¹ Canada's Urgent Protection Program (UPP), for example, allows the rapid resettlement of up to 100 cases per year (globally), providing a response to UNHCR sub-offices within 24 hours and (in some cases) allowing medical and background checks to be completed after arrival in Canada (Moreno-Lax 2019, 69-70). While resource intensive, such mechanisms could be used strategically – perhaps with a dedicated NCA allocation in addition to the global total - to increase the urgent protection spaces available to Central Americans.

Another relevant tool, distinct from expedited resettlement, is emergency evacuation. This model typically involves security screening and assessment of prima facie eligibility before travel to the destination country. There, the beneficiary will usually have a form of temporary protection and the option to apply for permanent protection (Moreno-Lax 2019, 77-78; Sherrell et al, 2004; UNHCR 1999, 345).²² The International Bar Association has put forward a model framework for an Emergency Evacuation Visa that would function along these lines (Moreno-Lax 2019). While primarily intended for large-scale evacuations in the face of humanitarian emergencies, the idea could potentially be adapted to provide urgent, life-saving protection to individuals or smaller groups at extreme risk.

ANNEX 3: Temporary protection (based on conditions in country of origin)

There are several temporary protection measures that exist in the region, some of which could be relevant to the design of new and innovative protection pathways. Extreme caution must be exercised however, to ensure that any exploration of these models in the context of pathway development does not erode core commitments to either protection or durable status (which is critical for ensuring positive integration outcomes in the receiving state). This may mean that use of temporary status should only be introduced where it is coupled with the ability to access regularized status post-arrival.

US humanitarian parole allows authorization of entry to the United States where an individual is affected by “a compelling emergency and there is an urgent humanitarian reason or significant public benefit” meriting temporary admission, typically for no more than a year.²³ There are several forms of humanitarian parole, including “port parole” which recently enabled the rapid entry of tens of thousands of evacuated Afghans who were “paroled” into the country on arrival. An alternate form of parole requires a sponsor “who agrees to provide financial support to the beneficiary while they are

²⁰ For example, an agreement with Romania allowed the host country to suspend arrivals if more than twenty refugees overstayed the permitted six-month period: UNHCR 2011, 3 (fn 6).

²¹ As of 2007, these states included Brazil, Denmark, Finland, the Netherlands, Norway, New Zealand and Sweden: see UNHCR 2007, 1. By contrast, United States regulations require a face-to-face interview for resettlement.

²² A further variant is emergency evacuation with temporary hosting in a transit country, as with the recent evacuations from Afghanistan: see Tan 2021.

²³ Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States.

in the United States for the duration of the parole authorization period” (USCIS).²⁴ Humanitarian parole has the potential to be a flexible legal tool that can support the creation of innovative pathways to the United States, including urgent protection/emergency evacuation, named sponsorship and education pathways. However, for humanitarian parole to serve as an effective pathway-related mechanism for protection, both parolee-benefits and opportunities for adjustment to a more durable status post-arrival must be systematically considered.

Other temporary protection programs in the region include Mexico’s Visitor for Humanitarian Reasons Card (Tarjeta de Visitante por Razones Humanitarias, TVRH, commonly known as ‘humanitarian visa’).²⁵ This allows the recipient to temporarily live, travel and work in Mexico. It is valid for one year and renewable if the humanitarian reasons persist (Angulo Pasel 2021). The difference between this and other protections is that the humanitarian reasons do not relate to what occurred in the applicant’s country of origin or their reasons for fleeing, but rather to their situation in Mexico. It is available to (i) victims of or witnesses to a serious crime in Mexico, (ii) unaccompanied minors, and (iii) people seeking asylum, refugee status or complementary protection in Mexico (although in practice this has not been consistently applied, and concurrent applications for TVRH and asylum are not always permitted). Further, there is discretion to issue the Card based on ‘public interest’ or other humanitarian grounds, which opens opportunities for negotiated use or application (Strauss Center 2020). Nonetheless, it has been (ab)used as a means to transit through Mexico to the United States border with status (Angulo-Pasel 2021).

Regional responses to the Venezuelan crisis are also relevant for demonstrating how temporary protection mechanisms have been developed to provide relief to large numbers of people – including those who have already entered the recipient country and those who may enter in the future. In November 2020, Costa Rica created the new Temporary Special Category of Complementary Protection to regularize the stay of Venezuelans, Nicaraguans and Cubans that have been denied asylum, recognizing that those who do not necessarily qualify as refugees under the law may find it impossible to return to their countries of origin due to various circumstances. In February 2021, Colombia granted legal status (by TPS statute) for ten years to c. 1.7million Venezuelans who were already in the country or who enter in a regular manner within two years, provided they register with authorities. This allows them to work legally and access government services, health care and education. South America is lauded for maintaining (with some exceptions) open border policies for Venezuelans, and for the myriad mechanisms employed to afford them protections. These include the use of existing migration agreements and visa categories, humanitarian visas, as well as new special stay arrangements that include temporary residency, work permits, and access to services. These measures have proved invaluable in mitigating some protection risks for Venezuelans on the move and providing temporary solutions.

²⁴ Sponsors may be individuals, multiple sponsors or a non-profit organization or medical institution, or self-sponsor by the beneficiary themselves if they can demonstrate sufficient resources.

²⁵ Created by the Law of Migration (2011) Art 52.V.

ANNEX 4: Family reunification

Apart from asylum, family-sponsored admission is the predominant legal avenue for people moving from high refugee-producing countries to OECD countries and Brazil – almost double the number of arrivals through resettlement over the past decade and far greater than work and study permits combined (OECD and UNHCR 2021, 14-16). Family admissions also account for a majority of new United States green card holders from Central America (Babich and Batalova 2021). For NCA nationals in need of protection, there are several types of family reunification pathways that are relevant.

First, in keeping with the right to family unity, states are expected to provide legal avenues for refugees to reunite with their nuclear family members following forced displacement (UNHCR 2019, 10). This is sometimes referred to as derivative status based on the right to family unity (UNHCR 2020, 230). Programs such as the United States’ “follow-to-join” provision (I-730) and Canada’s “One-Year Window of Opportunity” are aimed at giving effect to this right.²⁶ Mexico’s legislation provides a broader right to family reunification for those with recognized refugee status, extending opportunity to a range of relatives if they are economically dependent on the applicant.²⁷

Beyond this right, several forms of “alternative” or “complementary” pathways have been developed to facilitate family reunification. Some are intended to reunite recognized refugees in the receiving country with *extended* family members still living abroad. This can provide streamlined admission without the need for full resettlement processing. Some European countries have used this approach for Syrian refugees (UNHCR 2019c, 10). Canada also previously implemented a special family reunification program for NCA nationals (Garcia 2006).

Other forms of family reunification pathways operate regardless of whether the family member(s) already in the receiving country arrived as a refugee – eligibility centers exclusively on the protection needs of the family member(s) seeking admission. A notable example is the Central American Minors Program (CAM), which was newly relaunched and expanded by the Biden Administration, and which holds significant potential as a pathway to protection. Developed in 2014 in response to a dramatic rise in the number of unaccompanied children fleeing NCA countries, it was cancelled by the Trump Administration in November 2017 and re-launched in March 2021. It enables parents and legal guardians in the United States to sponsor their child(ren) in need of protection and certain accompanying family members to join them in the US.²⁸ It has two distinct streams: resettlement as a refugee (via in-country processing under the USRAP), or humanitarian parole for those found to be in danger despite not meeting the refugee definition (Congressional Research Service 2020, 9). A majority of beneficiaries to date have arrived through parole.

²⁶ The United States follow-to join provision has a two-year time-limit, while Canada’s program (as the name implies) has a one-year limit. Separately, the USRAP’s Priority 3 (“P-3”) category enables refugees who meet certain criteria to be reunified with immediate family members already admitted to the United States as refugees or through other defined humanitarian streams.

²⁷ See *Refugiados, Protección Complementaria y Asilo Político*, Art. 12 and 44(VI).

²⁸ Initially, these included the child’s biological parent who was married to the qualifying parent, and any children of the qualifying child. This was expanded in November 2016 to allow additional relatives.

In its original form, CAM brought more than 3,000 children to safety,²⁹ but was criticized for operational and eligibility barriers that prevented it from assisting more children.³⁰ The re-launch of CAM with revised parameters has addressed some but not all these concerns.³¹ Amongst other improvements, it has expanded the criteria for who can sponsor, though it still requires the sponsor to have lawful status in the United States and thus remains inaccessible for the undocumented.³²

Advocates continue to call for a range of measures to improve the program, including: expanding eligibility to any adult relative in the United States who can safely care for the child, regardless of status; incorporating more generous legal standards reflecting the realities of persecution in NCA; providing a guarantee of access to counsel and a child-friendly process; safe shelter and interim protection measures for those facing immediate threats; improved accessibility for children in rural and remote areas; and expeditious processing to offer faster protection (KIND 2020, 7 ff; Moulton et. al. 2016, 3-4; KIND 2021). Others have called for further broadening to enable children residing in the United States to apply to bring their parents or guardians to the US; include those who have already fled NCA to a third country such as Mexico; and expand processing options for urgent cases (e.g., parole into the United States with a decision on refugee status to follow) (CWS 2021).

Finally, states may also pursue protection aims through non-protection immigration streams. Canada used this approach to reunify Haitian families after the 2010 earthquake, through expedited processing under existing immigration categories (D'Aoust 2012, 32), and has included similar measures in its response to the Afghanistan crisis in addition to humanitarian admission measures (IRCC 2021). Providing other avenues of family reunification could help to relieve pressure on that program, which has a significant processing backlog.

ANNEX 5: Student pathways

Student pathways can also play an important role in providing avenues to protection from the NCA region – particularly if designed to reflect the educational background and qualifications of those at heightened risk in the region.

Canada has a long-established and well-developed Student Refugee Program (SRP) run by The World University Service of Canada (WUSC). The SRP combines resettlement with opportunities for higher

²⁹ Over 1,600 children were admitted as refugees, and 1,465 under humanitarian parole up to November 2017. A further 2,714 conditional parole approvals were rescinded when the parole stream was terminated in August 2017, but some (342 as of June 2020) were later admitted after a federal court ordered that their processing be continued: see KIND 2020, 2; Congressional Research Service 2020, 9.

³⁰ These critiques included that it was inaccessible for many, since the sponsoring parent was required to have certain forms of lawful status in the US; excluded children who had already fled their country of origin; put children at increased risk due to long wait times, a lack of protection measures during processing, and the need for some to travel many hours for an interview; and did not allow counsel to accompany children to interviews: see KIND 2020, 3-6; Odom 2016; Moulton et. al. 2016, 1.

³¹ This relaunch has occurred in two stages. The first stage (beginning March 15, 2021) focused on reopening cases that were closed without an interview when the original program was cancelled. Stage two, the consideration of new applications based on revised guidance, began June 15, 2021.

³² Legal guardians in the United States can now sponsor as well as parents, and the criteria for "lawful status" of the sponsoring parent/guardian has been expanded. It now includes lawful permanent residence; temporary protected status; parole; deferred action; deferred enforced departure; withholding of removal; and certain individuals with a pending asylum application or a pending U visa petition filed before May 15, 2021: US Department of State 2021b, 14.

education, bringing refugee students to Canada as permanent residents (under the private refugee sponsorship program) and engaging Canadian students in refugee welcome and integration support.

WUSC leverages the private sponsorship program to identify students in need of resettlement, with a focus on 15 countries including Syria, Jordan, Lebanon, Kenya and Malawi, and grants permission to colleges and universities to sponsor in the name of WUSC. WUSC does not currently have a referral system in Central America.³³

The development of educational pathways for refugees is at an early stage in the US, and several barriers would need to be overcome to operate such programs at scale, including restrictive student visa eligibility rules. A few scholarship programs for refugees exist, including Columbia University's Scholarship for Displaced Persons. Options are being explored and advocacy conducted through the "Initiative on US Education Pathways for Refugee Students," which involves a number of partners led by the President's Alliance. The development of a named sponsorship program in the United States may also present future possibilities for educational pathways.

Mexico has established a small education pathway for Syrian students under the Habesha Project, providing fully funded undergraduate and postgraduate courses (including technical degrees) at select universities in Mexico. The project employs a comprehensive approach that includes psycho-social support, validation of previous qualifications and documents, visa issuance and payment of all travel, accommodation and maintenance expenses through the period of study. In addition, Habesha Américas, in partnership with UNHCR Mexico, offers educational opportunities and training³⁴ to young refugees, asylum seekers and holders of temporary or complementary protection who are already in Mexico (20 places annually), principally from Central and South America (UNHCR 2019). Another initiative, the Ruta de la Hospitalidad, brings together businesses, public institutions, civil society and private individuals to connect refugees with employment, education and professional training opportunities and remove barriers to integration.³⁵ While neither the Ruta de la Hospitalidad nor Habesha Américas provides a complementary pathway to protection, both involve infrastructure that could potentially be leveraged for educational pathways.

As the Mexican examples illustrate, the inclusion of technical and vocational streams will be important to consider in the design of educational pathways for NCA nationals. Those most affected by displacement in the region are low-income families with low education levels who live in marginalised urban or poor rural areas, as well as families with low-middle incomes, who may have difficulty meeting the educational qualifications for academic programs but may thrive in technical and vocational programs. These could align with skills shortages in host countries and build on educational infrastructure in the region, including multiple technical and vocational training programs that have been funded by USAID and NGOs over the years and adult or further education centres for people at risk. They could also piggy-back on in-country mechanisms for the transfer/redeployment of professionals at risk (e.g., teachers and medical staff).

³³ Those seeking student visas independently in the region would apply to the Canada Visa Application Centres operated by IOM in Tegucigalpa and San Salvador. The NCA countries are not part of the fast-track Student Direct Stream.

³⁴ This includes higher education and flexible technical and vocational training.

³⁵ This initiative provides specialised programs for disabled and adult learners and technical training (e.g., in computer coding) for refugees and for Mexicans who have returned from the US.

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