



## GUIDANCE NOTE ON THE OUTFLOW OF NICARAGUANS

### International protection needs

1. Nicaragua continues to be affected by a grave political and social crisis giving rise to violence and human rights abuses.<sup>1</sup> Many Nicaraguans have consequently had to flee their country. Given the volatility of the situation, this is expected to continue. Based on UNHCR and partner profiling and border monitoring exercises, UNHCR observes that the majority of asylum claims are based on individuals' real or imputed political opinion,<sup>2</sup> and therefore considers that they are likely to be in need of international refugee protection.
2. Accordingly, UNHCR calls on States to allow Nicaraguans access to their territory and provide them with access to the asylum procedure and international protection as needed, in line with their obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, applicable regional and national instruments, while flagging the relevance of the Cartagena Declaration.<sup>3</sup> UNHCR stands ready to provide technical support and expertise as required by States seeking to improve the accessibility, fairness, and efficiency of their asylum processes.

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<sup>1</sup> Inter American Commission on Human Rights, *Nicaragua: CIDH expresa preocupación por situación de personas migrantes y refugiadas nicaragüenses y llama a los Estados de la región a adoptar medidas para su protección*, 15 Agosto 2018, <http://www.refworld.org/docid/5b759e5f4.html>; Inter American Commission on Human Rights, *Nicaragua: Graves violaciones a los derechos humanos en el marco de las protestas sociales en Nicaragua*, 21 Junio 2018, <http://www.refworld.org/docid/5b3a693a4.html>; UN News Centre, *Nicaragua debe poner fin a la "caza de brujas" contra las voces disidentes*, 9 Agosto 2018, <http://www.refworld.org/docid/5b6c9dce4.html>; Amnesty International, *Nicaragua: Disparar a matar: Estrategias de represión de la protesta en Nicaragua*, 29 Mayo 2018, <http://www.refworld.org/docid/5b0d94114.html>.

<sup>2</sup> Based on profiling activities and interview, UNHCR and partners have observed that recent arrivals include in particular Nicaraguans of the following profiles: students and youth who were, or are perceived to have been, involved in public demonstrations; persons who have supported the demonstrations by providing financial means or other type of support; civil servants who participated in public demonstrations against the government or who were forced to participate in pro-government demonstrations; former police and military officers; farmers and their relatives who were seen or perceived to oppose the official party, government decisions and/or policies; journalists; doctors and other health care professionals; human rights defenders; witnesses of human rights violations and leaders of the Catholic Church.

<sup>3</sup> *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Although the Cartagena Declaration is included in 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 and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration: Roundtable 15 and 16 October 2013, Montevideo, Uruguay*, 7 July 2014, <http://www.refworld.org/docid/53c52e7d4.html>.

### **Considerations relating to refugee status determination (RSD) procedures**

3. Where States are applying the 1951 Convention refugee definition or the definition in applicable regional instruments, UNHCR would support the implementation of measures to accelerate and simplify individual case processing if the number of cases exceeds the capacity of the asylum system and profiles are sufficiently similar that RSD processes can be streamlined. In the event that asylum systems become overwhelmed as a result of large numbers of applications, UNHCR encourages group-based mechanisms which it is also prepared to support.<sup>4</sup> In addition, UNHCR encourages States to ensure that asylum-seekers are not prevented from accessing essential services due to processing delays. All decisions on asylum claims need to take into account relevant, reliable and up-to-date country of origin information.
4. UNHCR also asks States to allow access to the asylum procedure to those Nicaraguans who had left their country for reasons not connected to the current circumstances in Nicaragua but who would be at risk upon return for similar reasons as more recent arrivals and, therefore, cannot return to their country of origin.

### **Applicable standards and ensuring non-refoulement**

5. UNHCR calls on States to abide by international and Inter-American standards on the treatment of asylum-seekers and other persons in need of international protection, respecting the obligation not to turn back at the border or expel from the territory any person claiming a risk of serious harm. In all situations where the forced return of an individual to Nicaragua is being considered, it would be of the utmost importance first to assess the person's international protection needs, in order to ensure that such returns do not violate States' non-refoulement obligations under national, regional and international law and to also ensure the person's right to due process.<sup>5</sup> Refugee status should be ceased only when the criteria included in Article 1C of the 1951 Convention Relating to the Status of Refugees are met.

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<sup>4</sup> Please see UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>. Any other forms of legal stay that provide protection but are not strictly speaking, 'temporary protection or stay arrangements' as outlined in UNHCR's Guidelines on Temporary Protection or Stay Arrangements, should be extended. Temporary protection or legal stay arrangements are: i) humanitarian and non-political; ii) complementary to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity; iii) used primarily as an emergency response to the large-scale movement of asylum-seekers, providing immediate protection from *refoulement* and basic minimum treatment. They can contribute to a better managed global response system to humanitarian crises as well as complex and mixed cross-border population movements, centered on multilateral co-operation and an equitable sharing of burdens and responsibilities if carried out on a multilateral basis.

<sup>5</sup> Inter-American Court of Human Rights, *Opinión Consultiva OC-25/18 de 30 de mayo de 2018 solicitada por la República del Ecuador. Resumen oficial emitido por la Corte Interamericana de Derechos Humanos*, 30 Mayo 2018, paras 122 and 196 <http://www.refworld.org/es/docid/5b48e0074.html>.