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**Refugee Crisis in Venezuela and Regional Cooperation: The Impact of Brazil,
Chile, and Colombia Policies**

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I dedicate this work to my grandfather, Osmar (in memoriam), the best example of an honest politician, good and charitable. To my grandmother, Adelia, for giving me strength all my life. To my mother, Naides, and to Atos, for being the main reason I conclude this work and for always believing in my dreams. To my father, Altair, for always being on my side and for teaching me the real meaning of bravery. To Fabio Michele, for being my safe place. Last but not least, to the young heroes from Città Del Ragazzo in Ferrara, Italy, those who cross the Mediterranean and survive human wickedness, but despite that, fill my soul with their laughter.

“Lord, when did we see you hungry and feed you or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you? The King will reply, ‘Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.’”

Matthew 25:31-46.

Abstract

The Venezuelan migration crisis has been challenging the South American region's migratory and legal asylum systems since its beginning. In terms of state infrastructure, the region's countries were not prepared to receive this number of people fleeing the deterioration of the Venezuelan state due to its economic and social crisis, leading to a systematic violation of human rights.

The present research analyses, in the first place, the drivers of the Venezuelan migration movement, particularly the economic and social crisis, and human rights violations. In the second place, it explores the main international and regional legal and policy standards embraced by the region, which could apply to the present migratory movement, focusing on the regional responses provided in the last years. Lastly, this study analyzes the individual country legal frameworks and policy standards of Brazil, Chile, and Colombia, including their human rights impacts in practice.

The outcome shows the lack of a common regional approach in practice, emphasizing the individual country policies. It also indicates the significant presence of an initial general welcoming approach and creativity in providing pathways for the regularization of Venezuelan migrants and refugees in the region, affected by the continuity of new arrivals and the pandemic.

Additionally, it highlights the non-prioritization of the asylum system by governments and Venezuelans, showing a trend in the region where most beneficiaries have opted for other forms of regularization because of celerity and practicality. This situation represents a challenge subject to political instability and not providing integral and specific protection.

Keywords: Venezuela migration crisis, Migration in South America, Regional Cooperation, Brazil, Chile, Colombia.

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Table of Acronyms

Abbreviation	Definition
CAN	Andean Community
CONARE	Nation Migration Council
GCR	Global Compact on Refugees
IACHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration
MERCOSUR	Southern Common Market
MPA	2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PEP	Colombia Special Stay Permit
RMRP	Regional Refugee and Migrant Response Plan
R4V	Coordination Platform for Refugees and Migrants from Venezuela
UNASUR	South American Conference and the Union of South American Nations
USD	United States of America dollar

Introduction

The subject of this research was chosen due to the massive migration flow of Venezuelans inside South American countries in the last years due to the deterioration of the living conditions in Venezuela, aggravated by a deep state crisis, economic and social crisis, and violation of human rights. This phenomenon challenges the migratory and asylum systems of the region, in which the majority were not prepared in terms of legislation and infrastructure to receive a massive number of new arrivals simultaneously. This situation gave place to intensive regional debates about international and regional cooperation, including the development of the asylum system and the creation of ad hoc solutions and humanitarian visas.

The general goal of this work is to identify a regional approach in the mechanisms of regional cooperation already existents or developed specifically to attend to this case.

The specific objectives are to analyze whether the existent regional approach has been in practice in the answers provided by South American countries for the Venezuelan migration crisis. Also, it is to analyze the individual country answers given by Brazil, Chile, and Colombia and its consonance with the regional approach. Finally, is to assess the impacts on human rights of Venezuelans concerning regularization and protection measures as well as access to human rights.

To achieve this purpose, the first chapter will deal with the main aspects of the Venezuelan crisis, its political background, the economic crisis and the current social emergencies, and generalized violations of human rights.

The second chapter will list and examine the international and regional mechanisms applicable to the Venezuelan migration movement. Additionally, it will provide an overview of the regional answers of regularization in the last years to identify a common regional approach and its changes over time towards Venezuelan refugees and migrants.

The final chapter will explore each individual country's answers of regularization, protection and integration of Venezuelans, and its human rights impacts, focusing on three countries: Brazil, Chile and Colombia.

Despite the increasing numbers of literature about the Venezuelan migratory crisis in South America in the last years, there is a lack of studies embracing the overall

situation, starting from its drivers, passing through the regional and national measures and arriving at the human rights impacts. This study presents a timeline of the regional measures combined with a focus in three different realities.

The method used was exhaustive bibliography research in scientific articles, international and regional Conventions and Declarations, reports of International Organizations and Nongovernmental Organizations, including relevant data extracted from official governments and governmental agencies.

Chapter 1 - Venezuelan Crisis, Human Rights Violations, and Migratory Flow

The first chapter's general objective is to introduce the main factors that lead to the current migration crisis. To achieve this purpose, it is necessary to deal with the country's political and economic background and its current implications, such as the social crisis. Moreover, it also deals with human rights violations as the main factor driving the migratory movement of Venezuelans.

The first subchapter explores the Venezuelan political background since its process of decolonization and the emergence of Simon Bolivar. Then, the aftermath passes through the factors contributing to the constant struggle between political parties, along with the beginning of the processes of democratic decay. Moreover, it describes the main political choices of the last two presidents, Hugo Chávez, and Nicolas Maduro. Finally, the political sphere will help understand the current political situation and crisis, which is essential to comprehending the migration issue.

Likewise, the second subchapter explains the principal characteristics of the economic crisis, describing the process of high dependency on the oil industry and prejudicial government financial choices. The aim is to analyze the possible features that lead to financial emergencies in the country.

After dealing with the political and economic background, the third subchapter explores one of the consequences of the crisis in the social sphere, where the most basic public services declined, severely affecting people's lives.

Subsequently, the fourth subchapter focuses on the human rights violations that have been happening in the country, including crimes against humanity.

Finally, the last one connects these violations with the intensification of the departure of Venezuelans from their own country.

1.1 The Political Crisis

The current political crisis in the Bolivarian Republic of Venezuela can not be disconnected from its past. Hence, to understand the current crisis in the country, it is necessary to tackle some events that lead to the present circumstances.

Like other countries from the American continent, Venezuela was a colony of the Spanish Empire. However, with the advent of the Napoleonic Wars, the rupture with the

colonial power started to be structured. In this context of decolonization, an important political figure emerged in the Venezuelan political scenario; his name was Simón Bolívar¹, and his political influence was essential for the consolidation of the actual political movement in the country.

Moreover, the country achieved its independence in 1821.² Following independence, around 1830 to 1899, political instability and the constant struggle between political regimes marked the political arena.³ The uninterrupted disputes between various political parties and their ideologies is a characteristic that started right after the independence and remained until recent times.

In this political background, it is essential to highlight the discovery of oil reserves around the 1910s.⁴ This fact radically changed the country's policies and soon influenced politics and the state's affairs.

Despite the constant struggle between Venezuelan political regimes, the government also was affected by *coups d'état* and military governance. Between 1936 and 1945, two military presidents were elected, respectively, Lopez Contreas and Medina Angarita, followed by other two *coups d'état* architected in 1945 and 1948.⁵ Consequently, the coup of 1945 defeated General Angarita and, as the author, Davilaa observes, constituted the primary constitutional rupture of Venezuela in the 20 century.⁶

In 1960, the Venezuelan political arena started to have the prominent presence of two major political parties, the Democratic Action (*Acción Democrática*) and the Independent Electoral Political Organization Committee (*Comité de Organización Política Electoral Independiente*).⁷ With the political prominence of these two political parties, the country achieved a kind of development at some level. However, according

¹ Gabriel V. Rindborg, "Venezuelan Oil and Political Instability: A Case Study of Venezuela and Its Oil Dependency," *Sociologiska Institutionen* 15, no. 1 (2016), <http://urn.kb.se/resolve?urn=urn:nbn:se:su:diva-156457>.

² Rindborg, "Venezuelan Oil Political Instability".

³ Rindborg, "Venezuelan Oil Political Instability".

⁴ Rindborg, "Venezuelan Oil Political Instability".

⁵ Rindborg, "Venezuelan Oil Political Instability".

⁶ Luis Ricardo Davilaa, "The Rise and Fall and Rise of Populism in Venezuela," *Bulletin of Latin American Research* 19, no. 2 (April 2000): 223–38, <https://doi.org/10.1111/j.1470-9856.2000.tb00101.x>.

⁷ Fernando Wandscheer de Moura Alves, "O Marco Legal Brasileiro Em Matéria De Migração e Refúgio Frente a Crise Humanitária Venezuelana" (dissertation, 2020), <https://repositorio.uniceub.br/jspui/handle/prefix/15093>.

to Moura Alves, they were equally responsible for beginning one of the country's leading crises until those times.⁸

Another issue in the country was the beginning of external debt growth, explained by the oil industry's economic boom in 1970. In this period, former president Carlos Andres Perez, did not manage the ongrowing public expenditures and accumulated a high external debt. The consequences of the debt were noticed in the next mandate with Luis Herrera Campins, who governed between 1974 and 1984.⁹

Disputes between political parties achieved stability during the 20th century through a political pact of power-sharing called the Pact of Punto Fijo. This agreement established a system of turnover in the government between the three main political parties present in the country.¹⁰ In this context, Levine elucidates that this period is represented by when democratic politicians and civilian rule were in place for a longer time during the 20th century.¹¹

The period of political peace at a certain point destabilized. In this regard, several authors and studies analyzed the factors contributing to the crescent democratic decay in Venezuela.

In this aspect, Mejia emphasizes two main characteristics that lead to the country's progressive democratic decay: the presence of the oil industry and the presence of economic conservatism. The first one concerns the state's dependency on the results of the oil industry, affecting and influencing the political arena. The second is the presence of a corporate elite and its conservative character, affecting oil production.¹²

Another aspect, which should be considered, is the crescent external debts of the country, mainly to the World Bank. The debt accumulated when oil prices increased, and the government elaborated big development plans, making expensive contracts. According to Iturbe, it was a period marked by excessive market money, enormous development and arrangements projects, and the consequent increase of foreign debt.¹³

⁸ Mouras Alves, "Marco Legal Brasileiro".

⁹ Moura Alves, "Marco Legal Brasileiro".

¹⁰ Jorge Steven Mejia, "Venezuela in Crisis: A Backgrounder," *Elements* 14, no. 1 (September 23, 2018), <https://doi.org/10.6017/eurj.v14i1.10333>.

¹¹ Daniel H. Levine, "The Decline and Fall of Democracy in Venezuela: Ten Theses," *Bulletin of Latin American Research* 21, no. 2 (April 1, 2002): 248–69, <https://doi.org/10.1111/1470-9856.00042>.

¹² Mejia, "Venezuela in Crisis: A Backgrounder."

¹³ Antonio Rodríguez Iturbe, "Venezuela Today," *Caribbean Journal of International Relations & Diplomacy* 2, no. 1 (2014): 37–48, <https://journals.sta.uwi.edu/ojs/index.php/iir/article/view/451>.

Afterward, around 1989, the country's political scenario suffered some changes, and new political actors, institutions, and social movements emerged.¹⁴ In this context, in 1992, the country suffered yet another attempted of *coup d'état*.¹⁵ This year the coup was organized by the Revolutionary Bolivarian Movement under the leadership of Hugo Chávez and Francisco Cárdenas.¹⁶

In spite of the failed attempt, an essential factor was responsible for the election of Chávez some years later. In 1993, President Carlos Andrés Pérez was deposed, by the democratic tool known as impeachment, for reasons linked to corruption.

Furthermore, in the next elections, Rafael Caldera was elected. His government was characterized by a peaceful time and the beginning of the path for the next presidential elections with the amnesty conceded by Caldera to Chávez in 1994. Consequently, allowing Chávez to run for the presidency and to win in 1998.¹⁷

Hugo Chávez was an important political figure, and his politics are essential to understanding the current crisis, including the present government. Chávez was a political leader inspired by the ideas of *Símon Bolívar*. The Bolivarian Political Theory is guided by a nationalist set of concepts linked with the country's emancipation from colonial power.¹⁸

A study done by Davilaa describes that since the first months of Hugo Chávez in power, it was possible to observe the systematic use of political exclusion and the growing militarization of the state.¹⁹ Indeed, he represented the rupture of the old political arrangements, although maintaining some old characteristics, such as the economic plans, the centralized presidency, and the expressive limitation of the checks and balances.²⁰

The Chávez government started to put into place gradual changes, for instance, the modification of the country's flag and the militarization of the state. However, the incremental changes were left behind when he suddenly announced in 2004 the adoption

¹⁴ Pedro Sanoja, "Ideology, Institutions, and Ideas: Explaining Political Change in Venezuela," *Bulletin of Latin American Research* 28, no. 3 (July 1, 2009): 394–410, <https://doi.org/10.1111/j.1470-9856.2009.00309.x>.

¹⁵ Mejia, "Venezuela in Crisis: A Backgrounder".

¹⁶ Moura, Alves, "Marco Legal Brasileiro".

¹⁷ Moura, Alves, "Marco Legal Brasileiro".

¹⁸ Sanoja, "Ideology, Institutions and Ideas".

¹⁹ Davilaa, "The Rise and Fall and Rise of Populism in Venezuela".

²⁰ Mejia, "Venezuela in Crisis: A Backgrounder".

of 21-century socialism, preceded by his declaration to be a follower of the Marxist doctrine.²¹

It is possible to notice that Chávez's government was initially viewed as democratic. Nevertheless, his way of governing had typical elements of authoritarianism from the beginning.

The Chavist government was marked by expropriations in the productive sector and a crescent climate of legal insecurity.²² In summary, bad governance and wrong economic choices contributed to the economic decline of his government.

Chávez was once again elected in October 2012 and, two months later, he announced the reappearance of his disease. In December 2012, Hugo Chávez named Vice President Nicolás Maduro to assume his place in the Presidency as he could not assume his office.²³

Subsequently:

“On Jan.9, 2013, one day before the constitutionally established date for the start of the 2013-2019 presidential term of office (and while the president was still in a hospital in Cuba), the Supreme Court made a controversial ruling allowing Chávez’s new term to continue from the previous one without a formal inauguration.”²⁴

The mentioned decision allowed Maduro to be interim president when Chávez died in March 2013. This decision was highly criticized as Maduro could continue in office while running for the new election presidency.²⁵

A report of the Carter Center made several observations regarding the highly controversial electoral procedure, the participation of public officials and civil servants in the exercise of their duties that should be eliminated, the necessity of an audit of the

²¹ Briceño-Ruiz, “The Crisis in Venezuela: A New Chapter, or the Final Chapter?,” *Latin American Policy* 10, no. 1 (May 1, 2019): 180–89, <https://doi.org/10.1111/lamp.12165>.

²² Briceño-Ruiz, “The Crisis in Venezuela”.

²³ “Study Mission of the Carter Center 2013 Presidential Elections in Venezuela,” April 14, 2013, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-final-rpt-2013-elections.pdf.

²⁴ “Study Mission of the Carter Center 2013”.

²⁵ “Study Mission of the Carter Center 2013”.

fingerprint used in the election, an audit of the electoral registry, and promoting more transparency.²⁶

In this regard, to continue the Chávez government, Maduro's presidency broke the concept of separation of powers, maintaining all the controls under the rule of the executive power.²⁷ The end of the separation of powers materialized the rupture with one of the most important law pillars. At this point, the democratic decay in Venezuela seemed to be irreversible as the economic crises and the lack of democracy led to an unstable internal and external climate.

Considering these circumstances, in 2014, the permanent discontent of the population began to worsen, and the protests intensified. Equally, the government's answer was assuming a solid position against all political opponents.²⁸

In 2015, a new political path was structured, when the opposition defeated the Maduro government in the National Assembly, achieving the majority to shorten his term in office. However, new judges were named to the Superior Court of Justice. As the Chavist regime was still under the control of the National Assembly, the Court annulled the Assembly in 2017²⁹, ending the hope of a new government.

The decision to annul the National Assembly again sparked protests and all the movements were violently repressed, which included deaths. In this regard, in the words of Briceño-Ruiz: "Human rights violations, arbitrary arrests, and the torture of young leaders at the demonstrations showed the authoritarian face of Maduro's government and its increasing move away from minimal democratic practices."³⁰

The last electoral procedure occurred in May 2018; Maduro again won the presidency. Nonetheless, another political attempt to depose the elected president took place. Juan Guaidó proclaimed himself to the presidency, basing his act on the Venezuelan Constitution and the premise that Maduro was not the legitimate president. Once again, as could be expected, the Superior Court of Justice did not support Guaidó's presidency, publicly declaring to be in favor of the Maduro government.³¹

²⁶ "Study Mission of the Carter Center 2013".

²⁷ Iturbe, "Venezuela Today".

²⁸ Robert Samet, "The Subject Of Wrongs: Crime, Populism, and Venezuela's Punitive Turn," *Cultural Anthropology* 34, no. 2 (May 1, 2019): 272–98, <https://doi.org/10.14506/ca34.2.05>.

²⁹ Briceño-Ruiz, "The Crisis in Venezuela".

³⁰ Briceño-Ruiz, "The Crisis in Venezuela".

³¹ Briceño-Ruiz, "The Crisis in Venezuela".

Venezuela is facing an institutional and rule of law crisis. The Assembly appointed government allies to sit in the Supreme Court, and the Court, in its turn, took several measures to block the legislative work. Additionally, the judiciary faces several measures aiming to subject judicial power to executive control.³²

Democracy is people's will to construct their human, civil, and political rights. According to the Venice Commission, democracy is considered one of the most direct expressions of the people's will.³³

It has been fully acknowledged that democracy is essential to the entire exercise of fundamental human rights. However, for democracy to exist it needs to have a system based on the separation and balance of powers, free and fair elections, including pluralism. According to Inter-American Court of Human Rights (IACHR), these elements have not been present for a long time in Venezuela which have jeopardized the effective exercise of democracy. The Venezuelan Constitution of 1999 prescribes the three powers to be divided. Nevertheless, in practice, the executive ignores the existence of other powers.³⁴

In summary, after dealing with the political background, it is possible to notice that since its independence, the country has constantly struggled between different political ideologies, including the incidence of attempts and *coups d'état*. In addition, the high dependency on state affairs in the oil industry, accentuated by economic conservatism and external debt, marked the path that led to the ongoing crisis. Finally, the critical point is the process of democratic decay, which includes the unification of the three powers and violent repression of political opposition and public protests. From this perspective, the political scenario connects with the economic crisis, which will be seen in more detail in the following subchapter.

³² Par Engstrom, "The Situation of Rule of Law and Human Rights in Cuba and Venezuela and EU Engagement" (European Parliament's Subcommittee on Human Rights (DROI), November 1, 2018), <https://ssrn.com/abstract=3300842>.

³³ "Convention on the Standards of Democratic Elections ... - Venice Commission," Venice Commission, accessed November 11, 2022, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL\(2006\)031rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL(2006)031rev-e).

³⁴ "Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report" (Inter-American Commission on Human Rights, December 31, 2017), <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

1.2 The Economic Crisis

According to the International Monetary Fund, Venezuela finished 2021 with the smallest per capita income in the region, 1.627 US dollars.³⁵ For many political scientists, including Bufalo, this is the consequence of the *Chavista* exploitation model. Also, in seven years, the gross domestic product decreased by 81,8%.³⁶ According to Hausmann, the severity of the crisis is also the worst in Latin America, the United States, and Western Europe.³⁷

One of the essential characteristics of understanding the crisis is comprehending the country's high dependency on the oil industry, as mentioned in the previous subchapter. Venezuela can be characterized as a Petrostate because it has the largest oil reserves in the world. This leads to three main features. First, the income is highly dependent on the exportation of oil. Second, the power over the oil exploration is concentrated in a tiny elite's hands, and the third is that corruption is also present in state affairs.³⁸

Along with these aspects, it is said that what happened in Venezuela is a term coined Dutch Disease. This occurs when the oil prices are high for a certain period in a particular country. As a result, the product receives a significant capital investment, consequently leading to the appreciation of the national currency and the development of a prejudicial dependency on the exportation product.³⁹

Experts maintain that Venezuela is the type of Petrostate that failed. In essence, several can be the measures that characterize the crisis, for instance, the dependency on the product, the debt, hyperinflation, and the presence of a crescent elite.⁴⁰

Additionally, research describes the worsening of the crisis with the Chávez government and his measures to have greater control over the Venezuelan Oil Company

³⁵ Aaron O'Neill, "Venezuela - Gross Domestic Product (GDP) per Capita 2022," Statista, November 23, 2021, <https://www.statista.com/statistics/371876/gross-domestic-product-gdp-per-capita-in-venezuela/>.

³⁶ Estadão 28 Nov 2021 - 17h55 A and 28 Nov 2021 - 17h55 Atualizado em 28 Nov 2021 - 17h55, "Venezuela Terminará 2021 Como o País Mais Pobre Da América Latina," Época Negócios, accessed January 27, 2022, <https://epocanegocios.globo.com/Economia/noticia/2021/11/epoca-negocios-venezuela-terminara-2021-como-o-pais-mais-pobre-da-america-latina.html>.

³⁷ Ricardo Hausmann, "Venezuela's Economic Decline Is 'Sharper than the US Great Depression'," World Economic Forum, July 31, 2017, <https://www.weforum.org/agenda/2017/07/venezuela-s-economic-decline-is-sharper-than-the-us-great-depression>.

³⁸ Amelia Cheatham, Diana Roy, and Rocio Cara Labrador, "Venezuela: The Rise and Fall of a Petrostate," Council on Foreign Relations (Council on Foreign Relations, December 29, 2021), <https://www.cfr.org/background/venezuela-crisis>.

³⁹ Cheatham, Roy, Labrador, "Venezuela: The Rise and Fall".

⁴⁰ Cheatham, Roy, Labrador, "Venezuela: The Rise and Fall".

in the late 1990s.⁴¹ With these measures, the success of foreign investment in the national market started to decrease, and in the following years, government control over the oil industry increased significantly.

To continue the control program, in 2002, Chávez's government replaced several workers and executives of the Venezuelan Oil Company by allies. Subsequently, the company was used to fund and manage Chávez's social programs, and in 2009 the president captured oil industry assets after the nationalization of the oil services sector. These actions, among others, destabilized foreign investment, according to Verrastro, the lack of good management in the oil sector and foreign investment led to the crescent breakdown of the industry.⁴²

With the government of Chávez's successor, Maduro, the situation continued to decline. Apart from the 2014 global crisis, the Venezuelan situation worsened due to government policies. The same year, Maduro politically persecuted the Ministry of Petroleum and the Venezuelan Oil Company. It is also important to mention that the new campaign of the Maduro government declares the end of the oil era.⁴³

Beyond the presence of wealth contained in natural resources, the country started to go through a period of economic recession, including a crisis in the field of energy. To illustrate, in 2016, President Maduro proclaimed twice a state of emergency.⁴⁴

In its turn, the author Walsh explains the crisis in three elements. First is the lack of respect for fundamental economic rights, such as the market mechanism through expropriation processes. Second, the lack of foreign exchange, and lastly, the excessive borrowing of money in the period of the economic boom. Furthermore, he also describes the crisis as one of the major disasters in terms of states, in which the cause is not war or the collapse of the state itself. To illustrate, in the last years, the GDP has fallen over 50%.⁴⁵

⁴¹ Frank A. Verrastro, "The Oil Industry Won't Save Venezuela," Center for Strategic and International Studies, July 21, 2021, <https://www.csis.org/analysis/oil-industry-wont-save-venezuela>.

⁴² Verrastro, "The Oil Industry Won't Save Venezuela."

⁴³ Rafael Ramírez, "The Venezuelan Oil Industry Collapse: Economic, Social and Political Implications," IAI Istituto Affari Internazionali, November 8, 2021, <https://www.iai.it/en/pubblicazioni/venezuelan-oil-industry-collapse-economic-social-and-political-implications>.

⁴⁴ Nikolina Jankovic et al., "The Divided Venezuela," International Journal of Foresight and Innovation Policy, March 21, 2019, <https://www.inderscienceonline.com/doi/10.1504/IJFIP.2019.098377>.

⁴⁵ Colleen Walsh, "Understanding Venezuela's Collapse," Harvard Gazette, February 12, 2019, <https://news.harvard.edu/gazette/story/2019/02/harvard-expert-tries-to-make-sense-of-venezuelas-collapse/>.

Another essential feature is the division in the Venezuelan society, the income coming from the oil industry only benefited the political elite.⁴⁶ In a society already affected by high political division, also economic division contributed to the crescent polarization.

Concisely, McCoy explains that:

“One of the main reasons for the decline of Venezuelan GDP is the oil sector's collapse. Deepening its historical reliance on oil revenues from the international markets to account for nearly 95% of Venezuelan exports, the government neglected investment in other essential industries, choosing to import most of its goods. Furthermore, although a long commodities boom in the first decade of the 21st century saw oil prices reaching the highest in the country's history, Chávez and Maduro's governments failed to accrue foreign exchange reserves or savings in sovereign funds.”⁴⁷

In 2021, the problem was a lack of resources to maintain the oil industry, exacerbated by a lack of security and public corruption cases.⁴⁸ In addition, poverty increased, and the minimum wage passed from 480 US dollars per month in 2012 to 2.4 USD in 2021.⁴⁹

Considering this background, it is possible to see that Venezuela's economic crisis can be attributed to some factors and measures connected with poor political and economic choices, most of the time also linked with the oil industry and the state's high dependency on the product. Venezuela, as a Petrostate, has had wealth derived from natural resources and several opportunities to stabilize its market economy. Nevertheless, the path opened by the oil industry suffered from mismanagement of government policies, leading to an economic crisis until today, far from the end.

⁴⁶ Nikolina Jankovic et al., “The Divided Venezuela,” *International Journal of Foresight and Innovation Policy* 14, no. 1 (2019): p. 5, <https://doi.org/10.1504/ijfip.2019.098377>.

⁴⁷ Dimitris Pantoulas and Jennifer McCoy, “Venezuela: An Unstable Equilibrium,” *Revista De Ciencia Política (Santiago)* 39, no. 2 (2019): pp. 391-408, <https://doi.org/10.4067/s0718-090x2019000200391>.

⁴⁸ Verrastro, “The Oil Industry Won’t Save Venezuela.”

⁴⁹ Ramírez, “The Venezuelan Oil Industry Collapse”.

1.3 The Social Crisis

In 2017, three Venezuelan universities' studies showed that around 25.8% of households lived in poverty and 61.2% in extreme poverty.⁵⁰ In addition, another research found that 76,6% of the population lives with less than 1,1 US dollars per day. Furthermore, the same study pointed out that 8 million people in the country were unemployed in 2021, approximately 28% of the country's population.⁵¹

The political and economic crisis also had consequences in other instances of society. For example, there is a lack of medicines, medical supplies, and food. Furthermore, one of the worst facts is that the government denies the existence of these issues and answers with violence any form of social protest.⁵²

The United Nations High Commissioner for Human Rights, Michelle Bachelet, expressed her concern in 2019 regarding the failures in the most basic public services, such as electricity and water supply. Bachelet also mentioned her preoccupation with the education and healthcare sectors, both affected by the lack of workers, supplies, and infrastructure. Also worrying is the health and malnutrition of children and pregnant women. A report by Caritas showed that in the poorest areas, 11.9% of children receiving assistance are in a malnutrition state, including 48.5% of pregnant women. Social security is also affected; the High Commissioner reported an increased level of violence, particularly in the state of Bolívar, including the existence of armed groups linked to the illegal exploitation of natural resources.⁵³

The United Nations General Assembly Resolution 42-25 of 2019, describes the crescent concern regarding the effects of the crisis on the right to good physical and

⁵⁰ José Briceño-Ruiz and Kai Lehmann, "Venezuela in Crisis: Governability, Equity and Democracy," in *Financial Crisis Management and Democracy. Lessons from Europe and Latin America* (Springer, 2021), p. 216, https://library.oapen.org/bitstream/handle/20.500.12657/43283/2021_Book_FinancialCrisisManagementAndDe.pdf?sequence=1#page=211.

⁵¹ "Venezuela Terminará 2021 Como o País Mais Pobre Da América Latina," *Época Negócios*, November 28, 2021, <https://epocanegocios.globo.com/Economia/noticia/2021/11/epoca-negocios-venezuela-terminara-2021-como-o-pais-mais-pobre-da-america-latina.html>.

⁵² Andrew Johnson, *Human Rights Brief, Americas Coverage*, no. Fall 2017, accessed February 1, 2022, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1000&context=hrbregionalcoverage-fall2017>.

⁵³ "Venezuela: High Commissioner Bachelet Details Plans for New Human Rights Assistance," OHCHR, December 18, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25438&LangID=E>.

mental health standards, including a proper standard of living, all linked to the breakdown of public services.⁵⁴

The Global Humanitarian Overview of 2022 announced that inflation rates decreased due to the 2021 slight recovery in oil production combined with some liberalization measures. However, the economy and sectoral sanctions still impacted essential services, for instance, in the sectors of sanitation, domestic gas and the others already cited. Finally, the overview of Venezuela in 2021 remains hyperinflation, political polarization, and violence.⁵⁵

In this context, Galavís emphasizes:

“Venezuela has the second-highest homicide rate worldwide. Homicides rates saw a steep increase from 11 per 100,000 in 1981 to 71.1 in 2016, meaning that 21,752 people were killed violently, most by firearms (86.6 percent). Venezuela also has the highest rate in Latin America of civilians killed by officials.”⁵⁶

Considering all of these, the social crisis affecting the country has its consequences, resulting in a recurrent violation of citizens` human rights. The following subchapter will describe more in detail the kind and extension of these violations.

1.4 Human Rights Violations

Venezuela ratified both the International Covenants regarding Civil and Political Rights and Economic, Social and Cultural Rights, consequently being bound to respect its precepts. The ICCPR dictates rules concerning the self-determination of people (article 1), prohibition of torture, inhuman treatment or punishment (article 7), prohibition of arbitrary arrests (article 9), the dignity of treatment of detainees (article 10), freedom of

⁵⁴ A/HRC/RES/42/25, General Assembly, Forty-second session, 2019.

⁵⁵ “Venezuela,” Global Humanitarian Overview, accessed February 1, 2022, <https://gho.unocha.org/venezuela>.

⁵⁶ Natalia Gan Galavís, “Rule of Law Crisis, Militarization of Citizen Security, and Effects on Human Rights in Venezuela,” *European Review of Latin American and Caribbean Studies* 109, no. January-June 2020: p. 67, accessed February 1, 2022, <https://www.jstor.org/stable/pdf/26936903.pdf?refreqid=excelsior%3A71062d9317a87ef7314b6d999c0e047c>.

thought (article 18), right to peaceful assembly (article 21), and freedom of association (article 22).⁵⁷ Despite the ratification, the country has violated all of these precepts and rights on a large scale.

Likewise, the ICESCR prescribes, among other rights, the right to work (article 7), an adequate standard of living (article 11), the right to physical and mental health (article 12), and the right to education (article 13).⁵⁸ Concerning these covenants' rules, Venezuela is also not respecting its commitments.

The right of freedom of assembly is almost nonexistent due to the beginning of severe repression of social protests practiced by the government forces where substantial human rights violations have occurred. Moreover, the protests intensified due to the population's dissatisfaction with political and economic deterioration. An OHCHR report describes unlawful and excessive use of force by security forces, in these manifestations, including physical aggression.⁵⁹ These episodes of extensive violent repression of social protests threaten citizen security and subject the population to social violence.⁶⁰

The press also has been suffering repression. According to Amnesty International, between January and August of 2021, more than 292 attacks were committed against journalists, such as arbitrary detentions and physical assaults.⁶¹

It is also essential to highlight the evidence of crimes against humanity that have been committed, described as a series of intentional, systematic attacks against the civilian population, including persecution based on political ideology, enforced disappearance, and injury⁶². Venezuela is a state party of the Rome Statute, being subjected to the jurisdiction of the International Criminal Court concerning the crimes mentioned above.

In this regard, the United Nations High Commissioner started investigating into the possible practice of crimes against humanity perpetrated by the government.⁶³

⁵⁷ United Nations (General Assembly). 1966.

⁵⁸ United Nations (General Assembly). 1966.

⁵⁹ Engstrom, "The Situation of Rule of Law and Human Rights in Cuba and Venezuela".

⁶⁰ Inter American Commission on Human Rights, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela," December 31, 2017, <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

⁶¹ "Venezuela Archives," Amnesty International, accessed March 30, 2022, <https://www.amnesty.org/en/location/americas/south-america/venezuela/report-venezuela/>.

⁶² "Crime against Humanity," Migration and Home Affairs, accessed March 31, 2022, https://ec.europa.eu/home-affairs/pages/glossary/crime-against-humanity_en.

⁶³ Andrew Johnson, "Human Rights Violations in Venezuela: A Worsening Crisis," Americas Coverage Fall 2017, October 18, 2017,

Additionally, a report conducted by independent experts detailed that since 2014, violations such as extrajudicial executions, torture, and gender and sexual violence have been under investigation.⁶⁴

One of the leading practices of the Venezuelan government against political opponents is arbitrary detentions. To illustrate the situation, the non-governmental organization Penal Forum reported that, until October of 2021, there had been 413 arbitrary arrests based on political motivation.⁶⁵

Apart from illegal arrests, detainees' lack of process guarantees is also reported.⁶⁶ In fact, unfair trials and military jurisdiction over the civilian population have been committed.⁶⁷

It can be observed that the justice system is also suffering a collapse, characterized by the lack of judicial independence, the principal cause of why perpetrators remain without trial. Lastly, communications report the mistreatment of detainees and torture practices such as asphyxiation, sexual violence, electric shocks, and isolation.⁶⁸

Beyond the crimes mentioned above, the gravity of the situation also permeates shortcomings in the sector of essential services, such as food, water, electricity, and access to health services.

The right to health has been critically affected. For example, it is estimated that 10 million people did not receive medicines for diseases like diabetes, parkinson's, malaria, and cancer.⁶⁹ In addition, an OAS publication describes the episodes of death of children in hospitals due to blackouts and lack of medicines for preventable and treatable diseases.⁷⁰

The same is happening with the right to food; in July 2021, it was publicized that many Venezuelans were living in poverty and in extreme poverty. Indeed, households are

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1000&context=hrbregionalcoverage-fall2017>.

⁶⁴ Helena Carpio, "Comissão Vai Investigar 200 Alegações De Assassinatos Pela Polícia Na Venezuela | ONU News," United Nations (United Nations, March 10, 2021), <https://news.un.org/pt/story/2021/03/1744102>.

⁶⁵ "Venezuela Archives," Amnesty International".

⁶⁶ Engstrom, "The Situation of Rule of Law and Human Rights in Cuba and Venezuela".

⁶⁷ "Venezuela Archives," Amnesty International".

⁶⁸ "Venezuela Archives," Amnesty International".

⁶⁹ "Venezuela Archives," Amnesty International".

⁷⁰ "Annual Report 2019" (Inter-American Commission on Human Rights, 2019), <https://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BVE-en.pdf>.

incapable of buying essential food assets.⁷¹ Similarly happens with water supply, where 29% of families reported having access to water at home, with 28% having access only once during the week.⁷²

Finally, the sector of education is also under pressure. Attacks on universities have been executed. Further, primary and secondary schools and institutes were suspended due to water and energy interruption.⁷³

In light of these facts, it can be concluded that human rights violations have been happening in Venezuela, passing through the breaches of fundamental rights, such as food, health, and education, and crimes against humanity. As a consequence, this situation intensified the numbers of migrants and refugees, which will be treated in the following subchapter.

1.5 Venezuelans Migration Movement

The UNHCR reported that since 2014, 5.5 million of an estimated 32 million Venezuelans have left their country.⁷⁴ Furthermore, around 4.3 million are hosted in Latin American and Caribbean countries inside these numbers.⁷⁵

It is crucial to notice that among these people, it is estimated that several of them are not with a regular migrant or refugee status in their countries of destination.⁷⁶ In this regard, it is possible to conclude that the numbers are higher than the existing records.

Migration outflows is not a new phenomenon in Latin America. Usually, the main migration movement was due to economic reasons, with people leaving the region seeking better living conditions in developed countries.⁷⁷ However, this enormous migration and refugee movement inside Latin America is something new in a recent story in the region.

⁷¹ "Venezuela Archives," Amnesty International".

⁷² Annual Report 2019, IACHR.

⁷³ Annual Report 2019, IACHR.

⁷⁴ "World Report 2021: Rights Trends in Venezuela," Human Rights Watch, January 13, 2021, <https://www.hrw.org/world-report/2021/country-chapters/venezuela>.

⁷⁵ "Migration Flows in Latin America and the Caribbean" (Unicef), accessed April 1, 2022, <https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Venezuela%20Situation%20Report%20Migration%20Outflow%20Jan-June-2020.pdf>.

⁷⁶ "Migration Flows in Latin America and the Caribbean," 2021.

⁷⁷ "Migration Flows in Latin America and the Caribbean," 2021.

In the Venezuelan case, from 2014 and the six following years, the number of migrants drastically increased. During these years, the country's economic situation deteriorated, and the Chávez government started to deviate to a more authoritarian wing. Moreover, a controversial and unfair electoral process for Maduro took place, combined with episodes of violent repression of political opponents.⁷⁸ Coupled with this, the association of a profound economic and political crisis factor led to an unprecedented humanitarian crisis, leaving millions of people to leave the country, seeking survival and protection from political persecution and systematic violence.

At this point, it is essential to consider the character of the Venezuelan displacement crisis as a mixed migration movement. As the Migration Data Portal pointed out in the following statement, mixed migration means:

“The cross-border of people, including refugees fleeing persecution and conflict, victims of trafficking, and people seeking better lives and opportunities. Motivated to move by multiple factors, people engage in mixed migration, have different legal statuses, and face a variety of vulnerable situations. Moreover, refugees and migrants travel along similar routes, using similar means of travel...”⁷⁹

Having said that, the migration movement of Venezuelans can be characterized as a mixed displacement, once it is possible to find migrants motivated by the lack of economic opportunities, and also asylum seekers motivated by political persecution and systematic violation of human rights.

Moreover, according to the OHCHR, an international migrant is a person outside the country where they have their nationality or, in the case of a stateless country, of their habitual residence.⁸⁰

⁷⁸ “Latin America,” Strategic Survey 121, no. 1 (January 2021): pp. 345-386, <https://doi.org/10.1080/04597230.2021.1984120>.

⁷⁹ “Mixed Migration,” Migration data portal, accessed November 8, 2022, <https://www.migrationdataportal.org/themes/mixed-migration#:~:text=Mixed%20migration%20refers%20to%20%E2%80%9Ccross,seeking%20better%20lives%20and%20opportunities.>

⁸⁰ “Differentiation between Migrants and Refugees,” OHCHR (United Nations Human Rights - Office of the High Commissioner), accessed April 12, 2022, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf>.

In its turn, the term refugee is recognized in international law as a person who has fulfilled the requirements contained in the 1951 Refugee Convention and is entitled to receive international protection. In general, terms shall be considered a refugee, according to article 1 A (2) of the Refugee Convention, a person who:

"(...) Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."⁸¹

With these differences in mind and theory, the International Human Rights Law framework protects all individuals independent of their status as migrants or refugees. However, in some circumstances, migrants also need specific protection once they can find themselves in a situation of vulnerability.⁸²

Additionally, the Latin American region possesses a regional refugee definition. The Cartagena refugee definition expands the concept contained in the Geneva Convention, including as refugees, people who are subject to generalized violence, foreign aggression, internal conflicts, massive violations of human rights, and situations of severe public disorder.⁸³

Important to mention that the United Nations High Commissioner for Refugees and the Inter-American Court of Human Rights have recommended the adoption of the refugee definition contained in the Cartagena Declaration.⁸⁴

The significant increase in the Venezuelan migration movement brought new challenges for the region's countries. On the one hand, due to the inadequate infrastructure to receive people in need, and on the other, demanding the creation of new policies concerning migration management, including specific types of visas and procedures.⁸⁵

⁸¹ "Universal Declaration of Human Rights," Documents, United Nations, accessed April 12, 2022.

⁸² "Differentiation between Migrants and Refugees," OHCHR.

⁸³ Freier, "Understanding the Venezuelan Displacement Crisis."

⁸⁴ Luisa Feline Freier, Isabel Berganza, and Cécile Blouin, "The Cartagena Refugee Definition and Venezuelan Displacement in Latin America 1," *International Migration* 60, no. 1 (February 2020): pp. 18-36, <https://doi.org/10.1111/imig.12791>.

⁸⁵ Migration Flows in Latin America and the Caribbean", 2021.

As expected, the migratory situation worsened with the Covid-19 pandemic, bringing travel restrictions and closing borders, increasing the risks associated with illegal migration routes.⁸⁶

The lack of regular entrance and stay permits impedes migrants and refugees from accessing essential services, such as health, education, and protection. This is why regularizing the situation of migrants from Venezuela in Latin American countries is considered to be one of the main challenges.⁸⁷

Besides the government's efforts, the region is facing migratory management challenges, causing implications for the human rights of Venezuelan migrants in practice. To place the Venezuelan migration crisis within the legal and policy framework in Latin America, the next chapter will describe the legal systems of regional cooperation and the regional responses to the crises over the years.

⁸⁶ “RMRP 2022: Regional Refugee and Migrant Response Plan”, 2021.

⁸⁷ “Migration and Migrants: Regional Dimensions and Developments. ”(International Organization for Migration (IOM), 2021), <https://publications.iom.int/system/files/pdf/WMR-2022-EN-CH-3.pdf>.

Chapter 2 – Mechanisms of Regional Cooperation and Regional Responses to Venezuelan Migrants and Refugees

The general purpose of this chapter is the analysis of international and regional legal instruments, police commitments, systems, and platforms that apply to the Venezuelan displacement crisis, in order to identify a common approach in the South American regional and national migratory answers. Moreover, it aims to analyze the measures taken in practice by the region and the individual countries over the years to manage the arrival of Venezuelans and its consonance with the common standards.

To achieve this goal, the first sections will describe and analyze the standards of regional cooperation in South America in the light of the Venezuelan migration crisis, starting with the uniformization made by international mechanisms such as the 1951 Refugee Convention and its 1967 Protocol, passing through the Cartagena Declaration on Refugees of 1984 and its subsequent Declarations. Likewise, the Global Compact on Refugees. Subsequently, it will be described and analyze the existent regional measures like the Inter-American Human Rights System, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas and the Mercosur Residence Agreement. Lastly, the Declaration of Quito on Human Mobility of Venezuelans Citizens in the Region.

The second section will provide a timeline with a general overview of the general regional responses and individual country answers offered by the region to Venezuelans over the years, starting from 2018 until 2022. The aim is to understand if the answers are aligned with the agreed international and regional standards and political commitments.

2.2 Standards of Regional Cooperation in terms of Migrant and Refugee Protection

International cooperation concerning refugee matters is built to offer solutions in two different ways. First, to provide material and financial resources to states of the first arrival, and second, to help find temporal or durable solutions in third countries.⁸⁸

According to De Menezes, the following statement elucidates:

⁸⁸ Fabiano L. de Menezes, "Utopia or Reality: Regional Cooperation in Latin America to Enhance the Protection of Refugees," *Refugee Survey Quarterly*, 2016, <https://doi.org/10.1093/rsq/hdw014>.

“Cooperation in the refugee regime is similar to other areas of world politics. The first relates to states’ interests and human rights. Strategic conditions, such as the coincidence of interest, cooperation, coordination, and coercion, explain how the practices of states relate to human rights most of the time. The second relates to the state’s interests and international aid.”⁸⁹

Using the interpretation above, international cooperation in refugee and migrant protection follows world politics, and several could be reasons to promote shared standard policies. In summary, refugee protection aims to provide financial and material resources, including the search for temporal and durable solutions.

Specifically, the scenario regarding the migratory movement in South American countries has been changing over the years. Historically, the three main migratory movements in the region were immigration abroad, migration inside the region, and migration to developed countries. However, in the last years, intraregional migration has assumed one of the first choices among South Americans because of the creation and enhancement of agreements based on regional cooperation.⁹⁰

Studies have shown that regional agreements are favorable to avoiding irregular mobility, including the guarantee and access to residency and social rights.⁹¹ Indeed, increasing the number of legal entries of foreigners.

These advancements were possible due to the extensive regional discussion considering the legal aspects of migration and all social aspects involved. In this setting, several countries in the region started to adopt national legal frameworks based on international standards to guarantee the protection of migrants’ rights.⁹²

In that regard, over the years, countries adopted the principles of the 1951 Convention and its 1967 Protocol. This is an essential aspect that brings a certain level of

⁸⁹ De Menezes, “Utopia or Reality”.

⁹⁰ “Migration Data in South America,” Migration Data Portal, October 26, 2021, <https://www.migrationdataportal.org/regional-data-overview/migration-data-south-america>.

⁹¹ Marcela Cerrutti, “Regional Migration Governance in South America: How Large-Scale Venezuelan Emigration Puts It to the Test,” Migration Data Portal, February 13, 2020, <https://www.migrationdataportal.org/blog/regional-migration-governance-south-america-how-large-scale-venezuelan-emigration-puts-it-test>.

⁹² Cerrutti, “Regional Migration Governance in South America”

uniformization in terms of legal mechanisms in the region. Equally important was the adoption of the 1984 Cartagena Declaration, which expanded the concept of refugees contained in the Refugee Convention in general terms to include people victims of internal conflicts, and systematic violations of human rights.⁹³

Besides legal uniformization, fundamental regional dialogues took place, such as inside the Mercosur (Southern Common Market), in the CAN (Andean Community), and in UNASUR (the South American Migration Conference and the Union of South American Nations).⁹⁴

All these aspects contributed to the debate concerning migration issues and regional cooperation. Specifically, concerning the Venezuelan displacement crisis, it is essential to highlight the Quito Declaration on Human Mobility of Venezuelans, an agreement signed in 2018 to coordinate the work with Venezuelan migrants inside the region,⁹⁵ together with the mechanisms of review derived from the Inter-American Human Rights System.

In summary, international and regional legal mechanisms play an essential role in constructing individual national answers provided by the states, even if the answers are different from each other. In contrast, at a national level, some have developed specific national legislations but also use complementary measures of protection according to the necessity and specificities of the case.⁹⁶

In this vein, the following subchapters will describe and analyze the international and regional measures applicable to the mixed migration movement of Venezuelans inside South American countries.

⁹³ “International Migration in the Americas: Sicremi 2017 - World,” ReliefWeb (OAS, December 18, 2017), <https://reliefweb.int/report/world/international-migration-americas-sicremi-2017>.

⁹⁴ Cerrutti, “Regional Migration Governance in South America”.

⁹⁵ Cerrutti, “Regional Migration Governance in South America”.

⁹⁶ Liliana Lyra Jubilut, Vera Marcia Espinoza, and Gabriela Mezzanotti, *Latin America and Refugee Protection: Regimes, Logics and Challenges* (New York: Berghahn, 2021).

2.2.1 The 1951 Refugee Convention and the 1967 Protocol

In 1951, to prevent the people from escaping the effects of the Second World War, a key document concerning the protection of refugees was created, the Refugee Convention.⁹⁷

The refugee definition contained in the Convention focused on the events that occurred before January 1st of 1951 in Europe. However, the crescent refugee movements that started in other continents such as Asia, Africa, and America brought the need to broaden the temporal and territorial limitations of the Convention to achieve universal application and embrace all refugees worldwide.⁹⁸

The 1951 Convention acknowledged the right guaranteed in the Universal Declaration of Human Rights of 1948, which ensure the people the right to seek asylum in other countries. Additionally, it adopts the following refugee definition in Article I:

“A refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”⁹⁹

Besides the cornerstone refugee definition, some other essential principles for refugee protection arised from the Convention, such as non-refoulement, non-penalization, and non-discrimination.¹⁰⁰ These principles should guide the measures taken by states in administering and protecting asylum seekers and refugees.

⁹⁷ United Nations High Commissioner for Refugees, “The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol,” UNHCR (UNHCR - The UN Refugee Agency, September 2011), <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>.

⁹⁸ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System” (Inter-American Commission on Human Rights, 2015), <http://www.oas.org/en/iachr/reports/pdfs/humanmobility.pdf>.

⁹⁹ United Nations High Commissioner for Refugees, “Convention and Protocol Relating to the Status of Refugees,” UNHCR (UNHCR, The UN Refugee Agency), accessed October 6, 2022, <https://www.unhcr.org/3b66c2aa10>.

¹⁰⁰ United Nations High Commissioner for Refugees, “Convention and Protocol Relating to the Status of Refugees,”

Nevertheless, neither the Convention nor the Protocol set specific rules concerning cooperation and responsibility sharing. Cooperation appears only in the Preamble of the 1951 Convention with the following statement:¹⁰¹

“Considering that the grant of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot, therefore, be achieved without international cooperation (...)”¹⁰²

In that respect, the 1951 Refugee Convention does not set any specific rules about the so-called “burden sharing,” creating a gap in international refugee law.¹⁰³ The lack of norms concerning responsibility sharing in the Convention is a problem that comes back in front of the massive flux of asylum seekers.¹⁰⁴ Furthermore, currently, there is no such provision in the international refugee law systems with binding force, only in the form of moral rules.¹⁰⁵

Lastly, explicitly considering the regional aspect of the Convention, it is worthy to emphasize that this international instrument has been ratified by 31 countries, members of the Organization of American States until now.¹⁰⁶

The ratification process brings to the national level in Latin America all the standards provided by the Convention, resulting in a positive legal uniformization, especially in cases of attempts to build coordinated responses and agreements.

¹⁰¹ De Menezes, “Utopia or Reality”.

¹⁰² United Nations High Commissioner for Refugees, “Convention and Protocol Relating to the Status of Refugees,”

¹⁰³ Meltem Ineli-Ciger, “Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?,” *EJIL*, June 19, 2018, <https://www.ejiltalk.org/will-the-global-compact-on-refugees-address-the-gap-in-international-refugee-law-concerning-burden-sharing/>.

¹⁰⁴ Komal Srivastava, “Burden Sharing in 1951 Refugee Convention,” *International Journal of Law Management & Humanities* 4, no. 2 (2021), <https://doi.org/http://doi.one/10.1732/IJLMH.26423>.

¹⁰⁵ Srivastava, “Burden Sharing in 1951 Refugee Convention,”

¹⁰⁶ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System”

2.2.2 Cartagena Declaration on Refugees of 1984 and the Subsequent Declarations

A key aspect of refugee protection is the creation of regional instruments to embrace regional-specific necessities and characteristics, in which the role is to complement international rule.

In this sense, the region also comprehending South American countries in 1984 created the Cartagena Declaration on Refugees. An instrument derived from a Colloquium of International Protection of Refugees in Central America, Mexico, and Panama.¹⁰⁷

The Cartagena Declaration expands the refugee definition of the 1951 Convention, stating:

"To reiterate that, in view of the experience gained from the massive flows of refugees in Central America area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article I, paragraph 2) and the doctrine employed in the reports of the Inter America Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."¹⁰⁸

In this framework, the Cartagena Convention set specific standards for refugee status determination in the region.

¹⁰⁷ Liliana Lyra Jubilut, Marcia Vera Espinoza, and Gabriela Mezzanotti, "The Cartagena Declaration at 35 and Refugee Protection in Latin America," E- International Relations, November 22, 2019, <https://www.e-ir.info/2019/11/22/the-cartagena-declaration-at-35-and-refugee-protection-in-latin-america/>.

¹⁰⁸ Regional Refugee Instruments & Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, available at: <https://www.refworld.org/docid/3ae6b36ec.html> [accessed 6 October 2022]

The Cartagena Declaration aims to protect displaced people from risky situations. In this framework, it proposes the evaluation of the status recognition considering the circumstances in the home country instead of an isolated individual story of the asylum seeker.¹⁰⁹

This is the so-called Spirit of Cartagena, which can give access to international protection of a group of people on a prima facie basis because of a country's situation without accessing individual cases.¹¹⁰

Still, according to Jubilut et al.:

“The “Spirit of Cartagena” can be said to be in place in the debates and adoption of the Cartagena Declaration but also in the development of the regime derived from it, and even influencing other actions regarding the protection of refugees and other migrants (such as humanitarian visas and other alternative pathways for legal stays for instance). That is to say, the 'spirit of Cartagena' and the Cartagena Declaration regime's pillars can be considered to be lasting impacts and legacies of the Cartagena Declaration in protecting refugees in Latin America.”¹¹¹

The Cartagena Declaration can be adopted at the national level. Nevertheless, its adoption has not been uniform in the region. As explained by Cantor and Trimino, some countries adopt the definition but also modify and omit some elements. For instance, some countries changed the causes of displacement and excluded some.¹¹² Concerning the applicability of the Cartagena for the Venezuelan displaced people, the recognition inside the region is not expressive.¹¹³

International debates were raised about the applicability of the Cartagena Declaration to Venezuelan migrants. Accordingly, UNHCR, in March 2018 and May 2019, published a Guidance Note on International Protection Considerations for

¹⁰⁹ Luisa Feline Freier, Isabel Berganza, and Cécile Blouin, “The Cartagena Refugee Definition and Venezuelan Displacement in Latin America 1,” *International Migration* 60, no. 1 (February 2020): pp. 18-36, <https://doi.org/10.1111/imig.12791>.

¹¹⁰ Freier et al., “The Cartagena Refugee Definition”.

¹¹¹ Jubilut et al., “The Cartagena Declaration at 35”.

¹¹² Freier et al., “The Cartagena Refugee Definition”.

¹¹³ Freier et al., “The Cartagena Refugee Definition”.

Venezuelans, attesting that most people coming from Venezuela need international protection under the Cartagena regime.¹¹⁴

As mentioned, the Cartagena Declaration admits a refugee status definition on a prima facie basis for groups of people because it considers the country of origin's situation instead of the individual circumstances. According to Freier and Ochoa, in this setting, the lack of application of this definition in Venezuelan migrants represents a policy gap.¹¹⁵

Still, according to the same authors mentioned before, if the countries use the prima facie group's refugee status determination, it would alleviate the high numbers of pending demands. In addition, for the application of Cartagena to be effective, political coordination and cooperation are needed.¹¹⁶

The Cartagena Declaration also comprehends a process of revision every ten years.¹¹⁷ The results of the revisional process were the creation of three Declarations, the 1994 San Jose Declaration on Refugees and Displaced Persons, the 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America (MPA), and the 2014 Brazil Declaration and Plan of Action: a Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean.¹¹⁸

The meeting of 1994 focused on the protection of internally displaced persons. In its turn, the summit of 2004 focused on a system of responsibility sharing instead of the burden approach, and the following discussion in 2014 enhanced the initiatives of the previous one to continue the work done.¹¹⁹

According to Jubilut et al., all the meetings derived from the review process have tried to construct standard police for refugee protection with a particular focus on responsibility sharing and solidarity.¹²⁰

The meeting of 2004 represents an essential instrument in the region. The 2004 Mexico Plan of Action has developed significant advances in the regional policy

¹¹⁴ Freier et al., "The Cartagena Refugee Definition".

¹¹⁵ Freier et al., "The Cartagena Refugee Definition".

¹¹⁶ Freier et al., "The Cartagena Refugee Definition".

¹¹⁷ Jubilut et al., "The Cartagena Declaration at 35".

¹¹⁸ Jubilut et al., "Latin America and Refugee Protection".

¹¹⁹ Jubilut et al., "The Cartagena Declaration at 35".

¹²⁰ Jubilut et.al, Latin America and Refugee Protection".

framework.¹²¹ The goals identified in the MPA align with two particular parts of the Cartagena Convention: "the strengthening mechanisms for the protection and the search for durable solutions."¹²²

The MPA concentrates on three principal themes. The first is enhancing cooperation in the institutional framework by strengthening international refugee law. Second, enhance already established mechanisms of refugee status determination and national systems with technical and financial support. Finally, enhancing regional and national protection of civil societies and their involvement in creating public policies.¹²³ Moreover, the MPA also brings the importance of international cooperation in putting into practice durable solutions.¹²⁴

Moreover, the MPA also provides uniformization in refugee protection legal frameworks. Sixteen of twenty countries adopted the MPA in their national legislation.¹²⁵

The MPA also states two additional programs to base the regional answers in Latin America, the Borders of Solidarity and the Solidarity Resettlement. The Borders of Solidarity establishes key priorities in border cities, such as the strengthening of the institutional mechanisms for refugee status definitions, raising awareness in the local population to prevent discrimination towards Venezuelans, developing a strategic plan to address essential assistance, protection, and integration of the migrant and refugee populations.¹²⁶

The Solidarity Resettlement aims "opens the possibility for any Latin American country, at the opportune time, to participate and to receive refugees who are in other Latin American countries."¹²⁷

On the other hand, the recent displacement crisis of Venezuelans showed some limitations of the MPA, particularly regarding border management. For instance, the

¹²¹ De Menezes, "Utopia or Reality"

¹²² Jubilut et al.I, "Latin America and Refugee Protection".

¹²³ Jubilut et al.I, "Latin America and Refugee Protection".

¹²⁴ Regional Refugee Instruments & Related, *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004, available at: <https://www.refworld.org/docid/424bf6914.html> [accessed 6 October 2022]

¹²⁵ Jubilut et al.I, "Latin America and Refugee Protection".

¹²⁶ Regional Refugee Instruments & Related, *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*

¹²⁷ Regional Refugee Instruments & Related, *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*

Borders of Solidarity program was insufficient to implement public policies, lacked integration and increased episodes of xenophobia. (Silva and Jubilut, 2018).¹²⁸

Lastly, concerning its implementation, the following statement is appropriate:

“Lack of implementation is not an uncommon issue within refugee and migration governance. The MPA was a valuable attempt to translate the regional aspirations of commitment to refugee protection into actions and programs in different countries. However, there are temporal, social, and geopolitical limitations that remind us that the Declaration and Plan of Action do not necessarily mean effective implementation or long-lasting regional cooperation.”¹²⁹

The statement above shows the lack of implementation and political commitment that affects several legal documents, including the Mexico Plan of Action.

2.2.3 Global Compact on Refugees

As treated in the previous section, the 1951 Refugee Convention does not stipulate comprehensible mechanisms for responsibility-sharing between states or ways of compensating host countries, representing a gap in international refugee law. This is why the United Nations General Assembly, in an attempt to answer the gap, adopted 2016 the New York Declaration for Refugees and Migrants.¹³⁰ The New York Declaration adopted a Global Compact on Refugees, where 193 states agreed to share the responsibilities for the refugees worldwide and effectively support host countries.¹³¹ The Compact consists of two parts, the first is the Comprehensive Refugee Response Framework, and the second is the Programme of Action.¹³²

According to the UNHCR, the Programme of Action’s goal is to:

¹²⁸ Jubilut et al.I, “Latin America and Refugee Protection”.

¹²⁹ Jubilut et al.I, “Latin America and Refugee Protection”.

¹³⁰ Meltem Ineli-Ciger, “Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?”.

¹³¹ Ineli-Ciger, “Will the Global Compact on Refugees Address the Gap in International Refugee Law?”.

¹³² Ineli-Ciger, “Will the Global Compact on Refugees Address the Gap in International Refugee Law?”.

“(…) Facilitate the application of a comprehensive response in support of refugees and countries particularly affected by a large refugee movement, or a protracted refugee situation, through effective arrangements for burden and responsibility sharing.”¹³³

More specifically, the Compact aims to set shared responsibility at the global and regional levels.¹³⁴ In the spheres of diminishing the pressures of arrivals in host countries and searching for new durable solutions and access to third countries.¹³⁵

The main objectives of the GCR are: “1) Ease pressure on host countries, 2) Enhance refugee self-reliance, 3) Expand access to third country solutions, and 4) Support conditions in countries of origin for return in safety and dignity.”¹³⁶

It is essential to notice that the Compact reaffirms the essentiality of the already existing durable solutions, which comprehends the expansion of access to third countries’ solutions and support conditions in home countries for safe return.¹³⁷

In the following statement Kemal’s observes:

“In recognition of the protracted nature of most refugee situations around the world, it goes beyond the 1951 Convention and calls for the international community to work together to improve the self-reliance of refugees and the resilience of their host communities by transforming refugees from a humanitarian burden to a development and economic opportunity.”¹³⁸

¹³³ United Nations High Commissioner for Refugees, “Report of the United Nations High Commissioner for Refugees Part II - Global Compact on Refugees,” UNHCR, September 13, 2018, <https://www.unhcr.org/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-global-compact.html>.

¹³⁴ Ineli-Ciger, “Will the Global Compact on Refugees Address the Gap in International Refugee Law?”.

¹³⁵ Liliana Lira Jubilit and Melissa Martins Casagrande, “The Global Compact on Refugees and Latin America,” E - International Relations, December 23, 2019, <https://www.e-ir.info/2019/12/17/the-global-compact-on-refugees-and-latin-america/>.

¹³⁶ Jubilit and Casagrande, “The Global Compact on Refugees and Latin America.”

¹³⁷ Kemal Kirişci, “The 1951 Refugee Convention Is Falling Short of Its Mission. Could the Global Compact on Refugees Help?,” Brookings (Brookings, March 9, 2022), <https://www.brookings.edu/blog/order-from-chaos/2021/07/26/the-1951-refugee-convention-is-falling-short-of-its-mission-could-the-global-compact-on-refugees-help/>.

¹³⁸ Kirişci, “The 1951 Refugee Convention Is Falling Short of Its Mission”.

Besides that, the Compact is not legally binding for signatory states.¹³⁹ Still, it constitutes an international political commitment concerning enhancing cooperation with refugees protection and host countries.¹⁴⁰

The consideration of the refugee's needs and host communities are among the main perspectives of the Global Compact. Moreover, South American countries have developed good practices in refugee protection, such as the broader concept of refugees and the establishment of complementary protection.¹⁴¹

In this sense, as described by Jubilut and Casagrande, Latin America has founded alternatives for forced migration movements, such as humanitarian visas, regional residency permits, and regional citizenship.¹⁴² These new advancements align with the Global Compact on Refugees once they provide pathways for regular migration and complementary entry forms in third countries.¹⁴³

Another point concerning refugee protection and the GCR in Latin America is that diminishing the pressures suffered by host countries and the development of refugee self-reliance and access to third-country solutions were part of the solutions presented by the Cartagena Declaration Review Process, particularly Cartagena +20 and Cartagena +30.¹⁴⁴

The Global Compact seems until now be in lign with the regional migratory approach, as highlighted before the region has created alternatives for dealing with the Venezuelan migration movement as it will be view in the following sections.

2.2.4 The Inter-American Human Rights System

The Inter-American Human Rights System is an organ of the Organization of American States (OAS) in which the goal is to promote and protect human rights in the

¹³⁹ Kirişci, "The 1951 Refugee Convention Is Falling Short of Its Mission".

¹⁴⁰ United Nations High Commissioner for Refugees, "Report of the United Nations High Commissioner for Refugees Part II - Global Compact on Refugees."

¹⁴¹ Jubilut and Casagrande, "The Global Compact on Refugees and Latin America."

¹⁴² Jubilut and Casagrande, "The Global Compact on Refugees and Latin America."

¹⁴³ Jubilut and Casagrande, "The Global Compact on Refugees and Latin America."

¹⁴⁴ Jubilut and Casagrande, "The Global Compact on Refugees and Latin America."

American continent.¹⁴⁵ The system comprises two bodies, the Inter-American Commission and the Inter-American Court of Human Rights (IACHR).¹⁴⁶

The Inter-American Court of Human Rights is an autonomous organ of the OAS. Its work is based on three principal areas, individual petition systems, a monitoring system about human rights in the member states, and the work in thematic areas.¹⁴⁷

Together the Commission and the Court have worked on migration-related questions, developing standards under the scope of the American Convention.¹⁴⁸

Since the creation of the OAS, the members have adopted a total of eleven legal frameworks concerning the promotion and protection of human rights at a regional level. Even if not all eleven treat migration specifically, all set rules linked to migratory contexts.¹⁴⁹ All these documents drive the action of member states in practice in migrants and refugee management.

The eleven instruments are composed by: the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969), the Inter American Convention to Prevent and Punish Torture (1985), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988), the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990), the Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belem do Para” (1994), the American Convention on Forced Disappearance of Persons (1994), the Inter-American Convention on the Eliminations of All Forms of Discrimination against Persons with Disabilities (1999), the American Convention against Racism, Racial Discrimination and Related Intolerance (2013), the American Convention against All Forms of Discrimination and Intolerance (2013) and, the Inter American Convention on the Protection of Human Rights of Older Persons (2015).¹⁵⁰

¹⁴⁵ “Oas: IACHR: What Is the IACHR?” IACHR - Inter American Commission on Human Rights, accessed October 6, 2022, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp>.

¹⁴⁶ Joel Hernández, “Inter-American Standards on Migration, Asylum and Refugee Law,” *University of Vienna Law Review*, December 19, 2018, <https://viennalawreview.com/index.php/vlr/article/view/123>.

¹⁴⁷ “Oas: IACHR: What Is the IACHR?”

¹⁴⁸ Hernández, “Inter-American Standards on Migration, Asylum and Refugee Law”.

¹⁴⁹ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System”.

¹⁵⁰ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons”.

In its turn, The American Declaration of the Rights and Duties of Man is a legally binding document among the states members of the OAS, which comes up with the organization's Charter.¹⁵¹ Through the Declaration, the Inter-American Commission based several analyses of cases concerning migration and violation of human rights.¹⁵²

Also, the Commission stated that article XXVII of the Declaration containing the right of an asylum set two criteria. First, the right to seek and receive asylum in a third country must be according to its national law. Second, the same right must also align with international agreements.¹⁵³

Furthermore, the American Convention on Human Rights was adopted in 1969 and entered into force in 1978, aiming to protect the individual fundamental rights of human beings without discrimination regarding nationality.¹⁵⁴

Moreover, concerning migration, the American Convention in article 1.1 set down the obligation to states to ensure the rights recognized in the instrument without discrimination based on language, sex, political opinion, nationality, social origin, race, color, or another status.¹⁵⁵ Additionally, article 22 determines the right of movement and residence. It also establishes the right to seek asylum (paragraph 7), the principle of non-refoulement (paragraph 8), and the prohibition of collective expulsion of aliens (paragraph 9).¹⁵⁶

In that regard, Venezuela denounced the American Convention in 2013. Even so, it remains subject to the Commission, and the obligations undertaken under the OAS Charter and in the American Declaration of the Rights and Duties of Man.¹⁵⁷ Thus in 2013, the UN High Commissioner asked the Venezuelan government to reconsider the decision to withdraw once this could represent a recess for the human rights field in the country.”¹⁵⁸

¹⁵¹ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons”.

¹⁵² “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons”.

¹⁵³ Hernández, “Inter-American Standards on Migration, Asylum and Refugee Law”.

¹⁵⁴ “Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System”.

¹⁵⁵ Hernández, “Inter-American Standards on Migration, Asylum and Refugee Law”.

¹⁵⁶ Hernández, “Inter-American Standards on Migration, Asylum and Refugee Law”.

¹⁵⁷ “Annual Report 2016” (IACHR - Inter American Commission on Human Rights, 2016).

¹⁵⁸ “IACHR Deeply Concerned over Result of Venezuela’s Denunciation of the American Convention,” OAS - Organization of American States, September 10, 2013, https://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp.

From this perspective, the IACHR approved 2019 the Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking. The principles there guide the development of legal frameworks, policies, and programs. Some critical regulations are non-refoulement (principle 6), cooperation and coordination (principle 9), right to seek asylum, right to access fair and efficient refugee status determination (principle 55), and access to asylum procedures that should not be subject to the presentation of documents (56), among others.¹⁵⁹

Altogether, in particular, given the American Declaration of the Rights and Duties of Man of 1948, the American Convention on Human Rights of 1969, and the Inter-American Principles on the Human Rights of all Migrant, Refugees, Stateless Persons, and Victims of Human Trafficking it is clear that in the Latin American has always been in constant debate about migratory issues, demonstrating a general framework of receptivity and respect for the rights of migrants and refugees.

2.2.5 The 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas and the 2010 Mercosur Declaration of Principles on International Refugee Protection

The governments of American countries, including Brazil, Chile, Colombia, and the Bolivarian Republic of Venezuela, met in Brasilia in 2010 on the occasion of the sixtieth anniversary of the 1951 Convention to sign the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas.¹⁶⁰

The Declaration acknowledges the progress brought by the Cartagena and the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America of 2004 and the new challenges derived from mixed migration movements. Moreover, reaffirms the need to find new durable solutions.¹⁶¹

¹⁵⁹ “Resolution 4/19 - Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking,” IACHR - Inter-American Commission on Human Rights, December 7, 2019, <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

¹⁶⁰ UN High Commissioner for Refugees (UNHCR), *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*, 11 November 2010, available at: <https://www.refworld.org/docid/4cdd44582.html> [accessed 6 October 2022]

¹⁶¹ UN High Commissioner for Refugees (UNHCR), *Brasilia Declaration*

In addition, they recognize the need to update the programs contained in the 2004 Mexico Plan of Action, such as the Borders of Solidarity, Solidarity Cities, and Solidarity Resettlement.¹⁶²

In summary:

“In its preamble, the Latin American States underlined the “creative and innovative character” of the solidarity resettlement program. Latin American states asked for the “technical and financial support of the international community” to consolidate the Solidarity Resettlement Programme. In the main text of the Brasilia Declaration, Latin American States needed to revitalize all the durable solutions developed under the MPA to improve the protection of refugees in the region. They also decided to extend the MPA to deal with the “protection of refugees in the context of mixed migratory movements.”¹⁶³

The Brasilia Declaration focuses on updating the Mexico Plan of Action statements. In this sense, some have argued for another instrument to address the same regional issues. The answer is that the previous document has gaps and that some sections of the Brasilia Declaration addressed these gaps. In addition, the new record serves to reinforce the need for more international cooperation. Furthermore, lastly serves as a reminder to the countries that did not sign the previous international instruments relating to refugees.¹⁶⁴

Still, it is essential to highlight three of the topics of the Brasilia Declaration, which were updated. The first is that the Declaration states the “unrestricted respect” for the principle of non-refoulement, enlarging the definition of the 1951 Refugee Convention to include the principles of non-rejection at the borders and indirect non-refoulement, the non-penalization of illegal entry, and the non-discrimination principle.¹⁶⁵

The second aspect is the inclusion of support for considerations based on age, gender, and diversity in national refugee laws. The objective is to encourage other states

¹⁶² UN High Commissioner for Refugees (UNHCR), *Brasilia Declaration*

¹⁶³ De Menezes, “Utopia or Reality”.

¹⁶⁴ Daniel Acosta, “Introductory Note to the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas,” *Cambridge University Press* 50, no. 3 (2011).

¹⁶⁵ Acosta, “Introductory Note to the Brasilia Declaration”.

to adopt this statement in national legal frameworks. Finally, the third is to support states in embracing new situations of migration not included in the previous Conventions, such as the victims of trafficking.¹⁶⁶

Still, according to the Acosta, the Brasilia Declaration gives a message of continuing to work in sharing responsibility and the development of regional protection mechanisms through the implementation of the Mexico Plan of Action.¹⁶⁷

It is important to note that the Declaration is not a binding framework, suggesting that this application depends strictly on the state's political commitment.¹⁶⁸ Nevertheless, it is possible to see that the Brasilia Declaration seeks to update significant gaps present in the Mexico Plan of Action, with a special focus on shared responsibility.

In turn, the 2012 Mercosur Declaration of Principles on International Refugee Protection focuses on two points. First, reaffirm the contribution of the durable solutions contained in the MPA. Also, the goal is to work in developing national and regional resettlement programs.¹⁶⁹

Besides, to constitute a political commitment, according to De Menezes, both Declarations, the Brasilia and Mercosur Declarations, “did not offer any new compromises and kept the same utopian ambitions without any compromises, as found in the MPA analysis.”¹⁷⁰

2.2.6 The Southern Common Market and the Mercosur Residence Agreement

The Southern Market Union represents the twenty-first century's progress in migration management in the region.¹⁷¹ This significant advancement was the creation of the Mercosur Residence Agreement. Through this mechanism, regional migration management was favorably improved through mechanisms created to protect and guarantee the human rights of migrants, such as access to residence-related rights, access to work and economic rights, right to education, including the recognition of international diplomas, social and security rights, health and education.¹⁷²

¹⁶⁶ Acosta, “Introductory Note to the Brasilia Declaration”.

¹⁶⁷ Acosta, “Introductory Note to the Brasilia Declaration”.

¹⁶⁸ Acosta, “Introductory Note to the Brasilia Declaration”.

¹⁶⁹ De Menezes, “Utopia or Reality”

¹⁷⁰ De Menezes, “Utopia or Reality”.

¹⁷¹ Cerrutti, “Regional Migration Governance in South America”.

¹⁷² Cerrutti, “Regional Migration Governance in South America”.

The residence agreement was signed in 2002. However, it entered into force only in 2009. It states common mechanisms for processing residence permits, making the procedures more straightforward and uniform between the signatory countries (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, and Uruguay).¹⁷³

The benefits of holding a residence permit in a foreign country are well known. Furthermore, the same is true for this system, which implies freedom of movement and access to all the rights of a national citizen.¹⁷⁴

According to the Migration Portal Data, since 2009, the time of processing residence permits has been reduced, including the growing issues of residence permits. From 2009 to 2018, 3,065,570 residencies were granted on a temporary or permanent basis.¹⁷⁵

Moreover, Diego Acosta points out that “the driving force behind the Mercosur agreement was to find solutions to irregular migration and not to pave the way for an internal trade market.” As stated in the Preamble, the goal is to deal with intraregional illegal migration and develop a regional integration process through a policy of free circulation of people.¹⁷⁶

2.2.7 Declaration of Quito on Human Mobility of Venezuelans Citizens in the Region

The governments of 12 countries, including Brazil, Chile, and Colombia, met in Quito to share information and good practices to articulate a regional coordination answer to the Venezuelan migratory crisis. As a result, they agreed to continue to work separately and cooperate in a way that each country finds adequate with the provision of humanitarian assistance, give access to mechanisms of regular residency, including the process of migration regularization, and access to procedures to get the status of refugees. Additionally, continue to work with public policies aiming to protect the human rights of all migrants according to national legislation and international and regional instruments,

¹⁷³ Cerrutti, “Regional Migration Governance in South America”.

¹⁷⁴ Cerrutti, “Regional Migration Governance in South America”.

¹⁷⁵ Cerrutti, “Regional Migration Governance in South America”.

¹⁷⁶ Ibrahim Awad and Usha Natarajan, “Migration Myths and the Global South,” *The Cairo Review of Global Affairs*, 2018.

recognize the importance of technique and financial cooperation by the states and international organizations, and accept travel and personal documents expired, which is the goal of migration.¹⁷⁷

In September 2018, the First Quito Declaration was developed, where the primary commitment was to provide facilities for the mobility of migrants and refugees from Venezuela and to urge the capital of Venezuela to provide documents of identity and passports for its nationals.¹⁷⁸

The Second Quito Declaration surged in November of 2018 with three main aspects: the regularization of Venezuelans in host countries in the region, regional cooperation with Venezuela, and international cooperation.¹⁷⁹

In the following year, in April 2019, the Third Declaration highlighted the need to seek financial and technical cooperation to implement the measures contained in the Action Plan.¹⁸⁰

In July 2019, the Fourth Declaration was created and approved with proposals for a Regional Mobility Card, Centers for Reception, and Assistance to Migrants and Refugees. Besides, creating a Group of Friends of the Quito Process and the organization a meeting to treat specifically human trafficking.¹⁸¹

Still, in 2019, in November, the Fifth Declaration with an emphasis on actions on migratory information cards, migratory information, reception centers, and socioeconomic integration was signed.

In September 2020, the Sixth Declaration aimed to enhance the Quito Process and introduce matters such as the impact of the Covid-19 pandemic and issues such as family reunification. At this meeting, the creation of the group called Friends of the Quito Process was formalized. In the same year, in October, the group's first meeting took place.¹⁸² And in May 2021, the Seventh Joint Declaration was started.

In summary, the Quito Process is a powerful regional platform to deal exclusively with the Venezuelan mixed migration movement. It recognized the necessity of regional

¹⁷⁷ Declaration of Quito on Human Mobility of Venezuelan Citizens in the Region, 4 September 2018, available at: https://www.cancilleria.gob.ec/wp-content/uploads/2018/09/declaracion_de_quito_en.pdf [accessed 6 October 2022]

¹⁷⁸ "Timeline," Proceso de Quito, accessed October 6, 2022, <https://www.procesodequito.org/en/timeline>.

¹⁷⁹ "Timeline," Proceso de Quito.

¹⁸⁰ "Timeline," Proceso de Quito.

¹⁸¹ "Timeline," Proceso de Quito.

¹⁸² "Timeline," Proceso de Quito.

cooperation, despite prioritizing national answers, leaving it to each state to decide the better policy according to its realities. The Quito Process reaffirms the regional migration policy already in place, based on international and regional standards but focusing on national frameworks.

2.3 Timeline of Regional Responses to the Venezuelan Displacement Crisis

Latin American countries have demonstrated an open approach towards migratory movements and creativity in providing legal status to migrants and refugees. However, as the displacement crisis continued and added to the fact that an immediate return was not foreseen, the great possibility that Venezuelans could remain in host countries in the long term constituted one of the main reasons why the discourses started to change towards a more restrictive policy.¹⁸³

The general objective of this section is to develop a timeline of the principal regional responses provided by South American governments to guarantee legal status to Venezuelan displaced people starting from 2018 to 2022. Moreover, it aims to construct an analysis of the effectiveness of these measures in practice and their commitment to human rights standards and refugee human rights, including regional frameworks and standards built in the last few years.

The first subchapter will provide background concerning the initiatives in place before 2018 starting approximately from 2015 when the displacement crisis achieved a significant proportion in the region.

The second subchapter will explore the initiatives of 2018, highlighting the developments of the Quito Process, the Inter-Agency Coordination Platform, the Joint Statement for the Development of Regional Response to the Massive Arrival of Venezuelans to the Americas of the Inter-American Commission on Human Rights, the IACHR Resolution 2/2018 and the Guidance Note on the Outflow of Venezuelans of UNHCR.

¹⁸³ Andrew Selee and Jessica Bolter, “An Uneven Welcome: Latin American and Caribbean Responses to Venezuelan and Nicaraguan Migration” (Migration Policy Institute, February 2020), <https://www.migrationpolicy.org/research/latam-caribbean-responses-venezuelan-nicaraguan-migration>.

The third subchapter will describe the change in the welcoming policies towards Venezuelans and the measures aimed to restrict the mobility of Venezuelans inside the region, such as the requirements for visas and passports and the prohibition of the presentation of expired documents.

The fourth section will continue to provide an overview of restriction policies aggravated by the Covid-19 pandemic.

The fifth section demonstrates the continuity of restrictive policies and their effects on Venezuelans displaced people in 2021.

Finally, the last will deal with the policies currently applied, including a summary of the previous years and general analysis.

2.3.1 Background

In 2015, the Venezuelan displacement crisis started to appear in the international community's discourses and concerns. In the beginning, in most South American countries, Venezuelans were allowed to enter without visa requirements and passports. This initial scenario of openness towards intra-regional migration resulted from a process of construction of regional agreements such as the Southern Common Market (Mercosur), the Andean Community (CAN), and bilateral agreements.¹⁸⁴

As mentioned, the majority of the countries in the region in 2015 did not ask Venezuelans for visas or the presentation of passports. In this framework above, there is a list of seven countries and their entry requirements in 2015.¹⁸⁵

Table 1: Entry Requirements for Venezuelans in Case Studies Countries, 2015¹⁸⁶

Country	Visa Required in Advance for Entry?	Passport Required for Entry?
Argentina	No	No
Brazil	No	No
Chile	No	Yes

¹⁸⁴ Selee and Bolter, “An Uneven Welcome: Latin American and Caribbean Responses to Venezuelan and Nicaraguan Migration”.

¹⁸⁵ Selee and Bolter, “An Uneven Welcome”.

¹⁸⁶ Selee and Bolter, “An Uneven Welcome”.

Colombia	No	Yes
Ecuador	No	No
Peru	No	No
Uruguay	No	No

According to the table, it is possible to see that only Chile and Colombia asked for the presentation of passports for the entrance of Venezuelans. However, as it will be treated in the following sessions, this framework started to change with the crescent of new arrivals and the duration of staying in host countries.

According to the governments, the requirements of visas and passports represent a necessary measure to ensure safe, regular, and orderly migration. On the other hand, research suggests that restrictive policies may force people to travel on illegal and dangerous migratory routes, especially considering the severe state crisis in Venezuela, impeding the issuance of passports and other documents.¹⁸⁷

Successively, in 2017 the number of new Venezuelan arrivals inside the region continued to increase as well as around the world.¹⁸⁸ Moreover, this year represented a significant increase in Venezuelan asylum claims filed. For instance, between 2014 and 2017, more than 100,000 asylum claims were filed, with more than half of this number only in 2017.¹⁸⁹ This phenomenon represented a new challenge for governments in the region, and as a result, it was offered a set of different responses to the crisis. Still, the majority of them were welcoming.¹⁹⁰ Venezuelans in that year tended to migrate to Brazil, Colombia, Ecuador, Peru, Argentina, and Chile. Besides asylum claims, Venezuelans also received visas for entry and temporary stay permits. Furthermore, these options did not allow the right to work, a negative factor that compromised the situation of Venezuelans in host countries.¹⁹¹

¹⁸⁷ Selee and Bolter, “An Uneven Welcome”.

¹⁸⁸ Vanina Modolo and Ezequiel Texido, “Latin America's Response to Venezuelan Emigration,” Migration Data Portal, August 20, 2019, <https://www.migrationdataportal.org/blog/latin-americas-response-venezuelan-emigration>.

¹⁸⁹ Jessica Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses,” Migration Policy Institute, February 1, 2022, <https://www.migrationpolicy.org/article/top-10-2017-issue-10-latin-america-spike-migrant-arrivals-prompts-flurry-responses>.

¹⁹⁰ Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses”.

¹⁹¹ Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses”.

In this sense, the governments started to work on different kinds of visas connected with the right to work for those who may not qualify for asylum.¹⁹² Or even as a solution for infrastructure problems regarding the underdeveloped asylum systems, offering new pathways through temporary or ad hoc alternatives as an option.¹⁹³

Below, a table presents the different solutions provided in three countries, Brazil, Colombia, and Peru.

Table 2 - Top Legal Avenues for Venezuelans in Latin America: Special Visas in 2017¹⁹⁴

Country	Name	Benefits	Duration	Applications Filed
Brazil	Temporary Residence Permit	Work Authorization	2 years	1,800
Colombia	Border Mobility Card	Can briefly visit Colombia border regions	2 years	1,000,000
Colombia	Special Stay Permit	Can work, study, and access social security	2 years	68,000
Peru	Temporary Stay Permit	Work Authorization	1 year	11,000

Temporary and Special Permits were granted between one and two years in these three countries and guaranteed the right to work. In Colombia, the Special Stay Permit ensures the right to study and access social security. In this framework, Colombia presented the option with the most significant guarantee of rights.

In contrast to the ad hoc alternatives, the following table shows the number of asylum applications filled in the same year in the same countries.

¹⁹² Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses”.

¹⁹³ Selee and Bolter, “An Uneven Welcome”.

¹⁹⁴ Selee and Bolter, “An Uneven Welcome”.

Table 3 - Top Legal Avenues for Venezuelans in Latin America: Asylum Cases Filed in 2017¹⁹⁵

Country	Asylum Cases Filed in 2017
Brazil	13,600
Colombia	500 (since 2014)
Peru	6,000

These numbers indicate that in 2017 the number of Asylum applications was significantly lower than other forms of visas or residence, a trend that will be maintained in the coming years.

In summary, the mixed migratory movement represented by Venezuelans which comprehends holders of refugee protection or migrants with special or humanitarian visas, represented a challenge for the migratory policies in the region, being clear that not all people who could apply for asylum did so, because of issues of the infrastructure of refugee systems, sometimes preferring to apply for ad hoc protection measures. Likewise, regional governments have tried to attend to the necessities of the new arrivals and provide some form of legal status.¹⁹⁶

2.3.2 The 2018 Responses

In 2018, crucial attempts to construct regional responses started to be built. In this respect, we have the development of the Inter-Agency Coordination Platform, the Quito Declaration on Human Mobility of Venezuelans Citizens in the Region and its derived meetings, the Resolution 2/18 of the Inter-American Commission on Human Rights (IACHR) on Forced Migration of Venezuelans, the Guidance Note on the Outflow of Venezuelans from the UNHCR and lastly the Join Statement for the Development of a Regional Response to the Massive Arrival of Venezuelans to the Americas of the IACHR.

Besides discussing a common regional approach, the countries agreed on a policy of balance between regional measures and respect for individual policies based on the

¹⁹⁵ Selee and Bolter, “An Uneven Welcome”.

¹⁹⁶ Selee and Bolter, “An Uneven Welcome”.

country's sovereignty. The result was various answers in providing legal status to Venezuelan migrants.¹⁹⁷

According to the United Nations Refugee Agency, in January of 2018, there were 133,574 applications for asylum from Venezuelans and 350,861 who obtained legality through other visa alternatives, mainly in Argentina, Chile, Colombia, Brazil, Ecuador, Peru, Uruguay, including United States of America and others.¹⁹⁸

In this framework, new coordination systems arise. In April 2018, the UN Secretary-General's command, IOM and UNHCR were responsible for managing a regional response plan. The Inter-Agency Coordination Platform was created as a Forum to coordinate the response plans for Venezuelan migrants in 17 countries in Latin America and the Caribbean.¹⁹⁹ It also focus on the support of national governments and resource mobilization.²⁰⁰

In its turn, the Regional Refugee and Migrant Response Plan (RMRP) was developed to promote self-reliance, education, and the construction of national capacities to guarantee essential services to Venezuelan migrants and refugees.²⁰¹

On 5 September, the Organization of American States examined the Venezuelan displacement crisis and publicized the installation of a Working Group to realize country visits, report the emergency, and create solutions.²⁰² Additionally, on 19 September, IOM and UNHCR appointed a Joint Special Representative for Venezuelan Refugees and Migrants in the region to develop a coordinated regional approach with governments, international organizations, and other stakeholders.²⁰³

Furthermore, another remarkable process was developed. In September, countries adopted the Quito Declaration on Human Mobility of Venezuelans Citizens in the Region. Later, in November, the second meeting of Quito was realized, and the members approved

¹⁹⁷ Selee and Bolter, "An Uneven Welcome".

¹⁹⁸ "Resolution 2/18 – Forced Migration of Venezuelans", IACHR – Inter American Commission on Human Rights, March 2, 2018 <https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf>

¹⁹⁹ "Regional Platform 2.0," R4V, May 12, 2022, <https://www.r4v.info/en/regional>.

²⁰⁰ "Regional Refugee and Migrant Response Plan" (R4V Response for Venezuelans, 2019), <https://reliefweb.int/report/colombia/regional-refugee-and-migrant-response-plan-refugees-and-migrants-venezuela-january>.

²⁰¹ "About Us," R4V - Inter Agency Coordination Platform for Refugees and Migrants from Venezuela, accessed October 6, 2022, <https://www.r4v.info/en/aboutus>.

²⁰² Enrique Gomez Ramirez, "The Venezuelan Migrant Crisis - A Growing Emergency for the Region," European Parliament, December 2018, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630343/EPRS_BRI\(2018\)630343_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630343/EPRS_BRI(2018)630343_EN.pdf).

²⁰³ Gomez Ramirez, "The Venezuelan Migrant Crisis".

an Action Plan. The Action Plan contains some agreed priorities to address the Venezuelan displacement, such as a Regional Coordinated Plan to create solutions for the regularization of illegal status, development of regional mechanisms for the exchange of information, document recognition, and commitment to decrease the costs for applications for legal status, integration in the labor market and social protection systems and finally the revision of current regularization norms.²⁰⁴

Following the adoption of measures aiming at the development of a common approach, the Inter-American Commission on Human Rights adopted the Resolution 2/18, recognizing the importance of the standards established seeking to regularize Venezuelan migrants through different channels of legalization.²⁰⁵ However, the Resolution urges its member states “to guarantee the recognition of refugee status to Venezuelan people with a well-founded fear of persecution in case of return” or to “who consider their life, integrity or personal freedom would be threatened under the terms of the Cartagena Declaration on Refugees.”²⁰⁶

The requirement also highlighted the possibility of a prima facie or group refugee status determination, a measure that implies a collective recognition of refugees to solve urgent needs.²⁰⁷ Finally, the Resolution called upon states to expand visa liberalization through accessible systems or put complementary protection pathways and humanitarian visas in place.²⁰⁸

It is possible to see that the non-primacy of the application of the refugee institute under the Cartagena Convention drew attention of the Inter-America Commission. Thus, the Resolution recognizes the importance of the regularization through different channels adopted so far. Nevertheless, it also emphasize the need of the recognition of Venezuelans as refugees according to the terms of the Cartagena Declaration, including prima facie refugee status determination.

The United Nations High Commissioner for Refugees also issued its opinion through the Guidance Note on the Outflow of Venezuelans. In the guidelines, the Agency calls on host countries to continue adopting pragmatic protection-oriented measures based

²⁰⁴ “Regional Refugee and Migrant Response Plan” (R4V Response for Venezuelans, 2019),

²⁰⁵ “Resolution 2/18 Forced Migration of Venezuelans - Oas.org” (Inter-American Commission on Human Rights IACHR, 2018), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf>.

²⁰⁶ Gomez Ramirez, “The Venezuelan Migrant Crisis”.

²⁰⁷ “Resolution 2/18 – Forced Migration of Venezuelans”.

²⁰⁸ “Resolution 2/18 – Forced Migration of Venezuelans”.

on existing good practices in the region, applying international protection based on the 1951 Refugee Convention and the Cartagena Declaration.²⁰⁹

In addition, UNHCR recommends states adopt the following approach:

“To consider protection-oriented arrangements to enable legal stay for Venezuelans, with appropriate safeguards. This could include various forms of international protection, including under international human rights law, temporary shelter or stay arrangements, or visa or labor migration arrangements that would offer access to legal residence and standards of treatment akin to international security. Implementing such arrangements would be without prejudice to the right to seek asylum, notably in expulsion or deportation proceedings or in the case of non-renewal of residence permits.²¹⁰

In this sense, an important aspect is the support of the UNHCR in adopting collective refugee status determination due to the excessive numbers and states’ capacities.²¹¹

Moreover, intending to establish a common response based on the principle of shared responsibility and human rights, the Inter-American Commission on Human Rights, the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights, and the Special Rapporteur on the Human Rights of Migrants embrace a Joint Statement.²¹²

The Joint Statement took into consideration Resolution 2/2018 on Forced Migration of Venezuelan of the IACHR and UNHCR Guidance Note on the Outflow of Venezuelans. In this sense, it follows some of the agreed measures.²¹³

²⁰⁹ “UNHCR Guidance Note on the Outflow of Venezuelans [En],” UNHCR Operational Data Portal (ODP), 2018, <https://data.unhcr.org/en/documents/details/63243>.

²¹⁰ “UNHCR Guidance Note on the Outflow of Venezuelans.”

²¹¹ “UNHCR Guidance Note on the Outflow of Venezuelans.”

²¹² Inter-American Commission on Human Rights, Joint Statement for the development of a regional response to the massive arrival of Venezuelans to the Americas, available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CMW/JointStatement_Venezuela5September2018_SP.pdf

²¹³ Inter-American Commission on Human Rights, Joint Statement.

- 1) To prevent more Venezuelans from being forced to migrate, promote actions for the state to guarantee access to humanitarian assistance;
- 2) Guarantee entry to the territory for Venezuelans to seek international protection or satisfy urgent humanitarian needs, including recognition of refugee status. Likewise, adopt measures to guarantee the principle of family unity;
- 3) Expand regular, safe, accessible, and affordable channels for migration through the progressive expansion of visa liberalization and easily accessible visa facilitation regimes and/or measures such as complementary protection, temporary protection, humanitarian visas, family reunification, visitor, work, residence, retirement, and student visas, and private sponsorship programs. These channels should be legally and economically accessible, which includes ensuring accessibility for Venezuelans, who, for reasons beyond their control, do not have the documentation that is usually required for these procedures;
- 4) Guarantee the recognition of the refugee status to Venezuelans based on the terms of the Cartagena declaration;
- 5) Consider the adoption of collective protection measures for the Venezuelan people, including prima facie or group determination of refugee status;
- 6) Respect for the principle of non-refoulement;
- 7) Implement mechanisms to identify persons who require international protection and particular needs of protection;
- 8) Protect and provide humanitarian assistance to Venezuelans within national jurisdiction;
- 9) Adopt measures to guarantee international support and share responsibility in rescuing, receiving, and hosting Venezuelans;
- 10) Guarantee access to the right to nationality;
- 11) Implement a coordinated regional and international strategy based on shared responsibility and a human rights approach;
- 12) Do not criminalize Venezuelan migration;

- 13) Prevent discrimination and xenophobia through positive measures such as educational campaigns;
- 14) Equal access to justice;
- 15) Coordinated and integrated responses to prevent and ensure reparations for victims of human trafficking;
- 16) Implement measures to promote social integration;
- 17) Authorize and provide the necessary facilities for international and regional human rights organizations to visit the states of the American continent to monitor the situation of Venezuelans”.

The presented framework constitutes the centrality of refugee and migrant protection, comprehending essential measures according to International Human Rights and Refugee Law.

Apart from the respect for the principle of nonrefoulement and the application of international protection as well as other new forms of regularization, 2018 finalized with great concern about the increase of requirements such as documentation and the cost of asylum applications, which would constitute an obstacle for a regular stay of Venezuelans and a consequent barrier to their fundamental rights.²¹⁴

Ultimately, IACHR reports observed the existence of protection gaps and the necessity of unification of measures adopted by regional governments, including all the actions treated in this session.²¹⁵

2.3.3 The 2019 Responses

At the beginning of 2019, Venezuelans could enter Argentina, Brazil, and Ecuador with only identity documents, whether they did not possess a passport, where they could start a permanent residence process. Meanwhile, others countries require passports only to enter without a specific visa. Moreover, as the displacement crisis increased, some countries began to put new entry requirements and refused to diminish entry payments. These new requirements effectively limit the possibilities of the arrival of Venezuelans

²¹⁴ “Regional Refugee and Migrant Response Plan” (R4V Response for Venezuelans, 2019).

²¹⁵ “Annual Report 2018” (IACHR - Inter American Commission on Human Rights, 2018).

once passports were challenging to obtain due to the bureaucratic situation in the country.²¹⁶

Four countries implemented new entry visa requirements in June and July year. Chile excluded the option of entry with tourist visas, and Colombia started to require visas for the admission of Venezuelans.²¹⁷

Other restrictions arise in Peru, Chile, and Ecuador. These newly implemented requirements highlight the shift of a regional open-door approach to the unilateral condition of documents due to national pressures.²¹⁸

The following table presents the entry requirements in Argentina, Brazil, Chile, Colombia, Ecuador, Peru, and Uruguay.

*Table 4 - Entry Requirements for Venezuelans in Case–Study Countries in 2019*²¹⁹

Country	Visa Requirement in Advance for Entry?	Passport Required for Entry?	Accepts Expired Passports from Venezuelans for Entry?
Argentina	No	No	Yes, national identity documents or passports that expired within the past two years
Brazil	No	No	Yes, passports that expired up to five years prior
Chile	Yes	Yes	Yes, passports issued in 2013 or later that have expired until April 18, 2021.
Colombia	No	Yes	Yes, passports that expired up to two years prior

²¹⁶ Andrew Selee et al., “Creativity amid Crisis: Legal Pathways for Venezuelan Migrants in Latin America,” MPI - Migration Policy Institute, January 2019, <https://www.migrationpolicy.org/sites/default/files/publications/VenezuelansLegalPathwaysBrief-English-Final.pdf>.

²¹⁷ Selee and Bolter, “An Uneven Welcome”.

²¹⁸ Selee and Bolter, “An Uneven Welcome”.

²¹⁹ Selee and Bolter, “An Uneven Welcome”.

Ecuador	Yes	Yes	No
Peru	Yes	Yes	Yes, passports that expired before August 28, 2018, accepted until August 28, 2023, and passports that expired August 28, 2018 or later accepted for up to five years after their expiration date
Uruguay	No	No	No

The table shows that the countries which require visas in advance for entry were Chile, Ecuador, and Peru. Likewise, Chile, Colombia, Ecuador, and Peru require passports for entry. However, only Ecuador and Uruguay did not accept the acceptance of expired passports. Hence, at that moment, Argentina and Brazil presented more welcoming policies once these two countries did not require visas and passports for entry or the acceptance of expired passports.

In conclusion, 2019 ends with an expressive increase in the entry requirements for Venezuelans in some countries. A controvert fact given the several developments at the regional level concerning the Venezuelan population at regional level treated in the previous session.

2.3.4 The 2020 Responses

As mentioned in 2019, some countries started to adopt more rigid police with new entry requirements, making the legal entry of Venezuelans more difficult in practice. Therefore, as a result of these measures, little less than half of the migrants had legal status in the region in that year.²²⁰

Although the new requirement, the migratory displacement continues, only forcing migrants to enter for illegal routes. According to the Migration Police, the efforts constructed in the region to uniformize the answers have failed, albeit it is still a present aspiration.²²¹

²²⁰ Selee and Bolter, “An Uneven Welcome”.

²²¹ Selee and Bolter, “An Uneven Welcome”.

In this vein, some countries have created mass campaigns for the regularization of Venezuelans, such as Colombia, Ecuador, Peru, Brazil, Argentina, and Uruguay. Notably, Brazil offered a temporary residency permit to Venezuelans under request, and Uruguay ensured Venezuelans access to the Mercosur Residency Visa. In addition, Chile and Colombia also provide legal status based on employment.²²²

Ultimately, according to the Coordination Platform for Refugees and Migrants from Venezuela (R4V), at the end of 2020, about 5.4 million Venezuelans moved to other countries. Approximately 4.6 million of them remain in Latin America and the Caribbean. At the same time, the main destinations in the year in question remain Colombia, Chile, Brazil, Ecuador, and Peru.²²³

The movement restriction got worse due to the worldwide pandemic, drastically changing the discourse towards migrants. By March, the World Health Organization announced the COVID-19 pandemic. As a result, several governments closed their borders and prohibited travel to stop the virus's spread, which critically limited human mobility.²²⁴

Aside from the closure of borders, other measures, such as social isolation, and economic shutdowns, were imposed by governments. The social, political, and economic consequences increased the vulnerability of migrant-sending countries.²²⁵ In addition, the vulnerability of migrants and refugees exacerbated their contracting of Covid-19 since those on the move could not practice social distancing, take preventive measures, or have access to medical centers for instance.²²⁶

Moreover, the Joint UNHCR-IOM Special Representative for Venezuelan refugees and migrants, Eduardo Stein, observed that:²²⁷

“The Covid-19 pandemic has further aggravated the already delicate living conditions of refugees and migrants from Venezuela. In addition

²²² Selee and Bolter, “An Uneven Welcome”.

²²³ “Annual Report 2020 - Chapter IV.B - Venezuela” (IACHR - Inter American Commission on Human Rights, 2020), <https://www.oas.org/en/iachr/docs/annual/2020/Chapters/IA2020cap.4b.VE-en.pdf>.

²²⁴ Joseph Chamie, “International Migration amid a World in Crisis,” *Journal on Migration and Human Security* (SAGE Journals, September 3, 2020), <https://journals.sagepub.com/doi/10.1177/2331502420948796>.

²²⁵ Chamie, “International Migration amid a World in Crisis”.

²²⁶ Chamie, “International Migration amid a World in Crisis”.

²²⁷ United Nations High Commissioner for Refugees, “Data Reveals Plight of Venezuelan Refugees and Migrants Evicted in Pandemic.”

to serious health impacts, the health crisis has caused economic disruptions and exacerbated protection risks.”

Furthermore, after the year of pandemic, the number of asylum claims diminish to around 200,000. These numbers represent a deterioration of the situation brought on by the pandemic rather than an improvement in migrant conditions.²²⁸

2.3.5 The 2021 Responses

Since March of the previous year, Latin American and Caribbean governments adopted measures to control the spread of the Covid 19. These included the closures of borders and movement restrictions. Consequently, in 2021, a substantial increase in illegal entries of Venezuelans inside the region was noticed.²²⁹

Although the pandemic and its restrictive measures, about 5.6 million Venezuelans migrated to another country in June of 2021, of which 85% migrated to other Latin American countries and the Caribbean.²³⁰

Considering the measures constructed in the last years of more restrictive migration policies for Venezuelans combined with the restriction measures derived from the pandemic. The Inter-American Commission on Human Rights Report of 2021 emphasized that several Venezuelans are not migrating because of the lack of documentation, such as identity cards, passports, or even birth certificates in the case of children. In this sense, the Commission suggests that states adopt more flexible approaches considering the documents that need to be issued abroad.²³¹

²²⁸ R4V, “No Home Away from Home,” Inter Agency Coordination Platform for Refugees and Migrants from Venezuela, July 18, 2022, <https://storymaps.arcgis.com/stories/fc308b616de34a129c86f0d658f2ccd3>.

²²⁹ “Explanatory Note for November’s Venezuelan Refugee and Migrant Figures Update - November 2021,” R4V, November 25, 2021, <https://www.r4v.info/en/document/explanatory-note-novembers-venezuelan-refugee-and-migrant-figures-update-november-2021>.

²³⁰ Marie McAuliffe and Anna Triandafyllidou, eds., “World Migration Report 2022” (Geneva: International Organization for Migration (IOM), accessed August 12, 2022, https://publications.iom.int/system/files/pdf/WMR-2022_0.pdf.

²³¹ “Annual Report 2021 - Chapter IV.B - Venezuela” (IACHR - Inter American Commission on Human Rights, 2021), <https://www.oas.org/en/iachr/docs/annual/2021/Chapters/IA2021cap4B.Venezuela-en.pdf>.

In essence, the IACHR recommended to all its member states to exclude the measures that could, in practice, limit the right to seek international protection or other forms of complementary protection.²³²

2.3.6 The 2022 Responses

Since the last year and in the current year, an expressive growth of irregular routes has been noticed because of the policies of closing borders derived from the COVID-19 measures.

One of the main concerns for this year is the increasing number of irregular migrants and refugees. According to the RMRP 2022:

“8.4 million people in need of assistance under the RMRP in 2022, some 4.6 million refugees and migrants from Venezuela are projected as being in destination, 1.12 million in pendular situations, and 645,235 are returned from Venezuela.”

Therefore, analyzing all the features and frameworks in place during these years, it is possible to conclude that the measures adopted by regional governments have effectively provided alternative regularization channels for Venezuelan migrants. However, they have been less able to deal with asylum applications. The reasons can be attributed to the inexperience, once several countries had received few applications in the past, aligned to the fact that most asylum systems are underdeveloped and couple with the lack the infrastructure to deal with the high numbers of applications.

As a final observation of this section, it was possible to see the gradual and significant changes in the regional regularization policies toward Venezuelans. In the beginning, the guidelines were more welcoming. In some countries, they could enter without the presentation of visas and passports, for example. As the situation in Venezuela continued to deteriorate, increasing the migratory flux and the length of stay in host countries, aggravated by the pandemic, the countries started to require documents and

²³² “Annual Report 2021 - Chapter IV.B - Venezuela”.

visas. Some could argue that the requirements put a significant limit on the legal entry of Venezuelans, increasing the number of crossing through illegal and dangerous routes.

At the same time, the countries in the region have demonstrated creativity in designing new legal statuses for Venezuelans, such as temporary stay permits, humanitarian visas, and others. These solutions provide access to fundamental rights like work, health care, and education. Nevertheless, it is subject to political decisions, and does not constitute complete protection compared to the one provided by asylum systems. Although the countries also accept asylum seekers, the number of applications among Venezuelans is significantly less than other forms of regularization status; the determining factors for this trend are the lack of expertise of the organs responsible for refugee status determination, the delay time, and complexity of the requirements, jeopardizing the right of those in need of specific protection in practice.

Chapter 3 - Individual Country Legal and Policy Framework the cases of Brazil, Chile, and Colombia and its Human Rights Impacts

The final chapter will treat specifically the individual country legal framework for the entry and regularization of Venezuelans, including policy framework and its correlated human rights impacts, with an emphasis in the sectors of education, health, and socio-economic integration. The countries chosen were Brazil, Chile, and Colombia, for representing significant different realities.

The aim is to comprehensively study the legal and policy frameworks in these three countries, analyzing the best welcoming policies and their outcomes, and shortcomings.

The first subchapter will be analyzed the Brazilian legal and policy framework. In this country, Venezuelans can seek asylum protection or choose for residence permits, including the Mercosur Residency Agreement. It is also emphasized the two policies created to better receive Venezuelans in the border cities and the program of integration, namely Operation Shelter and the Interiorization Program.

Subsequently, the second subchapter will deal with the legal and policy aspects present in Chile. Likewise, in this country, it is possible to search for asylum and receive permission to stay through a visa named Chile Democratic Visa.

Finally, the third and last subchapter will discuss the Colombian legal and policy system, where other ad hoc measures can be chosen besides the protection under refugee status, such as the Special Stay Permit or under the Temporary Protection Statute.

3.1 Brazil Legislative and Policy Framework

3.1.1 Background

The background of migratory movements in Brazil passes through different phases. In the period of the military dictatorship, the Statute of the Foreign was promulgated (Law 6.814 of 1980). This law focused on national security instead of migrant regularization

and protection. This is because, in this period, migrants were considered a threat to national security.²³³

Even after the deposition of the military dictatorship, the Statute of the Foreign was in force until 2017, still contrary to some international obligations contracted by Brazil, including its own Constitution.²³⁴

Moreover, due to the necessity of updating the old legal framework in 2017, the new Migration Law, number 13.445/2017, was approved. This new law represents a remarkable change from the old frame, recognizing the migrant as a subject of rights, highlighting the necessity to fight against discrimination, and acknowledging the migrant contribution to the cultural and economic development of the country.²³⁵

In this sense, the Brazilian migratory system comprises the 1951 Refugee Convention and its Protocol, the Cartagena Declaration of 1984, and the New Migration Law.²³⁶

Brazil and Venezuela share a common border characterized by a territory with low population density, with the presence of indigenous reserves. Couple with this, in the past, Brazil has not been the leading choice of destination for Venezuelans, from 1991 to 2010, existed a moderated migration flow between the borders, and it was only from 2016 that the outflow sharply increase.²³⁷

In 2016, although Venezuela was suspended from the Mercosur, the country continued to be part of the agreement concerning travel documents, which allows Venezuelan nationals to enter only with their identity card, without the need for passports or visas. It is essential to mention that Venezuela never adopted the Mercosur residence agreement.²³⁸ Still, Brazil and other countries decided to apply for Venezuelan nationals similarly.

As introduced before, Brazil adopted the Geneva Convention and its Protocol, including the Cartagena Declaration. In particular, the country usually adopts

²³³ Gisela P Zapata and Vicente Tapia Wenderoth, "Progressive Legislation but Lukewarm Policies: The Brazilian Response to Venezuelan Displacement," Wiley Online Library (IOM International Migration, June 16, 2021), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/imig.12902>.

²³⁴ Zapata and Wenderoth, "Progressive Legislation but Lukewarm Policies".

²³⁵ Zapata and Wenderoth, "Progressive Legislation but Lukewarm Policies".

²³⁶ Zapata and Wenderoth, "Progressive Legislation but Lukewarm Policies".

²³⁷ Zapata and Wenderoth, "Progressive Legislation but Lukewarm Policies".

²³⁸ Luiz Leomil, "Displaced Venezuelans and the Politics of Asylum: The Case of Brazil's Group Recognition Policy," *Carta Internacional* 17, no. 1 (2022), <https://doi.org/10.21530/ci.v17n1.2022.1177>.

Humanitarian Visas to embrace migratory emergencies. Nevertheless, at the beginning of Venezuelan migration, the government did not apply any of these instruments.²³⁹

Indeed, Brazil considered the situation a temporary crisis, focusing on providing others regularization channels, such as ad hoc measures and temporary residency, instead of applying for international protection. These measures compromise adequate access to economic, social, and cultural rights once it does not provide complete protection.²⁴⁰

Overall, as it will be treated in the following subchapter, the Brazilian policy of regularization towards Venezuelans changed over time, initiated by the application of the Mercosur Residency Agreement, passing through the issuance of Temporary Residence Permits until arriving in the application of the refugee definition under the terms of the Cartagena Declaration.

3.1.2 Legal Framework for the Regularization of Venezuelan Migrants and Refugees

In 2016, UNHCR did not explicitly recommend the application of the Cartagena definition of refugees for Venezuelans in Latin America. Hence in Brazil, CONARE (National Migration Council) members agreed to provide a solution similar to the one granted to Haitians in 2013, through Humanitarian Visas. Furthermore, in 2017 the Mercosur Residency Agreement was adopted to embrace all Venezuelans in Brazilian territory.²⁴¹ In that period, Brazil recognized Venezuelans as migrants instead of under the refugee regime.²⁴²

Jubilut argues that the lack of recognition of the nature of the mixed migration flow in the Brazilian government highlighted the difficulties founded by the country in guaranteeing specific protection at that time.²⁴³

Due to the rapid increase in the number of Venezuelan arrivals on the border of Brazil and Venezuela, and the lack of institutional capacity of the CONARE, the National

²³⁹ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴⁰ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴¹ Leomil, “Displaced Venezuelans and the Politics of Asylum”.

²⁴² João Carlos Jarochinski Silva and Liliana Lyra Jubilut, “Venezuelans in Brazil: Challenges of Protection” E - International Relations, July 12, 2018, <https://www.e-ir.info/2018/07/12/venezuelans-in-brazil-challenges-of-protection/>.

²⁴³ Jarochinski Silva and Jubilut, “Venezuelans in Brazil: Challenges of Protection.”

Immigration Council proposed the adoption of a Normative Resolution number 126 in March 2017 to issue Temporary Residence Permits to citizens from bordering countries who entered Brazil by land. For this reason, in September 2018, almost 23,300 residence permits were granted under the Normative Resolution.²⁴⁴

The application for Temporary Residence Permits in Brazil did not require legal entry, no passport, no certification of criminal record, and it was free of costs. Also, through this channel the migrant could apply for residence in a permanent basis. Nevertheless, to apply for this permit, the migrant need to have a pending asylum application, that would be withdrawn in case of application for this visa. Also there was a need to have a formal employment.²⁴⁵

Resolution 126 also embraced all nationals of Brazilian border countries, not only Venezuelans. Still, Venezuelans constituted nearly the totality of the applications for this kind of regularization.²⁴⁶

In this vein, residence permits grant some similar rights in comparison to international protection, the commonalities are the right to labor, education, social services, and health care. However, it not provide complete protection of refugee status, such as legal security while pending the application, right of non-refoulment, and also family reunification.²⁴⁷

In March of 2018, Resolution 126 expired and was substituted by the Interministerial Ordinance Number 9 to extend to Venezuelans a right to obtain two years of residence permits, which could be replaced by permanent, free of cost and without the requirement of entrance by land, neither the requirements of legalized documents and most importantly without the condition of withdrawing the asylum application.²⁴⁸

Still, it is possible to request permanent residency two months before completing the two years. This pathway guarantees the same rights to the persons that choose this avenue of protection as all other immigrants regularly living in Brazil have. The regulation also allows for working in the country.²⁴⁹

²⁴⁴ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴⁵ Corrales et al., “Welcoming Venezuelans”.

²⁴⁶ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴⁷ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴⁸ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁴⁹ Jarochinski Silva and Jubilot, “Venezuelans in Brazil: Challenges of Protection”.

In November 2017, Brazil adopted a New Migration Law, substituting the old one instituted during the Dictatorship era. Law 13.445/17 changed the migration management standards in the country, making the human rights of migrants one of the main principles.²⁵⁰

The new Law give to the migrants the same rights as Brazilians, including access to work, social security, and property right. Important to note that the Law also provides amnesty for irregular migrants living in Brazil. Also, the new legal framework did not change the existing laws about visas and work permits.²⁵¹

In essence, the Brazil Temporary Residence Permit in late 2018 did not require legal entrance, the presentation of passports, or even criminal history. It was free of cost and constituted a legal pathway for the request for permanent residence. Hence, at the end of that year, 23,000 Venezuelans were beneficiaries of this visa.²⁵²

Against this background, an important fact marked the year 2018. UNHCR's assume a position concerning Venezuelan displacement. The Agency emitted a Guidance Note announcing that “international protection considerations have become apparent for a significant proportion of Venezuelans” and that the countries should adopt measures based on regional and national frameworks such as the 1984 Cartagena Convention.²⁵³

Before the issuance of the UNHCR Guidance Note, Brazil, together with other countries in the region, had never used the Cartagena refugee definition on a large scale. Moreover, the Brazilian government could not embrace the established measures. For instance, at that time, asylum applications were processed manually. Thereby, the government created a digital system to deal with asylum applications named Sisconare.²⁵⁴

Following the position adopted by UNHCR in 2019, the National Committee for Refugees declared that Venezuelans were suffering a “serious and massive violation of human rights.” This vital decision made Brazil the first South American country to adopt the extended refugee definition contained in the Cartagena Declaration. As a result, at the

²⁵⁰ Jarochinski Silva and Jubilut, “Venezuelans in Brazil: Challenges of Protection”.

²⁵¹ “International Migration in the Americas” (OAS, OECD, 2017), <http://www.oas.org/documents/eng/press/SICREMI-2017-english-web-FINAL.pdf>.

²⁵² Andrew Selee et al., “Creativity amid Crisis”.

²⁵³ Leomil, “Displaced Venezuelans and the Politics of Asylum”.

²⁵⁴ Leomil, “Displaced Venezuelans and the Politics of Asylum”.

end of 2019, CONARE recognized, on a prima facie basis, around 21,000 Venezuelan citizens as refugees.²⁵⁵

Markedly, data from 2021 showed that around 55,000 Venezuelans had been recognized as refugees through group-based analysis, qualifying Brazil as the country with the majority of Venezuelans with refugee status in the world in that time.²⁵⁶

Additionally, data showed that between April 2021 and April 2022, the applications for refugee status by Venezuelans tripled, from 534 in April 2021 to 1,786 applications in April 2022.²⁵⁷

In March of the current year, the Brazilian government adopted an Interministerial Ordinance Number 19 on 23 of March. The ordinance treats the authorization of residency to migrants naturally from a border country with Brazil, where it is not in place Mercosur Residence Agreement. The residence can be required by migrants, independent of their status of entry, for two years.²⁵⁸

In summary, before the decision to extend refugee status for Venezuelan nationals, Brazil found a way to provide regularization for them.²⁵⁹ Mainly by providing Temporary Residence and with flexible entry requirements.²⁶⁰

On one side, it was a positive measure allowing to prevent migrants from being illegal, but at the same time prohibited attention to specific needs.²⁶¹ Moreover, it was a significant advancement the extension of asylum for Venezuelans, in the end embracing a significant numbers of Venezuelans.²⁶²

In Addition, it is essential to highlight the differences between residence authorization and refugee status. The residency represents a more straightforward process where the answers are immediate if all the necessary documents are presented. Its main advantage is that the migrant can travel abroad and come back to their country without authorization, but at the same time, did not offer complete protection. In its turn, with the

²⁵⁵ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁵⁶ Leomil, “Displaced Venezuelans and the Politics of Asylum”.

²⁵⁷ “Quarterly Mixed Migration Update: Latin America and the Caribbean,” Mixed Migration Centre, 2022, https://mixedmigration.org/wp-content/uploads/2022/07/QMMU_Q2_2022_WA.pdf.

²⁵⁸ Portaria Interministerial MJSP/MRE N° 19, 23 de Março de 2021 (2021).

²⁵⁹ Jarochinski Silva and Jubilut, “Venezuelans in Brazil: Challenges of Protection.”

²⁶⁰ Diego Chavez Gonzalez, Jordi Amaral, and Maria Jesus Mora, “Socioeconomic Integration of Venezuelan Migrants and Refugees: The Cases of Brazil, Chile, Colombia, Ecuador, and Peru” (IOM, DTM, MPI, July 2021), https://www.migrationpolicy.org/sites/default/files/publications/mpi-iom_socioeconomic-integration-venezuelans_2021_final.pdf.

²⁶¹ Jarochinski Silva and Jubilut, “Venezuelans in Brazil: Challenges of Protection”.

²⁶² Gonzalez, et al., “Socioeconomic Integration of Venezuelan Migrants and Refugees”.

refugee status, the migrant can't go back to their home country without authorization, but give the refugee has complete protection, such as the right of non-refoulment.²⁶³

Ultimately, in the current year, Venezuelans don't need a visa to entry in Brazil; they can have only their identity card. In addition, they can choose three pathways. First, the authorization for residence based on the Interministerial Ordinance number 19 of 23 March 2022, which issues permission for residence to a national from a border country where the Mercosur Residency Agreement is not in place.²⁶⁴

Second, Venezuelans can also apply for the recognition of their Refugee status based on severe and generalized human rights violations under the Cartagena Declaration of 1984²⁶⁵. And thirdly, they also can apply for the Mercosur Residency Agreement.

3.1.3 Policy Framework for Venezuelan Migrants and Refugees in Brazil

The arrival of migrants in Brazilian territory occurred at the border crossing between the two countries. Before the government's intervention, the state of Roraima was overwhelmed by the massive number of new arrivals. In December 2017, the state declared a state of social emergency.²⁶⁶

Due to the social emergency created at the borders, the government developed a program to manage the migration flow with Operation Shelter (Operação Acolhida), with the support of UNHCR, other UN Agencies, and Civil Society Organizations. The operation was created with three main objectives. First, to guarantee orderly entry, admission, and regularization. Second, the supply of shelter with health and food services, and lastly, the Interiorization Program, where Venezuelans will gradually be voluntarily relocated to other Brazilian regions.²⁶⁷

The Operation Shelter was instituted by the Provisional Measure 820 of February 2018, turning into a Law (13.684) in June 2018. Also, in the same year, another Federal

²⁶³ “FAQ - Perguntas Frequentes,” Ministério da Justiça e Segurança Pública, accessed November 6, 2022, <https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/perguntas-frequentes/faq-perguntas-frequentes>.

²⁶⁴ “FAQ - Perguntas Frequentes,” Ministério da Justiça e Segurança Pública.

²⁶⁵ “FAQ - Perguntas Frequentes,” Ministério da Justiça e Segurança Pública.

²⁶⁶ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁶⁷ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

Decree (9285) stated the ongoing emergency in the border state of Roraima, establishing a committee in a partnership between IOM Brazil and UNHCR.²⁶⁸

In April 2018, another essential program was instituted, the so-called Interiorization Program, in which the primary goal was to distribute the new arrivals to other regions in Brazil to alleviate the pressures on the border state and also to make more accessible the work search more. The program took place voluntarily and could be classified into four categories, the transfer from a border shelter to another municipality, to work opportunities, or for social and family reunification reasons.²⁶⁹

These programs are in line with the search for durable solutions founded in the 2004 Mexico Plan of Action, reaffirmed by the Cartagena +20 and +30, the 2010 Brasilia Declaration and the 2012 Mercosur Declaration.

In late 2019, almost 27,222 Venezuelans were transferred to approximately 409 municipalities, mainly in southern states such as Rio Grande do Sul, Santa Catarina, Paraná, and São Paulo.²⁷⁰

According to data from the Federal Senate, until October 2019, R\$ 504,09 billion of reais were destined for Operation Shelter.²⁷¹ Likewise, research shows that after two years of the creation of the Interiorization Program, its development is considered slow, taking into consideration the capacity of the municipality of the state of Roraima.²⁷²

The year 2020 was characterized by the continuity of the Interiorization Program and its strategies. Nevertheless, the pandemic seriously affected several actions promoted by the UNHCR.²⁷³

In January of the current year, the ACNUR and the Ministry of Citizenship extended the Cooperation Agreement until December of 2023 to continue the developments made by the Operation Shelter and the Interiorization Program.²⁷⁴

Data from this year indicate that 76,398 Venezuelan refugees and migrants benefit from the national relocation program implemented in the previous year.²⁷⁵

²⁶⁸ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁶⁹ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁷⁰ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁷¹ “A Economia De Roraima e o Fluxo Venezuelano: Evidências e Subsídios Para Políticas Públicas” (Fundação Getulio Vargas, 2020).

²⁷² “A Economia De Roraima e o Fluxo Venezuelano.

²⁷³ “O ACNUR Antes e Depois Da Operação Acolhida: Uma Análise à Luz Da Resposta Humanitária Brasileira” (UNHCR, ACNUR, 2022).

²⁷⁴ “O ACNUR Antes e Depois Da Operação Acolhida (UNHCR, ACNUR, 2022).

²⁷⁵ “Quarterly Mixed Migration Update: Latin America and the Caribbean.”

These two policies constitute the Brazilian government's main approaches to integrating economic, social, and cultural Venezuelans refugees and migrants in the country. Besides these policies, both programs must be improved to guarantee their effectiveness in practice. In the following session, it will be shown the human rights impacts, shortcomings, and strengths of the legal and police frameworks in place in Brazil.

3.1.4 Human Rights Impacts

Although Brazil has a migratory legal framework considered progressive, in late 2019, the country still did not use these instruments to protect Venezuelans arriving in the country since 2016. Zapata and Wenderoth argue that the response provided by the Brazilian government demonstrated to be ambiguous and complex, “lacking the clear progressive character portrayed by the international community.”²⁷⁶

Still, according to the same authors, the focus on Brazil to offer a regularization through ad hoc measures is part of a global trend, in Brazil emphasized by the extension of the Mercosur Residency Agreement to Venezuelans.²⁷⁷

In this sense, appropriate is the following statement:

“Thus, what we see in Brazil are contradictions in the application of international standards and national refugee law, although most Venezuelans have been offered a path to regularization rather than integral and permanent protection, they have been given access to a set of substantial rights such as access to the formal labor market and the public health and education systems, which tend to be usually granted when a refugee is lawfully staying or durably resident in the host state.”²⁷⁸

Even with the ad hoc measures implemented by Brazil, refugees and migrants obtain the same rights as legal residents and refugees, demonstrating a comprehensive

²⁷⁶ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁷⁷ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁷⁸ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

regularization measure focused on the guarantee of human rights. However, still, it does not provide the same rights under the refugee status.

Moreover, the following statement appropriately emphasizes the political reasons behind the measures adopted by the country:

“The policy response seems to be shaped by the confluence of domestic and regional political actors and agendas. In particular, UNHCR's growing pressure to recognize Venezuelans as refugees, civil society's long battle for the implementation of human rights-based migration and refugee policy, including the active role of courts and the public defender's office – attempts to clear the growing backlog of asylum requests – given the CONARE never tested lack of administrative capacity, the governments positioning vis a vis to Maduro regime and the changing political leanings of actors in key policy decision making roles at CONARE and the Ministry of Justice.”²⁷⁹

Furthermore, after the decision to start the recognition of Venezuelans under the terms of the Cartagena Declaration, which was a positive outcome, the Inter-American Human Rights Commission received some claims concerning the delay of the process, where the application could last for more than two years. In contrast, the Brazilian government maintains that the law did not impose deadlines for the procedure.²⁸⁰

As a matter of fact, in October of 2019, Brazil received more than 120,000 applications for refugee status made exclusively by Venezuelans, where 46,000 were accepted.²⁸¹

Still, regarding the application of refugee status under the terms of the Cartagena Declaration, the Inter-American Human Rights Commission notes the changes made by the government to provide access to fundamental rights for asylum seekers. For instance, the issuance of identity documents guarantees the right to a temporary residence, access to work and social security, and a personal registration number (CPF). With these

²⁷⁹ Zapata and Wenderoth, “Progressive Legislation but Lukewarm Policies”.

²⁸⁰ IACHR - Inter-American Commission on Human Rights, “Situation of Human Rights in Brazil,” accessed February 12, 2021, <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>.

²⁸¹ IACHR - “Situation of Human Rights in Brazil”.

documents, asylum seekers can access the job market having all the labor rights connected to it, in addition to economic rights, access to health, education, and also bank accounts.²⁸²

Regarding regularization and protection legislation in Brazil, it is possible to conclude that initially the legal policy adopted it was not in consonance with international and regional obligations undertaken by the country, in which it was not explicitly offered the possibility for application of refugees status. In contrast, it was offered ad hoc measures through residence permits and the application of the Mercosur Residence Agreement. Even though these policies represent not full protection, but instead only regularization pathways, it could not be forgotten the fact that with this regularization status migrants in Brazil had access to a full set of rights, such as education, health care, work permit, including social rights. It was only after the issuance of the UNHCR position towards the acceptance of Venezuelans as refugees under the Cartagena Declaration that the country followed the statement in 2019. From this moment on, the government started to offer more than one pathway for Venezuelans in this time in accordance with international and regional agreements. This measure is a positive outcome once refugee status gives a more complete set of rights than those offered to migrants, such as the right for non-refoulement and are not subject to political changes, as the refugee status will persist until the situation exist.

Considering the policies offered by the integration of Venezuelans in Brazil, IACHR considers Operation Welcome as a best practice in the region. The program comprehends the establishment of care centers at the borders to provide distributions of meals, hygiene materials, insurance, including portuguese classes and activities for children, and telephone calls to Venezuelans, also guaranteeing voluntary participation in the Interiorization Program.²⁸³

The policies implemented through the Operation Welcome and the Interiorization Program, besides the fact that they need to be improved in practice, represent a good political will to find solutions to ease the pressures of the border states and provide more opportunities to integrate social and economic migrants in the Brazilian territory. Future policies in Brazil should focus on the medium and long-term integration of Venezuelans and provide better legal protection and access to rights.²⁸⁴

²⁸² IACHR - "Situation of Human Rights in Brazil".

²⁸³ IACHR - "Situation of Human Rights in Brazil".

²⁸⁴ Zapata and Wenderoth, "Progressive Legislation but Lukewarm Policies".

Concerning the impacts of migratory policies in other areas, the Venezuelan refugee and migrants in Brazil do not have proper access to public services such as integration, protection, health, education, shelter, and food security.²⁸⁵

Particularly in education, access to school for children of all nationalities is guaranteed by law. However, 18% of Venezuelan children are not in school; in border states such as Roraima and Amazonas the percentage achieve 63% of Venezuelan children who are out of school; this compromises their integration as well as increases their exposure to child labor and exploitation.²⁸⁶

The low attendance rates in school by migrants and refugee young population could be attributed to lack of available places in areas with high migrants population, lack of school transportation for instance. For adults, the difficulties are connected with the recognition of diplomas.²⁸⁷

Especially about the situation of health, according to data, 54% of Venezuelans have medical needs, and 35% of them face several difficulties in accessing health services for reasons which also affect the Brazilian population. Hence, 70% manifest the delays in health services, 23% the high costs of medicines, and 21% the lack of specialists. In addition, 9% of them describe language barriers and discrimination.²⁸⁸

Another critical point is socio-economic integration. Although refugees and migrants in Brazil have a permit to work and, in theory, have the same rights as nationals, they still pass through socio-economic integration issues. For instance, language and cultural differences and lack of professional training.²⁸⁹

Moreover, a study revealed that Venezuelan migrants and refugees relocated under the Interiorization Program have more chances to integrate into legal work. The number of unemployed decreased for 18% in comparison to those not yet submitted in the program and living in shelter in Roraima, which is 31%. In addition, the population relocated earn two times more than those still in the border states.²⁹⁰

²⁸⁵ “RMNA 2022 Refugee and Migrant Needs Analysis” (R4V Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela, October 2022).

²⁸⁶ “RMNA 2022 Refugee and Migrant Needs Analysis”

²⁸⁷ “RMNA 2022 Refugee and Migrant Needs Analysis”

²⁸⁸ “RMNA 2022 Refugee and Migrant Needs Analysis”

²⁸⁹ “RMNA 2022 Refugee and Migrant Needs Analysis”

²⁹⁰ “RMNA 2022 Refugee and Migrant Needs Analysis”

Lastly, Venezuelan migrants and refugees also described difficulties in social integration in Brazil. Accordingly, 36% of them experienced some form of discrimination because of their nationality.²⁹¹

Regarding the primary needs, it is possible to realize that the main areas of concern are education, health, food security, protection, shelter, and socio-economic integration. More specifically, in education several issues prevent Venezuelan children and adolescents from going to schools, such as transportation, lack of vacancies, and the difficulties of legalizing diplomas. In health, the issues affecting the national population increased the Venezuelan population, including language barriers and discrimination. In socio-economic integration, besides the right to work for migrants and refugees, in practice, they lack access to formal work, accentuated once again by discrimination, language and cultural differences. In this field, the Interiorization Program benefited the labor area, where those who were relocated face fewer unemployment rates than those not yet transferred.

In summary, Brazil's legal and policy framework can be considered welcome, since the beginning attempts were made in order to provide regularization status and access to human rights. But still, all the systems need to be improved to properly contribute to the Venezuelan displacement crisis's demand.

3.2 Chile Legislative and Policy Framework

3.2.1 Background

Chile is one of the leading developed economies in the South American region, it was also a top destination country in the intraregional migration phenomenon. This happened mainly after the end of the Augusto Pinochet dictatorship in 1990, and it was enhanced by the migratory movements of Haitians and Venezuelans in the last few years.²⁹²

²⁹¹ “RMNA 2022 Refugee and Migrant Needs Analysis”

²⁹² Cristián Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise,” migrationpolicy.org (MPI, May 18, 2022), <https://www.migrationpolicy.org/article/chile-immigrants-rising-numbers>.

In the Pinochet era, Decree Law 1094 was the legislative act that managed migration, a law that views the migratory phenomenon as a theme of national security combined with great efforts to control migration.²⁹³

A changing of police occurred in the government of Michelle Bachelet in 2008, in which through a non-binding Presidential Instruction number 9, it was replaced the old lens of migration as an exclusive matter of national security, turning Chilean position as a more welcoming country, guaranteeing non-discrimination and access to work and legal rights.²⁹⁴ During the government of Bachelet, it was also approved the Law 20.430 to broaden the system for asylum seekers and refugees.²⁹⁵

Another important fact was the creation of a new Migration Law in 2021. The new legislation embraces a more human rights-based approach, maintaining the government's power to return migrants, limiting their access to rights, and, according to Reveco, maintaining the “national security lens that has defined Chile's approach to immigrants since 1970”.²⁹⁶ Moreover Chile is also a signatory state of the 1951 Refugee Convention and its Protocol and the 1984 Cartagena Declaration.

As it will be treated in the next session, Chilean migratory management also presented some changes over the years, starting with the new Migration Law in 2021, the creation of a specific visa for Venezuelans called the Chile Democratic Visa, as well as the adoption of ad hoc measures and application for asylum under the terms of the Cartagena Declaration.

3.2.2 Legal Framework for the Regularization of Venezuelan Migrants and Refugees

In 2017 Chile approved a new Migration Law, the new legal framework established equal rights between nationals and migrants, the right to family reunification, the right to access health and education, including the right to due process.²⁹⁷

²⁹³ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

²⁹⁴ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

²⁹⁵ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

²⁹⁶ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

²⁹⁷ “International Migration in the Americas”

In early 2018 the police in place in Chile allowed the entry of Venezuelans as tourists without the requirement of a visa, only with the presentation of a passport. Eventually, migrants with tourist visas could apply for residence and work permits. Nevertheless, a new policy established in April of 2018 prohibits converting tourist visas to permanent residency or work permits. This policy prevents many Venezuelans from obtaining legal status once they use this pathway to reside and work in Chile legally.²⁹⁸

In Chile, diverse visa types are applicable to all nationalities. However, all these have in common the necessity of presenting several requirements that, in the case of Venezuelans, may not fit, for instance, a professional degree. In this sense, at that time, the government was working on a new legal framework to change the visas available.²⁹⁹

In April 2018, Chile created a new visa category applicable specifically to Venezuelans. The visa requires the payment of USD30 and the presentation of a valid passport. It also allows Venezuelans to apply for a permanent residence visa, known as Chile Democratic Visa.³⁰⁰

In the beginning, the government had issued 16,000 Democratic Responsibility Visas with 90,000 applications filled by Venezuelans.³⁰¹

Against this background, Selee et al. argue about the non-complete effectiveness of the new visa in practice:

“Because of its onerous requirements, this visa is likely to offer legal status to a smaller universe of Venezuelans than the previous visa regime, in which those who entered Chile as tourists and found a job could adjust to temporary residence. Thus, instead of preventing Venezuelan migrants from falling into unauthorized status, this policy shift could drive some to resort to irregular migration.”³⁰²

Even though the government tried through the creation of the Chile Democratic Visa to regularize the entry of Venezuelans, the outcome may be the opposite due to the

²⁹⁸ Andrew Selee et al., “Creativity amid Crisis”.

²⁹⁹ Andrew Selee et al., “Creativity amid Crisis”.

³⁰⁰ Andrew Selee et al., “Creativity amid Crisis”.

³⁰¹ Andrew Selee et al., “Creativity amid Crisis”.

³⁰² Andrew Selee et al., “Creativity amid Crisis”.

several hard-to-obtain requirements for the application. In late 2018, 16,000 Venezuelans benefited from the Chile Democratic Visa.³⁰³

In April 2018 many Venezuelans were still living as irregulars in the country, for this reason the government developed a regularization program to embrace all Venezuelans entered before that date. The pathway provide one year temporary visa, with or without the presentation of legal documentation, for a cost of 0.13USD, and the presentation o a clean criminal record. in this frame, the country made an attempt to be flexible extending the deadline until July of 2019.”³⁰⁴

Subsequently, in July 2020, the number of Venezuelan refugees and migrants arrived at 455,000. And in this year, the government withdrew the requirement to present a valid passport, recognizing also expired documents.³⁰⁵

A report from OAS shows that Chile in 2020 was the third country with significant numbers of migrants and refugees. In addition, the Organization emphasized that the country's answer to the Venezuelan displacement crisis can be considered reasonable and with political will once it receives 455,000 Venezuelan exiled people, where the main police framework adopted was the issuance of the Democratic Responsibility Visa.³⁰⁶

The same report also highlights concerns regarding the crescent restrictions in admitting migrants and refugees, for instance, the tourist consular visa, which some requirements are hard to obtain.³⁰⁷

In its turn, 2021 was initiated by new legislative reforms, especially with Law 21.325, which entered into force on February 2022. The new Law guarantees respect for migrants' rights without differentiation of their status. Moreover, provide access to social security to those migrants who have residency in the country for two years.³⁰⁸

However, it also limits the freedom of movement and access to residence rights of migrants in its territory. The law states the return of irregular migrants when crossing the

³⁰³ Andrew Selee et al., “Creativity amid Crisis”.

³⁰⁴Corrales et al., “Welcoming Venezuelans: A Scorecard of Responses from Latin American and Caribbean Countries to the Venezuelan Migration Crisis.”

³⁰⁵ Meagan Dooley Dany Bahar, “Venezuelan Migration, Crime, and Misperceptions: A Review of Data from Colombia, Peru, and Chile,” migrationpolicy.org (MPI, February 1, 2022), <https://www.migrationpolicy.org/research/venezuelan-immigration-crime-colombia-peru-chile>.

³⁰⁶ “Situación De Los Migrantes y Refugiados Venezolanos En Chile” (OEA, April 2020), https://www.oas.org/documents/spa/press/Informe_Situacion-de-los-migrantes-y-refugiados-venezolanos-en-Chile.pdf.

³⁰⁷ “Situación De Los Migrantes y Refugiados Venezolanos En Chile”.

³⁰⁸ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

borders, and also the return of irregular migrants already in the country which have arrived through an unauthorized pathway.³⁰⁹

All things considered, the new legal framework aims to regulate migration and state procedures allowing collective expulsions of irregular migrants.³¹⁰

Concerning the new law Bruggeman explains:

“To avoid work tourism, as a general rule, all requests must be made from abroad, through the online platform, and eventually, the Chilean consulates receive the authorization and the relevant documentation before entering the country. It is a radical change in the regulation since previously, residence permits could be granted after regularly entering Chile as a tourist and finding employment. Undoubtedly, to the extent that this is applied properly, this will drastically limit access to our country for work purposes.”³¹¹

In fact, the new Law focuses on the expulsion of irregular entries. Since it entered into force during the period between April and May 2022, the government expelled 166 foreigners.³¹²

Additionally, it was conceived Supreme Decree number 177 to modify some procedures for migrants and refugees, including giving more flexibility to change migratory status, guaranteeing a humanitarian visa for children, and lastly, updating some asylum regulations.³¹³

In this sense, Chile also has been recognizing Venezuelans as refugees. According to R4V, in May 2022, almost 448,138 Venezuelan refugees and migrants were in Chile.³¹⁴

Against this background, it is possible to conclude that Chilean management over the Venezuelans displacement crisis also changed over the years with the adoption of new

³⁰⁹ Doña-Reveco, “Chile's Welcoming Approach to Immigrants Cools as Numbers Rise”.

³¹⁰ “Chile Overview,” ACAPS, July 3, 2022, <https://www.acaps.org/country/chile/crisis/venezuelan-refugees>.

³¹¹ Ann Bruggeman, “Relevant Aspects of the New Law No. 21,325 on Migration and Foreigners,” EDN Abogados, May 10, 2022, <https://ednabogados.cl/2022/05/10/relevant-aspects-of-the-new-law-no-21325-on-migration-and-foreigners/>.

³¹² “Quarterly Mixed Migration Update: Latin America and the Caribbean.”

³¹³ “Chile Situation Report - May 2022” (Reliefweb, July 19, 2022), <https://reliefweb.int/report/chile/chile-situation-report-may-2022>.

³¹⁴ “Quarterly Mixed Migration Update: Latin America and the Caribbean.”

legislative measures, passing through the creation of ad hoc measures, the adoption of a specific visa for Venezuelans, the Chile Democratic Visa, and the constant swift concerning the requirements of applications. Lastly, the adoption of the Law 21.325, presented as a contradictory framework in substance once in theory, adopts a human rights-based approach combined with limiting measures characteristic of the Chilean approach towards migrants. The most critical point is the allowance of collective expulsion of aliens, contradicting the American Convention on Human Rights of 1969, which prohibits the collective expulsion of foreigners

3.2.3 Policy Framework for Venezuelan Migrants and Refugees in Chile

The new Migration Law number 21.325 also comprehends the adoption of a National Migration Policy aiming the following:

“Integration and inclusion of foreigners within Chilean society in its various cultural expressions, promoting interculturality, in order to promote the incorporation and harmonious participation of foreigners in the social, cultural, political and economic reality of the country.”³¹⁵

Moreover, in order to maintain the social security character, the same policy also embrace the “protection of public order, the internal and external security of the State.”³¹⁶

The initiative was launched in May of the current year. However, it seems not to be in practice until now. The lack of available government information about the program at the moment makes difficult to assess its effects in practice.

Likewise, currently, the central system utilized by the government is the Social Household Registry, which guarantees protection and social benefits. However, to apply for this benefit, the migrant needs to be with regular migratory status, excluding those who are in an non regularized situation.³¹⁷

³¹⁵ “Conoce Sobre El Proceso De Formulación De La Política De Migración,” <http://www.interior.gov.cl/>, accessed November 7, 2022, <https://www.interior.gob.cl/sin-categoria/2022/06/14/conoce-sobre-el-proceso-de-formulacion-de-la-politica-de-migracion/>.

³¹⁶ “Conoce Sobre El Proceso De Formulación De La Política De Migración,”

³¹⁷ “RMNA 2022 Refugee and Migrant Needs Analysis”

Furthermore, in Chile, Venezuelans with a regularized status have access to social services through an identity number, where they can open bank accounts, make housing contracts, and access health and education systems.³¹⁸

Having said that, it could be concluded that in Chile, migrants with a regular migratory status have access to social benefits, which include economic integration, health, and education. However, the country until now did not provide enough information to understand whether the Policy established by the new Migration Law and launched in May of this year, is in place. In this case, future new analyses are necessary to assess whether the country is in line with the new policy and legislative framework.

3.2.4 Human Rights Impacts

Concerning the legal impacts of the measures taken by the Chilean government it is possible to see that the country in the last few years adopted new legal migratory frameworks, including changes in different approaches, sometimes more restrictive and others more open.

In 2017 the country approved a new Migration Law setting between others the equality of rights between nationals and foreigners. Additionally, in early 2018 Venezuelans were allowed to enter as tourists without the need for a visa, but with the necessity of the presentation of passports, once in the country, they could change the tourist visa for a residence or work permit. Some months after, in April 2018, the government prohibited the conversion of the tourist visa into a permanent residence or work permit. A fact that sharply limited the legal entry and stay of Venezuelans.

Subsequently, to tackle the Venezuelan migrants and refugees situation, the government created the Chile Democratic Visa, which constitutes a pathway for permanent residence. However, this visa requires the payment of 30 USD and the presentation of a valid passport. Hence the new visa created requirements hard to obtain, starting with the cost that many Venezuelans can not afford, passing through a valid passport, also hard to obtain due to the institutional crisis. Only in July 2020 the requirement of a passport was removed, allowing the presentation of expired documents.

³¹⁸ Corrales et al., “Welcoming Venezuelans”.

The most recent and remarkable fact is was the approval of the new Migratory Law number 21.325 promulgated in 2021.³¹⁹

Some criticized the new law on the grounds of presenting ambiguous principles. According to Reveco, the law presents an expansive language of human rights protection, but simultaneously limit the access to these rights, also focusing of the national security.³²⁰

To elucidate the following statement:

“Immigration law’s third article reads, “the Chilean state shall protect and respect the human rights of foreign-born individuals that are in the country, regardless of their migration status,” in accordance with national laws and the international human-rights agreements signed by the country. The same article, however, states that only foreign-born people who are “legally” within the Chilean territory have the right to freedom of movement and freedom of residency. In other places, the law guarantees migrants equal access to labor rights, health services, social security, education, and home ownership. Within these same articles, however, the law establishes that only immigrants who have resided in Chile for at least 24 months will be able to receive state-funded social security and related benefits.”³²¹

Still, Reveco remarks:

“Similarly, only those with a permanent residency permit have the same housing rights as nationals. In addition to these fine-print restrictions, the 2021 law incorporates an article stating that the rights granted will be interpreted according to the most favorable law, whereas the

³¹⁹ Cristián Doña-Reveco , “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome,” Migration Policy Institute, May 2021, <https://www.migrationportal.org/insight/chiles-retooled-migration-law-offers-more-restrictions-less-welcome/>.

³²⁰ Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome.”

³²¹ Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome.”

suspension or restriction of rights will be interpreted according to the most restrictive law.”³²²

Moreover, the focus on securitization is also the subject of debate. The new legal framework states authorization for the government to take measures to make migration regular, safe, and orderly. The mentioned law in article 9 states that irregular immigration can not be considered a crime. However, provide the authorization to close border entry and contribute to detention facilities and deportations of migrants based on security issues. In particular, this provision is being subject of high criticism by the UNCHR and NGOs.³²³

These provisions are contradictory, considering the prohibition of collective expulsion present in American Convention on Human Rights, in the 2010 Brasilia Declaration which states the prohibition of non rejection at the borders and non penalization of illegal entry

Furthermore, according to Reveco, the new migratory management policy aim to diminish migration by increasing the vulnerability of several migrants, growing not the numbers of migrants but their irregular status.³²⁴

Lastly, it is essential to mention that the new framework did not mention regional cooperation processes, such as the Mercosur Residency Agreement for instance.³²⁵

To conclude, the state Chilean migratory management always had a focus on security issues and sovereignty. The last updates of Chile's legislation in terms of migration are still ambiguous; what can be said for now is that besides the approach of human rights, the same framework also limits the same rights, and it is clear that the security approach prevails from the discourse of protection, where expulsions were already taken place. Moreover, only time and posterior analysis will demonstrate what the law will change in practice.

Concerning the impacts in other areas, the primary needs of Venezuelans in Chile are integration, education, and health.

³²² Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome.”

³²³ Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome.”

³²⁴ Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome,”

³²⁵ Doña-Reveco, “Chile's Retooled Migration Law Offers More Restrictions, Less Welcome,”

About education, Chile provides education for children and adolescents, independent of their legal status, one of the principal issues is the lack of accessible schools for them. In its turn, adults face challenges in the revalidation of diplomas and certificates.³²⁶

Regarding health, 27% of Venezuelan migrants and refugees do not have access to health insurance, including long waiting times. Another problem, is related to the lack of recognition of the provisional number, which allow migrants and refugees to access the health system.³²⁷

Finally, integration is also a common challenge in Chile, where they face difficulties in social and economic integration, where the majority face difficulties having no formal work due to the lack of documentation or in the waiting process for obtaining it.³²⁸

3.3 Colombia Legislative and Policy Framework

3.3.1 Background

Colombia differently from other Latin American countries it was not subject to a significant immigration and emigration flows. Although, considering the previous decades the country witnessed a phenomenon of greater leaving of Colombians, mostly due to internal conflicts and economic crisis.³²⁹

Going back to 2020, Colombia already hosted the majority of refugees and migrants from Venezuela, arriving in that year with 1.8 million in total, with more than 690,000 with some form of regularization status.³³⁰

It should be noted that the country became a choice for several Venezuelans for some reasons, such as the common share border and the development of the economy

³²⁶ “RMNA 2022 Refugee and Migrant Needs Analysis”

³²⁷ “RMNA 2022 Refugee and Migrant Needs Analysis”

³²⁸ “RMNA 2022 Refugee and Migrant Needs Analysis”

³²⁹ “Colombia - OECD,” OECD, 2009, <https://www.oecd.org/colombia/44535755.pdf>.

³³⁰ Dooley, Bahar, “Venezuelan Migration, Crime, and Misperceptions: A Review of Data from Colombia, Peru, and Chile.”

before the advent of the world pandemic.³³¹ Representing, in the beginning, a country with good access and apparent opportunities.

In the last years, with the increasing number of new arrivals, the government lacks previous experience with mass migration movements. As a consequence of lacking the knowledge on how to deal with this.³³²

Therefore, in the next session, it will be explored the legal solutions furnished by Colombia to deal with the Venezuelan displacement crisis. It can be told that the country, as the others, employ both the granting of asylum status to Venezuelans based on the Cartagena refugee definition, and also delivering ad hoc measures to give temporary stay permits and protection. Furthermore, Colombia is also a signatory state of the 1951 Refugee Convention and its Protocol and the 1984 Cartagena Declaration.

3.3.2 Legal Framework for the Regularization of Venezuelan Migrants and Refugees

At the end of 2017, about 470,000 Venezuelans lived in Colombia, and between these numbers, 202,000 possess a regular migratory status.³³³

The Colombian government created two legal pathways to regularize Venezuelans in the same year. First, the Border Mobility Card, a document that allowed people living in Venezuelan border cities with Colombia to legally enter the country.³³⁴ This card could be used both by people who intended to remain in Colombia for an extended period and either for those who remain living in Venezuela but had the necessity to cross the border for health services or to buy food. Consequently, the Card provoked the overcrowding of the border cities.³³⁵ Further, the Border Mobility Card requires only the presentation of an identity document, and a proof of residence in Venezuela.³³⁶

Second, the Special Stay Permit (PEP) constituted an alternative to the asylum system, giving the right to work and access health and social services through a legal

³³¹ “Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia,” International Crisis Group, September 6, 2022, <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia-venezuela/hard-times-safe-haven-protecting-venezuelan>.

³³² “Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia.”

³³³ Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses”.

³³⁴ Bolter, “In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses”.

³³⁵ Andrew Selee et al., “Creativity amid Crisis”.

³³⁶ Andrew Selee et al., “Creativity amid Crisis”.

residence permit for up to two years. Moreover, it was free of costs and give immediate regularity.³³⁷

The Special Stay Permit was first issued to cover Venezuelans who had arrived before July of 2017. After, the government embrace two additional groups, those who entered with passports before February of 2018 and those who entered irregularly but had registered before the spring of 2018.³³⁸

Following, in late 2018, about 272,000 Venezuelans of a total of 442,000 in irregular status registered for apply for the Special Stay Permit. In that year the government announced more rounds of the PEP, to avoid new arrivals to become irregulars, constituting as an ad hoc measure to prevent illegality.³³⁹

Another measure developed by the government in late 2018 was issuing a fifteen-day transit permit for Venezuelans who used Colombia as a transit country to achieve another destination without the need to present passports. Hence, this transit permit had the aim to provide a regular route to enter Colombia as a transit country without the need to be subject to traffickers and smugglers.³⁴⁰

In summary, the Special Stay Permit in late 2018, required passports, besides they could be expired up to two years,³⁴¹ no requires of clean criminal history, and free of cost.³⁴²

As mentioned in 2019, the government organized six more rounds of ad hoc issuance of PEP, of which some were larger and other smaller. The smaller ones covered former Venezuelan military members, and Venezuelans with the asylum application denied.³⁴³

Already in May of 2019, more than 1.3 million Venezuelans were residing in Colombia, being the country with received more Venezuelans in Latin America since then.³⁴⁴

³³⁷ Bolter, "In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses."

³³⁸ Andrew Selee et al., "Creativity amid Crisis".

³³⁹ Andrew Selee et al., "Creativity amid Crisis".

³⁴⁰ Andrew Selee et al., "Creativity amid Crisis".

³⁴¹ Corrales et al., "Welcoming Venezuelans: A Scorecard of Responses from Latin American and Caribbean Countries to the Venezuelan Migration Crisis."

³⁴² Andrew Selee et al., "Creativity amid Crisis".

³⁴³ Andrew Selee et al., "Creativity amid Crisis".

³⁴⁴ Corrales et al., "Welcoming Venezuelans: A Scorecard of Responses from Latin American and Caribbean Countries to the Venezuelan Migration Crisis."

Accordingly, the development of these two cards by the Colombian government facilitates the regular entry of Venezuelans into Colombia, avoiding the dangers of non-authorized migratory routes.³⁴⁵

In the middle of 2020, the PEP covered 762,857 Venezuelans.³⁴⁶ Despite the positive outcome of providing regular status to a large number of Venezuelans still in the following year, a significant portion of the Venezuelan population in Colombia remained unregularized approximately between 41% to 57%.³⁴⁷

According to a report issued in 2020, the Colombian answers to the Venezuelans displacement crisis has been innovative, beginning with the Special Stay Permit in 2017 and passing through the Border Mobility Card.³⁴⁸

As is common in the region, the governments constantly changed its migration requirements through resolutions. It was the same in Colombia, where two resolutions issued at the beginning of 2020, numbers 0240 and 0238, established new requirements for the application to the PEP. First, Venezuelans need to prove to enter in Colombia before November 2019 with passports, prove a clean criminal story, and last, prove not to have a current decision of expulsion or deportation while in Colombia.³⁴⁹

In 2021 the government announced the creation of a Temporary Protection Statute. Constituting another measure to regularize Venezuelans and offer temporary protection. This applied to Venezuelans who arrived before January of 2021, constituting also a pathway for legal residence allowing access to work, education and health care also covered those who regularly crossed the borders for the next two years.³⁵⁰

Colombia was considered creative in providing pathways for the regularization of Venezuelans inside the country and to offer a legal pathway for entry. Besides the great numbers of Venezuelans regularized, in contrast, the country received fewer numbers for asylum applications. One of the main reasons for this is that the ad hoc measures

³⁴⁵ Andrew Selee et al., “Creativity amid Crisis”.

³⁴⁶ Gonzalez, Amaral, Mora, “Socioeconomic Integration of Venezuelan Migrants and Refugees”

³⁴⁷ Gonzalez, Amaral, Mora, “Socioeconomic Integration of Venezuelan Migrants and Refugees”

³⁴⁸ Selee and Bolter, “An Uneven Welcome”.

³⁴⁹ “Requisitos,” Migración Colombia (Migración Colombia, January 30, 2020), <https://www.migracioncolombia.gov.co/venezuela/pep/requisitos>.

³⁵⁰ “Press Release: New Colombia Migration Policy,” Venezuela Crisis | World Vision International, March 16, 2021, <https://www.wvi.org/newsroom/venezuela-crisis/press-release-new-colombia-migration-policy>.

guarantee work authorization. Unlike the asylum application, where work permits are not automatically issued.³⁵¹

In early 2022, 2.4 million Venezuelans applied for the Permit of Protection, of which about 1.4 million were approved until July 2022. Moreover, this kind of permit did not include all Venezuelans once some could not provide any proof about their date of entry, including a valid identification document.³⁵²

Beyond that, in the current year, the government organized several actions to accelerate the issuance of Temporary Protection Permits in mass between January and April. From May, the permit applies only to those who entered regularly in the country, and the children and adolescents are registered in schools, this measure will be open until November 2023.³⁵³

In summary, the legal channels for regularization and protection of Venezuelan refugees and migrants in Colombia followed more or less the same structure of the countries mentioned previously. Thus, it combines ad hoc measures created specifically to regularize Venezuelans and also the adoption of asylum applications.

Regarding the ad hoc measures, it should be emphasized the creation of the Border Mobility Card, allowing Venezuelans living in border cities to enter in the country for a certain period while searching for health services or simply buy food supplies.

In addition, the Special Stay Permit, was developed as an alternative to the asylum system, providing immediate regularity, without costs, guaranteeing the right to work, access health and social services. Along with the years the requirements of the PEP were changing in order to adopt more requisites of application, for instance in 2020, applicants need to prove a clean criminal story and do not being subject to a decision of expulsion or deportation while in Colombia.

Another ad hoc measure was the creation of the fifteen-day permit for transit in the country. This measure allowed migrants who intend to arrive in another country, passing through Colombia, avoiding the transit through dangerous routes.

Lastly, in the last year, the creation of the Temporary Protection Statute represents another attempt to provide temporary measures to Venezuelans irregularly who have arrived before January 2021. It provides the right to work and access to the educational

³⁵¹ Andrew Selee et al., “Creativity amid Crisis”.

³⁵² Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia.”

³⁵³ “Quarterly Mixed Migration Update: Latin America and the Caribbean.”

and health system. It should be emphasized that in early 2022, around 2.4 million Venezuelans were beneficiaries of this protection.

Concerning asylum, in comparison to the ad hoc measures, the country received fewer asylum applications, this can be attributed to the fact that the residence permits and temporary protection provide the right to work, on the contrary, while pending the asylum application asylum seekers did not have the right to work. Another point is that with the PEP, for instance, the migrant obtains immediate regularity if presented all the requirements. One last point could be the fact that ad hoc measures usually constitute a more straightforward process with less time waiting.

3.3.3 Policy Framework for Venezuelan Migrants and Refugees in Colombia

The main police in Colombia comprehend all the efforts to strengthen the public services available to the population in general. To achieve this aim, the government received funds from United Nations, the European Union, and the United States. In addition, non-governmental organizations also work together with these institutions.³⁵⁴ Even though the increasing partnership in providing humanitarian emergency assistance and international aid, several researches have argued the lack of a structured policy framework.³⁵⁵

One important factor is the still ongoing recovering of the country after years of national conflicts and expressive inequalities. Edwards, observers in order to provide the continuity of social programs, which embraces also Venezuelans migrants and refugees, international support it is still needed to allow Colombia's engagement with the migratory crisis.³⁵⁶

The main policy of the country is through the Humanitarian Response Plans, launched every year, with the primary needs for the period. The Plan of 2022, specifically urged 283 million USD, in order to promote 173 projects, with the objective in two main front lines. The first, is to protect lives, and the second to enhance durable solutions for

³⁵⁴ Corrales et al., "Welcoming Venezuelans".

³⁵⁵ Andrés Ham et al., "Social Protection Responses to Forced Displacement in Colombia," May 2022, https://cdn.odi.org/media/documents/Colombia_social_protection_final_executive_summary_eng.pdf.

³⁵⁶ Nate Edwards, "Colombia's Support for Venezuelan Migrants and Refugees: President Petro Reaffirms Commitment to Integration, but Continued Progress Requires More International Support," Center on International Cooperation, September 2022, <https://cic.nyu.edu/>.

the reconstruction of rights and socio economic balance of the populations suffering from the impacts of the pandemic, violence, climate change, including mixed migration movements.³⁵⁷

3.3.4 Human Rights Impacts

In 2022 about 2.5 million Venezuelans are living in Colombia, where the government, despite all the internal problems, chose to host refugees and migrants. However, according to the international crisis group, “these policies stand out for their compassion but are not matched by sufficient economic or other support.”³⁵⁸

Thus, according to HIAS, relevant is the following paragraph:

“Colombia is now among the first countries in the world to adopt a public policy of welcoming Venezuelan migrants at scale. In February 2021, the Colombian government announced that the Temporary Protection Status TPS, for Venezuelan migrants would be granted for a period of up to 10 years. This path-breaking initiative by the government of Colombia offers Venezuelan legal immigration status and the right to work as well as access to education, health and other services. With the help of UNHCR and stakeholders like HIAS, nearly 90% per cent of Venezuelan migrants in Colombia have been pre registered for TPS documentation cards.”³⁵⁹

Thus, the migratory policies try to embrace vast numbers of Venezuelans, giving them protection and access to rights. However, the country doesn't have the necessary infrastructure to properly deal with its own population and the increasing numbers of

³⁵⁷ “Colombia 2022 Humanitarian Response Plan - Colombia,” ReliefWeb, February 23, 2022, <https://reliefweb.int/report/colombia/colombia-2022-humanitarian-response-plan#:~:text=The%20plan%20calls%20for%20USD,stabilization%20of%20communities%20affected%20by>.

³⁵⁸ Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia.”

³⁵⁹ “2022-2023 Overview HIAS Colombia” (HIAS), accessed November 7, 2022, <https://www.hias.org/sites/default/files/hias-colombia-overview.pdf>.

refugees, resulting in negative impacts on the exercise of human rights of the migrants and refugee population.

In the current year about 2.5 million Venezuelans are living in Colombia. In one, side the Colombian migratory policy can be considered welcomed, regardless the fact that several migrants and refugees are living in precarious conditions, due to the lack of work, economic opportunities, consequently affecting the access to health and others basic fundamental rights.³⁶⁰

In Colombia it is a well know issue the existance of criminal groups. Moreover these groups are recruiting Venezuelans in vulnerable situation to work for them, exposing them in dangers situations, increasing the sentiment of xenophobia.³⁶¹

It is one of the main priorities now that all the partners and donors focus on the protection of Venezuelans, providing them opportunities in the legal labor market and preventing them to access violent areas, where they can be subject to the recruitment of criminal groups.³⁶²

Concerning health, the need for medical treatment is one of the main reasons for migratory movement once the Venezuelan health system is completely broken, lacking medicines and treatments even for ordinary diseases.³⁶³

In this sense, it is important to mention that Venezuelans with a PEP have access to health care, instead, those who do not possess this Permit only have access to emergency medical treatment.³⁶⁴

Between those who have a regular status of residency, the problems are the same for the nationals when accessing the health system. In December of the last year, 427 Venezuelans were granted health insurance.³⁶⁵ Remaining the doubt about whether the health system will have the capacity to afford all these necessities.

Concerning education, the recognition of qualifications and access to training is one step essential to avoid irregular job markets and criminality. Accordingly, the government needs to take additional measures to improve this system.³⁶⁶

³⁶⁰ Hard Times in a Safe Haven”.

³⁶¹ Hard Times in a Safe Haven”.

³⁶² Hard Times in a Safe Haven”.

³⁶³ Hard Times in a Safe Haven”.

³⁶⁴ Corrales et al., “Welcoming Venezuelans”.

³⁶⁵ Hard Times in a Safe Haven.”

³⁶⁶ Hard Times in a Safe Haven: Protecting Venezuelan Migrants in Colombia.”

Data from June of 2022 revealed that about 553.490 Venezuelan children and adolescents were enrolled in schools, showing an expressive increase in comparison with 2021, nearly 500.000 more.³⁶⁷

In contrast, 64% of children between 0 and 5 years old not attend education, and 29% between 6 and 17 are not enlisted in schools, mainly due to the lack of provisions to afford materials and other related expenses, including the lack of documentation and educational systems capacity.³⁶⁸

The main need for access to the educational system is to improve the measures to guarantee that children remain in school, including the focus work in learning gaps between them.³⁶⁹

Regarding economic integration in Colombia Venezuelans are usually paid much less than nationals.³⁷⁰ Further, in poor and rural areas, where access to regular work is scarce several migrants and refugees without other alternatives engage in illicit activities, including armed and criminal groups.³⁷¹

As already mentioned before, it is one of the main priorities now for the Colombian government protect Venezuelans to prevent them to access illicit activities to survive. According to the International Crisis Group, to achieve this aim, the government needs to further developed the structures of reception at the borders and in big cities, improving the support for safe entry and relocation. In addition, it is needed to raise awareness about the dangers in engaging in criminal activities inside armed groups, where also children and women are affected.³⁷² Indeed, this condition increased from the moment when the covid 19 pandemic initiated.³⁷³

To illustrate, at the end of the last year, about 90% of Venezuelans were employed in the informal sector, where they can not be protected, where they are explored and subject to lower wages and subject to work more than 48 hours a week.³⁷⁴

Another barrier is that several employers do not recognize the PPT documents. A decisive factor is lack the access to information about how to apply for the PPT document,

³⁶⁷ “RMNA 2022 Refugee and Migrant Needs Analysis”

³⁶⁸ “RMNA 2022 Refugee and Migrant Needs Analysis”

³⁶⁹ “RMNA 2022 Refugee and Migrant Needs Analysis”

³⁷⁰ Hard Times in a Safe Haven.”

³⁷¹ Hard Times in a Safe Haven.”

³⁷² Hard Times in a Safe Haven.”

³⁷³ Hard Times in a Safe Haven.”

³⁷⁴ Hard Times in a Safe Haven.”

mainly and poor and rural areas.³⁷⁵ Likewise, is “the lack of information among employers on how to hire refugees and migrants from Venezuela, and on their work skills.”³⁷⁶ Substantially diminishing work opportunities for them.

The situation is even worst for those who do not have access to regularization stay permits. Affecting also the right to housing, where they can not rent a place to live, being subject to informal accommodations place, where once again they face inhuman conditions. Some researchers have found that to pay the rent, many subjects themselves to criminal activities, including sexual favors, to pay off the debt.³⁷⁷ Living conditions also exposed them to scarce access to potable water and food insecurity.³⁷⁸

In conclusion, the country is facing several shortcomings in providing access to the most basic rights for Venezuelan migrants and refugees, mainly in the sectors, of protection, access to health, education, and socio-economic integration.

³⁷⁵ Rachel Schmidtke, “Filling the Gap: Humanitarian Support and Alternative Pathways for Migrants on Colombia’s Edge,” June 2022.

³⁷⁶ “RMNA 2022 Refugee and Migrant Needs Analysis”

³⁷⁷ Hard Times in a Safe Haven.”

³⁷⁸ Hard Times in a Safe Haven.”

Conclusion

In conclusion, it was possible to identify that, in general terms, the approach of South American countries towards migration, including the Venezuelan, is welcoming, as is typically a characteristic of the region. Nonetheless, the appearance of more restrictive policies in the last few years should also be noticed as a consequence of the continuity of the migratory movement, the Covid-19 pandemic, and the duration of the Venezuelan crisis.

In addition, it seems a significant increase in the regional debates in trying to construct a regional common approach to deal specifically with the Venezuelan migration crisis. Besides all the legal and policy frameworks established in the last few years, the region's countries did not work with a uniform system, apart from similarities. Hence, the states provided answers according to their own national political scenario and necessities. Indeed, the 2018 Declaration of Quito on Human Mobility of Venezuelans Citizens in the Region reaffirmed the continuity of the work separately, taking into account the way that each country finds more appropriate in the areas of humanitarian assistance, rights of residence, and refugee status determination.

One common point is the application of refugee status for Venezuelans based on the Cartagena Declaration, encouraged by declarations of the Inter-American Commission on Human Rights and the UNHCR.

Correspondingly, many countries have offered complementary entry forms and regularization mechanisms through residence permits, temporary protection status, and others, highlighting the consonance of the region with international standards such as the Mexico Declaration and Plan of Action of 2004, the Brasilia Declaration on the Protection of Refugees and Stateless Persons and the Global Compact.

Concerning the individual country's answers, it is possible to see a standard agreement between the countries to respect the basic principles of regional migration and the refugee system but prioritize individual decisions based on their sovereignty. In common, all case studies accepted asylum applications and, at the same time, developed and provided ad hoc measures and alternative entry pathways.

It was possible to see that all countries received fewer asylum applications from Venezuelans compared to other forms of regularizations. This is because asylum

procedures usually require more time to be finalized and more procedural steps, failing in the region's underdeveloped asylum systems, making the other forms of regularization faster and less complicated from the refugee point of view. Hence, this represents a concerning regional trend because even though alternative options for asylum give access to residence and fundamental rights, it does not guarantee integral and complete protection founded in refugee systems, for instance, the right of non-refoulement, leaving them subject to political instability.

Moreover, these various fragmented ranges of options available for entry and regularization in practice have been seen as confusing for many Venezuelans, usually lacking information and assistance to access these solutions.

Several needs were emphasized regarding the human rights impacts in practice. The research exposed the needs for education, health, and socio-economic integration in three countries, demonstrating that the challenges have been the same in all of them. In education, the primary needs concerning access to school for children and adolescents are the inability of the parents to afford expenditures, transportation, and overwhelmed school systems. Among the adult population, the bureaucracy with the revalidation of diplomas. About access to health the right is guaranteed for migrants and refugees, but the primary needs occur in the overwhelming border cities and alongside the main migratory routes, lacking the infrastructure to attend to the local population and the new arrivals. Finally, concerning socio-economic integration, the lack of regularization is one of the principal problems creating issues in the access to formal work, in which many migrants and refugees rely on the informal sector economy, being subject to the actions of criminal groups, abuses, extensive working hours, and less payment. All these sectors are highlighted by significant rates of discrimination and xenophobia toward the Venezuelan population.

In summary, the region's main challenges for the future are improving long-term regularization systems, long-term protection, integration of Venezuelan migrants and refugees, and extensive work on preventing discrimination.

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