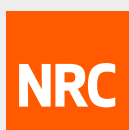


The search for protection: A snapshot of Latin American legal protection frameworks

June 2023





NORWEGIAN
REFUGEE COUNCIL

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NRC in Latin America: NRC works across Latin America meeting the needs of hundreds of thousands of people affected by forced displacement. We also contribute to the development of policy aiming to protect the rights of the displaced, as well as support the strengthening of protection and response regimes across the region. NRC currently has offices in Colombia, Venezuela, Ecuador, Panama, Honduras, El Salvador and Guatemala and works through partners in Mexico.

Cover photo: San Vicente Migratory Reception Station, Panama, August 2022.
Photo: Ingrid Prestetun/NRC

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Executive Summary

People in Latin America are on the move, fleeing violence, political turmoil and the adverse impacts of climate change. Many try to reach the United States and Canada, but an increasing number are moving within Latin America, settling in countries through which they would previously have passed on their way to North America.

While most of the people on the move in Latin America originate in Venezuela, there are also significant numbers of refugees and migrants from Central America, South America, the Caribbean, Africa, and Asia. Many are forcibly displaced and in need of international protection, while others seek economic and educational opportunities. In many cases, people are motivated by a mixture of these factors.

While most Latin American countries are rightly recognised as having progressive and humane refugee laws, their application can be inconsistent - with the result that protection can oftentimes be hard to access. NRC has analysed the legal protection frameworks in several Latin American countries and has identified six key protection challenges which apply across the region:

Inconsistent and discriminatory assessment of asylum claims

While almost all of the countries analysed have adopted the Cartagena Declaration and have incorporated its definition in their internal legislation, it is not consistently applied when determining refugee status, with some nationalities facing de facto exclusion from consideration under its more generous criteria. In addition, the increasing number of asylum petitions combined with the lack of funding and resources for the institutions responsible for processing asylum claims, significantly undermines the asylum system.

Absence of accessible legal migration pathways

Many national and regional schemes exist to facilitate regular migration, but all require applicants to possess passports, are limited in scope, grapple with significant administrative burdens, and/or often require payment of high fees. In addition, alternative schemes can also undermine international refugee protection when they are more easily accessible but offer less protection in practice.



Panama, August 2022. Photo: Ingrid Prestetun/NRC

Prevented from accessing protection

Many of those who arrive in countries irregularly are unable to take advantage of the opportunities which periodically arise to secure complementary protection. Given the challenges involved in accessing regular migration routes these schemes are therefore of limited protective value.

Denied opportunities to work

Refugee Status Determination (RSD) procedures are lengthy and oftentimes applicants are unable to access the labour market nor exercise their right to work. This results in people either giving up on the process or remaining in the country but in very precarious conditions. It is important to acknowledge and address the difficulties that refugees face in accessing the labour market, as it is a crucial component of their successful integration and long-term self-reliance.

No protection for the most vulnerable

While most countries studied recognise the need to provide additional protection to highly vulnerable groups such as children and survivors of sexual and gender-based violence, very few countries have functional mechanisms to ensure that protection is provided.

The humanitarian impact of US border policy

The USA is a major driver of displacement dynamics in Latin America and changes to its border policy have a significant impact on its neighbouring countries. Recent changes have resulted in increased humanitarian needs in Central American countries.



Danli, Honduras, April 2023. Photo: Ed Prior/NRC

Introduction

People in Latin America are on the move to a greater extent than ever previously seen. Complex emergencies, natural hazards, violence, criminality, and poverty are driving record numbers of forced displacement. The complexity of the displacement picture is staggering.

More than 7 million Venezuelans are now outside their country, having fled economic and political crisis.¹ Many seek asylum in neighbouring countries, while others pass through, making the journey north towards the USA or Canada. Colombia hosts the single largest number of displaced Venezuelans, while itself being a country of origin and facing a significant internal displacement crisis. By January 2023 approximately 600,000 people from Central America had sought refuge from violence and poverty in neighbouring countries, and more than 318,000 had been internally displaced in El Salvador and Honduras.² The political and social crisis in Nicaragua alone caused the displacement of over 225,000 people, with more than 180,000 asylum seekers in Costa Rica in 2022³.

Additionally, Latin American countries host refugees and migrants from Haiti and other Caribbean countries, but also from outside the continent including from Africa and Asia and the Middle East,⁴ many of whom travel to Latin America with the intention of then continuing to North America. Changes to the United States' immigration policy have added an additional dimension to Latin America's migratory patterns, with deportations and border pushbacks creating reverse migration flows, as people seek to return to their areas of origin or settle elsewhere on the continent. These reverse migration flows are creating new humanitarian needs in countries ill-equipped to address them.

Classifying these migration flows and the people who comprise them is challenging. Many of the people on the move in Latin America are forcibly displaced. Of these, some will fall under the definition of a refugee set out by the 1951 Convention; others may be defined as a refugee with reference to the 1984 Cartagena Declaration, which expands the objective criteria under which international protection must be provided. Still others – known as People otherwise in Need of International Protection (PNIP) – may need international protection, but not attain the criteria sufficient for formal recognition of refugee status.⁵ Some people on the move may be in search of improved economic or educational opportunities, and not in need of international protection. Where people with different legal statuses and motivations travel together using the same routes and modes of transport, the term “mixed movements” is used, reflecting the varied stories and objectives of the people on the move.



San Vicente Migratory Reception Station, Panama, August 2022.
Photo: Ingrid Prestetun/NRC

Latin American countries have some of the most progressive refugee laws in the world, with several countries demonstrating better rates of compliance with UNHCR good legislative practice than the European Union (EU).⁶ However, this “liberal tide” of Latin American refugee legislation is not uniform and, even where strong legislation exists, its application may be piecemeal, discriminatory, or inconsistent.

It is therefore important to understand the different legal protection frameworks for refugees and PNIP across the region, assessing rights they confer in both theory and practice, and identifying protection risks which operate across the region. This report provides a snapshot of the legal protection frameworks for people in need of international protection across Colombia, Ecuador, Peru, Panama, Costa Rica, Honduras, El Salvador, Guatemala, and Mexico, and also the relevant US policies which have a specific impact upon migration in the Latin American region.

This document has been drawn from a much larger body of work commissioned by NRC to review the legal frameworks in depth and to help inform our Information Counselling and Legal Assistance programmes across the region. That larger report was compiled on the basis of over 40 key informant interviews and a desk review of primary and secondary sources. All analysis was conducted prior to the end of 2022 and it is important to note that a number of new national legislative and policy frameworks have been already been introduced during the first half of 2023, including in Costa Rica, Peru and Ecuador.



Darien Gap, Panama, August 2022.
Photo: Ingrid Prestetun/NRC

Recommendations

To Latin American governments

Ensure that Refugee Status Determination (RSD) is conducted in a fair, timely and non-discriminatory manner. Those countries which have adopted the Cartagena Declaration have committed to provide protection to those who meet the Cartagena broadened definition of a refugee. This principle should apply regardless of the nationality of the applicant or the political context of their application.

Provide asylum seekers with opportunities to access formal labour market while processing their claims. Acknowledging that (RSD) processes take time, host governments should accordingly take steps to remove barriers that prevent asylum seekers from accessing the labour market and provide support to facilitate their socio-economic integration into the host country.

Expand access to regular migration pathways by reducing financial and administrative barriers. Many refugees and migrants would be better protected if they were able to migrate through regular pathways. Reducing the cost and documentation requirements would allow more of the most vulnerable people to access these schemes, reducing related downstream protection risks common to those moving irregularly, such as trafficking and people smuggling.

Continue to learn from and build on good practice across the region by providing opportunities for refugees and migrants who entered irregularly to regularize their stay. Governments should continue to adopt a harm-reduction approach and establish schemes through which irregular refugees and migrants can apply for complementary protection.

Deliver on protection for the most vulnerable. Recognising specific vulnerabilities is of little value if no mechanisms are put in place to provide protection and respond to these risks. Such mechanisms should be developed for all groups identified as at risk of exploitation and abuse.



Refugee and migrant father and son waiting at a transit centre in Danli, Honduras, April 2023. Photo: Ed Prior/NRC

To the United States of America

Consider the humanitarian impact of changes to border policies and put in place steps to mitigate harm and address increased resulting needs. Policies such as Title 42, the Migrant Protection Protocols and the recent enforcement of long-standing

Title 8 have a significant adverse impact on displacement across countries in Latin America. The USA has an obligation, to refugees and migrants, and to Latin America States to consider the impact of its policies and enact harm reduction strategies accordingly.

To donor governments

Recognize that a large number of displaced people across Latin America are in need of international protection. Rigid focus on distinguishing between refugees and so-called economic migrants can hinder efforts to provide the necessary protection to those entitled to it. By viewing the crisis through a protection lens, donors can support Latin American countries to provide protection to those in need.

Host governments should be supported with increased capacity to process claims for refugee status in a fair, timely, and non-discriminatory manner. This is crucial in ensuring that refugees and migrants have access to the protection they need and deserve. For the refugee status to be a real option, governments should be provided with resources to improve their capacity to process refugee claims. This can help to reduce the backlog of cases and ensure that claims are processed in a timely and efficient manner.



Darien Gap, Panama, August 2022.
Photo: Ingrid Prestetun/NRC

Region-wide protection risks

Ad hoc application of legal protection frameworks and discriminatory practices

The report finds that, while the majority of countries studied in the report have progressive legal protection frameworks, their application is piecemeal and often discriminatory, determined on the nationality of the applicant and not on an objective assessment of their asylum application. All of the countries studied, with the exception of Panama, have incorporated the 1984 Cartagena Declaration into their national legislation.⁷ This declaration expands definition of a refugee to cover those “persons who have fled their country because their lives, security or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”

The Cartagena Declaration does not place temporal or nationality restrictions upon those it protects. Nevertheless, several of the countries studied in this report apply the Cartagena definition to applicants from one country, but the “1951 Convention” definition to others. Interview respondents indicated that Venezuelans applying for asylum in a country which has adopted the Cartagena definition are unlikely to have their application considered against that broader definition, in contrast to applicants, for example, from Colombia. This discriminatory practice undermines Latin America’s reputation for progressive refugee protection policies, while reliance on discretionary practice introduces a significant element of uncertainty into the refugee status determination process.

Barriers to accessing refugee status

Some interviewees indicated that generally asylum seekers are treated primarily as economic migrants by the governments of some Latin American states. Latin America has a long tradition of economic migration, and several regional visa schemes operate to facilitate this movement. Indeed, these economic visa schemes represent often the only legal way that refugees and migrants can enter several of the countries examined in this report.

Theoretically, having entered regularly, a refugee or migrant may then apply to the relevant authorities for asylum or, where it exists,



Venezuelan refugee and migrant family in Popayán, southern Colombia, December 2022. Photo: Alejandro Camelo López/NRC

complimentary protection.. In practice, there are several barriers. The centralization of the refugee procedure in some countries limits access to seeking asylum. Likewise, the insufficient number of official reception centres in these countries makes it difficult for asylum seekers to come up with the necessary resources (time and economic resources) to be able to continue their asylum processes, which often entail regularly checking in with the authorities. These high costs can only be met by the richest refugees and migrants meaning that the poorest – who are also likely to have additional vulnerabilities – have no choice but to cross borders irregularly. This increases their vulnerability by pushing them into the arms of traffickers and smugglers, and their irregular status entrenches their marginalisation.

Irregular status? No consistent access to protection

The majority of the countries studied in this report have complementary protection mechanisms or humanitarian visas which are open only to those who entered the country of asylum through regular channels, in specific periods of time and/or under certain conditions (valid passport and much supporting documentation). If the most vulnerable refugees and migrants are the least likely to be able to access the documentation and money needed to acquire a passport, they are unlikely to enter the country of asylum regularly, they are therefore unlikely to be eligible for any complementary protection mechanism. These schemes are, therefore, of limited protective value.

Protecting the most vulnerable

Many of the countries studied explicitly identify groups which should be provided with additional support by virtue of their increased vulnerability. Children and young people – particularly when unaccompanied – are most frequently identified as needing specific and targeted support. Survivors of sexual and gender-based violence are also frequently referenced. Other groups such as members of the LGBTIQ+ community, the elderly, those with disabilities and chronic health conditions and pregnant and lactating women may also be identified. Despite the formal recognition of this range of additional vulnerabilities, interviews indicated that concrete support is often lacking. While the principle is clearly articulated, many countries should do more to put in place protocols for delivering the support and protection required.

The Impact of USA immigration policies

The United States is a significant factor in displacement dynamics in Latin America, drawing people towards it in search of safety and/or economic opportunity. The past five years have seen the USA make significant changes to its border policies in the hope of



Popayán, southern Colombia, December 2022. Photo: Alejandro Camelo López/NRC



A woman, who cannot be identified and who was forced to flee violence, speaks with an NRC staff member, Honduras, April 2023. Photo: Ed Prior/NRC

detering migrants from arriving via its southern border. Measures such as the Migrants Protection Protocols, the recently expired Title 42 and the ongoing reinforcement of long-standing Title 8, have all added an additional layer of complexity to the migration picture in the region. Deportations and border pushbacks have caused some refugees and migrants to return to Central and South America. While some return to their areas of origin others do not, choosing instead to remain in third countries. As a result, countries which, traditionally, were considered countries of transit are now becoming countries of asylum and residence. These returning and settling people often have high levels of humanitarian needs and are placing additional pressures on countries which are little prepared to support them.

Venezuelan refugee and migrant family in Popayán, southern Colombia, December 2022. Photo: Alejandro Camelo López/NRC



Country Specific Findings

Colombia

Colombia hosts one of the largest populations of refugees and migrants in the region, including 35% of all displaced Venezuelans. According to figures from the migration authorities, as of December 2022, 66 per cent of Venezuelan migrants have been granted temporary residence for 10 years under the Temporary Protection Statute for Venezuelan Migrants (ETPV)⁸. Only 1,527 people – 86% of whom are Venezuelan – have refugee status, and there are about 30,000 pending asylum applications.⁹



Legal pathways to protection

Despite hosting a significant number of refugees and migrants, Colombia is relying on piecemeal regulations which require further development to be of practical effect. In principle, Colombia applies the Cartagena Declaration definition of a refugee, but this is rarely reflected in practice, resulting in limited recognition of refugee claims. Asylum seekers may not access formal employment while their claims are considered.

The Colombian government has focused primarily upon providing protection to Venezuelan citizens. Although largely unwilling to recognise Venezuelans as refugees, it has put in place a series of interim solutions, such as the Special Permanence Permit (PEP) and, more recently, the Temporary Protection Statute for Venezuelan Migrants (ETPV).

To avail of the ETPV, an applicant must register in the Registro Único de Migrantes Venezolanos (RUMV), following which they can apply for the Permit for Temporary Protection (Permiso de Protección Temporal or PPT). Individuals who have applied for asylum can also apply for a PPT but, if their application is approved, they must withdraw the request for refugee status. While this confers benefits such as healthcare, education and the right to work, its acceptance removes from asylum seekers protection from non-refoulement,¹⁰ the right to family unification, and protection from any penalties for irregular entry into Colombia. The Colombian government has also created a residence visa that Venezuelans may acquire.¹¹

While these schemes provide more protection than is available to non-Venezuelans, access to them is largely – with some exceptions – restricted to those adults who arrived in Colombia before 31 January 2021 and for those entering the country the following two

years regularly meaning with a passport (even expired)¹². Currently there are no alternative legal pathways for those Venezuelans who enter Colombia by irregular means. By restricting access to those who have arrived through legal channels, and requiring arrival before a certain date, the protective value of the temporary protection schemes is significantly undermined, to the detriment of the poorest and most vulnerable.

It should also be reiterated that the PPT is only available to Venezuelans. Other, non-Venezuelan refugees and migrants suffer from a lack of legal protection mechanisms.

Special protection regimes

The additional vulnerability of women, children and adolescents is recognised in Decree 1067 from 2015 (Refugee Decree), which provides for a prioritisation of their needs. The Instituto Colombiano de Bienestar Familiar (ICBF) should be notified of asylum applications from children, and it is tasked with acting in their best interest. In cases of unaccompanied children, the ICBF acts as their representative in the asylum application process. Children should also be supported to access PPTs, subject to certain conditions.

While the recognition of children's additional vulnerability is important, there remain several areas in which protection can be improved. Firstly, PPTs are individual permits which only confer protection on the holder. While minors may be granted the permit in recognition of their additional vulnerabilities, no such allowance is made for their parents, who may not be eligible for a PPT.¹³

Costa Rica

Costa Rica is a country of both destination and transit. The vast majority of asylum seekers who claim asylum in Costa Rica come from other Latin American countries, primarily Nicaragua, then Venezuela, El Salvador, Colombia and Cuba. In addition, hundreds of thousands of people are in transit across the country in search of protection, and/or improved economic and educational opportunities.¹⁴

Legal pathways to protection

Costa Rica is broadly accepted as having one of the most progressive immigration and refugee regulatory frameworks in the region. However, changes are being introduced which are chipping away at the protections provided by these frameworks. New administrative processes through which applicants may seek asylum are applied inconsistently, with some suggesting that measures are being introduced to deter applications from those nationalities most likely to seek asylum.¹⁵ Asylum seekers from Haiti, Nicaragua and Venezuela are now no longer automatically permitted to work, nor to leave Costa Rica while their application is being considered.



Due to the high number of Nicaraguans, Venezuelans and Cubans with denied asylum claims,¹⁶ in February 2021 Costa Rica implemented a special regularisation process, *Categoría especial temporal de protección complementaria* (or Special Temporary Category of Complementary Protection) which grants 2-year residency for those eligible.¹⁷ The interviews conducted while compiling this research suggest almost 4,000 Nicaraguans, Venezuelans and Cubans were granted the two-year complementary protection status. The Government of Costa Rica announced a second phase of this process, launching in Spring 2023. Those who succeed will be able to work for two years but must withdraw their asylum applications and prove they have no criminal record.

Obtaining a visa to enter Costa Rica is complex. The process is expensive, often costing in excess of 500 USD, and the requirements – a valid passport, proof of income and an absence of criminal record – can be difficult for some applicants to meet; particularly vulnerable refugees seeking safety.

Special protection regimes

While the government has put in place guidelines to support vulnerable applicants, there are no formal protocols in place to ensure that groups likely to be particularly vulnerable – for example children, and survivors of gender-based violence – are provided with additional support or mechanisms through which to access protection.

Ecuador

Ecuador is home to one of the largest numbers of recognized refugees in Latin America, hosting more than 571,000 people who have been forced to flee their country of origin, of whom 40% are under 17 years old and 55 percent are women and girls.¹⁸ The majority of refugees hosted in Ecuador originated in Colombia, but in the last decade the country has also come to host the third largest population of displaced Venezuelans.¹⁹

Legal pathways to protection

On paper, Ecuador's legal framework for the protection of refugees and migrants is remarkably progressive. The Ecuador Constitution recognizes the principle of universal citizenship and the free mobility of all the inhabitants of the planet. In 2017, the National Assembly adopted the Organic Law on Human Mobility, which promotes a rights-based approach to migration, integration and development and applies to groups including immigrants, victims of human trafficking and smuggling and people seeking international protection.

These principles notwithstanding, while Ecuador has, historically, been willing to offer asylum to fleeing Colombians it has taken a less welcoming approach to displaced Venezuelans, assessing their asylum claims on the grounds of the 1951 Convention rather than



against the broader criteria set out by the Cartagena Declaration.
20, 21

While options do exist for refugees and migrants to obtain regular status, for example the MERCOSUR Residence Agreement and the Union of South American Nations (UNASUR) visa, both are very expensive and place onerous administrative burdens on applicants. Furthermore, neither option is open to Venezuelans.

In 2019, Ecuador established an exceptional temporary residence visa for humanitarian reasons (VERHU). While the VERHU visa provided Venezuelans with some protective options, it did not provide them with a pathway to long-term regular residence, with the result that many of those to whom it was granted reverted to an irregular status upon its expiry.

Special protection regimes

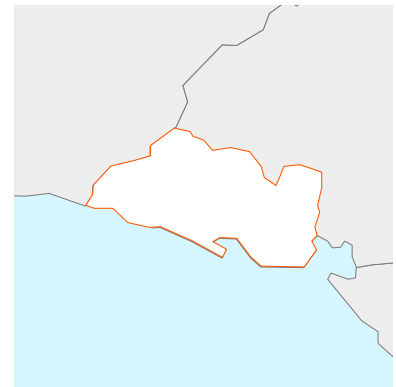
Ecuador provides special procedural guarantees to ensure the protection of children and young people and prioritises the application of unaccompanied minors. This same prioritisation applies to survivors of sexual and gender-based violence.

El Salvador

El Salvador hosts very few asylum seekers and refugees. The country has long been a transit country through which refugees and migrants originating in South American and Caribbean countries pass, en route to North America. In recent years, as refugees and migrants have sought to return their countries of origin, El Salvador has also become a country of return transit.

In 2019 the government of El Salvador joined the Regional Integrated Framework for Protection and Solutions (MIRPS), an initiative that aims to address forced displacement in Central America and Mexico and implement the Global Compact for Refugees. Those asylum seekers who are denied refugee status may be granted residence for two years as a complementary protection measure. In theory, in order to avail of this protection, a rejected asylum seeker must show proof that their claim was rejected and that returning to their country of origin or residence presents a risk of harm to their life. Temporary residence may also be granted for humanitarian reasons on presentation of a letter – for example from an NGO – explaining why it is necessary. While the availability of complementary protection is to be welcomed, its application is largely discretionary.

El Salvador signed the Central American Free Mobility Agreement CA-4, which facilitates the transit of people from participating countries (El Salvador, Guatemala, Honduras, and Nicaragua) without the need for a passport but does not imply an automatic right to residency.²² Nationals of the signatory countries can reside regularly for a period of three months. Migrant workers and their dependents may also avail of temporary residence permits, should they wish to remain in the country.



Special protection regimes

El Salvador recognises that decisions concerning unaccompanied minors should be made in their best interests, and that they should have access to education. There is currently no process regulating the protection of unaccompanied minors. In theory, survivors of sexual and gender-based violence and trafficking may avail of additional protection.

Guatemala

Guatemala hosts few asylum seekers and refugees. Although primarily a country of transit, the numbers of people needing international protection are also increasing. Refugees and migrants from Venezuela, Nicaragua, Honduras and El Salvador travel through Guatemala on their journey north. Increasing numbers of Haitians are also using the country as a point of transit.

Legal pathways to protection

The Government of Guatemala has enacted legislation to provide refugees and migrants with access to public services on the same basis as Guatemalan nationals. However, the law does not specify whether this right of access applies only to those with regular status, or if it also includes those who are undocumented or of irregular status.

Guatemala is part of the Central American Free Mobility Agreement CA-4 signed in 2006 by the migration authorities of El Salvador, Guatemala, Nicaragua and Honduras, which provides for a three-month long residency for nationals of these countries. The country also grants permanent residence to nationals of Central American countries when they have been temporarily resident in Guatemala for one year. However, it has introduced visa requirements for nationals from Venezuela, Ecuador and Haiti.

Those seeking asylum must apply in person, which imposes travel-related costs. The state grants refugees and asylum seekers the right to healthcare, education and work – this latter with prior authorization of the Ministry of Labor and Social Security. These rights are demonstrated by provision of a Personal Special Identity Document (DPI). However, not all service providers recognise the benefit conferred by this document, which can pose problems to some refugees and migrants. The lack of DPI means that people in transit may struggle to access health services. The DPI also does not confer temporary residency. In order to secure this status, refugees and migrants must pay for approximately 250 USD and go through the administrative process. The Migration Code permits the grant of temporary residence for humanitarian reasons.

Special protection regimes

Guatemala recognises the additional vulnerability of child and adolescent refugees and migrants, and provides them



with preferential treatment, including ensuring that decisions concerning them are made in their best interests. Sexual violence is specified as a ground for recognising refugee status, and survivors are assisted to access support.

Honduras

Honduras is a transit country for refugees and migrants en route to North America and is also a country of voluntary and forced returns. Migratory flows in Honduras are mixed, made up of regular and irregular refugees and migrants, and Honduran deportees or returnees. It hosts very few asylum seekers and refugees. Those arriving in Honduras come from a variety of countries, with the largest proportion being Cuban, followed by Venezuelans, Ecuadorians, Haitians and then other nationalities.²³ Honduras also receives refugees and migrants from Nicaragua however, as Nicaraguans are able to avail of the Central American Free Mobility Agreement CA-4, they enter the country as tourists and most undergo their migration check and most continue their journey to Guatemala.



Changes in the US migration policy, including the removal of migrants under Title 42 and the tightening of the US immigration policy towards refugees and migrants have changed migration dynamics in Central America.

Interviews informing this report suggested that the US decision to remove irregular refugees and migrants under Title 42, and the application of the Migrant Protection Protocols (MPP) to all Venezuelans entering after 19 November 2022,²⁴ changed migration dynamics towards the end of 2022. Venezuelan migrants and refugees who were in Guatemala or Mexico began to return to Southern countries. Thus, Guatemala faced a situation of two-way transit migration. In January 2023, the U.S. government announced further policy changes affecting asylum seekers and migrants from Cuba, Haiti and Nicaragua and in May 2023, the US announced a further enforcement of Title 8 to remove individuals who arrive at the U.S. border irregularly.²⁵

On the one hand, mixed movements flows continue to the North (as is the case of Ecuadorians) and necessarily pass-through Honduras due to their geographic location. On the other hand, refugees and migrants, especially Venezuelans might begin to return to the South, causing a “sandwich effect” and saturation of shelters and temporary housing availability.

Legal pathways to protection

Honduras may grant special permits of permanence for a maximum of five years to refugees and stateless persons, asylum seekers, and “others that the General Directorate of Immigration and Alien Affairs deems appropriate for reasons of national interest, humanitarianism or reciprocity with other states”. However, the information provided by the law and regulations is still unclear.

It may also grant a temporary residence permit for humanitarian reasons, but the cost of this permit is prohibitive for many. Irregular refugees and migrants are subject to expulsion and, previously, were fined approximately 240 USD. However, an amnesty has been introduced exempting these refugees and migrants from the fine.

The number of Venezuelan refugees and migrants has significantly increased, although the legal framework for their protection remains unclear. Some apply in Honduras for temporary residence on humanitarian grounds and stay in Honduras, while others whose asylum claims are denied await voluntary return.

Special protection regimes

Migration law identifies certain groups, for example unaccompanied children, Gender Based Violence (GBV) survivors and others as requiring special consideration, but in practice these special measures are applied on an ad hoc basis.

Mexico

Mexico has a highly complex migratory scenario. Over the past decade it has gone from being a country of origin and transit to one of destination in which thousands of people from Latin American and non-Latin American countries seek international protection.

While it remains a significant route through which refugees and migrants seek to enter the USA, changes to the US government policy for Venezuelans but also Cubans, Haitians, and Nicaraguans has had a deterrent effect, increasing the possibility that many already on the move may instead choose to remain in Mexico. The country's northern states host many non-Mexicans who have been deported from the USA under the former Title 42 and the Migration Protection Protocols (MPP) otherwise known as the "Remain in Mexico" programme, which allowed US border officials to return non-Mexican asylum seekers to Mexico to wait until their claims have been decided.²⁶ As a result of these policies, many areas of Mexico started hosting large groups of people of different nationalities, many of whom have severe humanitarian and protection needs. The enforcement of Title 8 from May 2023 is expected to further exacerbate those trends.

Mexico is also a country of asylum and has received asylum applications from more than 100 nationalities. In 2022 the main nationalities seeking asylum in Mexico were Hondurans, Cubans, Haitians, Venezuelans and Nicaraguans. As a result of these complex migration flows, border procedures are complex and often arbitrary, with interviewees reporting significant risk of pushback, limiting the right to seek asylum. Border officials ask few questions about protection status, focusing primarily on economic motivations.



Legal pathways to protection

Mexican refugee and asylum law includes the Cartagena refugee definition. It is applied to Venezuelans but not to Central Americans, and on an individual basis only. Should an individual not qualify for protection even under this broader definition, the refugee agency COMAR also has the power to grant complementary protection. There are differences between full refugee status and complementary protection. First, complementary protection does not give rise to the right to family unification, except where the applicant is a minor and second, one may not apply for complementary protection; rather, it is a discretionary status granted following analysis of an asylum application. Interviews suggest that Venezuelans are regularly and rapidly granted refugee status, while few applications made by Hondurans, Salvadorans and Nicaraguans are accepted.

Mexico also allows for a declaration of statelessness in cases where the asylum seeker's country of origin does not maintain diplomatic presence in the country, rendering deportation impossible. Asylum seekers from Cuba and some African countries have received this status. People who have applied for asylum are granted a temporary residence card, otherwise described as a visitor card for humanitarian reasons, which is valid for 1 year and that gives them the right to work, healthcare and education.

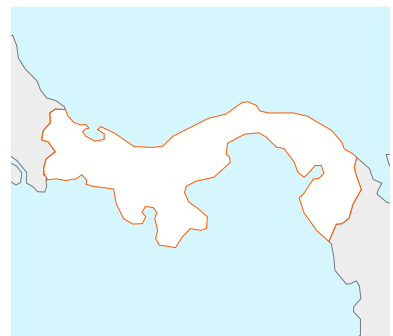
Special protection regimes

The temporary residence card (visitor card for humanitarian reasons) is also available for unaccompanied minors, victims of crimes and other vulnerable cases, such as elderly population or people with chronic diseases.

Panama

Since the mid-2010s, Panama has become a country both of transit and destination, experiencing increased movements of people from South American and non-South American countries passing through the Darien Gap in transit to the USA and/or Canada. Large numbers of Venezuelans, as well as significant numbers of Ecuadorians and Haitians - and nationals of non-Latin American countries - have continued attempting to cross the Darien Gap in recent months.

The October 2022 US judicial decision to expand the provisions under Title 42 and the MPP to Venezuelans has resulted in a decrease in the numbers of Venezuelans attempting to traverse the Darien Gap, and an increasing number who have been unable to enter the US were retracing their journeys, intending instead to reside in Panama. To prevent this entry, the Panamanian government has closed its border with Costa Rica to any Venezuelan who does not hold a valid visa.²⁷ Recent years have also seen an increase in the numbers of Nicaraguans arriving in Panama, with many crossing irregularly and settling in rural areas. Refugees and migrants who



arrive in Panama irregularly are subject to penalties which start at 50 USD but may go as high as 1000 USD.²⁸

Legal pathways to protection

Panama has ratified the 1951 Refugee Convention but has not incorporated the 1984 Cartagena Declaration into its national legislation. Asylum seekers must submit their application for asylum within 6 months of their arrival in country. In theory, the law allows for the provision of humanitarian protection which can be granted temporarily in response to a large-scale influx of people entering the country irregularly in search of protection. However, subsequent Decrees do not mention this category of protection and, so far, it has not been granted.

Refugees and migrants may only enter Panama regularly under one of the temporary or permanent visa schemes which are mainly offered to formal workers or investors. These visas typically cost between 1,200 and 1,800 USD. To avail of family reunification the applicant needs to have not only permanent residence, but a monthly salary of USD 1000. These provisions mean that visas are out of reach of most refugees and migrants and that, by default, there are no legal pathways open to those seeking protection in Panama.

Panama has previously introduced extraordinary regularisation schemes through which applicants might eventually obtain permanent residence. There are currently no such schemes available for people in need of international protection.

Panama does provide a visa or temporary permit for humanitarian reasons which allows temporary residence for up to six years. To be eligible for these visas an applicant must have pressing health problems and chronic diseases or disabilities; be elderly; or living in Panama in a state of extreme poverty.

Special protection regimes

The additional protection offered to minors is limited. Gender is listed as a basis upon which one might claim asylum. Individuals with disabilities or with significant health needs may apply for a Temporary Permit for Humanitarian reasons.

Peru

Peru has recently seen a growth in the number of foreign residents, largely as a result of the Venezuelan displacement crisis. This crisis has also resulted in a significant increase in the number of asylum applications, although the number of approved applications remains low.

Legal pathways to protection

Peru uses both the 1951 Convention and the Cartagena Declaration refugee definition when determining refugee status. However, it does not generally apply the Cartagena criteria when considering Venezuelan asylum applications except in a limited number of cases. In addition to refugee status, asylum seekers may apply for temporary residence for humanitarian reasons. This status was introduced in order to relieve pressure on the asylum system. It does not require an applicant to withdraw their asylum application, as in the case in Colombia. Humanitarian residence lasts for 183 days but can be extended an indefinite number of times for periods of one year, gives access to the public healthcare system and confers the right to work.

While these procedures provide good protective value, it may be difficult in practice for refugees and migrants to avail of them. Immigration procedures at the border are reported to be restrictive in their interpretation of the law, and there have been reports of collective expulsions at the Northern border, including of asylum seekers and non-Peruvian parents of Peruvian children.²⁹ The Constitutional Court has recently prohibited the collective expulsions of refugees and migrants,³⁰ so it remains to be seen what impact this will have.

The Peruvian government has also adopted ad hoc solutions to Venezuelan displacement through the introduction of several temporary protection schemes including the Temporary Residence Permit Card (Carné de Permiso Temporal de Permanencia, from now CPP). The CPP is a temporary extraordinary permit that confers a two-year legal residence and ability to work legally for those who entered the country before 20 October 2020. Requirements to access the CPP include having a passport or valid identity document and presenting an affidavit.³¹ The process to obtain a CPP was open until 1 April 2023—although it has previously been extended, and so may be again.³² While any nationality can apply to the CPP, 96% of these documents have been issued to Venezuelan citizens.³³

Some, for example survivors of GBV and human trafficking, or those with disabilities, may apply for residency on the basis of vulnerability. This application grants 1 year's access to a



foreigner's card and is renewable multiple times if the conditions of vulnerability continue.

Special protection regimes

Peruvian Migration Law recognizes the following groups as the most vulnerable refugees and migrants: children, teenagers, elderly, people with disabilities, members of indigenous communities, victims of human trafficking and migrant trafficking, victims of domestic and sexual violence, and in general, any person who need protection due to a significant threat of an infringement of her fundamental rights. This recognition has significant legal impact, as the Constitutional Court has suggested that people considered vulnerable under the Migration Law should not be required to have a visa to enter the country.³⁴

Refugee and migrant mother and son,
San Pedro Sula, Honduras, April 2023.



Endnotes

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