

Chapter 4

State and “Mixed Migrations”: Migration Policies Towards Haitians, Colombians and Venezuelans in Ecuador



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4.1 Introduction

As it was mentioned in the introduction to this book, the South American migration landscape has undergone important changes in the last 20 years, and new patterns of immigration have emerged. For example, migrants who usually looked northwards, such as Haitians, started to come southwards, to places like Brazil, Chile or Ecuador; countries that traditionally host migrants are beginning to experience massive flows of emigration, such as Venezuela; and transit states are increasingly common among people on the move, with many migrants now undertaking long journeys before settling in one place after leaving their country of origin. Moreover, the causes that push people to leave are a combination of economic factors with social violence, ecological crises and political turmoil, and are less dependent on a single factor. This is what some migration studies literature has begun to call mixed migrations. Indeed, the term “mixed migrations” is, on one hand, about the complexity of how to name people who move, whether they are transit migrants, permanent settlers, refugees, forced or economic migrants, and, on the other hand, it is an issue surrounding debates about what kind of legal categories should be used in migration policies (Sharpe, 2018; Kiseleva & Markin Egor, 2017).

In Latin America, the existence of mixed migration is particularly visible. Not only do economic migrants coincide on the same routes with people in need of international protection - such as those displaced by social and political violence, climate change, mega-development projects, or sexual or gender-based violence - but often the motivations behind the mobility of these people are multiple. A large part of the mixed migrations that cross the region come from countries such as Venezuela, Colombia, Cuba, Haiti, Honduras, Guatemala, El Salvador and Mexico. These are countries with complex situations in terms of internal conflicts,

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widespread violence, poverty, environmental problems, natural disasters and systematic violations of human rights. As a result, many of the people fleeing these countries are forced to leave because of the acute conditions of structural violence.

The problems of mixed migration are not unique to Central and South America, and have been extensively studied in other regions (Crawley & Skleparis, 2017; Van der Klaauw, 2010; Van Hear et al., 2009). However, there are important differences that need to be taken into account when analyzing some South American countries. Firstly, we are talking about South-South migration flows, that is, the nature of the countries of origin and of destination is quite similar in terms of high rates of under-employment, and lack of access to effective rights for the majority of the population. Secondly, as a consequence, the reasons for migration are always more complex and go beyond the economic, so that “mixed migrations” are rather common, and less of an exception. Third, the role of States in the region towards migrants had been, until recently, rather friendly, in terms of discourse, but rather restrictive in practice (Acosta & Freier, 2018). And finally, while forced conditions of departure seem to prevail, these flows have not been accompanied by an increase in the number of people granted asylum in the region, nor by a strengthening of guarantees of non-violation of their rights as migrants.

This chapter analyses Ecuadorian migration policies in three cases that can be termed “mixed migration”. Although the concept of mixed migration is not explicitly present in its legal documents, the term has been widely used by Ecuadorian state officials in the international arena. Moreover, for the past decade, governmental norms and policies have implicitly embraced it. We will analyze how the state has treated the Colombian, Haitian, and the more recent influx of Venezuelans in the last 10 years. We argue that, despite being aware of the complexity of these migrations, the Ecuadorian state has resisted recognizing the forced nature of this type of migration. Thus, instead of granting asylum to these populations based on its own legislation and constitutional principles, the State adopted an ad-hoc and singular approach towards each group that ends up reinforcing a policy of deterrence, irregularization and exclusion, instead of guaranteeing migrant’s rights. Thus, the State has taken advantage of the ambiguity of the concept of mixed migrations to implement restrictive policies on “unwanted” mobility.

Consequently, not only have the control policies that generate irregularity been normalized, but these population flows have been channeled, regardless of their nature, into the national migration system, reducing the possibility for migrants to access the broader system of refugee protection that many South American states have embraced with in the Cartagena Declaration of 1984. In fact, this Declaration represents a step forward in the understanding of the type of complex displacements that occur in the region, going beyond the restricted definition of refugee contained in the 1951 Geneva Convention relating to the Status of Refugees. Cartagena could represent an advanced instrument in the management of these mixed mobilities, since it could be set as an extended protection umbrella. For example, authors such as Berganza et al. (2020) have argued for the applicability of the Cartagena Declaration to the case of Venezuelan migration in several Latin American countries, due to the widespread violations of economic, social and cultural rights in

Venezuela. However, the Cartagena Declaration has only been used in a residual way by Latin American states (Acosta & Madrid, 2020). For example, Mexico and Brazil, countries with very different political projects, are the only ones that have granted a significant number of asylum visas to Venezuelans.¹ As of December 2020, there were 171,793 recognized refugees in the world, almost 40% corresponds to Spain, then comes Brazil with 46,700, and Mexico has granted 13,000 asylum visas (R4V, 2021).

Similarly, we find a progressive shift in the country towards a migration management model in which not only deterrence and restrictions on mobility prevail, but the State ends up promoting the irregularization of migrant populations, and legitimizing entry barriers and expulsions. In addition, regularization measures targeted at specific populations are implemented that remain limited in terms of who can opt for them (Acosta et al., 2019).

We argue that the consequences of these policies are twofold. First, they enable the establishment of a mobility management model based on fragmented measures aimed at providing transitory and emergency “solutions”, as opposed to a more holistic view of mobility processes. Secondly, the ambiguity entailed by the concept of mixed migrations has contributed to the weakening of the refugee protection system, which was particularly relevant in Ecuador during the second half of the 2000s, when the country applied the Cartagena Declaration to Colombian populations through the Expanded Registry policy (Molina, 2010; Velásquez Victoria, 2012). In contrast, the idea of mixed migrations favors ad-hoc migration policies, produces legal instability for migrants, and distances them from the categories contemplated in constitutional and legislative instruments, which aim for more stable policies.

The chapter is based on different qualitative research previously conducted by the authors in relation to the Colombian case (Gómez Martín & Malo, 2019; Hurtado Caicedo et al., 2020; Gómez Martín, *in press*) and the Venezuelan and Haitian cases (Herrera & Cabezas, 2019; Herrera, 2019; Herrera & Berg, 2019), as well as secondary literature on immigration in Ecuador.

The chapter has been divided into three parts: First, we review different conceptions of “mixed migration”, which are linked to different understandings of mobility itself. We aim to highlight the complexity and ambiguity surrounding the term mixed migrations. We then focus on the Ecuadorian context as a receiving space for mixed migrations, and look at the evolution of migration policies over the last 20 years. Thirdly, we present our analysis on how the Ecuadorian state has dealt with the three cases of interest, namely the migrations of Colombians, Haitians and Venezuelans in Ecuador. We end with some conclusions on the contributions of the chapter to better understanding how these new and not-so-new migration patterns in South America are being addressed with policies increasingly aligned with global border control regimes, rather than international protection policies.

¹According to Acosta and Madrid (2020), this policy was not so much due to the recognition of the forced and complex nature of these migrations as to a political stance of President Bolsonaro against the Venezuelan government.

4.2 “Mixed Migration”, the Cornerstone of Global Human Mobility Management

One of the elements that characterizes the new global regime of migrations that arises from the consolidation of the neoliberal system in the 1990s is the adoption of concepts that take a predominant role in language but pose multiple problems both in terms of the meanings that can be attributed to them, as well as the situations that legitimize their use in public policies (Gómez Martín, 2022).

Among these concepts we find that of “mixed migrations”, constructed from different meanings and actors, and inscribed in the three predominant models of understanding migrations: the one in which the defense of migrants’ rights prevails, the one that prioritizes the security of States over the rights of people, and the one that does not see the two positions as incompatible or in dispute, but rather considers that it is possible to generate a balance between both approaches.² In these models, the concept of mixed migration starts from a common substratum: it is seen as a population movement of complex composition; however, the explanation given to the reason for such complexity, and the consequences of its implementation, take different channels (Sharpe, 2018).

The first meaning of mixed migration, linked to the rights guaranteeing model, points out that the current intricate composition of the flows of people on a global scale is an effect of the policies of state control, containment and deterrence, which, on one hand, has progressively restricted access to international protection for forcibly displaced populations and, on the other hand, has led large masses of the population to processes of irregularization. This is the initial meaning of the concept upheld by the United Nations Refugee Agency (UNHCR) from 2007³ onwards, and which will be developed more broadly and analytically by academics.

From this perspective, not only is an explanation given as to why these migrations become mixed, it is also understood that the concept implies a kind of rupture with the rigidity generated by the categories of migrant and refugee, pointing out the existence of populations that do not necessarily fall clearly into a category (Ferreira Santos, 2018). At the same time, the concept marks the multidimensionality of the causes of mobility visible and, therefore, the impossibility of separating expulsions of an economic nature from violence or persecution of various kinds (Castles, 2010).

Another definition of the concept appears from the security paradigm. Although it affects the varied composition of the flows, it focuses primarily on the individual

²Some authors consider that, rather than a scenario marked by differentiated and disputed paradigms, there are only certain nuances, particularly regarding the first and third models. Both would start from the same basis: the understanding of migrations as a problem of international order that needs to be managed and controlled through the combination of different channels (Ruiz & Álvarez, 2019).

³In 2007, António Guterres launched a series of meetings called “Dialogues on Protection Challenges” in which the concept of “Asylum-migration nexus” adopted in the early 2000s was replaced by that of mixed migration. This change is introduced in the base document “Mixed Migration: 10 Point Plan of Action” (Sharpe, 2018).

motivations behind mobility (Sharpe, 2018). These motivations are presented as legitimate or illegitimate based on unclear dichotomies about forced or voluntary; emphasizing that most of them would be voluntary, but would try to pass as forced in order to benefit from the international protection system. From this perspective, the problem does not derive from the imposition of barriers to regular entry by states, but from the people in mobility themselves and their supposed tendency to transgress the sovereign rules of the states that prevent them from passing through. This idea of mixed migration also generates a powerful sense of suspicion (Shamir, 2005) and has been particularly important in undermining international refugee protection, introducing the idea that many requests for protection are abusive or fraudulent (Marcogliese, 2020).

From this perspective, mixed migration can also be read as a concept-container. That is, it refers to a wide variety of forms of mobility, but, at the same time, it imposes a homogenizing scheme on them, by simply labelling them as irregular migration (Castles, 2010). Irregular entry means that potential asylum seekers cannot be recognized as refugees, but also that many migrants end up being excluded from dignified treatment (Ferreira Santos, 2018) and in accordance with international human rights law.

Finally, the third meaning of the concept is linked to the humanitarian world. In fact, its use initially occurs within international cooperation agencies, in a scenario in which the UNHCR raises the alarm about the crisis in which the international protection system has found itself since the shift in the mobility paradigm that occurred in the 1990s (Van Hear, 2011; Sharpe, 2018). Similarly, the UNHCR emphasizes the deepening of this crisis caused by the misrepresented use of the term “Asylum-migration nexus” (Papadopoulou, 2005), the predecessor of mixed migration, which had been adopted by the international organization itself in the early 2000s. That is, that asylum was being abused by the migrant population, and that this mainly affected the countries of the North.

Subsequently, the concept of mixed migration used by the UNHCR will be transformed and adapted to the interests of the other major organization linked to mobility processes, the World Organization for Migration (IOM) (Van Hear, 2011). In fact, the term “mixed migration” is progressively replaced in the academic, political, mediatic and humanitarian vocabulary by the term “mixed flows”, which is the term coined by the IOM.⁴ This organization emphasizes two issues with important impacts on the generation of discourse and policy making: on one side, the vulnerable nature of many of the people who are part of them, which leads for their case to be treated following a humanitarian approach; on the other side, it connects them to irregular movements of people. The IOM points out in this sense that: “Mixed flows are related to irregular movements, in which there is often transit migration, with people traveling without the necessary documentation, crossing borders and

⁴No clear reflection has been made so far on the strategic and even ideological implications of using one or the other term. The term “mixed flows” refers more to a vision of the entry and exit of people from a country and the possible measurement of these flows, while the term “mixed migrations” refers to more complex and comprehensive processes (Gómez Martín, *in press*).

arriving at their destination without authorization” (International Organization for Migration [IOM], 2009, p. 1).

For the IOM “answers to irregular migration and mixed migratory flows need to take place in the context of a global approach to migration management, which simultaneously takes into account the legitimate sovereign authority of States and the fundamental human rights of migrants” (IOM, 2009, p. 1). This meaning tries to generate a balance between the concerns of States and, at the same time, generate protection measures for migrants to deal with flows that are considered to have a forced nature or have suffered situations that violate rights during the different stages of the migratory cycle. It is thus possible to combine the discourse of the defense of human rights with that of state sovereignty.

What is interesting here is to see how mixed migrations have become in the last decade, a key piece in the explanation of the mobility paradigm defended by the IOM (Van Hear, 2011), that is, the one that insists that migratory flows must be well managed, organized and safe, to put an end to irregularity and solve the danger of unregulated transits (Domenech, 2017). The acceptance of this discourse has led the IOM to position itself as a reference actor in the treatment of mobility on a global scale. This fact not only leaves the UNHCR in a position of subordination and submission to its discourses and decisions,⁵ but also interweaves a relationship of dependence of the States with the organization, by outsourcing to it the treatment of humanitarian crises that the same States provoke with their policies of control and containment. This would explain the close connection between the second and third models of migration management, by establishing a functional relationship between the two.

In short, the concept of mixed migrations is not neutral and adopts different meanings and uses depending on the prevailing model of migration management. This leads us to a reflection on the political character of the use of the categories, with which we seek to signify the new migratory patterns. Thus, Crawley and Skleparis (2017), who analyze the use of the categories “migrants” or “refugees” in the so-called “European refugee crisis of 2015”, show the profoundly political character of refusing to use the word refugee and instead seek new meanings to name the ever-increasing exoduses of populations around the world. These authors highlight the need for reflection on the use of categories in order to detect their implications and meanings, in the course of migration policies and ultimately in the lives of people in mobility. In other words, while a category may appear neutral and objective in a Declaration or International Convention, it is permanently re-signified and transformed, responding to changes in the political allegiances or to the interests of refugee-receiving countries, and the evolution of policies and laws.

⁵This situation was reinforced in 2016 when the IOM joined the United Nations System as its migration agency. Under a supposed cooperation between the two organizations, we are witnessing, however, a certain cornering of the UNHCR in decision-making, because from the logic of the IOM the categories migrant/refugee would be little operational to take off an operating model in which it equates international protection with humanitarian action.

While it is necessary to recognize that there is a growing gap between the normative and legal frameworks that define the international protection regime and contemporary forms of migration, it is also important to ask how policies and categories are constructed, which actors come into play, and the interests by which certain processes are named. In this chapter, we seek precisely to examine the way in which the Ecuadorian state constructed different categories for those populations that could qualify as migrants in need of international protection. Instead, as we will see in Sect. 4.3, the state constructs them as economic migrations, migrations vulnerable to human trafficking, or migrations resulting from humanitarian crises, all while avoiding recognizing the forced nature of these mobilities.

4.3 The Evolution of Migration Policies in Ecuador: From Universal Citizenship to Securitization

Until the end of the twentieth century, Ecuador was mainly a country of emigration with important numbers of Ecuadorians leaving for the US, Canada and Venezuela. There were some cross border migrants, particularly from Colombia and Peru, but the numbers were not significant. By the turn of the century both emigration and immigration flows increased dramatically. The exodus of about 1,500,000 nationals during one of Ecuador’s most acute economic crises (1999–2001) and the arrival of about 250,000 Colombian refugees fleeing from political violence, placed migration at the center of policy agendas.

Over the last 20 years, Ecuador has become a place for different types of migrants and mobilities; new immigrants from Cuba, Haiti, and Dominican Republic started coming from 2010 on, and continued together with some North to South professional migrants and cross border migrants from Colombia and Peru. But, the arrival of great numbers of Venezuelans in 2015 posed a crucial challenge to migration policies. Nowadays, according to the UN v Platform, there are 4,600,000 Venezuelans in Latin America and the Caribbean, and 429,000 in Ecuador. This is by far the most important migration stream in South America.

Regarding the type of migration, transit migration is combined with more classic settlements, and forced as well as voluntary return migration from the US and Europe have taken place. As we mentioned before, motivation to move to Ecuador is not only economic, but increasing pushed by other factors such as ecological crisis, social violence and human rights violations. Therefore, the structural causes of migration, as well as individual motivations for moving, hardly fit conventional legal categories with which migrants are named.

Concerning immigration policies, according to Ackerman (2014), during the twentieth century Ecuador’s state response toward immigration was racially and geographically selective: white European immigrants were offered benefits to invest in the country, while there were strict laws of exclusion for other nationalities (Ackerman, 2014). The sudden increase of both emigration and immigration, at the

turn of the century, produced a more active response from the state. State actions can be divided in three periods: A first period, going from 2000 to 2007, corresponds to the construction of migration as a public matter. During that period, the state engaged in some policies toward its diaspora, but kept legislation on immigration untouched.

From 2007 on, the government of President Correa brought a series of changes to the dormant migration policies of previous years. The new constitution approved in 2008, included important rights for migrants: it advocates universal citizenship and the free circulation of people; it also entitled immigrants to vote in presidential elections, and emigrants to elect representatives to the National Assembly; it also guaranteed universal access to public health and education (Góngora-Mera et al., 2014). During this second period, which happened until 2013, several policies were implemented; they were basically oriented to the creation of an institutional transnational network of support for Ecuadorian emigrants abroad. Regarding the requirements to enter the country for foreigners, the need for a visa was eliminated for all nationalities. This was justified as a measure to improve tourism, and also as a way to apply the constitutional principle of free mobility. Ever since, there has been an important diversification of migratory flows coming to Ecuador.

Finally, the third period, from 2014 to 2020, expresses the shift in Ecuadorian migration policy towards more restrictive policies. Several presidential decrees were enacted to control the borders. In fact, in 2010 a visa was required for several nationalities, particularly for people coming from Asian countries. With regard to policies on refugee, the Presidential Decree 1182 of 2012 narrowed the scope for asylum access. The state justified this restrictive agenda with a narrative on the needs to curb trafficking and the operation of criminal smuggling networks. However, these policies were fundamentally oriented at limiting the entry of certain types of immigrants (Ruiz & Álvarez, 2019; Herrera & Berg, 2019). At this stage, we find that migration policies are mainly guided by representations of immigrants as a problem, and sometimes even as a danger; being the main concern of the State control and deterrence, while those programs oriented to the Ecuadorian diaspora were abandoned. As we will see, this trend was reinforced with the arrival of Venezuelan migration.

4.4 Policies Towards the Colombian Population: Progressive Weakening of Refugee Status and Its Replacement by Migratory “Solutions”

The relationship between Colombia and Ecuador in terms of human mobility has been determined by historical and political conjunctures, economic and commercial dynamics, family, ethnic and cultural relations -particularly in the border areas- that have stimulated mobility on both sides, as well as the omnipresent Colombian internal armed conflict (Rivera et al., 2007).

This connection becomes more evident at the end of the 1990s due to two simultaneous processes that attract Colombians to Ecuador, reinforcing the idea of mixed migration. On one hand, the adoption of US Dollars as the national money of exchange that took place after the Ecuadorian bank closure of 1999, made the country attractive for the settlement of businesses and foreign workers, particularly from bordering countries (Herrera et al., 2012). On the other hand, the implementation of Plan Colombia (1999),⁶ which lead to the regionalization of Colombian’s internal political conflict and the crossing of the Colombian-Ecuadorian border by thousands of people (Rojas, 2003). The combined effect of these two situations is why we currently find Colombian populations with very different statuses in Ecuador: recognized refugees, asylum seekers and applicants, migrant populations in a regular situation with different migratory visas (among which are people in possible need of international protection), and a significant number of people in an irregular situation.

In the first decade of the 2000s, the increasing presence of Colombians displaced by the conflict led to the flows arriving from the neighboring country to be classified as forced migrations.⁷ This spurred the development of a refugee policy based on the international regulations that Ecuador had adopted in previous decades⁸ (Gómez Martín & Malo, 2019). However, this policy came at a contradictory and very limited time (2008–2010), as it coincided with the protection of rights inaugurated by the Constitution of Montecristi in 2008, but also with the rupture of diplomatic relations with Colombia caused by the bombing of Angostura.⁹ This last event caused the few guaranteeing policies that could have been taken at the time to be tinged by a clearly security-targeted scenario during the implementation of the so-called Enhanced Register¹⁰ (Pugh, 2021). It is interesting to note how this last policy, which involved the collective regularization of almost 28,000 people, along with the total accumulated number of refugees recognized in the country,¹¹ has allowed

⁶ Bilateral agreement signed by Colombia and the United States in 1999, which sought to generate a strategy to fight drug trafficking and subversive groups. The plan ended up generating an expansion of the conflict by reinforcing the war against the FARC, the militarization of large areas and contradictory effects regarding illicit crops.

⁷ The figures provided by UNHCR speak of 250,000 forcibly displaced persons living in the country. However, this unofficial figure has been available since 2010 and could be much higher, as the number of people entering the country has continued to rise over the last 10 years.

⁸ We refer to the accession in 1955 to the 1951 Geneva Convention, and the signing of the 1967 Protocol in 1969, as well as the adoption of the principles of the 1984 Cartagena Declaration.

⁹ It took place in the framework of the so-called Operation Phoenix and resulted in an air attack by the Colombian army on a jungle area in the Ecuadorian province of Sucumbios where a FARC camp was located. The intervention resulted in the death of 22 guerrillas, including the commander known as Raul Reyes, and triggered a regional diplomatic crisis (Arellano, 2008).

¹⁰ This is an innovative mechanism implemented in 2009 in different areas of the country and in which the Ecuadorian Foreign Ministry, UNHCR and civil society organizations collaborated (Molina, 2010; Velásquez Victoria, 2012).

¹¹ From 1 January 1989 to 31 July 2020, 243,974 persons applied for refuge in Ecuador. Of these, 57,138 are active recognized refugees (23% of the total number of applicants).

Ecuador to present itself as a country that protects the rights of refugees (Hurtado Caicedo et al., 2020).

Although the progress made by the policy of Enhanced Register, and the innovation it implies in regional terms is undeniable, since for the first time the Cartagena Declaration is applied collectively in a South American country,¹² it was still an exceptional policy that did not lead to a broader and more comprehensive policy, i.e., one that would guarantee international protection in all its aspects. In fact, we only later found small provisions regarding the improvement of documentation, access to certain services, or some restricted agreements related to employment (Arcentales, 2014; Gómez Martín & Malo, 2019; Rodríguez González, 2017).

During the following decade, the measures taken in various spheres generally slow down the attainment of the status.¹³ Firstly, the production of regulations below the rank of the constitution (executive decrees and ministerial agreements) which, despite contradicting it, set the line to follow in terms of restricting access to refuge. The most significant case is the approval of decree 1182 on May the 5th, 2012, in force until August 2017. Although the restrictions regarding deadlines for submitting refugee applications and the elimination of the Cartagena refugee definition were declared unconstitutional, much of the regressive articles were maintained (Ubidia Vásquez, 2015), which explains the drastic decrease in the recognition of refugee status in the following years.¹⁴

Secondly, there is a progressive stigmatization of the figure of the refugee. One on side, because of the connection established by the local host society, but also by the officials in charge of studying the cases, between the refugee request and the cause that generated the forced displacement. As Colombian refugees and members of humanitarian organizations point out in interviews, the refugee is often blamed for bringing insecurity and violence, which often leads to confusing the victims with the perpetrators.¹⁵ On the other side, because of the social perception that refugees are supported by the state, and therefore, would be a burden on Ecuadorian society (Gómez Martín, & Malo, 2019).

In this sense, the massive rejections of refugee requests will encourage Ecuadorian institutions to believe that these are migrants who come to take advantage of the “solidarity” offered by the country, rather than being people who have been forcibly

¹²Cartagena assumes a definition of the term refugee, broadening it and adjusting it to the processes of forced displacement in the region. It states that refugees are those who “have fled their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order”.

¹³We are referring to Executive Decree 1471 of December 3rd, 2008, which imposed the presentation of a judicial past for Colombian nationals. The Decree was not declared unconstitutional until 2017.

¹⁴Since 2011, annual recognition rates have been very low, below 15%, (reaching 3% in 2015), with the sole exception of 2018 when they rose to 27%, as a process of readjustment of several thousand applications that had been held up for years took place (Hurtado Caicedo et al., 2020).

¹⁵Interviews carried out in the framework of the collaboration between Flacso-Ecuador and the Commission for the Clarification of Truth, Coexistence and Non-Repetition of Colombia.

displaced.¹⁶ All this has led the population in need of international protection, to see refuge as an unattractive option, since, in many situations, their possession affects their socio-labor integration and, furthermore, does not guarantee them work or access to the rights enshrined in the Constitution. In addition, there has also been a delay in the State’s response to requests, which has kept petitioners in a legal limbo for years.¹⁷ This is one of the reasons why people in need of international protection have ended up seeking other strategies to legally remain in the country.

In the Colombian case, it is the Mercosur regional visa that has particularly facilitated this process (Ramírez et al., 2017; Pugh, 2021). The fact that up to 2017 80.71% of Mercosur visas granted in the country were for Colombian citizens is proof of that. This visa has functioned as a container for all types of flows from the neighboring country, which reinforces the confusion in the country between regularization and protection. Similarly, these migratory solutions allow for the treatment of potential refugees as economic migrants, creating a scenario in which both the expelling and receiving states take no responsibility for the fate of these populations, forcing them to assume the full economic, social and emotional cost of this forced displacement.

4.5 Victimization as Containment: The Ecuadorian State and Haitian Migration

Haitians started moving to Ecuador after 2008, taking advantage of the policy that eliminated a visa for short stays to all citizenships. However, it was from 2012 to 2016 that Ecuador became an important destination for Haitians, either to start a live or to temporarily stay until they could go further South or North. According to Ceja and Ramírez (2022) between 2012 and 2015, the migratory balance was approximately of 41,000 people. However, these numbers could be misleading because many Haitians left Ecuador through different clandestine paths when the Peruvian government offered an entry visa for Haitians in 2012. Over the last 10 years, since the 2010 earthquake, Haitians have looked to different destinations in South America to migrate, being Brazil and Chile the preferred ones. Ecuador slowly became an important node for transitions of migrants from different nationalities, either to the South or the North (Álvarez Velasco, 2020).

Haitians are a good example of what is now called “mixed migrations”. While Haitians have a long history of migrations to Northern countries such as the US and France, two natural disasters, the 2010 Earthquake and Hurricane Sandy, as well as social and political violence, have caused important crisis of social reproduction

¹⁶Interview with Ralf Oetzel, Advisor to the SI Frontera program of GIZ Ecuador, in the framework of the collaboration between Flacso Ecuador and the Commission for the Clarification of Truth, Coexistence and Non-Repetition of Colombia.

¹⁷Between 2018 and 2019, for example, there was an extraordinary process to try to resolve 9000 applications that had been held up since 2006 (Hurtado Caicedo et al., 2020).

that push men and women to leave the country in search of a better life. As Ceja and Ramírez (2022) sustain, their migration is a combination of ecological, social, economic and political motivations. Burbano (2015) also claims that Haitian migration to Ecuador challenges static notions of migrant and refugees due to the multiple crises that the country has experienced, which pushed its citizens to abandon the country. Under such conditions, the Cartagena Declaration could have been a suitable instrument to use in order to guarantee Haitians rights in Ecuador. However, this was not the case. Instead, we found a series of measures that aim towards controlling their mobility.

Indeed, after the 2010 earthquake in Haiti, the Ecuadorian government launched a humanitarian Amnesty to Haitian population already living in Ecuador (Decree 248 of February 2010) which granted 5-year residence permits to Haitian arriving to Ecuador before January 2011. This program benefitted as little as 383 Haitian citizens. Over the following years, the state adopted a more restrictive approach and started strengthening controls at airports. According to Bernal Carrera (2014) and López Rivera and Wessel (2017) many Haitians were singled out at the airport due to suspicion on behalf of immigration officials of being part of smuggling networks. In fact, the state's representation of migrants as actual and potential victims of human smuggling and trafficking was particularly striking in the case of Haitians. Such victimization is intertwined with racial considerations that confirm a selective targeting of Haitians and African immigrants for more restrictive reactions on behalf of public officials (Acosta & Freier, 2015; Bernal Carrera, 2014).

In 2015, the Ecuadorian State imposed a registration on Haitians in the Ministry of Tourism, with the excuse of protecting them against trafficking. This was called the "Formulario Único de Validación Turística" (Single Tourism Validation Form) and was only applied to Haitian population. This form included information on previous visits to Ecuador, and plans on touristic activities. According to Ceja and Ramírez (2022), between August 2015 and March 2016, 3588 Haitians filled out this form and only 722 were approved, in other words, only 20% of all applicants. Moreover, unlike the treatment received by Colombians, 762 Haitians applied for asylum between 2010 and 2016, and only 6 obtained the status. Interestingly, in these different measures of control and containment, Haitians were named as potential victims of criminal networks (Herrera & Berg, 2019).

In other words, Ecuadorian state policies were not really motivated neither by humanitarian concerns for Haitians nor in compliance with the human right approach of its Constitution, or any signed International Agreements, such as the Cartagena Declaration. They rather support the combat against human smuggling and trafficking, a policy agenda that has been promoted by the US State and respond to issues of border control (Ruiz & Álvarez, 2019).

4.6 Policies towards Venezuelan Migration: Deterrent Humanitarianism?

As mentioned before, Venezuelan migration represents the most important exodus of the last 50 years in South America. Discussions on the mixed character of Venezuelans flows have been abundant among public functionaries in international forums. During the Twelfth Global Forum on Migration and Development held on January 2020 in Quito, chaired by Ecuador, mixed flows and mixed migrations had a central role in the agenda of states and civil society meetings, and several Ecuadorian high decision makers highlighted the mixed character of Venezuelan migration in their speeches. In the case of Venezuelans, this term is related to the idea of an economic and political crisis that needs a humanitarian response. This is the sense of the first decree of Emergency declared by the state in August 2018, when flows reached an average of 4200 per day. Through this decree, the state reinforced its personnel at the borders and promised to deploy more security for the bordering regions, among other measures.

Initially, Ecuador applied an open-door policy that privileged free entry over border control. However, these policies were hardened with the rapid growth of immigrants, reaching the visa requirement in August 2019, and, the closure of borders in March 2020, due to the pandemic. These policies have drastically slowed down the passing of people across regular borders, and caused the growth of irregular passages and smuggling.

Indeed, until August 2019, South Americans - including Venezuelans - could enter Ecuador with a passport or an identity card issued in their countries. Once in the country, Venezuelans had three routes for obtaining a regular work permit. The first way was to apply through the 2010 bilateral treaty between Ecuador and Venezuela, which grants a 2 years residency and work permits to migrants with a formal job in the country. This is a very expensive permit (\$450) which very few people could take advantage of. The second path to regularization was through the UNASUR visa, which was implemented since 2017, as a consequence of the approval of a legislation supporting a South American citizenship, guaranteed in the 2008 Constitution. This visa bestowed a 2-year work permit without the need to prove a work contract, and it could easily be renewed, although it had a high cost (\$250). The third kind of permit available to Venezuelans was obtaining a professional visa. This third method usually implied an additional requirement of college degree recognition by the public agency of education, and has a very selective character (Herrera & Cabezas, 2019). These three types of visas benefited around 120,000 Venezuelans until 2019. However, in August 2019, under the prerogative of guaranteeing a “safe, orderly and regular migration” as promulgated by the Global Pact on Migration, a new visa was set into place.

The Ecuadorian state added this new temporary visa through a presidential decree instead of maintaining the instruments derived from the Law on Human Mobility approved in 2017 by the Legislative Assembly. Although this visa is less expensive than previous visas, it can only be obtained in Venezuela or in a Venezuelan

consulate of a bordering country. This not only creates serious limitations for the formal entry of new Venezuelan migrants, but also affects the circulation of Venezuelans throughout the continent. On the other hand, in contrast to Mexico and Brazil, the recognition of Venezuelans as refugees has hardly been applied in Ecuador. By December 2020, only 441 out of 13,000 applications had been granted asylum status by the state.

Despite processes of registration, regularization, and the granting of 68,000 new visas since September 2019, the gap between legal and undocumented migrants has continuously grown. At the end of 2019, the number of Venezuelans in Ecuador reached an estimated of 400,000, and by August 2020 the state had distributed 180,000 visas. The Ecuadorian state response has thus been inadequate given the rapid growth of migrant flows.

The state's arguments surrounding the implementation of visas for Venezuelans were based on securing safe and formal migration, in order to avoid trafficking and labor exploitation of undocumented migrants. However, the opposite seemed to be occurring. Interviews with international organizations and NGO officials at the Rumichaca border between Ecuador and Colombia confirmed that the border's closure in mid-2019 has drastically slowed the circulation of migrant population through regular checkpoints, but has not halted migration. The border's closure, in fact, has led to an increase in irregular crossings and a proliferation of criminal networks and human trafficking. This situation was exacerbated and reached a critical point when all borders were closed in April 2020 due to COVID-19, just as hundreds of Venezuelans sought to return home.

National measures aimed at controlling migration and restricting mobility were accompanied by an international strategy of promoting the principle of multilateral co-responsibility, by which Venezuelan migration should be considered a *migratory and humanitarian crisis*,¹⁸ that involves not only the countries of destination but the international community as a whole. Therefore, while internally, the main policies towards Venezuelan have been one of closure and border control, in the international arena, the Ecuadorian state praises an idea of humanitarian crisis resulting from a combination of economic and social crisis with violence and the lack of access to health and basic needs. That is, there is a double discourse of border control at the national level, which is mainly the product of internal political pressure; and, a narrative of humanitarian crisis that implies the forced and mixed character of Venezuelan migration at an international level. This contradiction is well summed up by the name of the new ad-hoc visa created for Venezuelans, which is called the "Exception Visa for Humanitarian Reasons (VERHU)".

In this third case, we appreciate an increasingly frequent recourse to the idea of humanitarian assistance that had already been forged in previous policies but which is confirmed with the arrival of Venezuelan migration (Herrera & Berg, 2019). Thus,

¹⁸This argument of co-responsibility is present in the *Quito Declaration on human mobility of Venezuelan nationals*, of September, 2018, on the Declarations of two more following meetings that took place in Quito, on November 2018 and April 2019 and in the *IV Joint Declaration of the fourth meeting on human mobility of Venezuelan nationals* held in Buenos Aires on July 19th, 2019.

one could speak of a colonization of the idea of mixed migrations through the humanitarian trope. In a state discourse, fiscal crisis is combined with a humanitarian crisis to demand the joint responsibility of the international community when dealing with the massive arrival of the Venezuelan population, both in Ecuador and in several other countries of the Andean region.¹⁹ From then on, Ecuadorian immigration policy acquires an important turn: The Ministry of Foreign Affairs and Mobility focuses on the search for international funds, while regularization and border control is managed by the Ministry of the Interior, which is in charge of security issues and social assistance; placing integration in the hands of international organizations. Clearly, this kind of division of labor among the main actors of migration management, which surrenders social emergency and social integration to third parties, has abandoned any kind of concern for international protection.

Consequently, the shift experienced by migration policies has acquired a perspective of control and regulation rather than of social integration; which will be clearly reflected in the way the State faced COVID-19. Borders were closed for more than a year and a half, and assistance for migrant population was charged to international organizations and NGOs, since the state did not include migrant populations in its social protection emergency measures.

4.7 Conclusions

Migration in South America increasingly responds to structural crises that combine different exclusion factors. In addition to historical cross-border labor migrations, international displacements have been increasingly added in response to multiple situations of social, economic and political violence. These phenomena have questioned both the analytical tools with which we interpret these phenomena, and the legal categories with which displaced persons are classified; revealing the interests that exist behind how certain processes are named. In this sense, the different responses that the Ecuadorian state has given in the last 10 years to the three studied regional migratory flows show: first, that the way in which migrants are named in policies affects their access to rights in destination countries; second, that the state constructed different categories for those populations that could qualify as populations in need of international protection.

In the case of Colombian migration, the evolution of the State’s response from the “Expanded Registry” policy to the Mercosur visa shows that the State went from recognizing these populations as refugees, to dubbing them with their ambiguous conception of “mixed migrations”. Thus, the refugee status was gradually blurred in favor of the category of South American economic migrant, leaving many displaced by the violence that persists in this country without international protection.

¹⁹This idea of co-responsibility is reflected in what was the Pact of Quito, a meeting of 11 States that took place at the end of 2018, aiming at finding regional solutions to what is called a Venezuelan migration “crisis”.

On the other hand, the forced nature of Haitian migration has not been recognized either. The multidimensionality of the violence that expels them from their territories and their livelihoods is made invisible in the way this migration is categorized by the Ecuadorian state. Indeed, the vulnerability identified by the State does not lie in permanent political and social insecurity, poverty or the lack of access to decent living conditions, but in the probability that this population will fall into trafficking and smuggling networks in their mobility processes. This led to the use of a measure that makes no sense in the case of this migration: requesting a registry of information that qualifies them as “tourists”. The Ecuadorian State has looked the other way regarding the conditions of extreme vulnerability of Haitian migration, imposing a measure of containment and a category that clearly does not respond to the reality of the lack of protection of this population.

Finally, the case of Venezuelan migration is a clear example of the way in which the state shapes the application of migration laws and categories in favor of its own interests, as Crawley and Skleparis (2017) have noted in the European context. Thus, in less than 5 years, Venezuelan migration went from a qualified migrant category, with the possibility of accessing stable and long-term regularization processes, to a temporary humanitarian subject category, which considerably decreases their possibilities of a real social integration. This category also makes the forced nature of a large part of this population invisible and; therefore, also rules out the recognition of their need for international protection.

The three analyzed cases show how the state shapes the interpretation of its legal instruments, based on internal and external political interests. This has a direct impact on the lives and rights of people on the move, who see their options for formal entry and regularization considerably reduced. In short, in spite of having the legal instruments for the treatment of both forced and South American labor migration, the Ecuadorian State has maintained a series of ambiguous and contingent measures when it comes to regulating these three migratory processes, promoting the irregularity in these populations, and a greater vulnerability regarding the exercise of their rights.

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